On February 20, 2020, the Federal Energy Regulatory Commission (“Commission” or “FERC”) issued several orders narrowing New York Independent System Operator, Inc.’s (“NYISO”) buyer-side market power mitigation rules in its mitigated capacity zones,[1] including NYISO’s proposal to exempt up to 1,000 megawatts (“MW”) of renewable resources from NYISO’s buyer-side market mitigation rules in a capacity auction year (“NYISO Renewable Exemption Order”). The Commission’s actions will significantly impact renewable resources in NYISO, PJM Interconnection, L.L.C. (“PJM”), and potentially other organized markets. Rejection of the proposed MW exemption will hinder renewable resources’ participation in NYISO’s capacity auction by: (i) requiring them to bid no lower than an established price floor, regardless of their actual incremental costs; and (ii) tightening currently-available mitigation exemptions.

The effect of FERC’s orders (e.g., expanding the resources subject to a minimum offer price floor) likely will diminish chances of renewable resources’ success in capacity auctions, which may increase capacity prices. The Commission’s implementation of similar policies in two different ISOs/RTOs may foreshadow expansion of the policy into other regions and markets. FERC’s philosophy of counteracting state renewable subsidies creates uncertainty for many market
participants, and will impact pricing and compensation across multiple markets for years to come.

Background

NYISO’s buyer-side market power mitigation rules provide that new participants in its Installed Capacity (“ICAP”) market are subject to a capacity offer bid floor, unless otherwise exempted. Resources are exempt from the floor price if:

- the forecast of capacity pricing the first year of a new entrant’s operation exceeds the default offer floor (which is 75% of the NYISO’s most recent net cost of new entry [“CONE”] reset); or
- the forecast of capacity pricing in the first three years of a new entrant’s operation exceeds the unit-specific net CONE.

Previously, FERC held that certain renewable and self-supply resources lacking the incentive and ability to exercise buyer-side market power to artificially suppress ICAP market prices should be exempt from NYISO’s buyer-side market power mitigation rules.[2]

In response, NYISO proposed to exempt up to 1,000 MW of renewable energy from its buyer-side mitigation rules in every auction year. If aggregate qualifying bids totaled above 1,000 MW, the bids would be reduced pro rata to meet the 1,000 MW exemption. According to NYISO, the exemption avoided artificially suppressing ICAP market prices while advancing resource adequacy without discouraging entry of renewable resources.

NYISO justified using ICAP to calculate the exemption, rather than Unforced Capacity (“UCAP”),[3] because ICAP: (1) provides reliable and transparent information; (2) is consistent with other exemptions to the buyer-side market power mitigation rules; (3) is a fixed quantity across time periods; (4) is less complicated and administratively burdensome than a UCAP-based MW exemption; and (5) avoids the uncertainty of NYISO having to determine whether the MW exemption is exceeded whenever resources’ derating factors are updated. NYISO also contended that using UCAP would create uncertainty for resources seeking, and having already been granted, a renewable resources exemption.

The NYISO Renewable Exemption Order

The NYISO Renewable Exemption Order rejected the level, and other features, of NYISO’s proposed exemption, and directed NYISO to make a compliance filing.

FERC found that the proposed exemption should have been more carefully tailored to apply to NYISO’s individual capacity zones and eligible renewable resources entering those capacity zones, rather than across the entire New York Control Area. FERC also directed NYISO to set the MW exemption level based on UCAP, not ICAP. The Commission asserted that UCAP represents a comparable metric for the exemption across renewable resource types, producing a more consistent year-to-year measure. Further, FERC asserted that because the amount of capacity a resource can sell into the ICAP market is measured in UCAP, an exemption based on
ICAP could have a different impact on ICAP market prices depending on the type of renewable resource that enters the ICAP market under the exemption. While rejecting a proposal to require NYISO to base its MW exemption on load growth, FERC did not categorically prohibit load growth, or some combination of load growth and retirements, from setting the MW exemption level.

NYISO’s compliance filing is due on Monday, March 23, 2020.

Analysis

The NYISO Renewable Exemption Order is another example of the Commission’s growing reaction to renewable resources’ receipt of out-of-market consideration in organized capacity markets, such as subsidies to meet state renewable energy goals. FERC’s rejection of the proposed 1,000 MW exemption will hinder renewable resources’ entry, or competition in, NYISO’s capacity auction by: (i) imposing a minimum offer price floor to which they would otherwise not be subject; and (ii) making an exemption from an applicable mitigation measure less likely. Although FERC did not state whether the 1,000 MW exemption was too high or too low, other recent orders suggest its dissatisfaction with any MW exemption enhancing renewable resources’ receipt of out-of-market payments and exemption from buyer-side market mitigation measures.

The NYISO Renewable Exemption Order continues the philosophy embodied in FERC’s December order imposing PJM’s Minimum Offer Price Rule (“MOPR”) on a new or existing resource in PJM, entitled to receive a so-called “State Subsidy,” that is not otherwise exempted (“PJM MOPR Order”). PJM’s MOPR sets the minimum price that a non-exempt resource can bid in a capacity offer auction, regardless of that resource’s actual incremental costs. The PJM MOPR Order seeks to neutralize out-of-market payments’ impacts for resources participating in PJM’s capacity market, thereby aiding traditional incumbent generation resources.

The NYISO Renewable Exemption Order and the PJM MOPR Order diminish the price-reducing impacts of new renewable resources (that receive out-of-market payments) in organized markets. Applying FERC’s philosophy to other products (e.g., spot markets) will subject out-of-market payments’ recipients to various allegedly remedial market rules.

FERC’s minimum offer price floor orders may impair many new renewable resources’ participation in organized markets, depending upon the importance of the affected revenue stream to the project’s developers. A lower MW exemption for renewable resources makes it more difficult for them to qualify for a mitigation exemption. This could, in turn, affect investments in renewable projects meeting state renewable energy goals, influence the market share of resource classes, and impact wholesale prices.

Further, the orders highlight a growing tension between FERC’s wholesale rate jurisdiction and state policies fostering renewables’ development.[4] Affected renewable resources would be subject to a minimum offer floor even if such resources’ actual incremental costs fall below the minimum offer price floor.


According to the Commission, “ICAP represents the installed capacity or nameplate of a facility, while UCAP is the amount of ICAP that NYISO has qualified to participate in the ICAP market, which takes into account forced outages and forced deratings.”

For example, New York requires that the State obtain 70 percent of its electricity from renewable resources by 2030, as well as requiring the addition of: 9,000 MW of offshore wind by 2035; 3,000 MW of electricity storage by 2030; and 6,000 MW of distributed solar by 2025.

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