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NYC Suppliers File FERC Complaint Against NYISO Regarding Capacity Market Rules

On June 3, 2011, electric generation suppliers Astoria Generating Company, L.P., designated NRG Companies and TC Ravenswood, LLC ("Suppliers"), which sell unforced capacity in the New York Independent System Operator, Inc. ("NYSISO") Zone J capacity zone (i.e., New York City or "NYC"), filed a complaint ("Complaint") at FERC against the NYISO alleging that the NYISO has improperly implemented the buyer-side market power rules (also commonly referred to as "buyer-side mitigation") contained in its Market Administration and Control Area Services Tariff (the "Services Tariff").

In 2007, the Commission directed the NYISO to modify its NYC capacity market rules to provide a level of capacity compensation that would attract and retain needed infrastructure, without over-compensating or under-compensating generators. In response, the NYISO proposed, and the Commission accepted, new buyer-side *and* seller-side market power rules. The intended purpose underlying buyer-side mitigation rules is to prevent "uneconomic entry" that would suppress prices in the NYC capacity market below "just and reasonable levels." These new rules became effective in 2008, prospectively, and thus, only apply to new capacity entrants in the NYC market. Unless exempt under the Services Tariff's exemption test ("Market Exemption Test"), new capacity entrants to the NYC market are generally subject to a capacity price offer floor ("Offer Floor") set at 75 percent of the net cost of new entry ("Net CONE"). Under the Mitigation Exemption Test, a new entrant is exempt from buyer-side mitigation, among other ways, if its capacity clearing prices are projected to be higher than 75 percent of Net CONE for two capability periods.

In November 2010, the Commission issued an order that, *inter alia,* accepted NYISO's procedures for its application of the Mitigation Exemption Test. Subsequently, the Suppliers sent various questions to the NYISO, including how the NYISO would implement the Mitigation Exemption Test for the NYISO's 2009 and 2010 Class Years which represent an aggregate of approximately 2,500 MW of potential NYC generating capacity. Not satisfied with NYISO's response, the Suppliers filed the Complaint stating that the NYISO's implementation of the buyer-side mitigation rules has been "inexcusably opaque." In the Complaint, the Suppliers allege that the NYISO's proposed implementation of its buyer-side market power rules violates the Services Tariff and is inconsistent with Commission precedent and the demand curve reset process. Specifically, the Suppliers argue that the NYISO's intended application of the rules will exempt uneconomic entrants and impose "inadequate" mitigation on entrants not exempted. Suppliers further allege that even if the Commission finds the NYISO's intended approach to be consistent with the requirements of the Services Tariff, it is nonetheless contrary to Commission precedent and will result in unjust and unreasonable rates. The Suppliers also requested that the Commission direct the NYISO to hold its interconnection queue cost allocation process in abeyance, pending the resolution of the instant proceeding.

The Complaint contained a request for "fast-track" processing pursuant to the Commission's rules which, if granted, would have resulted in an abbreviated comment period. The NYISO filed an answer on June 6, 2011, opposing these requests. The Commission agreed with the NYISO and set the comment period for twenty (20) days, ending June 23, 2011.

This proceeding (Docket No. EL11-42-000) could result in higher installed capacity prices in Zone J, and therefore end-use customers in NYC and all entities serving load could potentially be affected by the outcome. Further, stakeholders intending to construct capacity resources in NYC, or otherwise sell capacity in the region, should pay careful attention to this proceeding as it could significantly impact how the NYISO applies its buyer-side mitigation measures, which could, in turn, affect whether new capacity is determined to be "uneconomic."

If you have questions concerning the material contained in this alert,
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