

NYISO Comments Regarding the D.C. Circuit Court of Appeals May 1, 2015 decision in
Delaware Department of Natural Resources and
Environmental Control v. Environmental Protection Agency

The New York Independent System Operator, Inc. (“NYISO”) is the not-for-profit company charged with reliable operation of New York’s bulk electricity grid, administration of wholesale electric markets, and planning for the future of New York’s power system. To maintain a reliable electric system, the NYISO is required to ensure resource adequacy which it accomplishes primarily through administering a Capacity market. In addition to traditional generation, eligible sellers in the Capacity market include entities such as large industrial customers that can reduce their grid-supplied load when directed to by the NYISO either through reducing their electric requirements, or by using on-site generators for some or all their electric usage. The NYISO directs that load reductions be taken when it forecasts shortages in its Available Reserves. Approximately 1210 MW of demand response are currently enrolled as demand response supply in the Capacity market for the Summer 2015.

On May 1, 2015, the U.S. Court of Appeals for the District of Columbia Circuit (“D.C. Circuit Court of Appeals”) vacated the exemption EPA had included in its National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines (“RICE”); New Source Performance Standards for Stationary Internal Combustion Engines¹ for “emergency engines” or “back-up generators.”² The exemption allowed such emergency engines and back-up generators to operate without emissions controls for up to 100 hours per year as part of an emergency demand-response program.³

The NYISO understands that certain of its demand response providers make their load reduction available by using an emergency engine or back-up generator (“Emergency Generators”). In addition to potentially being subject to the EPA’s RICE rules, these Emergency Generators must have a Minor Facility Registration, a State Facility permit or a Title V Clean Air Act permit from the New York State Department of Environmental Conservation (NYSDEC) to operate in New York. For some of these units, the EPA RICE rules may be more restrictive than the NYSDEC rules, making the EPA RICE rules’ 100-hour demand response exemption valuable to a subset of the NYISO’s demand response providers.

¹ National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines; New Source Performance Standards for Stationary Internal Combustion Engines; Final Rule 78 Fed. Reg. 6,674 (Jan. 20, 2013) (amending 40 C.F.R. pts. 60 and 63) (the “RICE rules”).

² Delaware Department of Natural Resources and Environmental Control v. Environmental Protection Agency, *2015 U.S. App. LEXIS 7228* (D.C. Cir. 2015) at 30.

³ *Id.* at 3.

Based on the latest responses from demand response providers participating in the NYISO's Capacity Market, approximately 100 MW of demand response may be impacted by the court order vacating the exemption from the RICE rules for Emergency Generators. This has raised several concerns for the NYISO.

The NYISO's Summer 2015 capability period started on May 1. As grid operators, the NYISO prefers to have a good understanding of the supply resources available going into the peak summer period, which is immediately upon us. Having certainty and advanced notice of the rules that impact the availability of the NYISO's demand response resources is preferable. Near-term certainty as to the ability of Emergency Generators to operate at least over this summer assists the NYISO in planning resources to meet summer demand.

The NYISO asks that, should the EPA request further review by a court, or for a delay in the application of the D.C. Circuit's Order, that it do so in such a way as to provide for certainty as to the status of Emergency Generators under the RICE rules. That is, that there be a clear understanding within the next few weeks, if at all possible, that the emissions limits of the RICE rules either (a) apply to Emergency Generators, or (b) that Emergency Generators are exempt from its emissions limits provided they limit their operation to no more than 100 hours/year. Having certainty for the balance of the summer, whether the exemption does or does not apply, is preferable.

Respectfully submitted;

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