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Longtime tension between state regulators and power markets to emerge again

BY **MARIE J. FRENCH** | 08/08/2019 05:00 AM EDT

New York's capacity market is mandatory — meaning utilities are required to purchase enough capacity through NYISO's market to meet standards enforced by NYISO.| David Prasad

ALBANY — Long-simmering tensions over melding the current electric market structure with Gov. Andrew Cuomo's ambitious renewable goals are poised to break into the open with action by the state's utility regulator today.

State policymakers appear ready to dive once again into a complex debate over how to ensure there is enough electricity to keep the lights on while also making sure that electricity is derived from relatively clean sources — and what role the state should play in the process.

The conflict has typically involved the state's grid operator, the New York Independent System Operator, which is charged with making sure there are adequate resources that can be dispatched quickly. But the state wants to ensure those power sources are low-carbon and align with Cuomo's stated goal of getting to 70 percent renewable energy by 2030 and to carbon free electricity generation by 2040.

The Public Service Commission will issue an order related to "resource adequacy matters" on Thursday. It's not clear precisely what the utility regulator will do or what the goal of the proceeding will be, but energy industry players and environmentalists are watching closely.

Both said they welcome the potential chance to air issues related to how the state's grid operator treats subsidized resources and how to achieve New York's lofty carbon-cutting goals.

"We support the Public Service Commission initiating this process to explore how to more effectively align NYISO markets with public policy," said Jackson Morris with the Natural Resources Defense Council.

"We'd like to keep the market and understand the market needs to adjust," said Independent Power Producers of New York's Gavin Donohue. "We're not afraid of the discussion and we're looking forward to bearing out the facts."

State policymakers have chafed for years over their lack of control over capacity markets — the mechanism by which the NYISO ensures there's enough generation to meet peak demand, plus a comfortable cushion. The concern from some environmental advocates and the administration has been that current policy and pending actions by NYISO — or the Federal Energy Regulatory Commission — risk imperiling Cuomo's renewable energy goals and potentially raising costs.

The NYISO declined to comment on the pending proceeding.

Donohue said the state's energy markets — set up to deliver lower cost electricity without accounting for environmental goals — and the power sector he represents may be a victim of the successes they've delivered in terms of reliability, efficiency and cost.

"New York state has struggled with, 'Okay, we've had some great outcomes with reliability, efficiency and the cleanliness of the units, but it's not what we want, so we're going to try to figure out a way to interject our public policy objectives into this market paradigm,'" he said. "And it's bound to cause a collision at some point."

The state cannot currently directly control the mix of fossil fuel, solar, wind, hydropower, nuclear, storage and other resources used to supply electricity in New York. By subsidizing nuclear, new renewables, offshore wind and storage the state hopes to achieve those policy goals.

But a challenge looming over those subsidies involves the NYISO and the Federal Energy Regulatory Commission because of policies on how new, subsidized resources are allowed to participate in those capacity markets.

New York's capacity market is mandatory — meaning utilities are required to purchase enough capacity through NYISO's market to meet standards enforced by NYISO. The goal is to keep enough resources online, even if they're only needed to provide electricity in extreme circumstances, to meet the state's electric demand.

Power generators bid in at the price they want to be paid to be available to run. The market works by paying all resources the cost of the last unit needed to meet reliability criteria, so generators that bid in lower get paid the same as higher cost plants.

There are concerns that new, subsidized resources that don't have any fuel costs could suppress the capacity price and thus put more expensive fossil generators, which are still needed to ensure reliability, at risk of retirement.

The NYISO subjects new entrants in some areas of the state to a "buyer-side mitigation" test to see whether they are economically viable without subsidies. If they are determined not to be, the power providers are required to bid in at a minimum price above what they'd otherwise charge. This can mean they don't "clear" the auction if the price is above the last generator needed to meet reliability needs.

Resources subject to "buyer-side mitigation" can lose out on a significant revenue stream. Pending complaints at FERC, filed by IPPNY, could vastly expand the number of new resources subject to mitigation. FERC has signaled in a similar PJM case that it is comfortable ordering additional mitigation to keep more capacity resources online over reliability concerns.

"It gives a leg up to incumbent generators," said Environmental Advocates of New York's Conor Bambrick of mitigating new subsidized resources. "And that doesn't mean the state's not going to continue to move forward ... it's just a question of how efficiently we're going to be able to move forward."

The state likely has broad authority to seize back control of resource adequacy, which could effectively end NYISO's capacity markets and allow the state more influence over the resource mix.

The state ceded authority over resource adequacy to the NYISO during utility deregulation in the 1990s. There is some legal uncertainty around what exactly the state can do now and where the line between state and federal jurisdiction lies, which could lead to litigation, according to experts.

"The New York PSC is squarely within its rights and historic competence to take up the reins on resource adequacy," said Ray Gifford, a partner at Wilkinson Barker Knauer and former Colorado Public Utilities Commission chairman. "The strange thing about the New York ISO inhabiting the same territory as the New York PSC is they have largely historically worked in concert, so it would be a little bit weird to see them turn on each other and start a big jurisdictional fight."

NYISO CEO Rich Dewey has said the grid operator is working to accommodate the anticipated influx of renewables driven by state policies while balancing reliability. One of the preferred options pushed by NYISO and merchant generators is to price carbon in the energy market. But the state has thus far declined to publicly endorse that plan.

“Using carbon pricing, whether it’s through a carbon charge or through a cap-and-trade program, seems promising as a way to achieve the state’s clean energy goals without incurring FERC-mandated buyer-side mitigation,” said Resources for the Future’s Daniel Shawhan, lead author on a report reviewing the carbon pricing proposal.

But advocates and some outside experts say carbon pricing alone won’t be enough to achieve the state’s ambitious goals. And it’s a somewhat distinct issue from buyer-side mitigation and the way new resources are treated in capacity markets, said Jennifer Chen, senior counsel on federal energy policy at Duke University's Nicholas Institute for Environmental Policy Solutions.

“Carbon pricing can help you incentivize zero carbon resources to come online,” she said. “If those are able to displace emitting resources, it might provide the price signal for those to retire but if the renewable resources aren’t able to participate in capacity markets … they’re not going to be able to displace the other resources.”

State policymakers attending NYISO meetings have been critical of the specter of buyer-side mitigation being raised as a reason to pursue carbon pricing. The Department of Public Service’s chief economist Warren Myers has called it a “false reduction of alternatives.”

In recent months, the state’s energy agencies have also been critical of NYISO’s plan to subject new, subsidized storage resources to buyer-side mitigation testing. Doing so could exclude those resources from the capacity market and make them more expensive to develop — resulting in more state subsidies that ultimately flow from ratepayers to achieve an aggressive 3,000 megawatt by 2030 goal.

The state is seeking to ensure that subsidized storage projects are not subject to buyer-side mitigation, seeking a blanket exemption for the resources from a buyer-side test or a more limited exemption for 300 megawatts of capacity annually.

“The NYISO’s current [rule]s are used as both a shield to preserve the market position of incumbent generators and as a sword against new market entrants,” wrote the PSC and the New York State Energy Research and Development Authority in a filing to FERC late last month asking for the federal regulator to force NYISO to exempt storage.

The NYISO’s proposal threatens the state’s legitimate policy goals, the state argues.

“While even the threat of mitigation has a deleterious impact discouraging market entry, actual mitigation would severely limit, or even eliminate, the ability of Energy Storage Resources to be paid for the value they provide,” the filing states.

There are also questions around how offshore wind resources will be treated by the NYISO. The state has set a goal of getting 9,000 megawatts online by 2035 and awarded two projects ratepayer subsidies earlier this year.

The Cuomo administration last engaged in a protracted dispute over resource adequacy in 2014, when FERC approved a new capacity zone for the Lower Hudson Valley. FERC indicated the new zone — which raised the price of power near New York City and Long Island to attract generators — was needed to ensure reliability, while the state saw it as a windfall to generators from ratepayers.

Environmental advocates also raised concerns about the new capacity zone supporting existing and new fossil fuel plants.

“If we saw more retirements in that area, that would create more opportunities to bring more clean energy resources,” Bambrick said.

New York challenged the new zone in court but ultimately lost. The PSC, under Audrey Zibelman, held its first ever joint technical conference with FERC on resource adequacy while the legal challenge was pending.

“Given the fact that more than $2.6 billion flows through the capacity market annually, it is critically important that it reflects the State's policy objectives and the needs of consumers in the State,” Zibelman said in a statement announcing the joint conference.

No action resulted from those discussions.

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