



Proposed ICAP Buyer-Side Mitigation Tariff Revision: Competitive Entry Exemption Modified Proposal

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ICAP WG Meeting

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NYISO, KCC

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Agenda

- ◆ **Summary of Modifications to the Proposal presented at the December 3, 2012 ICAP WG meeting**
- ◆ **Review of Proposal**
 - *Purpose and Nature of Exemption*
 - *Proposed Process*
 - *Criteria for the Exemption*
 - *Required Certifications*
 - *Failure to Refresh Certification*
 - *Penalty for False, Misleading or Inaccurate Certification*
 - *The meaning of “Direct or Indirect;” types of contacts/financial support/in kind support that make a project not eligible for a Competitive Entry Exemption.*
- ◆ **Next Steps**

Summary of Modifications to the December 3, 2012 Proposal

- ◆ **The NYISO considered verbal comments made during and after the working group meeting, and the written comments. These comments and internal discussions have led to a refinement of the proposal.**
- ◆ **The following slide provides a high level summary of the modifications. We will cover each in more detail when discussing the proposal.**

Summary of Modifications to the Proposal

- ◆ **We are proposing a transition mechanism for projects in a Class Year that has a Start Date prior to the effective date of these tariff revisions.**
- ◆ **The proposal has been expanded to specify that the project has no direct or indirect (i) contracts with, (ii) financial support from, or (iii) in kind support from any of the listed entities.**
- ◆ **A clarification that a Governmental entity is a NY state or local governmental entity**
- ◆ **A clarification that if a project fails to provide a certification after being granted an exemption, its Offer Floor will be 75% of Mitigation Net CONE.**
- ◆ **The presentation provides more details on the proposed penalty if a project is found to have provided a false, misleading or inaccurate certification after it has certified or sold capacity in the NYISO market.**

Purpose and Nature of the Exemption

- ◆ **The competitive entry exemption will exempt from buyer side mitigation a new entrant that is not receiving support outside of competitive markets, thus allowing such entrants to enter at their own risk and based on their own business outlook.**
 - *By necessity buyer side mitigation (“BSM”) tariff measures are formulaic and competitive entrants may legitimately have a different view of the market than specified by the tariff formula.*

Proposed Process

- ◆ **Prior to Start Date of the Class Year, developers can request a Competitive Entry Mitigation Exemption.**
 - *The deadline for the request will be set by the NYISO and published on the NYISO web site.*
 - *A transition mechanism for developers that are in a Class Year when the tariff revisions become effective is being proposed. (See next slide)*
- ◆ **Applicants who meet the criteria will be granted an exemption from ICAP Buyer Side mitigation**
 - *Applicants still must provide costs data required for the part B tests.*
 - *NYISO will review and approve or deny exemption applications. The MMU will review and comment prior to the NYISO's determination.*
- ◆ **Application determinations will be based on certifications by applicants.**
 - *The NYISO may ask applicants to provide additional information.*
 - *Certifications are ongoing : Applicants must notify NYISO if the certification is no longer true up to when the project first produces energy.*

Addition to the Proposed Process

- ◆ **Transition mechanism for developers that are in a Class Year with a Start Date prior to the effective date of the tariff revisions:**
 - *Competitive Entry Exemptions would apply to any Class Year rounds subsequent to the tariff effective date.*
 - *Application for the Competitive Entry Exemptions would be submitted after the tariff change is filed with FERC.*
 - *Note that other projects' forecasts will also be impacted as of the tariff effective date if Competitive Entry Exemptions are granted.*

Criteria for the Exemption

◆ Proposed Criteria:

- *The exemption would be granted if the project has no direct or indirect (i) contracts with, (ii) financial support from, or (iii) in kind support from any NY electric distribution company, Municipal Utility, or any NY state or local governmental entity, including but not limited to Public Authorities, except any of (i), (ii) or (iii) that are generally available to all new entrants in that mitigated capacity zone. This includes:*
 - **No contracts to construct and/or operate the project for which the exemption is requested, and**
 - **No contracts for the provision of physical goods, financing, or financial support of, or related to, electric energy and capacity or other market products.**
- *A NY electric distribution company, Municipal Utility, or any NY state or local governmental entity including but not limited to Public Authorities are not eligible for the exemption if they build a project themselves.*

Clarifications to the Criteria (1)

- ◆ **The proposal has been expanded to specify that the project has no direct or indirect (i) contracts with, (ii) financial support from, or (iii) in kind support from any of the listed entities.**
- ◆ **Government entity**
 - ***The last presentation did not specify which government entity. We are clarifying that only contracts with New York state and local governmental entities are applicable here***
 - **Why? The mitigation measure is a buyer side mitigation measure. Non-NY government entities do not have an interest in depressing ICAP prices.**

Clarifications to the Criteria (2)

- ◆ There were also requests to expand the contracts that would be allowable under the Competitive Entry Exemption:
 - *Some comments requested that contracts with Public Authorities and/or generators developed by a Public Authority be eligible for a Competitive Entry Exemption.*
 - *Some comments requested that projects with contracts for environmental attributes (for example, RPS contracts) be eligible for a Competitive Entry Exemption.*
 - *The proposal is for a competitive entry exemption and neither of these requests aligns with the intent of the exemption. In addition, both could provide support for a generator outside of the competitive markets. Therefore we are not proposing to modify the proposed criteria to accommodate the suggestions.*

Required Certifications

- ◆ A company officer would provide certifications.
- ◆ There would be an initial certification at the time of application.
- ◆ Recertification would be required:
 - *Upon acceptance of SDU costs and/or SUF project cost allocations.*
 - *At the date when the security posts for SDU and SUFs.*
 - *Upon first selling energy.*
- ◆ In addition to the certifications, the applicant would be required to make available to the NYISO:
 - *All contracts for the physical or financial supply of, or related to, electricity or capacity from the facility to which any entity with an ownership interest in the facility or any affiliate thereof is a party.*
 - *All contracts for any physical or financial supply of, or related to, electricity or capacity to which any entity with an ownership interest in the facility or any affiliate thereof is a party.*

In the Event a Project fails to Recertify

- ◆ **Failure to certify or recertify to the satisfaction of the NYISO, after consultation with the MMU, (i) upon acceptance of SDU costs and/or SUF project cost allocations, (ii) at the date when the security posts for SDU and SUFs, (iii) upon first selling energy, and (iv) upon the request of the NYISO, the exemption is removed.**
- ◆ **The facility would be mitigated at 75% of Mitigation Net CONE and would lose the alternative possibility of a lower Offer Floor based Unit Net CONE.**
 - *This is required because conducting a unit specific analysis would, if it occurred during the Class Year process, delay the completion of the Class Year process or, if the failure to recertify occurred after the Class Year Process was completed, the Offer Floor could not be determined.*

Penalty for False Certification

- ◆ **False, misleading, or inaccurate certification or an attempt to circumvent the rules would be a violation of the Tariff and would be referred to the MMU for referral to the FERC Office of Enforcement.**
- ◆ **In addition, a project that is determined to have provided a false, misleading, or inaccurate certification would be penalized.**
 - *The penalty would be 1.5 times the MW of the project times the difference between the ICAP price in the auction(s) in which the project certified MW and the price in ICAP that would have cleared had the project been subject to an offer floor of 75% of Mitigation Net CONE.*
 - *The proposal is to credit the penalty to generators still active in the NYISO markets who certified UCAP in the ICAP auctions during the time when the project sold more capacity than it would have had it been subject to an Offer Floor of 75% of Mitigation Net CONE.*

Meaning of “Direct or Indirect”

Types of contracts, financial support, or in kind support absent those that are generally available to all entrants in that mitigated capacity zone:

◆ Direct

- *Financing support*
- *Financial support*
- *Equipment*
- *Real or personal property*
- *Energy contract*
- *Capacity contract*
- *Post construction pilot agreement*
- *Purchase power agreement*

◆ Indirect

- *Lower fuel costs because an entity is not subject to the tax, which is generally applicable to other projects, is purchasing the fuel.*
- *A swap.*

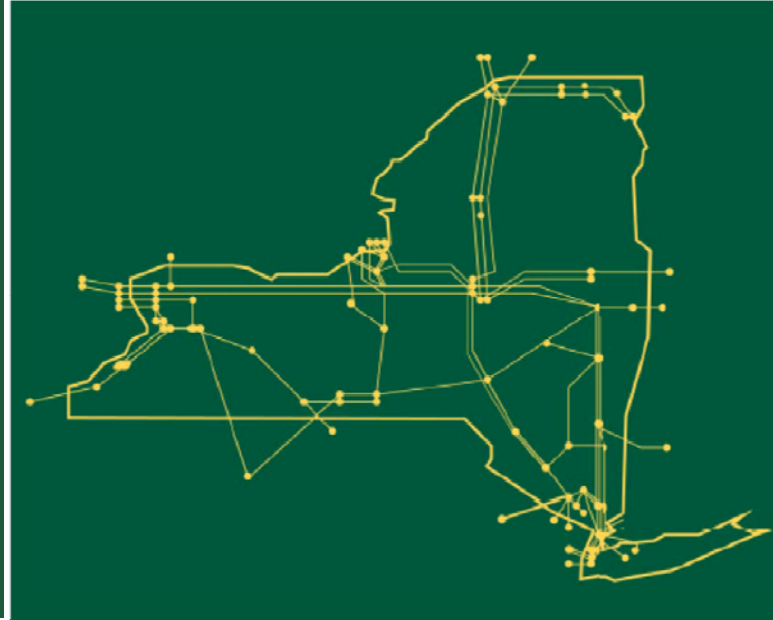
▪ What we do not intend to include:

- *Joint facility agreements for a substation or interconnection*

Planned Next Steps

- ◆ **Monday March 11** **ICAP WG Presentation including tariff language**
- ◆ **Thursday April 4** **ICAP WG: second review of tariff language**
- ◆ **April or May** **BIC & MC**

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