Proposed Merchant Generation Market Mitigation Measures

Comments of the Long Island Power Authority

January 3, 2012

For the New York City market, NYISO has proposed a set of buyer side mitigation rules exempting the "purely" merchant generation facilities from buyer-side mitigation, i.e. those generators that are not under contract to sell their output to any entity other than into the NYISO markets. The proposed rules exempt merchant generation additions but explicitly exclude generation under long term contract, and significantly, generation under contract to public power authorities and generation built or owned by public power authorities. Merchant projects in NYC could be bid into the ICAP market without facing buyer-side mitigation, while comparable or even superior projects built or owned by or contracted to public power authorities might be mitigated and thereby worsen the project economics.

LIPA has concerns with the discriminatory treatment of comparable merchant projects constructed pursuant to long term power purchase agreements with public power authorities, and the application of such rules to a New Capacity Zone (NCZ) particularly a NCZ that includes Long Island (a structure LIPA vigorously opposes).Such rules could create significant conflicts with existing statutory and contractual commitments. Although we do not object to merchant NYC projects being exempted from the existing buyer mitigation rules in a NYC capacity zone, we cannot support the exclusion of public power projects, projects under long-term contract, projects under contract to public power authorities, or projects developed in response to legitimate public policy or statutory authority; nor can we support any future exclusion of public power projects in the LIPA service territory.

The Long Island Power Authority Act[1] gives LIPA the authority and responsibility to oversee planning for the Long Island bulk power system, "as the Authority deems necessary or desirable to maintain an adequate and dependable supply of … electric power within the [Long Island Transmission District]."[2] It has authority "with respect to operations, properties and facilities as may be necessary to convenient to carry out [its regulatory oversight of the Long Island Transmission district] subject to the provision of [SAPA]."[3] The proposed rules undermine that authority by significantly and adversely affecting the economics of projects developed specifically for, and under commitment to, public authorities. Though without countervailing statutory authority, these rules, if applied in the LIPA capacity zone, may prevent LIPA from entering into long term contracts to stabilize prices for its consumers and carrying out its statutory responsibilities as set forth above. The proposed rules significantly impede the construction of new generation in conflict with current and future, state and authority public policy.

The proposed merchant-only exemption rules would establish a price floor for such commissioned generation in the ICAP market that would virtually vitiate the ability of such generation to clear the ICAP auction. Assuming such generation was already under contract and LIPA was required to purchase substitute generation in the ICAP auction, such a result would substantially increase the cost to LIPA and its ratepayers.

The proposed rules, if applied to LI, could provide skewed incentives that favor merchant projects over authority projects. Identical plants added by a public power authority and by a merchant developer could have different revenue consequences that accrue to the detriment of LIPA and its ratepayers. Two such plants with comparable net cost structures would face

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[1] Public Authorities Law, Article 5
[2] §1020-g(a)
[3] §1020-f(z)).

significantly different bidding rules. The merchant generating facility could bid as a price taker and under NYISO rules be evaluated prior to the public power authority facility. While a price taking facility is accepted in every auction, the public power authority facility could be mitigated if the addition of a merchant unit reduces the market price below the lower of 75% of Mitigation Net CONE and the public power facility Unit Net CONE. While this, on its face, is discriminatory it is also uneconomic.

Again, the approach is not a rational approach to for allowing the public to benefit from the inherent advantages of the public power financing model.