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NEM Seeks Clarification that FERC Affiliate Capacity Release Rules Wont Impact Retail Access Releases

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The National Energy Marketers Association has asked FERC to clarify its proposal prohibiting multiple affiliates from bidding in open seasons for pipeline capacity, and prohibiting the release of capacity to affiliates, in terms of how the proposal would affect state retail choice programs and capacity releases made thereunder (RM11-15).

NEM supports the intent and purpose of the proposed regulations to prohibit multiple affiliates from bidding on pipeline capacity that is not undertaken with an independent business reason, but sought to ensure that the unique nature of capacity releases made under retail choice programs is recognized.

Among other things, FERC has specifically proposed to, "prohibit affiliates from releasing any capacity obtained in an open season pursuant to a pro rata allocation to any affiliate or otherwise from allowing any affiliate effectively to obtain the use of the allocated capacity" ([see 4/11](#)).

NEM requested that the Commission, "clarify that the proposed prohibition on the release of capacity was not intended to encompass LDC releases of capacity to their marketing affiliates pursuant to a state retail access program."

NEM noted that FERC, in Order 712, recognized an exemption from the bidding requirements for capacity releases under state retail choice programs.

"NEM believes that an exemption from the proposed prohibition on the release of capacity in the circumstance of a LDC release of capacity to a retail marketing affiliate pursuant to a state retail access program is not only consistent with FERC policy in favor of such programs but is necessary to avoid the unintended result of discriminating against utility retail marketing affiliates that participate in such programs alongside unaffiliated retail marketers."

"Moreover, permitting this exemption would not subvert the Commission's purpose in this proposed rulemaking of prohibiting multiple affiliate bidding that is intended to game the pro rata allocation mechanism and thereby unfairly obtain a competitive advantage in the marketplace. Indeed, an LDC's release of capacity to its retail marketing affiliate under a state retail access program should be deemed an 'independent business reason' to release the capacity," NEM noted.

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