UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Offer Caps in Markets Operated by Regional Transmission Organizations and Independent System Operators	)))	Docket No. RM16-5-000

COMMENTS OF THE NEW YORK STATE PUBLIC SERVICE COMMISSION

INTRODUCTION

On February 4, 2016, the Federal Energy Regulatory Commission (Commission) published a Notice of Proposed Rulemaking (NOPR) in the Federal Register seeking comments on a Commission proposal to modify the energy supply bid restriction (Offer Cap) currently employed by each Regional Transmission Organization (RTO) and Independent System Operator (ISO).[1] The proposed modification stems from a preliminary Commission finding that the Offer Cap might prevent generators from recovering all short-run marginal costs during acute natural gas price spikes, and may result in unjust and unreasonable rates. If implemented, the modified Offer Cap would include a process whereby generators could submit cost-based energy offers that exceed the bid restriction and, if selected, those offers could be used for purposes of calculating Locational Marginal Prices (LMPs).

The New York State Public Service Commission (NYPSC) respectfully urges the Commission to refrain from modifying the Offer Cap at this time.[2] The modification proposed in the NOPR presupposes that increasing the Offer Cap will provide an improved price signal, and that market participants will be able to respond to such price signals in order to discipline prices.

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1 Docket No. RM16-5-000, Offer Caps in Markets Operated by Regional Transmission Organizations and Independent System Operators, 154 FERC ¶61,038 (issued January 21, 2016).

2 The views expressed herein are not intended to represent those of any individual member of the NYPSC. Pursuant to Section 12 of the New York Public Service Law, the Chair of the NYPSC is authorized to direct this filing on behalf of the NYPSC.

However, without sufficient competition that includes Demand Response providers, as is currently absent in New York, raising the Offer Cap will merely result in increased prices that will burden ratepayers. The NYPSC therefore opposes raising the Offer Cap until such time that adequate Demand Response is available. The NYPSC urges the Commission to take steps to ensure Demand Response is able to participate in the real-time energy market, which would form a basis for raising the Offer Cap.

BACKGROUND

Since 1999, each jurisdictional RTO/ISO has capped incremental energy offers at $1,000/MWh (except for PJM, for which the Commission lately approved an increase to $2,000/MWh).[3] Recently, however, a brief period of extreme weather during the 2013-2014 winter (the Polar Vortex) led to a spike in natural gas prices that could have caused certain resources in PJM with must-offer requirements to incur operating losses if their short-run marginal costs exceeded the Offer Cap.[4] PJM responded with a series of tariff filings, approved by the Commission, that implemented measures to compensate those resources for costs that exceeded the Offer Cap during certain winter months.[5] The Commission approved similar Offer Cap waivers for the New York Independent System Operator, Inc. (NYISO) and the Midcontinent Independent System Operator, Inc. (MISO).[6] In compliance filings submitted after

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3 NOPR at ¶10, 12.

4 Id. at ¶13.

5 Id. at ¶14.

6 Id. at ¶15.

the end of each waiver period, PJM, NYISO, and MISO each reported that it was unnecessary to provide any incremental compensation under the terms of the Offer Cap waiver.[7]

The Commission subsequently granted PJM's request to renew the increased Offer Cap during the 2014-2015 winter.[8] The Commission approved a similar request submitted by the MISO.[9] In so ruling, the Commission assumed that the Offer Cap could prevent certain resources from submitting incremental energy offers that reflect their marginal costs, thereby forcing those generators to sell electricity below cost.[10] The Commission reasoned that the waiver would address that potential risk, while requiring cost verification of incremental energy offers that exceed $1,000/MWh as a customer protection measure.[11]

The Commission approved PJM's and MISO's requests to renew the Offer Cap waiver during the 2015-2016 winter.[12] Notwithstanding the repetitive requests for a conditional Offer Cap waiver, PJM reported that no compensation was required under the terms of the waiver during either the 2013-2014 winter or the 2014-2015 winter.[13] The MISO and NYISO reported similar results.

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[7] PJM Interconnection, LLC, Docket No. ER14-1145-000, Report on PJM Energy Market Offers, February 11 to March 31, 2014 (dated April 30, 2014) at 3 (2014 PJM Report); PJM Interconnection, LLC, Docket No. EL15-31-000, Report on PJM Energy Market Offers, January 16 to March 31, 2015 (dated May 5, 2015) at 5 (2015 PJM Report); New York Independent System Operator, Inc., Docket No. ER14-1138-000, Bid Restriction Waiver Informational Filing (dated March 28, 2014) at 2; Docket No. ER15-691-000, Midcontinent Independent System Operator, Inc., Report on MISO Energy Market Offers, December 20, 2014 to April 30, 2015 (dated July 9, 2015) at 1-2.

[8] NOPR at ¶16.

[9] Id.

[10] Id.

[11] Id. at ¶ 17.

[12] Id.

[13] 2014 PJM Report at 3; 2015 PJM Report at 5.

Although it noted that Offer Caps are market power mitigation measures, the Commission found preliminarily that all currently-effective Offer Caps may result in rates that are unjust and unreasonable and may not promote its price formation goals.[14] The Commission identified four bases for this conclusion: (1) the Offer Cap might prevent recovery of short-run marginal costs; (2) the Offer Cap might impair price formation by suppressing the LMP below the marginal cost of production; (3) resources could be discouraged from offering their supply when short-run marginal costs exceed the Offer Cap; and (4) the Offer Cap could obscure cost differences among resources with incremental energy offers that exceed the Offer Cap.[15]

The Commission proposed to modify all currently-effective Offer Caps to address the deficiencies that it identified. Specifically, the Commission proposed that the modified Offer Cap would apply to incremental energy offers in the day-ahead and real-time energy markets subject to three requirements, namely: (1) an Offer Cap structure whereby the incremental energy offer used to calculate LMP in energy markets would be capped at the higher of $1,000/MWh or the resource's cost-based incremental energy offer; (2) the costs used to justify a cost-based incremental energy offer that exceeds the Offer Cap must be verified before it may be used to derive LMPs; and (3) all resources must be eligible to submit cost-based incremental energy offers that exceed $1,000/MWh.[16]

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14 NOPR at ¶7, 43, 47 (identifying driving goals such that: (1) "clearing prices in the energy and ancillary services markets should ideally reflect the true marginal cost of production, taking into account all physical system constraints," and (2) "LMPs should ensure that all suppliers have an opportunity to recover their costs") (internal quotation marks and citations omitted).

15 Id. at ¶2.

16 NOPR at ¶52-69.

NOTICE OF INTERVENTION

The NYPSC is a regulatory body established under the laws of the State of New York with jurisdiction to regulate rates or charges for the sale of electricity within the State.[17] It is, therefore, a State Commission as defined in §1.101(k) of the Commission's Rules of General Applicability.[18] Additionally, the NYPSC is responsible for ensuring "safe and adequate service" by "electric corporations," including independent generation owners.[19] Accordingly, NYPSC hereby provides its Notice of Intervention pursuant to Rule 214(a)(2) of the Commission's Rules of Practice and Procedure.

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DISCUSSION

The NYPSC recognizes that increasing the Offer Cap in the real-time energy market may provide improved price signals. With higher prices caused by economic situations, consumers may opt to make different choices for their energy use. The most immediate option would be to curb consumption.

Although economic Demand Response programs are designed to signal appropriate times when consumption should be curbed, the NYISO has not yet implemented a real-time Demand Response program, which would allow market participants to respond to the

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17 New York Public Service Law (PSL) §65.

18 18 C.F.R. §1.101(k)(2014).

19 PSL §§2(13), 65(1), 66(1), (2), (3) & (5).

price signals envisioned in the NOPR. The Commission explicitly required the NYISO to "allow for qualified demand response resource participation in its real-time energy market. Therefore, [the Commission] direct[ed] NYISO to modify its tariff to allow technically capable demand response resources to participate in the real-time energy market to provide energy imbalance service."[20] Given that the Supreme Court has reached a final determination in EPSA v. FERC, the Commission should ensure that the NYISO refocuses its efforts and develops market rules that would allow Demand Response to participate in the real-time energy market.[21]

Because Demand Response providers are not yet able to participate in the real-time energy market in New York, it is premature to raise the Offer Cap. In the absence of sufficient competition that includes Demand Response providers, raising the Offer Cap will merely result in increased prices that will burden ratepayers. It is also important to recognize that fuel costs for generators are a "pass through" expense for which recovery is assured if they are selected for dispatch. As a result, having the potential for higher prices, signaling a need for additional resources, is presently unhelpful and non-stimulating for the New York market. Until the New York market develops more effective economic Demand Response programs, the Commission should refrain from raising the Offer Cap.

In the meantime, if the Commission concludes that an interim remedy is necessary to ensure market generators may recover all short-run marginal costs during acute natural gas price spikes, the Commission should adopt an alternative mechanism to the one proposed in the NOPR. In particular, the "Bid Production Cost Guarantee" mechanism approved

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[20] Docket No. ER09-1142-000, NYISO, Order on Compliance Filing, 129 FERC ¶61,164 (issued November 20, 2009), ¶34.

[21] See, FERC v. EPSA, 136 S. Ct. 760 (2016); see also, Docket No. ER01-3001-000, NYISO Annual Report on Demand Side Management programs (filed January 12, 2016), p. 21 (noting that the NYISO postponed further development of real-time Demand Response market rules pending a decision in EPSA v. FERC).

for the NYISO during its Offer Cap waiver period would ensure generators could be compensated for legitimate production costs that exceed the $1,000/MWh bid restriction, while cost-based bids verified by the NYISO would not be used to calculate LMPs. This would avoid inflated market clearing prices that would expose customers to substantial and unpredictable energy price spikes that could otherwise be avoided or mitigated with sufficient competition and Demand Response participation.[22]

[22] Docket No. ER14-1138-000, New York Independent System Operator, Inc., Order Granting Waiver (issued January 31, 2014). Incremental compensation would be paid to generators as a Bid Production Cost Guarantee, the cost of which would be recovered through uplift payments. Id. at ¶4.

CONCLUSION

For the reasons set forth herein, the NYPSC respectfully urges the Commission to find that a modification of the existing Offer Cap is not warranted at this time. Until such time as sufficient competition exists, including real-time Demand Response participation, alternative mechanisms may be utilized to ensure prices are just and reasonable. At a minimum, the Commission should direct the NYISO to refocus its efforts and to develop market rules that would allow Demand Response to participate in the real-time energy market, as the Commission previously directed. This would increase the competitiveness of existing markets, while moderating the ratepayer impacts associated with modifying the Offer Cap, as proposed in the NOPR.

Respectfully submitted,

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