

# FERC PARTIALLY APPROVES NYISO COMPLIANCE FILING CONCERNING ENERGY STORAGE RESOURCES

*Hodgson Russ Renewable Energy Alert*  
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On December 20, 2019, the Federal Energy Regulatory Commission (FERC or Commission) adopted in part the New York Independent System Operator's (NYISO) proposed revisions to its tariff to bring it into compliance with FERC's Order No. 841. Order No. 841 required NYISO, along with other federally-regulated grid operators, to remove barriers for electric storage resources to participate in federally-regulated wholesale energy, capacity, and ancillary services markets. Although it accepted most of the proposals, the FERC rejected on procedural grounds NYISO's proposed change to its Buyer Side Mitigation (BSM) rules. The FERC also found that NYISO's prohibition on dual market participation was non-compliant with Order No. 841.

NYISO's BSM rules are intended to counteract the purported incentives for buyers to exercise their monopsony power and suppress capacity prices below competitive levels. Under the current framework, NYISO examines every new resource seeking to provide capacity services to a Mitigated Capacity Zone to see whether it is "economic" or qualifies for an exemption. Uneconomic and nonexempt resources are subject to bid restrictions ("offer floors"), which require them to submit higher bids into the capacity auctions than they otherwise would. If the offer floor price is higher than the market clearing price, the resource will be priced out of the market and receive no revenues from the capacity auction. The BSM rules apply to resources that are 2 MW or greater, but NYISO's proposal would have extended their application to all generators, including energy storage resources, that were less than 2 MW.

The New York State Energy Research and Development Authority (NYSERDA) and the New York Department of Public Service (DPS), among others, filed protests arguing that NYISO's proposal was non-compliant because it created barriers to market entry for energy storage resources. The BSM proposal, according to these New York parties, was beyond the scope of the proceeding in that the BSM rule revisions would apply to all capacity resources, not just energy storage, the subject of Order No. 841. The City of New York likewise protested the proposal on similar grounds.

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The FERC seemed to adopt the procedural rationale put forward by DPS, NYSEDA, and the City of New York. Determining that the BSM proposal was beyond the scope of the FERC No. 841 compliance proceeding, FERC's ruling rejected the BSM revisions. The Commission refused to address the merits of the NYISO's proposal, which may be the subject of a future NYISO application. This decision counts as a minor victory for smaller energy storage resources that receive State incentives, and thus would possibly be subject to mitigation measures.

The Institute for Policy Integrity and Advanced Energy Economy each commented that NYISO's proposal inhibited energy storage resources from participating in both retail and wholesale markets. FERC agreed, finding that NYISO's proposed tariff revisions did not allow for dual market participation, and accordingly, failed to comply with Order No. 841. However, the Commission deferred further action on this issue since NYISO had filed a separate proposal under Section 205 of the Federal Power Act that would allow participation of all resources in wholesale and retail markets. That proposal is still pending before the FERC.

Additional highlights from the FERC's December 20 Order include:

- FERC approved NYISO's limits to wholesale market participation to systems sized at 100kW or more.
- FERC found that NYISO's proposal to prohibit aggregation of energy storage resources at multiple, disparate locations did not conflict with Order No. 841, but noted that NYISO had filed new market rules for such aggregations in a separate docket that were pending before the Commission.
- FERC also approved NYISO's "dispatch-only" participation model for energy storage resources, over protest of representatives of pumped-hydro storage resources.

To learn more about the wholesale market participation of energy storage resources, please contact a member of Hodgson Russ's Renewable Energy Practice.

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