

154 FERC ¶ 61,088
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

New York Public Service Commission
New York Power Authority, and
New York State Energy Research and
Development Authority

Docket No. EL15-64-001

v.

New York Independent System Operator, Inc.

ORDER DENYING REHEARING AND CLARIFICATION

(Issued February 5, 2016)

1. This order addresses the requests for rehearing and clarification of the Commission's October 9, 2015 order granting in part, and denying in part, the complaint filed by the New York Public Service Commission (NYPSC), the New York Power Authority (NYPA), and the New York State Energy Research and Development Authority (NYSERDA) (collectively, Complainants) against the New York Independent System Operator, Inc. (NYISO), and requiring NYISO to make a compliance filing to revise the rules governing buyer-side market power mitigation in NYISO's Market Administration and Control Area Services Tariff (Services Tariff) to exempt a narrowly defined set of renewable and self-supply resources.¹ Independent Power Producers of New York, Inc. and the Electric Power Supply Association (jointly, IPPNY/EPSCA), the

¹ *N.Y. Pub. Serv. Comm'n v. N.Y. Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,022, at P 2 (2015) (Complaint Order).

Indicated Suppliers,² the Indicated TOs,³ the Petitioners,⁴ and Entergy Nuclear Power Marketing, LLC (Entergy) filed requests for rehearing and clarification of the Complaint Order. For the reasons discussed below, we deny the requests for rehearing and clarification.

I. Summary of the Complaint Order

2. On May 8, 2015, the Complainants alleged that NYISO's buyer-side market power mitigation rules are unjust, unreasonable, or unduly discriminatory or preferential because: (1) they are imposed in an overbroad manner on all new entrants in mitigated capacity zone markets, regardless of whether the new entrant has the intention, incentive, and ability to suppress prices below a competitive level in those markets; and (2) the test used to determine whether a new entrant is economic, and can therefore bid into a mitigated capacity zone market without an offer floor, is fundamentally flawed and results in over-mitigation.⁵

3. On October 9, 2015, the Commission issued the Complaint Order, finding that the Complainants had demonstrated that NYISO's Services Tariff is unjust, unreasonable, or unduly discriminatory or preferential pursuant to section 206 of the Federal Power Act (FPA)⁶ because it applies the buyer-side market power mitigation rules to certain narrowly defined renewable and self-supply resources that have limited or no incentive and ability to exercise buyer-side market power to artificially suppress installed capacity (ICAP) market prices.⁷ While the Commission stated that it remains concerned with both

² The Indicated Suppliers consist of: Astoria Generating Company, L.P., TC Ravenswood, LLC, NRG Power Marketing LLC, GenOn Energy Management, LLC, and Cogen Technologies Linden Venture, L.P.

³ The Indicated TOs consist of Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., New York State Electric and Gas Corporation, Rochester Gas and Electric Corporation, and Central Hudson Gas and Electric Corporation.

⁴ The Petitioners consist of the Complainants, the City of New York, Multiple Intervenors, and the Natural Resources Defense Council.

⁵ Complaint Order, 153 FERC ¶ 61,022 at P 11 (citing Complaint at 2, 5, 13).

⁶ 16 U.S.C. § 824e (2012).

⁷ Complaint Order, 153 FERC ¶ 61,022 at P 2.

the incentive and ability to exercise market power, the Commission reasoned that applying the buyer-side market power mitigation rules to certain narrowly defined renewable and self-supply resources can result in the unnecessary mitigation of resources that derive limited or no benefit from lower prices. Therefore, the Commission granted the complaint in part and required NYISO to make a compliance filing to revise its buyer-side market power mitigation rules to exempt certain narrowly defined renewable and self-supply resources. The Commission denied the remainder of the complaint.⁸

4. With regard to the renewable resources exemption, the Commission found that applying NYISO's buyer-side market power mitigation rules to certain renewable resources up to a megawatt cap is unjust, unreasonable, or unduly discriminatory or preferential because such resources, narrowly defined, have limited or no incentive and ability to exercise buyer-side market power to artificially suppress ICAP market prices. The Commission explained that intermittent renewable resources⁹ with low capacity factors and high development costs, including many wind and solar resources, narrowly defined, provide their developer with limited or no incentive and ability to exercise buyer-side market power.¹⁰ In order to ensure that the renewable resources exemption is limited to only renewable resources with limited or no incentive and ability to exercise buyer-side market power, the Commission required NYISO to define the exemption to limit the type and amount of renewable resources that may qualify.¹¹ The Commission stated, however, that the specifics of the renewable resources exemption are best worked out through the stakeholder process.¹²

⁸ *Id.* PP 10, 36.

⁹ The Commission defined "intermittent renewable resources" for purposes of the renewable resources exemption to mean renewable resources that cannot be stored by the facility owner or operator and that have variability beyond the control of the facility owner or operator. *Id.* P 47 n.116 (citing NYISO, OATT, § 1.9 (6.0.0); *Integration of Variable Energy Resources*, Order No. 764, FERC Stats. & Regs. ¶ 31,331, at 1 n.1, *order on reh'g and clarification*, Order No. 764-A, 141 FERC ¶ 61,232 (2012), *order on clarification and reh'g*, Order No. 764-B, 144 FERC ¶ 61,222 (2013)).

¹⁰ *Id.* P 47.

¹¹ *Id.* PP 49-50.

¹² *Id.* P 50.

5. As for the self-supply exemption, the Commission found that applying NYISO's buyer-side market power mitigation rules to certain self-supply resources is unjust, unreasonable, or unduly discriminatory or preferential because such resources, narrowly defined, have limited or no incentive and ability to exercise buyer-side market power to artificially suppress ICAP market prices. According to the Commission, if a load serving entity, such as a municipality, cooperative, or single customer entity, self-supplies the majority of its needed capacity, the amount of capacity it procures from the ICAP markets will be relatively small. Therefore, the Commission explained, uneconomic entry would reduce the cost of procuring this portion by less than the cost of financing the uneconomic entry in the first place.¹³ The Commission required NYISO to include in its compliance filing tariff revisions that provide an exemption from its buyer-side market power mitigation rules for load serving entities whose ICAP portfolios are consistent with reasonably anticipated levels of their future ICAP obligations, as measured by use of appropriate net-short and net-long thresholds.¹⁴ The Commission also directed NYISO to consider: the impacts of state decisions to subsidize resources that are owned or contracted for by a self-supplied load serving entity; whether to bar projects that have irregular or anomalous cost or revenue advantages that do not reflect arms-length transactions or that are not in the ordinary course of the self-supply load serving entity's business; and whether to exclude load serving entities that have arrangements for payments or subsidies specifically tied to the load serving entity clearing its project in NYISO's ICAP market or to the construction of the project.¹⁵ The Commission allowed NYISO flexibility to develop rules and parameters that recognize the unique characteristics of NYISO's capacity market and that address concerns raised by commenters regarding the structure of the self-supply exemption.¹⁶

6. The Complainants also sought to exempt demand response resources from NYISO's buyer-side market power mitigation rules. The Commission found that the Complainants failed to demonstrate that, absent an exemption for demand response resources from the application of NYISO's buyer-side market power mitigation rules, NYISO's Services Tariff is unjust, unreasonable, or unduly discriminatory or preferential pursuant to section 206 of the FPA.¹⁷

¹³ *Id.* P 61.

¹⁴ *Id.* P 62.

¹⁵ *Id.* P 63.

¹⁶ *Id.* P 65.

¹⁷ *Id.* P 105.

II. Requests for Rehearing and Clarification

7. On November 6, 2015, IPPNY/EP SA filed a request for rehearing and clarification of the Complaint Order. On November 9, 2015, the Indicated Suppliers, the Indicated TOs, the Petitioners, and Entergy also filed requests for rehearing and clarification of the Complaint Order. As discussed below, we deny the requests for rehearing and clarification.

A. Procedural Matters

8. On November 23, 2015, the Long Island Power Authority and its wholly-owned subsidiary Long Island Lighting Company (LIPA), the New York Power Authority (NYPA), and American Public Power Association (APPA) each filed answers to the requests for rehearing and clarification.

9. Rule 713(d) of the Commission's Rules of Practice and Procedure¹⁸ prohibits an answer to a request for rehearing. Accordingly, we reject LIPA's, NYPA's, and APPA's answers to the requests for rehearing filed in this proceeding.

B. Substantive Matters

1. Renewable Resources Exemption

a. Requests for Rehearing and Clarification

10. The Petitioners seek rehearing of the Commission's decision to require that the renewable resources exemption be narrowly tailored, arguing that the narrow renewable resources exemption is inconsistent with federal energy policies by erecting an arbitrary and artificial barrier to the objectives of the Environmental Protection Agency's Clean Power Plan and curtailing flexibility that the Petitioners state is a central feature of the Clean Power Plan.¹⁹ In addition, the Petitioners claim that mitigating renewable resources in New York will improperly interfere with the state's and the City of New York's lawful energy planning processes.²⁰

¹⁸ 18 C.F.R. § 385.713(d)(1) (2015).

¹⁹ Petitioners November 9, 2015 Request for Rehearing at 2-3, 9, 16-18 (Petitioners Request for Rehearing).

²⁰ *Id.* at 18-20.

11. Entergy seeks rehearing of the Commission's decision to order a renewable resources exemption because, according to Entergy, the exemption will increase the amount of subsidized renewable resources entering NYISO's ICAP markets, which will result in artificial price suppression.²¹ Further, Entergy claims that the Commission improperly disregarded the Market Monitoring Unit's (MMU) argument that the current mitigation exemption test already takes into account state and federal incentives for owning renewable resources by reducing the unit-specific net cost of new entry (Net CONE), which reduces the likelihood of mitigation. According to Entergy, the current mitigation exemption test is not so onerous that another layer of protection is needed.²² Entergy also argues that there was no evidence in the record that subjecting intermittent renewable resources to the mitigation exemption test had resulted in any harm. Entergy contends that the existing buyer-side market power mitigation rules have not resulted in over-mitigation, but, rather, have been a necessary backstop to prevent under-mitigation.²³

b. Commission Determination

12. We deny the Petitioners' request for rehearing regarding the limited renewable resources exemption. While the Petitioners contend that the exemption is inconsistent with federal, state, and city renewable energy policies, we find that the Petitioners have not met their burden to show that the Commission made an error in the Complaint Order in granting the limited renewable resources exemption pursuant to the FPA. The Petitioners discuss federal, state, and city policies that encourage the development of renewable resources.²⁴ The Commission, however, based its decision to require NYISO to implement a renewable resources exemption on the Commission's duty to ensure just and reasonable rates pursuant to the FPA.²⁵ As for those renewable resources not eligible

²¹ Entergy November 9, 2015 Request for Rehearing and Alternative Motion for Clarification at 17-18 (Entergy Request for Rehearing).

²² *Id.* at 18.

²³ *Id.* at 3-4, 17.

²⁴ Petitioners Request for Rehearing at 16-21 (citing the Environmental Protection Agency's Clean Power Plan and National Ambient Air Quality Standards for Ozone, the New York State Energy Plan, and the New York City One City: Built to Last, and OneNYC plans).

²⁵ *See* 18 C.F.R. § 824d (2015) ("All rates and charges . . . subject to the jurisdiction of the Commission . . . shall be just and reasonable . . .").

for NYISO's renewable resources exemption, if the resource owners are willing to forego subsidies, they may be eligible for the competitive entry exemption; if not, the mitigation exemption test already takes into account certain incentives for owning renewable resources by reducing the unit-specific Net CONE.²⁶

13. We also deny Entergy's request for rehearing. We disagree with Entergy that the limited renewable resources exemption at issue here will increase the amount of subsidized renewable resources entering NYISO's ICAP markets to the point that prices will be artificially suppressed. Limiting the type and amount of renewable resources that may qualify for the exemption will mitigate the potential for artificial price suppression.²⁷ We also disagree that the Commission improperly disregarded MMU's argument; rather, the Commission specifically acknowledged and agreed with MMU that the mitigation exemption test already takes into account certain incentives for owning renewable resources by reducing the unit-specific Net CONE.²⁸ MMU's argument, however, does not negate the Commission's finding that certain intermittent renewable resources with low capacity factors and high development costs, up to a megawatt cap, should not be subject to the mitigation exemption test in the first place. For those renewable resources that are still subject to the mitigation exemption test because, for example, the megawatt cap on the renewable resources exemption has been met, the reduction in the resource's unit-specific Net CONE will make it less likely that the resource will be subject to inappropriate mitigation.²⁹

14. We also disagree with Entergy that the Commission erred in granting the renewable resources exemption because there was no evidence in the record that subjecting intermittent renewable resources to the mitigation exemption test had resulted in any harm. The Commission granted the complaint in part because low capacity values and high development costs mean renewable resources are not an effective vehicle for

²⁶ Complaint Order, 153 FERC ¶ 61,022 at P 48.

²⁷ *Id.* P 49.

²⁸ *Id.* P 48.

²⁹ *Id.*

artificially suppressing capacity market prices.³⁰ The Commission can rely, as it did in the Complaint Order, on economic theory, so long as it is applied in a reasonable manner, to support its findings.³¹ In the Complaint Order, on the basis of economic theory, the Commission reasoned that a properly constructed renewable resources exemption, which exempts only those resources with limited or no incentive and ability to exercise buyer-side market power, is just and reasonable.³² We affirm that finding here.

2. Self-Supply Exemption

a. Requests for Rehearing and Clarification

15. IPPNY/EPISA, the Indicated Suppliers, and Entergy seek rehearing of the Commission's finding that the Complainants demonstrated that NYISO's buyer-side market power mitigation rules are unjust and unreasonable without a self-supply exemption. IPPNY/EPISA and the Indicated Suppliers argue that the Commission erred in granting a self-supply exemption in NYISO based solely on the Commission's acceptance of a self-supply exemption in PJM.³³ The Indicated Suppliers explain that

³⁰ See *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,145, at P 110 (2011) (noting that wind and solar resources are a poor choice for any entity attempting to suppress capacity prices; because such resources produce variable energy output, the dependable amount of capacity that can be counted on for capacity market prices, and, thus, the amount of capacity that can be sold into the capacity market, is typically much lower than the maximum potential output of the wind or solar resource).

³¹ See, e.g., *Cent. Hudson Gas & Elec. Corp. v. FERC*, 783 F.3d 92, 109 (2d Cir. 2015) ("FERC may permissibly rely on economic theory alone to support its conclusions so long as it has applied the relevant economic principles in a reasonable manner and adequately explained its reasoning"); *Sacramento Mun. Util. Dist. v. FERC*, 616 F.3d 520, 531 (2010) ("[I]t was perfectly legitimate for the Commission to base its findings about the benefits of marginal loss charges on basic economic theory, given that it explained and applied the relevant economic principles in a reasonable manner."); *Assoc. Gas Distributors v. FERC*, 824 F.2d 981, 1008-09 (1987) ("Agencies do not need to conduct experiments in order to rely on the prediction that an unsupported stone will fall. . . .").

³² Complaint Order, 153 FERC ¶ 61,022 at P 47.

³³ Indicated Suppliers November 9, 2015 Request for Rehearing and Clarification at 8-12 (Indicated Suppliers Request for Rehearing); IPPNY/EPISA November 6, 2015 Request for Clarification or, in the Alternative, Rehearing at 4, 9-10 (IPPNY/EPISA Request for Rehearing).

PJM's and NYISO's markets are fundamentally different, and note that NYISO is a single-state system operator, and PJM's self-supply exemption was fully vetted through PJM's stakeholder process.³⁴ Entergy contends that the Commission gave insufficient weight to the unique attributes of NYISO.³⁵

16. The Indicated Suppliers and Entergy further argue that the Commission neglected to consider whether establishing a self-supply exemption in NYISO would allow capacity prices to remain within the zone of reasonableness. The Indicated Suppliers contend that, by design, the self-supply exemption allows for economically irrational behavior, which could drive prices to levels approaching zero. Therefore, the Indicated Suppliers claim that capacity suppliers will be denied the opportunity to recover their fixed costs, over time, as well as a return on equity.³⁶ Entergy also asserts that the Commission improperly rejected MMU's argument regarding market fundamentals: that load serving entities behaving rationally would already procure capacity to meet their needs at the lowest cost and would not need a self-supply exemption.³⁷ Entergy further argues that there was no evidence in the record that subjecting self-supply resources to the mitigation exemption test had resulted in any harm.³⁸

b. Commission Determination

17. We deny IPPNY/EPISA's, the Indicated Suppliers', and Entergy's requests for rehearing and clarification regarding the Commission's reliance on precedent in PJM in adopting the self-supply exemption. The Commission ruled on the complaint based on the characteristics of NYISO's market, not on what the Commission previously found to

³⁴ Indicated Suppliers Request for Rehearing at 8-10, 14 (citing *N.Y. Indep. Sys. Operator, Inc.*, 124 FERC ¶ 61,301, at P 37 (2008), *order on clarification, reh'g, and compliance*, 131 FERC ¶ 61,170 (2010), *order on clarification, reh'g, and compliance*, 150 FERC ¶ 61,208 (2015)).

³⁵ Entergy Request for Rehearing at 12.

³⁶ Indicated Suppliers Request for Rehearing at 13 (citing *Bridgeport Energy, LLC*, 113 FERC ¶ 61,311, at P 29 (2005)); *see also* Entergy Request for Rehearing at 13-14.

³⁷ Entergy Request for Rehearing at 13.

³⁸ *Id.* at 3-4, 12-13.

be just and reasonable in PJM.³⁹ That is not to say, however, that principles underlying market design in one region are not applicable to another. While the Commission offered guidance on the parameters for NYISO to consider in developing the self-supply exemption with its stakeholders, including a reference to the attributes of PJM's self-supply exemption, the Commission also stated that NYISO "may propose rules unique to the New York capacity market and its participants."⁴⁰

18. We further deny the Indicated Suppliers' and Entergy's requests for rehearing as to whether the self-supply exemption will result in ICAP market prices outside of the zone of reasonableness. The Commission directed NYISO to design a self-supply exemption that would prevent the unnecessary mitigation of resources that have limited or no incentive and ability to artificially suppress ICAP market prices.⁴¹ The Commission provided guidance on the parameters of the self-supply exemption that will promote competitive market outcomes, thereby ensuring just and reasonable rates and balancing the risk of over-mitigation with the need to mitigate buyer-side market power.⁴²

19. We disagree with Entergy that the Commission improperly rejected MMU's argument regarding market fundamentals. A properly constructed self-supply exemption will ensure that only those self-supplying entities that meet a sufficiently large proportion of their capacity needs through their own generation investment, and that therefore have

³⁹ Complaint Order, 153 FERC ¶ 61,022 at P 38 ("Whether the Commission has found certain exemptions from buyer-side market power mitigation in PJM or any other region to be just and reasonable is not dispositive of whether the Commission should find NYISO's buyer-side market power mitigation rules to be unjust and unreasonable absent similar exemptions. Here, we address whether NYISO's buyer-side market power mitigation rules are unjust, unreasonable, or unduly discriminatory or preferential absent exemptions for certain resources, in the context of NYISO's ICAP market design."). (citation omitted).

⁴⁰ *Id.* P 62 & n.154; *see also N.Y. Indep. Sys. Operator, Inc.*, 124 FERC ¶ 61,301 at P 37 (recognizing that a state is less likely in a multi-state ISO/RTO to support uneconomic new entry that drives down market prices than in a single-state ISO/RTO).

⁴¹ Complaint Order, 153 FERC ¶ 61,022 at P 10.

⁴² *See, e.g., PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090, at P 26 (2013) (finding that PJM's buyer-side market power mitigation rules "appropriately balance[] the need for mitigation against the risk of over-mitigation"), *order on reh'g and compliance*, 153 FERC ¶ 61,066 (2015).

limited or no incentive and ability to suppress ICAP market prices, will qualify for the exemption.⁴³ There is no need to subject the business decisions of such load serving entities to the mitigation exemption test. In addition, even if, in theory, load serving entities behaving rationally would already procure enough capacity to meet their needs at the lowest cost and would not need a self-supply exemption, given the short duration of NYISO's capacity product, a self-supply exemption may better enable load serving entities to invest in new generation and plan on a long-term basis.⁴⁴ This long-term planning will, in turn, support the efficient and reliable operation of the electric transmission system. The self-supply exemption also does not preclude load serving entities from procuring capacity from the market.

3. Demand Response Resources Exemption

a. Requests for Rehearing and Clarification

20. The Indicated TOs and the Petitioners seek rehearing of the Commission's denial of the Complainant's proposed exemption for demand response resources.⁴⁵ The Indicated TOs argue that it is highly unlikely that providers of demand response would exercise market power to artificially suppress ICAP market prices because, like renewable resources, demand response resources represent a small proportion of ICAP market resources and it is not feasible to use these resources to suppress ICAP market prices.⁴⁶ In addition, the Indicated TOs claim that the Commission did not address why a cap on the amount of demand response resources exempted from the buyer-side market power mitigation rules, like the one ordered for the renewable resources exemption, would not be sufficient to mitigate any concern over granting a demand response

⁴³ Complaint Order, 153 FERC ¶ 61,022 at PP 61-62; *see also PJM Interconnection, L.L.C.*, 153 FERC ¶ 61,066 at P 36 (“When a self-supplying entity owns or has contractual rights to an amount of generation that is close to its capacity requirement, the entity's net purchases or sales are not significantly affected by changes in the capacity market price. As a result, the load serving entity will not have an incentive to suppress PJM's capacity market price because there will not be a significant benefit from doing so. Mitigating the offer prices of resources owned by such an entity is therefore not necessary to ensure just and reasonable rates.”).

⁴⁴ Complaint Order, 153 FERC ¶ 61,022 at P 61.

⁴⁵ Indicated TOs November 9, 2015 Request for Rehearing at 1-7 (Indicated TOs Request for Rehearing); Petitioners Request for Rehearing at 9.

⁴⁶ Indicated TOs Request for Rehearing at 2, 5-6.

resources exemption.⁴⁷ The Indicated TOs assert that, although the state could seek an exemption for specific state demand response programs, requiring such program-specific exemptions creates a significant burden for both the state and the Commission.⁴⁸ The Petitioners add that mitigating demand response programs will inhibit the growth of distribution-level demand response in New York, thereby interfering with state efforts to moderate peak demand, avoid infrastructure investments that will inflate utility rates, and improve system efficiency.⁴⁹

b. Commission Determination

21. We deny the Indicated TOs' and the Petitioners' requests for rehearing regarding the Commission's rejection of the Complainants' proposed demand response resources exemption. The Complainants failed to demonstrate that the continued application of NYISO's buyer-side market power mitigation rules to Special Case Resources (i.e., demand response resources) renders NYISO's Services Tariff unjust, unreasonable, or unduly discriminatory or preferential pursuant to section 206 of the FPA.⁵⁰ There is no additional evidence presented on rehearing to alter that determination. As explained in the Complaint Order, a state may "seek an exemption from the Commission pursuant to section 206 if it believes that the inclusion in the [Special Case Resource] Offer Floor of rebates and other benefits under a state program interferes with a legitimate state objective."⁵¹ We disagree with the Indicated TOs that requiring program-specific exemptions creates a significant burden for both the state and the Commission.

4. Structure and Parameters of the Exemptions

a. Requests for Rehearing and Clarification

22. IPPNY/EP SA, the Indicated Suppliers, the Petitioners, and Entergy seek rehearing and clarification regarding the design of the renewable resources and self-supply exemptions that the Commission directed NYISO to submit on compliance.

⁴⁷ *Id.* at 2, 7-8.

⁴⁸ *Id.* at 7 n.16.

⁴⁹ Petitioners Request for Rehearing at 25-27.

⁵⁰ Complaint Order, 153 FERC ¶ 61,022 at P 53.

⁵¹ *Id.* P 105 (quoting *N.Y. Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,208 at P 30).

23. Regarding the renewable resources exemption, the Indicated Suppliers, the Petitioners, and Entergy seek rehearing and clarification related to the megawatt cap. The Indicated Suppliers ask that the megawatt cap be set at the minimum level necessary to accommodate those state renewable energy goals that are not adequately addressed through renewable portfolio standards, and that the cap not exceed the anticipated growth in capacity market requirements.⁵² On the other hand, the Petitioners seek clarification that the megawatt cap should not be tied to load growth and should be expressed in unforced capacity (UCAP) values, consistent with NYISO's ICAP markets. In addition, the Petitioners argue that the megawatt cap should be set at a level that will reasonably accommodate the rapid deployment of renewable technologies.⁵³ Entergy contends that the Commission should clarify that the megawatt cap should appropriately reflect the mitigated capacity zones in NYISO. Further, Entergy requests that the Commission require the megawatt cap in small capacity zones to be correspondingly scaled to reduce price suppression.⁵⁴

24. The Petitioners also seek clarification, or, alternatively, rehearing, that the renewable resources exemption includes all renewable technologies, including hydroelectric, biomass, and offshore wind resources, that do not have either the incentive or ability to profitably exercise buyer-side market power.⁵⁵ The Petitioners contend that renewable technologies have higher development costs than traditional generating resources regardless of whether they rely on an intermittent fuel source because of the substantial siting and permitting challenges and operating risk. Therefore, the Petitioners assert that the Commission erred by concluding that developers of all renewable resources ineligible for the exemption have both an incentive and ability to exercise buyer-side market power to artificially suppress ICAP market prices.⁵⁶

25. As for the self-supply exemption, Entergy contends that the Commission should ensure that the net-short and net-long thresholds are as narrow as the Commission contemplated. In addition, Entergy asks the Commission to clarify that, if a resource fails

⁵² Indicated Suppliers Request for Rehearing at 14-18 (citing *ISO New England Inc.*, 147 FERC ¶ 61,173, at P 83 (2014), *order on reh'g and clarification*, 150 FERC ¶ 61,065, at PP 21-22 (2015)).

⁵³ Petitioners Request for Rehearing at 21-24.

⁵⁴ Entergy Request for Rehearing at 19.

⁵⁵ Petitioners Request for Rehearing at 9-16, 22-23 & n.53.

⁵⁶ *Id.* at 9-11.

an appropriate net-short test, it will be ineligible for an exemption in any amount, and if it fails an appropriate net-long test, any amount in excess of its load should be mitigated. Entergy further requests the Commission clarify that, after NYISO grants a self-supply exemption during the Class Year process based on the net-short and net-long thresholds, the entity receiving the exemption must maintain this position until after the resource enters the market. Further, Entergy asserts that the test should be measured at the time the load serving entity enters into the contract with the new entrant and again when the new resource first participates in the market.⁵⁷ Entergy further asserts that the Commission's guidance about cost and revenue advantages that are irregular, anomalous, or not in the ordinary course of business should expressly include discounted financing terms not normally available in the marketplace. Therefore, Entergy concludes that resources that have received special financing terms should not qualify for the self-supply exemption.⁵⁸

26. IPPNY/EPISA and Entergy ask that the Commission clarify that NYPA, LIPA, and any other state-controlled entities should not be eligible for the self-supply exemption.⁵⁹ The Indicated Suppliers argue that a state entity could have political or other non-economic incentives to suppress prices even where the costs of sponsoring new entry are not outweighed by the benefits of price suppression. Therefore, the Indicated Suppliers contend that net-long and net-short thresholds will not be an adequate proxy for incentives where state actors are involved.⁶⁰

b. Commission Determination

27. We deny IPPNY/EPISA's, the Indicated Suppliers', the Petitioners', and Entergy's requests for rehearing and clarification regarding the structure of the renewable resources and self-supply exemptions because the arguments presented are premature and outside the scope of this proceeding. While the Commission provided guidance in the Complaint Order regarding certain parameters for NYISO to consider in developing the renewable resources and self-supply exemptions, the Commission also gave NYISO flexibility in designing those exemptions to take into account the unique aspects of NYISO's capacity

⁵⁷ Entergy Request for Rehearing at 14-15.

⁵⁸ *Id.* at 16-17.

⁵⁹ IPPNY/EPISA Request for Rehearing at 4-8; Entergy Request for Rehearing at 15-16.

⁶⁰ Indicated Suppliers Request for Rehearing at 11-13.

market.⁶¹ The Commission encouraged NYISO to work with stakeholders on the details of the exemptions and submit the proposed exemptions in a compliance filing.⁶² With regard to the Petitioners' request for clarification, or, alternatively, rehearing, as to which renewable resources will be eligible for the renewable resources exemption, the Commission stated in the Complaint Order that intermittent renewable resources with low capacity factors and high development costs, including wind and solar resources, narrowly defined, provide their developer with limited or no incentive and ability to exercise buyer-side market power to artificially suppress ICAP market prices. The Commission did not list the fuel sources that may be eligible for the renewable resources exemption; rather, the Commission emphasized the characteristics of renewable resources that should be eligible for such exemption. Therefore, the design of the renewable resources and self-supply exemptions, including the megawatt cap, which resources are eligible for the exemptions, and the details of the net-short and net-long thresholds, will be addressed in the compliance proceeding that follows NYISO's compliance filing.⁶³ Interested parties will have the opportunity to comment on NYISO's proposed exemptions at that time.

5. Impact of the Competitive Entry Exemption

a. Requests for Rehearing and Clarification

28. Entergy seeks rehearing of the Commission's decision to require additional exemptions to NYISO's buyer-side market power mitigation rules, arguing that the Commission failed to account for the recent implementation of the competitive entry exemption in NYISO, under which unsubsidized resources will not be subject to the mitigation exemption test. Entergy contends that too little time has passed since the Commission approved the competitive entry exemption to know whether any intermittent renewable or self-supply resource has been improperly mitigated.⁶⁴ Moreover, Entergy claims that the Commission ordered NYISO to adopt the competitive entry exemption to address the same purported flaws the Complainants cite here in seeking additional exemptions, such as the fact that the existing buyer-side market power mitigation rules

⁶¹ Complaint Order, 153 FERC ¶ 61,022 at PP 51, 62 & n.154, 65.

⁶² *Id.* PP 51, 65.

⁶³ NYISO's compliance filing is due February 22, 2016. *See* Notice of Extension of Time, Docket No. EL15-64-000 (Dec. 16, 2015).

⁶⁴ Entergy Request for Rehearing at 3-4.

over-mitigate needed capacity resources and do not take into account the intent and ability to suppress prices.⁶⁵

b. Commission Determination

29. We deny Entergy's request for rehearing on this issue. The Commission previously found that NYISO's Services Tariff was unjust and unreasonable without a competitive entry exemption because competitive entrants that have no incentive to inappropriately suppress capacity market prices should not be subject to the buyer-side market power mitigation rules.⁶⁶ Similarly, the Commission found in the Complaint Order that NYISO's Services Tariff is unjust and unreasonable, despite the implementation of the competitive entry exemption, because it still inappropriately subjects certain renewable and self-supply resources to the buyer-side market power mitigation rules. These are separate flaws in the application of NYISO's existing buyer-side market power mitigation rules that the Commission is seeking to remedy, distinct from those the competitive entry exemption is meant to address. The amount of time that the competitive entry exemption has been in place is irrelevant to whether NYISO's buyer-side market power mitigation rules are unjust and unreasonable without narrowly defined renewable resources and self-supply exemptions.

6. Focus on Incentive and Ability

a. Requests for Rehearing

30. Entergy seeks rehearing because, according to Entergy, the logic the Commission employed in granting exemptions for certain renewables and self-supply resources improperly focused on the incentive and ability of the subsidized resource.⁶⁷ Entergy argues that the entity that sponsors the subsidy has the incentive to exercise buyer-side market power and to artificially suppress prices, and the resource receiving the subsidy has the ability to do so. If the incentive is relevant at all, Entergy argues that the incentive of the party sponsoring the subsidy should be examined, not only the incentive of the subsidized new resource.⁶⁸ For example, Entergy contends that, because the state

⁶⁵ *Id.* at 5.

⁶⁶ *Consol. Edison Co. of N.Y., Inc. v. N.Y. Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,139, at P 45 (ConEd Complaint Order), *order on reh'g, clarification, and compliance*, 152 FERC ¶ 61,110 (2015).

⁶⁷ Entergy Request for Rehearing at 7-12, 17.

⁶⁸ *Id.* at 7.

administers its Renewable Portfolio Standard program, which provides a critical funding source to renewable energy projects, the state can control the quantity and location of renewable resources entering the market.⁶⁹ As for ability, Entergy contends that any subsidized resource has the ability to exercise buyer-side market power because it can bid far below its costs without any consequence.⁷⁰ Therefore, Entergy asserts that there is no evidence to show that the subsidized subset of renewable and self-supply resources the Commission ordered NYISO to exempt from its buyer-side market power mitigation rules will not have the ability to suppress prices, which contradicts the Commission's ruling rejecting a *de minimis* exception to the competitive entry exemption.⁷¹

b. Commission Determination

31. We deny Entergy's request for rehearing on this issue. We maintain that certain narrowly defined renewable and self-supply resources should not be subject to the buyer-side market power mitigation rules because they have limited or no incentive and ability to exercise buyer-side market power to artificially suppress ICAP market prices.⁷² While developers of renewable resources may have limited incentive to exercise buyer-side market power, we maintain that a narrowly defined set of renewable resources with low capacity factors and high development costs are not a viable means to artificially suppress ICAP market prices, even if that is the goal of a subsidy, and that a self-supply exemption that correctly considers funding from state entities will also prohibit those with the incentive and ability to artificially suppress ICAP market prices from doing so. While we will evaluate the specifics of the exemptions on compliance, we find that the focus on incentive and ability appropriately balances the need to mitigate the exercise of buyer-side market power to ensure just and reasonable ICAP market prices with the risk of over-mitigating new entrants.

32. As for the *de minimis* exception to the competitive entry exemption, the Commission stated in that proceeding that no party had provided any reason why permitting any subsidy was a necessary part of the competitive entry exemption.⁷³ Rather, the Commission found that the "*de minimis* exception contradict[ed] the principle

⁶⁹ *Id.* at 17.

⁷⁰ *Id.* at 8.

⁷¹ *Id.* at 8-9 (citing ConEd Complaint Order, 150 FERC ¶ 61,139 at P 64).

⁷² Complaint Order, 153 FERC ¶ 61,022 at P 36.

⁷³ ConEd Complaint Order, 150 FERC ¶ 61,139 at P 64.

underlying the competitive entry exemption: that unsubsidized entities do not have the incentive to exercise market power to lower capacity market prices.”⁷⁴ That same reasoning does not apply here where we are considering certain narrowly defined subsidized renewable and self-supply resources. We therefore disagree with Entergy that the Commission contradicted its ruling rejecting a *de minimis* exception to the competitive entry exemption in the Complaint Order.

The Commission orders:

The requests for rehearing and clarification are hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁷⁴ *Id.*

Document Content(s)

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