Proposed Revision to Prohibited Investment Rules

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August 14, 2013

Rensselaer, NY

Background

The NYISO's tariffs and agreements establish broad restrictions against NYISO directors and employees holding a financial interest in a NYISO market participant or any of its affiliates.

As the number of NYISO market participants has increased over time, these restrictions have become increasingly onerous - prohibiting investment in several hundred publicly-traded companies.

- Since the NYISO began operations, the number of market participants has increased from approximately 119 in 1999 to nearly 400 today. NYISO market participants have more than 10,000 corporate affiliates.
- Most of the companies that are prohibited investments are not actually market participant companies, but rather affiliates of those companies.

Background

At the start of NYISO operations, most NYISO market participants were traditional electric sector companies. Now market participants, and especially their affiliates, include a wide range of companies whose primary business activities are outside of the electric sector.

- As more companies become demand response providers, the NYISO expects the number of companies in this category to continue to grow.
- Corporate family relationships create an ever-growing list of prohibited investments.

Background

The expanding scope of these restrictions is making it increasingly difficult for the NYISO to recruit and retain talented and experienced directors.

- A NYISO director recently resigned citing the significant constraints imposed by the NYISO's independence requirements.
- The NYISO is aware of well qualified individuals who would have been excellent Board candidates, but who have declined to be considered due to these rules.
- This is a problem that will continue to grow, impairing the NYISO's ability to attract and retain top talent.
- NYISO stakeholders have indicated concerns regarding the unintended consequences of the NYISO's prohibited investment rules.

Background

Given these concerns, the NYISO has explored opportunities for sensible revisions to the current rules.

- The NYISO believes there is an opportunity to reform the prohibited investment rules in a manner that preserves the NYISO's independence without unduly impairing recruiting and retention.
- The NYISO presented a proposal at the last BIC meeting to reform the prohibited investment rules. Market participants provided feedback on that proposal and asked the NYISO to consider revising the proposal based on that feedback.
- This presentation lays out a modified proposal that incorporates input received at the last BIC meeting.

Current Rule

The NYISO's tariffs and agreements establish broad prohibitions against NYISO directors, employees, and their immediate family members investing in market participants or their affiliates.

- Currently there are approximately 340 publicly traded market participants and affiliates.

Modified Proposal

NYISO directors, employees, and their immediate family members may not invest in any active NYISO market participant or affiliate of an active market participant that, in either case, trigger any of the following screening criteria:

- the relevant market participant or affiliate is an electric sector company as determined by the North American Industry Classification System;
- the relevant market participant activity (for the corporate family) in the NYISO markets (purchases and sales) is equal to or greater than 0.5% of the publicly traded company’s gross revenues for the year; or
- the relevant market participant activity (for the corporate family) in the NYISO markets (purchases and sales) is equal to or greater than 3% of total NYISO market purchases and sales for the year.

Modified Proposal

- “Active” market participants would include all market participants that have been active in the NYISO markets in the past 12 months.

- A NYISO director shall recuse himself or herself from participating in NYISO Board deliberations and decision making that directly involve a market participant or affiliate when that director is aware that he or she, or an immediate family member, has a financial interest in the market participant or affiliate.

The NYISO believes that this proposed rule will provide robust protection against potential conflicts of interest arising from individual investment holdings without creating the unintended consequences of the current, overbroad restriction.

We have had preliminary conversations with FERC about this issue, and will soon be discussing the details of this proposed change with FERC Commissioners and staff.