

Fair competition in the markets where electricity is bought and sold is good for consumers because it helps keep costs low and power generators efficient and innovative. That's why the Federal Energy Regulatory Commission (FERC) recently issued [four orders](#) addressing **buyer-side mitigation** rules for the New York Independent System Operator ([NYISO](#))'s capacity markets. The orders, issued February 20, 2020, seek to keep New York's electricity market competitive and help ensure price signals work properly to secure the right amount of reliable power at the lowest cost. But what impact will FERC's recent orders have?

What is the NYISO capacity market (ICAP) and why is it important?

NYISO's [ICAP](#) helps ensure the availability of sufficient power generation capacity when needed to serve New York consumers and keep the lights on at the lowest cost. To provide the right signals to make sure unneeded or costly plants retire and new, less costly and needed resources enter the grid—or that capacity needed to ensure reliability stays online—resources must bid into the market at the appropriate level.

What is “Buyer-Side Mitigation” and why does it matter?

[Buyer-side Mitigation \(BSM\)](#) helps maintain market integrity by preventing power providers from bidding into the capacity market at an artificially low price. Some providers that receive “out-of-market” payments such as state subsidies or other preferential treatment could have an unfair advantage over other power providers—undermining the benefits consumers experience when power providers compete fairly in the free market. BSM helps ensure providers and generators can't exercise buyer-side market power—a form of monopoly control over a market.

What the Orders Do NOT Do:

- **Significantly hamper renewable generation or “help coal” in New York.** The majority of renewable generation projects exist in the upstate region of New York, which is not subject to and would not be subject to BSM under FERC's February 20 orders. With the pending retirement of the Cayuga Power Plant in Lansing and the Somerset Power Plant, there will be no more coal in New York.
- **Subject NYISO to similar mitigation as PJM.** The [December 29 order](#) on PJM's MOPR applies broadly to new and existing state-subsidized resources across the entire PJM footprint. The February 20 orders only impact certain new resources in NYISO zones where buyer-side mitigation already applies. Exemptions for certain subsidized resources are included. This means those resources may be able to bid at a lower price and not be impacted by BSM.

- **Expand BSM to Upstate NY.** The February 20 orders do not impact all of New York. BSM only applies in the Lower Hudson Valley and NYC. This is status quo, not a new application.
- **Exclude renewables from NYISO's capacity market.** First, there is no BSM in Upstate New York so renewables in those zones are not impacted and can enter at any price. Second, in downstate New York, FERC required NYISO to propose a cap on the annual maximum allowed megawatts from subsidized renewables that would not be subject to BSM. The logic used is nearly identical to FERC's original [October 2015 Order](#) directing the compliance filing that was issued under a totally different commission.
 - The new cap must balance 1) the size of the MW cap; and 2) the impact on capacity market prices. This leaves a broad opening for NYISO to set a new level.
- **Exclude self-supply resources from the capacity market.** With the exception of large state-sponsored buyers of capacity (e.g., the New York Power Authority) that have the incentive and ability to actually exercise buyer-side market power, [self-supply](#) entities are not mitigated under BSM rules, subject to some existing tests for market power.

What the Orders Do:

- **Attempt to protect against the existing ability of power providers to exercise market power in New York—a practice that ultimately harms consumers.**
- **Require the renewable exemption cap to be based on actual resource output [how much electricity can be expected to be generated. This accounts for the intermittent nature of renewables].** The Order requires the MW cap for renewables not subject to BSM to be based on [Unforced Capacity \(UCAP\)](#) as opposed to [Installed Capacity \(ICAP\)](#). This is a more accurate reflection of renewable output and could allow *more* resources to enter the market, even if the set MW exemption cap is lower than the rejected 1,000 MW.
- **Subject all new electric storage resources (ESRs) to BSM in mitigated zones.** The Commission found that ESRs could suppress capacity market prices because they can deploy strategically, unlike intermittent resources captive to available sun or wind. Therefore, FERC found that ESRs should be subject to BSM in the mitigated zones. There are multiple avenues for these resources to receive an exemption from the BSM rules.
- **Subject certain Special Case Resources (e.g., [demand response](#)) to BSM in mitigated zones.** Any revenues not received through the wholesale market (e.g., from a third-party) are subject to BSM. However, the Commission requires additional analysis to determine whether special case resources that receive compensation for meeting certain distribution-level reliability needs should also be subject to BSM.

The Bottom Line

Markets deliver better outcomes for consumers than a costly patchwork of state subsidies, and they must be allowed to function properly to do so. Since created two decades ago, competitive power markets such as NYISO have delivered lower consumer costs, greater efficiency, innovation, and even emissions reductions.

State policymakers say they want emissions reductions and cleaner energy generation, and New York's leaders have the opportunity to embrace a market-based solution to achieve those goals—a [widely-supported carbon pricing proposal](#) developed by NYISO and the states' stakeholders. Many agree that carbon pricing would be the surest and most effective way to achieve deep decarbonization—it's time to act.

The Electric Power Supply Association (EPSA) and competitive power suppliers are focused on the future. We are working on and welcome a serious conversation about how market mechanisms can deliver emissions reductions and incentivize cleaner energy technology without burdening consumers and taxpayers or hampering reliable power delivery.

About the Electric Power Supply Association

EPSA represents competitive power suppliers—the owners and operators of power generation and storage facilities providing **more than 150,000 MW** of capacity from a diverse range of resources. Our members are leaders in innovation, relying on clear and fair market signals to provide dependable power and invest in new, more efficient, and cleaner technologies.

EPSA member companies lead the way in building a clean energy future while maintaining reliable, least cost power availability.

- EPSA members have adopted decarbonization commitments and proposed transparent market-driven pathways to emissions reductions such as an economy-wide price on carbon.
- EPSA member companies own nearly **6,000 MW** of renewable capacity nationwide with more in development, in addition to increasingly clean and efficient natural gas, nuclear, coal, and oil facilities that help ensure reliable, cost competitive power availability.
- EPSA members also provide retail electricity solutions to customers and businesses, which create additional opportunities for renewable power generation.

Well-functioning, transparent, competitive energy markets are the most effective way to encourage sustainable environmental progress without harming reliability or burdening consumers with high costs. **EPSA's mission** is to foster a **durable market design** that delivers the many **benefits of competition** to all Americans as our energy mix evolves.

The Legal and Regulatory History

EL13-62 - Mitigation of Uneconomic Generators with Out-of-Market Payments

- **May 10, 2013:** IPPNY files complaint under Section 206 of the Federal Power Act asking FERC to direct NYISO to apply buyer-side mitigation measures and offer floor mitigation to existing resources that would have exited the market but for out-of-market payments.
- **March 15, 2015:** FERC rejected IPPNY's complaint by the Commission and ordered the NYISO to study whether offer floor mitigation may be needed for the Rest of State (ROS) market and for existing uneconomic resources that receive out-of-market compensation to retain them in the market.
- **April 5, 2018:** EPSA files [a motion](#) requesting that the BSM measures be expanded statewide, creating a new minimum offer price rule (MOPR) and imposing that MOPR on existing, as well as new, capacity resources.

ER16-1404 - Renewable Exemption

- **April 13, 2016:** NYISO [submitted a compliance filing](#) to comply with FERC's directive that the NYISO exempt up to a certain amount of wind and solar facilities from the BSM measures. The NYISO proposed in its compliance filing that 1,000 MW of solar and wind for each interconnection class year be exempt from the BSM measures.
- **May 31, 2016:** IPPNY and EPSA jointly [protested](#) the NYISO's 1,000 MW exemption and proposed a much lower amount of MW that could be eligible for exemption. FERC never ruled.
- **July 19, 2019:** NYISO filed a motion for expedited Commission action and warned that, if FERC did not rule, it would implement the 1,000 MW exemption as proposed.
- **August 5, 2019:** [IPPNY and EPSA jointly filed a motion](#) supporting FERC action but protested the NYISO's justification for applying the exemption as proposed absent FERC action. The joint IPPNY/EPSA answer stated the Commission should reject the NYISO's proposed 1,000 MW cap and instead order the NYISO to adopt the methodology to determine a cap that IPPNY/EPSA proposed in the May 31, 2016 protest of the compliance filing.

EL16-92 - SCR Exemption

- **February 3, 2017:** FERC granted a complaint by the NYPSC (and six other parties) against the NYISO to allow a blanket exemption for new Special Case Resources (SCRs are providers of demand response in NYISO) from the BSM measures but denied a request that the blanket exemption apply to SCRs currently subject to mitigation. Both the NYPSC and IPPNY requested rehearing.

EL19-86-000 - Energy Storage Exemption

- **July 29, 2019:** NYPSC & NYSEDA filed a complaint requesting that FERC direct the NYISO to establish a blanket exemption, or alternatively, a 300 MW per calendar year exemption, from the BSM measures for new energy storage resources.
- **August 19, 2019:** IPPNY filed a protest in response which demonstrated the complainants failed to meet their burden of proof under Federal Power Act Section 206.