

The NYISO's Second Compliance Filing proposed values for its Regulation Movement Multiplier ("RMM"),⁶ and Regulation Movement Bid Restriction ("Bid Restriction"). Beacon supports the NYISO's proposed RMM value and the NYISO therefore takes no issue with the discussion of the RMM in the Comments and Protest. As is explained below, however, Beacon's protest of the value of the Bid Restriction, on the other hand, is based on mathematical errors and an incomplete analysis. Moreover, its argument that the Bid Restriction is not really "temporary" ignores the plain meaning of the provision as clearly described in the tariff. The Commission should therefore adopt the Bid Restriction as proposed.

I. REQUEST FOR LEAVE TO ANSWER

The NYISO is authorized to answer Beacon as a matter of right to the extent that its pleading constitute "comments." The Commission also has discretion to accept answers to protests when they help to clarify complex issues, provide additional information, are otherwise helpful in the development of the record in a proceeding or assist in the decision-making process.⁷ The NYISO's answer satisfies those standards and should be accepted because it addresses inaccurate or incomplete statements, and provides additional information that the Commission needs to fully evaluate the arguments in this proceeding.

⁶ Capitalized terms that are not otherwise defined herein shall have the meaning specified in the NYISO's compliance filings in this docket.

⁷ See, e.g., *Southern California Edison Co.*, 135 FERC ¶ 61,093 at P 16 (2011) (accepting answers to protests "because those answers provided information that assisted [the Commission] in [its] decision-making process"); *New York Independent System Operator, Inc.*, 134 FERC ¶ 61,058 at P 24 (2011) (accepting the answers to protests and answers because they provided information that aided the Commission in better understanding the matters at issue in the proceeding); *New York Independent System Operator, Inc.* 140 FERC ¶ 61,160 at P 13 (2012) and *PJM Interconnection, LLC*, 132 FERC ¶ 61,217 at P 9 (2010) (accepting answers to answers and protests because they assisted in the Commission's decision-making process).

II. ANSWER

A. The Commission Should Not Revise the NYISO's Proposed Bid Restriction

The NYISO has previously explained that it proposed a Bid Restriction of \$2.47 in order to avoid unforeseen but potentially significant price volatility as the design changes to the Regulation Service Market mature. This could be of particular concern since, at the time that the Bid Restriction is implemented, the NYISO will not have all the information necessary to employ the mitigation tools it traditionally uses to prevent the abuse of market power.⁸ The value of \$2.47 is the average revenue earned by a Regulation Service Supplier in the NYISO's market from 2009 through 2011 for each MW of energy provided in response to the Regulation Service dispatch signal provided by the NYISO – *i.e.*, the product that is proposed to be called “Regulation Movement.”⁹ Once the NYISO's proposed Regulation Service redesign is implemented, Regulation Service providers bidding the costs and delivering the MWs of regulation response that they did from 2009 through 2011 will earn, in Regulation Movement settlements alone, what they earned for providing Regulation Service in each of these previous years even with a Bid Restriction (and Regulation Movement Market Price) no higher than \$2.47.

Not only does Beacon inaccurately characterize the manner in which the Bid Restriction was calculated, it ignores the additional revenue that Regulation Capacity will provide under the NYISO's proposed Regulation Service market redesign. Regulation Movement is one part of a two-part bid opportunity that would be offered to Regulation Service providers, including

⁸ See: *New York Independent System Operator, Inc.*, Docket ER12-1653-000, Letter to Secretary Bose from Mollie Lampi, April 30, 2012, (“First Compliance Filing”) proposed amendments to the Market Administration and Control Area Services Tariff (“Services Tariff”) Sections 21.5.3 and 21.5.3.1.

⁹ See: Second Compliance Filing, Affidavit of Mr. Rana Mukerji, ¶¶ 9-12.

Limited Energy Storage Resources (“LESRs”). Beacon consistently, and erroneously, ignores this fact when it makes its revenue-deficiency arguments. Moreover, it offers no alternative design, nor any evidence on which an alternative Bid Restriction level should be based, when asking the Commission to order that the Bid Restriction be revised. Its revenue insufficiency arguments are therefore invalid and should be dismissed.

1. Beacon Misstates its Ability to Recover its Costs under the NYISO Design

Beacon argues that a Bid Restriction based on historic average revenues does not provide room for a Supplier to bid high when costs are “above average.”¹⁰ Beacon ignores, however, the fact that because the Bid Restriction is based on historic average revenues, it will allow suppliers to recover amounts greater than their actual costs when they are lower than average historic costs. Beacon focuses exclusively on the possibility that there might be individual hours during the temporary duration of the Bid Restriction when the Bid Restriction might limit cost recovery without acknowledging that there will be many other hours when they will be able to earn revenues in excess of their costs. Commission precedent is clear that competitive suppliers in organized markets are not entitled to a guarantee to recover their costs in every hour.¹¹

Neither does Beacon’s assertion that the annual average Regulation Services market prices from 2008 through 2010 were higher than the proposed Bid Restriction¹² make the

¹⁰ Comments and Protest at 3. Beacon errs, however, when stating the \$2.47 value is based on average Market prices. It is based on average revenue earned expressed in terms of the MW provided by regulation response – the product to be now identified as Regulation Movement. *See*: Second Compliance Filing, *Affidavit* of Mr. Rana Mukerji, ¶¶ 9-12.

¹¹ *See: Bridgeport Energy, LLC*, 113 FERC P 61,311 (2005) at P 47, (“It is reasonable and expected in a competitive market that there will be periods where full cost recovery is not realized. In a competitive market, the Commission does not have an obligation to guarantee cost recovery, especially for a highly efficient merchant generator, capable of earning a significant portion of available market revenues. Instead, the Commission is responsible for assuring that Bridgeport is provided the opportunity to recover its costs.”)

¹² Comments and Protest at 4.

NYISO's Bid Restriction calculation, which was based on the Regulation Service market revenue for the more recent 2009 through 2011 period, unreasonable or incapable of providing appropriate cost recovery. Beacon does not challenge the NYISO's use of Regulation Service revenue earned from 2009 to 2011 as the basis for its Bid Restriction calculation nor does it assert that the NYISO should have, instead, used the market revenue earned from 2008 through 2010 in determining average revenue.

2. Beacon Understates the Revenue that Suppliers Will Receive Under the NYISO's Regulation Service Market Redesign.

Beacon's argument that the NYISO Bid Restriction prevents LESRs "from recover[ing] all their costs with the revenue they earn in the Regulation market" mischaracterizes the expected revenue streams that Suppliers will be able to earn under the NYISO's Regulation Services Market redesign and is not credible.¹³ Beacon ignores the NYISO's proposed Bid Production Cost Guarantee for Day-Ahead and Real-Time Regulation Capacity Bids and Real-Time Regulation Movement Bids, which ensure that the revenue any scheduled Regulation Service-only provider receives in a day will at least equal its Regulation Service as-bid costs for the day.¹⁴ In addition, as mentioned, unless Suppliers were bidding less than their costs from 2009 through 2011, and there is no reason to believe that they were, the revenue a provider can expect to receive from its Regulation Movement settlement *on its own*, even with a Bid Restriction, should allow Suppliers to recover all the costs they bid historically (2009 through 2011) to provide Regulation Service. This will be the case so long as Suppliers deliver, on average, 10 MW of Movement for each MW of Capacity. Indeed, since LESRs will likely provide more than

¹³ Comments and Protest at 4-5.

¹⁴ *See*: First Compliance Filing proposed amendments at Services Tariff, Sections 18.2.2.2 and 18.4.2. These proposed revisions will also ensure that the daily revenues paid any energy and demand-side resource providing Regulation Service will cover its as-bid costs for providing service to the NYISO, including Regulation Service as-bid costs.

10 times their scheduled Regulation Capacity in Regulation Movement MW, they can expect to earn even more than they earned from 2009 through 2011, for the same service.

In addition, Beacon's unsupported assertion that LESRs should recover "substantially all their costs . . . from the NYISO's Regulation Movement payment" does not justify basing an example of a costs-versus-payments calculation on incomplete information. Correcting the example of revenue insufficiency Beacon provided illustrates Beacon's error directly.

Beacon explains how the NYISO's Regulation redesign would have left it with revenue "below the level that would have allowed adequate cost recovery" by comparing expected Regulation Movement revenue with actual expenses for hour 15 on August 7, 2011. Its conclusion that actual expenses exceeded revenue could only be true if the Regulation Capacity revenues that it would have received for that very same hour were zero or were ignored altogether. If the Regulation Capacity revenues that Beacon would likely have received are included, Beacon's example proves the point that the NYISO's Regulation Services Market is designed to allow providers the opportunity to earn revenue in excess of their costs, notwithstanding the Regulation Movement Bid Restriction.

In hour 15 on August 7, 2011, when Energy prices rose in reaction to high demand, the Real-time Regulation Service Demand Curve triggered and the average RTD Market Clearing Price for Regulation Capacity over the hour was \$362.59/MW.¹⁵ Beacon indicates that it was scheduled for 20 MW of Regulation Capacity and that it provided 599 MW of Regulation Movement for that hour at a cost of \$3,962.96.¹⁶ Assuming Beacon was scheduled in real-time,

¹⁵ See Pricing Data at:
<http://www.nyiso.com/public/markets_operations/market_data/pricing_data/index.jsp>

¹⁶ Comments and Protest at 5.

fully delivered 18 MW of Regulation Capacity for the hour, and settled its Regulation Movement MWs at a Market Price set at the Bid Restriction -- \$2.47, Beacon would have earned \$6526.62 in Regulation Capacity revenue and \$1479.53 in Regulation Movement revenue, or more than \$13/ MW of Regulation Movement provided that hour.¹⁷ This is well in excess of, not well below, Beacon's cited costs of \$6.62 per MW of Movement for the hour.

In addition, Beacon's assertion that it is not good market design to require out-of-market opportunities to ensure cost recovery mischaracterizes the NYISO's proposal. For regulation-only providers like Beacon, the NYISO ensures full cost recovery for the bidder's Regulation Capacity and Regulation Movement as-bid costs through its Bid Production Cost Guarantee.¹⁸

3. Beacon Ignores the Plain Terms of the NYISO's Proposed Bid Restriction Which Call for Its Termination When It Is No Longer Needed

Finally, Beacon's assertion that, to be temporary, the NYISO's Bid Restriction must expire at an established date is simplistic and unreasonable. Unlike any other Bid cap in Section 21 of the NYISO's Services Tariff, Section 21.5.3 requires the NYISO's Market Monitoring Unit ("MMU") to evaluate the Regulation Movement Bid Restriction and make a recommendation that it continue, be adjusted or expire. This review and recommendation is to occur no less frequently than once a year (which means it could be requested earlier) and is required to include, but not be limited to, an evaluation of whether an increase in the Bid Restriction, or its elimination, would provide incentives to raise offers for Regulation Movement substantially

¹⁷ The NYISO market redesign continues the application of a Regulation Service Demand Curve. *See*: First Compliance Filing, Services Tariff Section 15.3.7.

¹⁸ *See* footnote 14, *supra*.

above levels that would be anticipated in an efficient market and whether the Bid Restriction prevents appropriate cost recovery.¹⁹

If the issues that the Bid Restriction was intended to avoid are resolved early, as Beacon suggests, the MMU may well recommend its elimination sooner rather than later. The Commission should not act to preempt the MMU by determining the date on which the Bid Restriction will no longer be necessary to mitigate potential impacts on price volatility. When Regulation Movement Bids are reflecting a competitive Regulation market and NYISO's customers no longer need a Bid Restriction to avoid unreasonable price spikes, the tariff permits the MMU to recommend the Bid Restriction's elimination. Beacon's request that the Commission act prematurely and establish an expiration date before any empirical information has been accumulated in support of such an approach should be denied.

¹⁹ See: First Compliance Filing proposed amendments at Services Tariff Section 21.5.3 (Attachment F).

III. CONCLUSION

WHEREFORE, for the reasons set forth above, the NYISO respectfully requests that the Commission reject Beacon's arguments challenging the NYISO's proposed Bid Restriction and accept the NYISO's Compliance Filings submitted in this docket, including the values for its Regulation Movement Multiplier and Bid Restriction, without requiring any modifications.

Respectfully submitted;

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. §385.2010.

Dated at Rensselaer, NY this 21st day of September, 2012.

/s/ Joy A. Zimmerlin

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