

162 FERC ¶ 61,205
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;
Cheryl A. LaFleur, Neil Chatterjee,
Robert F. Powelson, and Richard Glick.

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renewable resources may qualify for the RTR exemption and enter the FCA without being subject to the MOPR. Any unused portion of that 200 MW can carry forward for up to three years (two additional FCAs) for a possible maximum of 600 MW of exempt renewable resource capacity in any given FCA.⁵

II. ISO-NE's Competitive Auctions with Sponsored Policy Resources Filing

4. On January 8, 2018, ISO-NE made the instant filing as a means to accommodate the entry of Sponsored Policy Resources⁶ into the FCM over time while maintaining competitive capacity pricing. ISO-NE explains that, over the past decade, New England states have sought to reduce greenhouse gas emissions and meet climate goals through various mechanisms outside of the ISO-NE-administered wholesale markets. ISO-NE states that such state efforts have included mandates that state-regulated utilities enter into long-term contracts with certain resources.⁷ ISO-NE states that, while each of the six New England states has adopted a renewable target, recently, some states have increased both their renewable targets and their efforts to promote the development of

on January 1, 2014, or, in states without a standard, qualify under that state's renewable energy goals as a renewable resource (either by statute or regulation) as in effect on January 1, 2014. In addition, the resource must qualify as a renewable or alternative energy generating resource in the state in which it is geographically located. Tariff § III.13.1.1.1.7 (48.0.0); see also ISO New England Inc., 147 FERC ¶ 61,173, at PP 81-88 (2014) (First RTR Order), order on reh'g, 150 FERC ¶ 61,065 (2015) (RTR Rehearing Order); ISO New England Inc., 155 FERC ¶ 1,023, at P 33 (2016) (RTR Remand Order), order on reh'g, 158 FERC ¶ 61,138, at PP 43, 48 (2017) (RTR Remand Rehearing Order), appeal pending sub nom. NextEra Energy Res., LLC v. FERC, Case No. 17-1110 (D.C. Cir., filed Apr. 3, 2017).

⁵ Tariff § III.13.1.1.2.10 (48.0.0).

⁶ Tariff § I.2.2 defines a Sponsored Policy Resource as “a New Capacity Resource that: receives an out-of-market revenue source supported by a government-regulated rate, charge or other regulated cost recovery mechanism, and; qualifies as a renewable, clean or alternative energy resource under a renewable energy portfolio standard, clean energy standard, alternative energy portfolio standard, renewable energy goal, or clean energy goal enacted (either by statute or regulation) in the New England state from which the resource receives the out-of-market revenue source and that is in effect on January 1, 2018.” Tariff § I.2.2 (107.0.0).

⁷ ISO-NE states that some New England states have established legal requirements, while others have non-binding goals, related to emissions reductions.

state-preferred new generation resources.⁸ According to ISO-NE, the most recent state actions include the Multi-State Clean Energy request for proposals that aims to procure the rough equivalent of 460 MW (nameplate) of new renewable resources and the 2016 Massachusetts Energy Diversity Act that requires clean energy procurements in the range of 2,800 MW (nameplate).⁹ ISO-NE views these expected procurements as “a potentially significant increase in the qu

Sponsored Policy Resources into the FCM over time; (3) avoid cost shifts by decreasing the potential for one state's consumers to bear the costs of another state's subsidies; and (4) develop a transparent, market-based approach. ISO-NE states that the first two objectives are fundamentally in tension, so it had to make a number of design decisions to balance these objectives and, wherever possible, elected to prioritize the preservation of competitive prices in the FCM.¹³

7. ISO-NE states that under CASPR it will conduct the annual FCA in two stages. The first stage, the primary auction, will maintain the current FCA process and its corresponding MOPR.¹⁴ The second stage, known as the substitution auction, will immediately follow the primary auction. The capacity prices to be paid by ISO-NE loads will be determined in the primary auction.¹⁵ In the second stage, the substitution auction, existing resources that have acquired capacity supply obligations through the primary auction will be permitted to offer a demand bid in the substitution auction, indicating a willingness to permanently retire from all ISO-NE markets at a certain price. In the substitution auction, the supply curve consists of capacity sell offers from Sponsored Policy Resources that did not already obtain a capacity supply obligation in the primary auction. ISO-NE states that existing resources that clear the substitution auction will transfer their capacity supply obligations to Sponsored Policy Resources and will pay the substitution auction clearing price, which Sponsored Policy Resources obtaining the capacity supply obligations will receive. Accordingly, ISO-NE states that existing resources that clear in the substitution auction generally will be able to shed their capacity supply obligations at a lower price than they received in the primary auction and retain a one-time net payment equal to the difference between the primary auction clearing price and the substitution auction clearing price, much like a severance payment. In exchange, those existing resources will agree to permanently exit ISO-NE's wholesale markets through termination of their interconnection rights.¹⁶

8. ISO-NE states that Sponsored Policy Resources that clear in the substitution auction take on the same obligations and rights—including the Pay for Performance obligations—as resources that obtain a capacity supply obligation through the primary

¹³ *Id.*

¹⁴ ISO-NE proposes to phase out the current RTR exemption by allowing accrued exempt MWs to be used through FCA 15. See *infra* P 87

¹⁵ ISO-NE also states that clearing the substitution auction can, under certain circumstances, result in “side payments” to cleared demand bids, and that those side payments will be borne by load. When this occurs, the total cost to load of capacity can increase from the primary auction results. See Geissler Testimony at 142-149.

¹⁶ ISO-NE Transmittal at 6-7.

12.

and policies.²⁵ Dominion similarly states that it has concerns about CASPR's effect on long-term capacity prices and that ISO-NE and its stakeholders should continue to evaluate market design changes that promote competitive entry of Sponsored Policy Resources through accurate market price signals and price transparency.²⁶

15. Public Systems state that CASPR is only a modest improvement on the status quo and that it offers no improvement for non-renewable consumer-preferred resources. Public Systems state that they do not ask the Commission to reject CASPR but instead urge the Commission to initiate and expeditiously complete an investigation under section 206 of the FPA²⁷ to determine whether the Commission should require ISO-NE to expand the eligibility for participation in the substitution auction or make other necessary modifications for FCA 14 and future auctions.²⁸

16. Notwithstanding their geT2 1 TE

19. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure³⁰ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the aforementioned answers because they have provided information that assisted us in our decision-making process.

V. Substantive Matters

20. We accept ISO-NE's proposed Tariff revisions as a just and reasonable and not unduly discriminatory or preferential modification to the FCM design.

21.

22. Absent a showing that a different method would appropriately address particular state policies, we intend to use the MOPR to address the impacts of state policies on the wholesale capacity markets. However, we acknowledge that there can be more than one valid method of managing such impacts, and that methods may be tailored to the specific challenges posed by the state policies in a given region. Accordingly, while we will use the MOPR as our standard solution, we will consider supplemental or alternative proposals to manage the impact of state policies, provided that those proposals are sufficiently consistent with the above-mentioned

26. We reiterate that the Commission's policies are fuel-neutral.³⁶ Although the state policies that are driving ISO-NE's proposal are intended to increase the development of clean energy resources, we are reviewing this proposal under section 205 of the FPA to determine whether the proposal before us is just and reasonable and not unduly discriminatory. Our acceptance of this proposal should not be read as a departure from our fuel-neutral policies, but only as a finding based on the record before us.

27. We address individual aspects of ISO-NE's proposal and related pleadings in turn below.³⁷

A. Sponsored Policy Resource Definition

1. ISO-NE's Proposal

28. ISO-NE proposes to define a "Sponsored Policy Resource" as follows:

a New Capacity Resource that: receives an out-of-market revenue source supported by a government-regulated rate, charge or other regulated cost recovery mechanism; and qualifies as a renewable, clean or alternative energy resource under a renewable energy portfolio standard, clean energy standard, alternative energy portfolio standard, renewable energy goal, or clean energy goal enacted (either by statute or regulation) in the New England state from which the resource receives the out-of-market revenue source and that is in effect on January 1, 2018.³⁸

29. ISO-NE states that this definition limits the resources that can participate in the substitution auction to "renewable, clean or alternative resources that receive revenue

³⁶ We consider this resource-agnostic rationale to be particularly important given ISO-NE's acknowledged concerns with the region's fuel security, and its implications for the resilience of the bulk power system.

³⁷ We note that because we accept ISO-NE's proposal as just and reasonable and not unduly discriminatory or preferential, we need not address any alternative proposals. See *OXY USA Inc. v. FERC*, 64 F.3d 679, 692 (1995); *Cities of Bethany v. FERC*, 727 F.2d 1131, 1136 (1984).

³⁸ Tariff § I.2.2 (107.0.0).

from a state or municipal government entity outside of the ISO-administered markets.”³⁹ ISO-NE explains that this definition reflects one of the key objectives of the CASPR proposal—for the FCM to accommodate procurements required by states in order to meet their renewable and clean energy resource requirements. ISO-NE further notes that the requirement that the resource receive out-of-market revenue is intended to be consistent with the current use of that concept by the Internal Market Monitor (IMM) for purposes of setting a new resource’s minimum offer price in the FCA, and that the definition seeks to ensure that “capacity sold via [the substitution auction] is sponsored to meet public policy objectives.”⁴⁰

30. As discussed further below, the definition of Sponsored Policy Resource limits the types of technologies that can enter the substitution auction based on the laws in effect on January 1, 2018, in the state from which a resource receives supplemental revenue. ISO-NE states that this date limitation “provides more clarity to the market regarding the types of technologies that are eligible to participate . . . in the substitution auction.”⁴¹ ISO-NE points out that:

If there was no cutoff date, then the set of technologies that would satisfy this condition could expand in unanticipated ways as state policies changed, such as if a future state regulation decreed a conventional combined-cycle gas generator to be an “alternative” technology for purposes of entering such a technology into the substitution auction.⁴²

ISO-NE represents, however, that if state policies change in the future, it will work with stakeholders to determine if the new laws can and should be accommodated by CASPR.⁴³

2. Comments

31. Multiple parties assert that the definition of Sponsored Policy Resource is unduly discriminatory. Consumer-Owned Systems urge the Commission to reject CASPR, and APPA and Public Systems do not oppose CASPR but urge the Commission to institute a

³⁹ ISO-NE Transmittal at 13; see also Geissler Testimony at 62.

⁴⁰ ISO-NE Transmittal at 14.

⁴¹ *Id.*

⁴² Geissler Testimony at 66.

⁴³ ISO-NE Transmittal at 14.

proceeding under section 206 of the FPA to determine whether ISO-NE should expand substitution auction eligibility or make other modifications for the fourteenth FCA and future FCAs. Public Systems, APPA, and Consumer-Owned Systems question why the definition of Sponsored Policy Resource reflects some government policy preferences, such as state renewable and clean energy policies, but not others, such as the preferences of public power entities. Public Systems and APPA assert that public power utilities base their preferences for resource types on issues such as fuel-type, lowering costs to consumers, environmental concerns, and reliability,⁴⁴ and CASPR will not incorporate these entities' public power preferences into the FCA. Public Systems additionally argue that ISO-NE has not demonstrated that CASPR's ability to protect FCA prices is dependent on limiting the eligibility to participate in the substitution auction to only state-supported renewable resources, because the fact that the substitution auction replaces retiring capacity on a MW-for-MW basis will tend to protect FCA prices regardless of the fuel or technology used by the resources participating in the substitution auction.⁴⁵ Public Systems, therefore, argue that all new consumer-preferred resources should be eligible to offer capacity in the substitution auction, regardless of fuel or technology type.⁴⁶

32. Consumer-Owned Systems

33. In response to ISO-NE's statement that public power entities' lower cost of financing makes their new natural gas-fired resources more likely to clear the primary auction, so that such resources would not need to enter the substitution auction,⁴⁹ APPA asserts that some public power projects may have higher costs of financing than ISO-NE posits, and in any case, the fact that a resource can enter the primary auction is not a guarantee that it will clear.⁵⁰ Consumer-Owned Systems state that ISO-NE could accomplish the goals of CASPR in a manner that is not unduly discriminatory through: (1) using a technology-neutral definition of Sponsored Policy Resources, thus enabling all resources to compete on an equal footing to participate in the substitution auction; (2) allowing resources to bid competitively, on a cost-justified basis, through the use of the resource-specific bid review by ISO-NE's IMM; or (3) enabling self-supply to meet its own capacity needs without being subject to the MOPR.⁵¹

34. AEMA, Connecticut Parties, and NGSAs raise concerns with the definition of Sponsored Policy Resource being limited to resource types selected by state policies prior to the January 1, 2018 date. AEMA argues that this limitation unduly discriminates against technologies that may be developed in the future and supported by states—in particular, energy storage. AEMA points out that the Commission has recognized energy storage's attributes as important to the future electric grid and that, while energy storage is not currently part of a state renewable or clean energy standard, it could be in the future. AEMA is concerned that in the near term, the MOPR could result in new storage resources not clearing the primary auction and that, if storage cannot participate in the substitution auction, the market could lose the benefits of a valuable resource that could assist states in meeting their emissions-reduction goals and ISO-NE in meeting its flexibility needs. AEMA acknowledges that ISO-NE has indicated that it will work with stakeholders if state policies change, and new laws can be accommodated through CASPR. AEMA asks, however, that to provide necessary certainty to energy storage developers, the Commission should approve CASPR as filed, but impose a compliance

other form of 'out-of-market' support.”).

⁴⁹ ISO-NE Transmittal at 14.

obligation on ISO-NE and stakeholders to review what resources would be eligible to participate in the substitution auction on an annual/biannual basis.⁵²

35. Connecticut Parties note that ISO-NE has not yet answered Connecticut Parties' question of whether large-scale hydro that Connecticut seeks to procure would qualify as a Sponsored Policy Resource under CASPR. Connecticut Parties argue that CASPR is unduly discriminatory to the extent it excludes Connecticut's imported hydro as a Sponsored Policy Resource but includes imported hydro developed as a Massachusetts

basis that routine changes to the CASPR eligibility list will only undermine market certainty.⁵⁶

3. Answers

39. ISO-NE disagrees with the argument that the definition of Sponsored Policy Resource is unduly discriminatory.⁵⁷ ISO-NE asserts that resources that are both cost-effective and do not receive out-of-market support will choose the more advantageous route of submitting offers in the primary auction at their preferred price. If these resources sell capacity in the primary auction, ISO-NE posits that they can expect to receive a higher clearing price than they would in the substitution auction, and it is therefore not unduly discriminatory to prevent such resources from participating in the substitution auction.⁵⁸ ISO-NE further asserts that a broader definition of Sponsored Policy Resources as desired by public power entities could have broad negative ramifications for the FCM. According to ISO-NE, if non-renewable resources are included in the definition and states begin sponsoring conventional generators, the FCM may no longer serve its purpose of guiding competitive, cost-effective entry and exit decisions to maintain resource adequacy. ISO-NE contends that, at that point, the FCM should be dismantled and the states should affirmatively resume responsibility for resource adequacy in New England. ISO-NE further asserts that, while its proposed definition discriminates among types of resources, that discrimination is not “undue” because the proposed CASPR rules narrowly address the specific problem that ISO-NE is facing.⁵⁹

⁵⁶ NRG-GenOn Comments at 10.

⁵⁷ ISO-NE reiterates that the defined Sponsored Policy Resources are not similarly situated to other, more traditional resources, in that: (1) they are procured by the states outside of the wholesale markets to meet the states’ legal requirements, including renewable and clean energy mandates and (2) that procurement cannot be directly accomplished through ISO-NE’s wholesale markets, which are not designed to value high-cost renewables’ carbon-free characteristics. ISO-NE Answer at 15.

⁵⁸ ISO-NE Answer at 15; see also Geissler Testimony at 39 (explaining that the substitution auction clearing price is expected to be below the primary auction clearing price because supply offers in the substitution auction will generally be at lower prices than the primary auction, and demand bids in the substitution auction will generally be priced below the FCA clearing price).

⁵⁹ ISO-NE Answer at 16.

40. FirstLight opposes expanding the definition of Sponsored Policy Resources to public power self-supplied resources. It states that the IMAPP stakeholder process that led to the development of CASPR sought to address “a clear and present danger to the market posed by existing state legislation which seeks large quantities of new polic

assert that they would support a solution that would enable all New England states to realize their environmental goals, whereas the CASPR program simply accommodates Massachusetts' goals.⁶⁴

4. Commission Determination

43. We disagree with arguments that ISO-NE's proposed definition of Sponsored Policy Resources is unduly discriminatory or preferential.

44. As the Commission has previously explained, "the FPA does not forbid preferences, advantages, and prejudices *per se*. Rather, FPA section 205(b) prohibits 'undue' preferences, advantages and prejudices."⁶⁵ The determination as to whether a Commission-regulated rate or practice that provides different treatment to different classes of entities is unduly discriminatory is fact-based, and turns on whether those classes of entities are similarly situated. "To say that entities are similarly situated does not mean that there are no differences between them; rather, it means that there are no differences that are material to the inquiry at hand."⁶⁶

45. We find that the definition of Sponsored Policy Resource proposed by ISO-NE does not unduly discriminate against resources that do not fit within that definition because those two classes of resources are not similarly situated. ISO-NE contends that the development of Sponsored Policy Resources will result in the presence of more capacity in the New England region than ISO-NE has deemed necessary to satisfy its capacity requirements, and thus ISO-NE seeks to accommodate the entry of new Sponsored Policy Resources into the FCM over time. ISO-NE has provided record evidence of specific projects and megawatts of capacity that will be developed by the operation of state environmental and clean energy mandates, whether that capacity clears

⁶⁴ *Id.* at 3-4.

⁶⁵ RTR Rehearing Order, 150 FERC ¶ 61,065 at P 26.

⁶⁶ See *N.Y. Indep. Sys. Operator, Inc.*, 162 FERC ¶ 61,124, at P 10 & n.30 (2017) (citing *Iberdrola Renewables, Inc. v. Bonneville Power Admin.*, 137 FERC ¶ 61,185, at P 62 (2011), reh'g denied, 141 FERC ¶ 61,233 (2012)). See also *Transmission Agency of N. Cal. v. FERC*, 628 F.3d 538, 549 (D.C. Cir. 2010); *Cities of Newark v. FERC*, 763 F.2d 533, 546 (3d Cir. 1985) ("[D]ifferences in rates are justified where they are predicated upon factual differences between customers . . ."); *Town of Norwood v. FERC*, 202 F.3d 392, 402 (1st Cir. 2000) ("[D]ifferential treatment does not necessarily amount to undue preference where the difference in treatment can be explained by some factor deemed acceptable by the regulators (and the courts).").

49. ISO-NE proposes to limit existing resource participation in the substitution auction to resources that can “permanently” retire, in whole or in part, in order to prevent their return as new resources at a later date. ISO-NE also proposes that new resources that obtain a capacity supply obligation in the primary auction may not participate in the substitution auction as demand. ISO-NE reasons that this latter restriction would most effectively maintain competitively-based capacity auction prices (objective 1) by achieving the competitively-based capacity price – the “same price signals and incentives for competitive new resources as would exist if there was no substitution auction (and resources could not include out-of-market revenues in their supply offer prices).”⁷⁵ ISO-NE concedes that this exclusion could lead to an inefficient capacity surplus if a new Sponsored Policy Resource is available yet primary auction prices are high enough to attract and clear a new non-sponsored resource.⁷⁶ However, ISO-NE recognizes the treatment of new non-sponsored resources presents a fundamental tension between retaining the competitively-based capacity price and accommodating Sponsored Policy Resources in the FCM. ISO-NE states that it evaluated alternative proposals such as permitting or requiring new non-sponsored resources to participate in the substitution auction as demand, and determined that such proposals would likely be more effective in accommodating Sponsored Policy Resources but less effective in maintaining the competitively-based capacity prices. ISO-NE explained that it ultimately decided to exclude new non-sponsored resources from offering as demand in the substitution auction because the proposal tends to favor the objective of maintaining the competitively-based capacity price.⁷⁷ ISO-NE adds that allowing new non-sponsored resources to participate in the substitution auction as demand would also have significant potential risks and undesirable consequences, such as fictitious entry and capacity prices above the cost of new entry for non-sponsored resources.⁷⁸

50. Further, ISO-NE explains that allowing non-sponsored resources to be eligible to receive a severance payment in the substitution auction would likely incent fictitious entry in the FCA. Fictitious entry would occur when participants seek to sell new non-sponsored capacity for undesirable been

auction, with no intention of fulfilling a capacity supply obligation.⁷⁹ That is, ISO-NE states that such participants would have no intention of actually constructing new non-sponsored capacity, therefore providing nothing of value to the New England region.⁸⁰ ISO-NE adds that such fictitious entrants would likely lower their primary auction bids below their true costs to increase the likelihood of clearing the primary auction so that they would be eligible to participate in the substitution auction, which could suppress the primary auction price below the cost of new entry.⁸¹ ISO-NE states that it is not always possible to identify such fictitious entrants because it is difficult to distinguish between legitimate new non-sponsored resources and potential fictitious entrants at the early stages of project development.⁸²

51. With respect to the primary auction clearing at prices above the cost of new non-sponsored entry, ISO-NE explains that it considered allowing new non-sponsored policy resources to participate as demand in the substitution auction, but not compensating those that clear (i.e., no severance payment) as a means to address the fictitious entry problem and associated below-cost bidding. ISO-NE states that it determined that doing so could fundamentally undermine the FCM, discourage new non-sponsored resource participation in the FCM, and thus cause the primary auction to clear at levels above the cost of new non-sponsored entry.⁸³ ISO-NE states that developing a new non-sponsored capacity resource is costly and that stripping such resources of their capacity supply obligation without any compensation would make FCA participation a “money-losing endeavor” for new non-sponsored resources.⁸⁴ ISO-NE states that if new non-sponsored resources decline to develop and qualify new capacity for the primary auction in a given year given the risks of losing their capacity supply obligation and new capacity is needed in that year, the clearing price could increase above the cost of entry for that new non-sponsored resource and thus raise costs to FCM customers.⁸⁵

customers.⁹¹ The External Market Monitor argues that the core economic objective of any capacity market, including the FCM, should be to “facilitate efficient long-term investment and retirement decisions to satisfy ISO-NE’s capacity needs at the lowest cost.”⁹² The External Market Monitor asserts that the proposal excludes this economic objective because it will cause new non-sponsored resources to clear the primary auction when they are not economic or needed and will cause the premature retirement of existing resources with going-forward costs below those of new non-sponsored resources.⁹³

55. The External Market Monitor states that ISO-NE’s concern that permitting new non-sponsored resources to participate in the substitution auction could result in fictitious entry is unwarranted and could be resolved by eliminating any payments to new non-sponsored resources that do not retain a capacity supply obligation.

submit a spread bid that reflects the minimum severance payment they will accept to retire. They state that, absent this allowance, existing resources will be incented to bid lower in the substitution auction to protect against a lower than expected primary auction clearing price that would reduce their severance payment.

59. Consumer-Owned Systems state that their members, which are publicly owned utilities, are not subject to the same requirements to procure renewables as other state-regulated utilities. Consumer-Owned Systems take issue with ISO-NE's proposal to allocate "side payments" arising from the non-rationability of demand offers from existing resources to load via the Net Regional Clearing Price.¹⁰¹ Since their utilities are not subject to the same renewable mandates, Consumer-Owned Systems argue that they will not benefit from any "side payment" in the substitution auction, but will be allocated a portion of the cost. Consumer-Owned Systems assert that imposing these costs on their members would constitute an unjust and unreasonable cost shift.¹⁰²

3. Answers

60. In its answer, ISO-NE argues that the External Market Monitor's proposed modifications would be both unfair to new resources and ineffective.¹⁰³ ISO-NE asserts that the External Market Monitor's proposal to strip new non-sponsored resources of their capacity supply obligations without compensation is unfair to new non-sponsored resources and would deter new non-sponsored resource entry, even if it is needed.¹⁰⁴ ISO-NE adds that stripping a non-sponsored capacity resource of its capacity supply obligation without compensation would change the meaning of the primary auction

¹⁰¹ The Net Regional Clearing Price is defined in the Tariff as "the sum of the total payments [] paid to resources with Capacity Supply Obligations in the Capacity Zone [] less [Peak Energy Rent] adjustments for resources in the zone [] and including any applicable export charges or credits [] divided by the sum of all Capacity Supply Obligations (excluding (i) the quantity of capacity subject to Capacity Supply Obligations Bilaterals and (ii) the quantity of capacity clearing as Self-Supplied FCA Resources) assumed by resources in the zone." Tariff § III.13.7.3 (47.0.0).

¹⁰² Consumer-Owned Systems Comments at 12.

¹⁰³ ISO-NE Answer at 23.

¹⁰⁴ Id. at 22-24.

clearing price because a high clearing price would no longer serve its fundamental purpose as a market signal to encourage commercial investment.¹⁰⁵

61. ISO-NE also argues that the External Market Monitor's proposal would fail to protect ratepayers from large price increases—or “price blowouts”—because it relies on two assumptions holding: (1) that non-sponsored resource developers have accurate information about both how long they will take to qualify and when Sponsored Policy Resources will participate; and (2) Sponsored Policy Resources are not located in export-constrained zones.¹⁰⁶ ISO-NE argues that if assumption (1) does not hold, new resources may opt not to participate in the FCM, even in years when they may otherwise clear, such as in years when Sponsored Policy Resources do not offer into the FCM.¹⁰⁷ ISO-NE poses an example where a new non-sponsored resource

relinquish those rights and transfer their capacity supply obligations.¹⁰⁹ If a Sponsored Policy Resource is unwilling to accept a low substitution auction clearing price—or pay if the clearing price is negative—ISO-NE states that it will still have the opportunity to clear in subsequent substitution auctions.

63. ISO-NE argues that spread bids in the substitution auction are not necessary in CASPR for bidders to maximize their profits and that spread bidding strategies will result in lower profits under CASPR.¹¹⁰ ISO-NE refers to its testimony, which explains that an existing resource would maximize its profits by submitting a demand bid at the maximum price at which it would willingly buy out of its obligation. The ISO-NE testimony states that unlike a spread bid, a fixed price demand bid is not dependent on the primary auction clearing price. It further states that because a resource that has obtained a capacity supply obligation in the primary auction will receive the primary auction clearing price whether it retains the capacity supply obligation or buys out of it in the substitution auction, the optimal demand bid price that the resource should submit in the substitution auction is not dependent on the primary auction clearing price. Rather, the testimony asserts, the optimal demand bid price should be equal to the price at which the resource would be indifferent between retaining its capacity supply obligation and buying out of this obligation and permanently exiting the market. ISO-NE states that a spread bid format would not enable a resource to convey the specific price at which it is indifferent between retaining its capacity supply obligation and permanently exiting the market. —

auction would change bidding incentives and reduce efficiency. ISO-NE adds that allocating side payment costs to existing resources would increase the risk that existing resources would lose money by participating in the substitution auction and thus decrease the likelihood that Sponsored Policy Resources will acquire capacity supply obligations in that auction.¹¹²

66. In its Answer, the External Market Monitor responds to arguments ISO-NE raises about prohibiting non-sponsored resource participation in the substitution auction. The External Market Monitor asserts that ISO-NE's argument that stripping a new non-sponsored resource of its capacity supply obligation in the substitution auction is unfair is based on the false premise that such a resource is entitled to a severance payment.¹¹³ The External Market Monitor also refutes ISO-NE's argument that the External Market Monitor's proposal would change the meaning of clearing prices in the FCA.¹¹⁴ The External Market Monitor argues that a new non-sponsored resource is not entitled to the primary auction clearing price and that this price should not govern entry decisions. Rather, the External Market Monitor argues that under CASPR, the substitution auction price should govern entry and exit decisions because the primary auction does not include all of ISO-NE supply due to the application of the MOPR to Sponsored Policy Resources.¹¹⁵

67. The External Market Monitor also argues that the price blowout concerns ISO-NE raises regarding non-sponsored resource participation in the substitution auction are misplaced. Instead, the External Market Monitor argues that price blowout concerns are caused by "over-mitigating" Sponsored Policy Resources with MOPRs that exceed the net cost of new entry for non-sponsored policy resources.¹¹⁶

68. The External Market Monitor argues that ISO-NE incorrectly implies that new non-

sponsored resources to offer into the FCA even if the probability of clearing is relatively low.¹¹⁸ The External Market Monitor states that new non-sponsored resources have offered into every FCA and a large quantity have failed to clear and that there is no reasonable basis to assume that no new non-sponsored resources will participate in future FCM auctions.¹¹⁹

69. The External Monitor also refutes ISO-NE's claims that the External Market Monitor's proposal would increase costs to load, arguing that ISO-NE incorrectly compares the lost-capacity revenues to Sponsored Policy Resources to a maximum consumer cost estimate that assumes all capacity is procured through the primary auction.¹²⁰

70. ISO-NE filed a second answer to respond to arguments made by the External Market Monitor's answer. ISO-NE points to the External Market Monitor's statement that the "price blowout" it fears is really caused not by CASPR, but by a flaw in the existing MOPR rules that would over-mitigate Sponsored Policy Resources even without the CASPR provisions.¹²¹ Thus, ISO-NE asserts, the External Market Monitor's arguments are beyond the scope of this filing, since the only question before the Commission is whether the CASPR provisions are just and reasonable.¹²² ISO-NE further states that, although the MOPR has generally worked to preserve competitive price signals in the FCM, no design can fully accommodate substantial new Sponsored Policy Resources and maintain competitively-based capacity prices, and the External Market Monitor's proposal would eviscerate competitively-based pricing and result in price-setting by administrative dictate.¹²³

71. ISO-NE asserts that the External Market Monitor's proposal to require the involuntary transfer of capacity supply obligations is fundamentally different from the outcome of a normal competitive auction, and will result in a perversion of the market's price signal, a chilling of participation by competitive new resources, and eventual higher

¹¹⁸ *Id.* at 6-7.

¹¹⁹ *Id.* at 8.

¹²⁰ *Id.* at 6.

¹²¹ ISO-NE Second Answer at 3 (citing External Market Monitor Answer at 4).

¹²² *Id.* at 3-4.

¹²³ *Id.* at 4 (citing Geissler Testimony at 24-28).

prices.¹²⁴

persuaded by ISO-NE

ISO-NE's markets in the future. The Sponsored Policy Resource obtains a capacity supply obligation and thus achieves existing resource status in future FCAs, which allows it the opportunity to earn capacity revenues for the associated future delivery years. It is therefore reasonable that a Sponsored Policy Resource may be willing to accept a low payment—or even pay an existing resource—in its first year to enter the FCM.¹²⁹ Such a result would be efficient and consistent with market fundamentals.

77. We are not convinced by Exelon's and NEPGA's argument that we should require ISO-NE to allow existing resources to submit spread bids in the substitution auction. This allowance is not necessary for CASPR to be a just and reasonable means to accommodate the exit of certain existing resources and the entry of new Sponsored Policy Resources into the FCM over time. We acknowledge that spread bidding could present existing resources with an alternative way to express their willingness to exit the market at a specific severance payment amount, and thus could enhance liquidity in the substitution auction. However, we nonetheless conclude that ISO-NE's proposal for fixed price bidding in the primary and substitution auctions is reasonable. Fixed price bidding allows an existing resource to express the minimum capacity revenue it requires to fulfill a capacity supply obligation for the associated delivery year, ensuring that no resource will be required to sell capacity at a price below its minimum required price. This is consistent with current bidding principles in the FCM, and we find it just and reasonable.

78. We find unpersuasive Consumer-Owned Systems' concerns about the allocation of side payments to load, including to the load of publicly owned utilities. We find that CASPR balances an opportunity for Sponsored Policy Resources to receive capacity supply obligations with the FCM's need to secure private investment in the long term to achieve its primary objective of providing resource adequacy at just and reasonable rates. In these circumstances, we find it reasonable for load to assume additional costs associated with meeting these two goals.

¹²⁹ Note that if the substitution auction clearing price is positive, cleared Sponsored Policy Resources receive a payment based on that price, and cleared (i.e., retiring) existing resources make a payment based on that price. If the substitution auction clearing price is negative, cleared Sponsored Policy Resources make a payment based on that price, and cleared existing resources receive a payment based on that price.

C. Offer Behavior and Market Power

1. ISO-NE's Proposal

79. ISO-NE states that, while certain de-list bids (e.g., retirement or static de-list bids)¹³⁰ in the primary auction are and will continue to be reviewed by the IMM for supply-side market power, demand bids in the substitution auction will not be reviewed

implemented in time for FCA 13, ISO-NE states that it will work with stakeholders in 2018 to develop a mitigation-related proposal to address this issue beginning with FCA 14.

2. Comments

82. NRG-GenOn and NEPGA assert that bid shading presents a real concern that, if left unmitigated, could result in market distortions and adversely impact all remaining capacity suppliers in the primary auction.¹³³ NEPGA supports ISO-NE's efforts and commitment to develop an appropriate remedy to the bid shading concern, and NRG-GenOn requests that the Commission condition its acceptance of ISO-NE's proposal on the completion of these efforts.¹³⁴

83. Connecticut Parties state that ISO-NE's proposal creates new incentives and opportunities for strategic behavior within and between the primary auction and the substitution auction.¹³⁵ They explain that the quantity of capacity supply obligations available to be acquired by Sponsored Policy Resources in the substitution auction will always be determined by incumbent participants. Accordingly, Connecticut Parties are concerned that the substitution auction will have few incumbent generators participating as demand in the substitution auction, which creates significant market power and concentration concerns that ISO-NE has not addressed. Connecticut Parties note that there is no market monitor oversight in ISO-NE's proposal to protect against an exercise
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the RTR exemption.¹⁵⁷ Furthermore, Connecticut Parties contend that the RTR exemption is not a guarantee; rather, it reduces risk by providing predictability and certainty to the market that an opportunity exists for a handful of policy preferred resources to clear the auction and obtain a nominal amount of capacity supply obligations.¹⁵⁸ According to Clean Energy Advocates, it is possible that CASPR could provide space for more state-mandated resources to enter the FCM than the RTR exemption, but it is also plausible that CASPR could provide less room or no room at all for resources currently eligible to enter under the exemption if existing resources do not elect to retire their resources in the substitution auction.¹⁵⁹ Consequently, they argue

market forces to rearrange the regional resource mix to accommodate state policy resources by requiring such resources to pair their out-of-market megawatts with offsetting early retirements.¹⁷¹ FirstLight further states that the draw for resources to offer early retirements needed to “fuel the Substitution Auction hinges on elimination of other opportunities for state-sponsored new entry to bypass the MOPR and gain unmitigated entry.”¹⁷² FirstLight states that the RTR exemption is an inferior method of accommodating Sponsored Policy Resources because, contrary to what Connecticut Parties assert, the RTR exemption can push FCA clearing prices below competitive levels.¹⁷³ FirstLight argues that continuing the RTR exemption beyond the ISO-NE proposed phase-out would undermine the substitution auction’s effectiveness and that an RTR exemption in the form of a backstop would undermine CASPR.¹⁷⁴ FirstLight argues that CASPR provides the opportunity, but not the guarantee, to find a retirement pairing match in any given substitution auction, and a backstop mechanism to assure immediate capacity supply obligations for policy resources in the event of a failed attempt to pair up with an early retirement would both undermine the operation of CASPR and permit FCA clearing price suppression.¹⁷⁵

97. ISO-NE acknowledges that the conditions that made the RTR exemption just and reasonable upon its adoption will no longer exist going forward. According to ISO-NE, the RTR exemption now presents a greater risk of price suppression and ISO-NE’s motivation to replace the RTR exemption with CASPR is forward-looking.¹⁷⁶ However, ISO-NE argues that while it is true that conditions have changed, there are circumstances that TfcEq 34 ri5

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auction will appropriately allow new Sponsored Policy Resources the opportunity to obtain capacity supply obligations, while additionally ensuring that, because each MW of new entry is coordinated with a MW that exits, the FCM maintains investor confidence by avoiding sudden and dramatic shifts in the supply curve that could result from state sponsored entry without a corresponding amount of supply exiting the market. Furthermore, we agree with ISO-NE that the long-term continuation of the RTR exemption could limit participation in the substitution auction, undermining the purpose of CASPR.¹⁸⁶

102. We also deny the request to institute a 200 MW backstop replacement for the RTR exemption. We agree with ISO-NE that CASPR provides a reasonable opportunity to accommodate state sponsored resources in the FCM over time, and the lack of a backstop to provide a guarantee of that accommodation does not render the proposal unjust and unreasonable.

E. Other Issues

1. ISO-NE's Proposal

103. ISO-NE proposes to allow inter-zonal transfers of capacity supply obligations through the substitution auction only when the two zones did not price-separate in the primary auction. In addition, ISO-NE states that transfers across a zonal boundary of two capacity zones that were modeled separately (but did not price-separate) will be limited, such that any permitted transfers do not shift total capacity in an import-constrained zone to the left of the truncation point, and in an export-constrained zone to the right of the truncation point.¹⁸⁷

104. ISO-NE explains that this limitation is effectuated through the use of two constraints in clearing import-constrained and export-constrained zones. In the case of an import-constrained zone, ISO-NE explains that t

capacity's reliability value is greater in the import-constrained zone than in the unconstrained Rest of Pool. ISO-NE states that the constraint prevents any transfer of capacity into or out of that zone in the substitution auction. The second constraint applies if, based on the results of the primary auction, capacity in the import-constrained zone is greater than or equal to (to the right of or even with) the truncation point. ISO-NE argues that such an outcome means that capacity's reliability value in the import-constrained zone is equal to that in Rest of Pool. ISO-NE states that the constraint limits transfers out of the zone such that total capacity in the zone remains greater than or equal to the truncation point.

105. In the case of an export-constrained zone, ISO-NE explains that the first constraint applies if, based on the results of the primary auction, capacity located in the export-constrained zone is greater than (to the right of) the truncation point. According to ISO-NE, such an outcome means that capacity's reliability value is lesser in the export-constrained zone than in the unconstrained Rest of Pool. ISO-NE states that the constraint prevents any transfer of capacity into or out of that zone in the substitution auction. ISO-NE explains that the second constraint applies if, based on the results of the primary auction, capacity in the export-constrained zone is less than or equal to (to the left of or even with) the truncation point. According to ISO-NE, such an outcome means that capacity's reliability value in the export-constrained zone is equal to that in Rest of Pool. ISO-NE states that the constraint limits transfers into the zone such that total capacity in the zone remains less than or equal to the truncation point.

106. ISO-NE argues for these limitations on the grounds that allowing transfers in the substitution auction to increase or decrease the relative reliability level between one capacity zone and another would also affect the zonal prices in those zones in future primary auctions, which ISO-NE argues is inconsistent with ISO-NE's objective to maintain competitively-based capacity prices.

2. Comments

107. Exelon asserts that CASN substi9.7j ET 180tNE 9.7(l between orl.)JTJ e s6(i)-9.1(nt)tive re

Annual Reconfiguration Transaction proposal and that allowing inter-zonal trading would harmonize CASPR with this proposal.¹⁸⁸

108. Several parties comment that the Commission should take additional action in response to ISO-NE's instant filing. Verso states that it should require ISO-NE to make periodic filings on ways to improve CASPR going forward.¹⁸⁹ Public Systems argue that the Commission should accept CASPR for FCA 13 but institute a section 206 proceeding to broaden substitution auction eligibility to self-supply resources beginning with FCA 14. APPA asserts that CASPR is yet another incremental change to FCM rules that fails to address the misalignment between the capacity market rules and state and consumer resource preferences. APPA states that a more fundamental change, such as a move to a residual capacity market, is necessary, but that if the Commission accepts CASPR, it should initiate a separate proceeding to address the limitations on public power resource choices in the FCM.¹⁹⁰ Calpine requests the Commission impose a date certain for completing the mitigation related to bid shading in the primary auction.¹⁹¹ Clean Energy Advocates argue that the Commission should reconsider the applicability of the MOPR to state-sponsored renewable energy resources.¹⁹²

109. CPV Towantic asserts that the Commission should apply a consistent set of principles when evaluating proposals, like CASPR, to accommodate state-supported resources while limiting the effect of the entry of those resources on energy and capacity market prices.¹⁹³ Among the principles CPV Towantic offers is that energy markets must also be protected from price suppression arising from the entry of state-supported resources. CPV Towantic argues that CASPR will negatively impact the competitiveness of ISO-NE's energy markets because the Sponsored Policy Resources whose entry CASPR facilitates have either no or low marginal energy costs, which will reduce energy market clearing prices and increase pressure on existing competitive resources. CPV Towantic asserts that, if ISO-NE's energy markets are not protected, the resulting uncertainty will increase the risk associated with competitive resources in the energy markets and either discourage the entry of new competitive resources or at least increase the cost of new entry, as investors increase their required risk premiums. CPV Towantic

¹⁸⁸ Exelon Comments at 7.

¹⁸⁹ Verso Comments at 1-2.

¹⁹⁰ APPA Comments at 11-12.

¹⁹¹ Calpine Comments at 4.

¹⁹² Clean Energy Advocates Comments at 26.

¹⁹³ CPV Towantic Comments at 5-13.

states that this concern is exacerbated because in regions like New England, with retail choice, competitive resources must rely heavily on revenue from ISO-NE's energy and capacity markets, rather than on long-term bilateral contracts that may be available in regions where retail suppliers have captive customers. CPV Towantic argues that CASPR bifurcates ISO-NE's energy market into Sponsored Policy Resources with access to long-term energy contracts that make them indifferent to the prices received from ISO-NE's markets and non-state-supported resources without access to such long-term contracts. CPV Towantic states that, in response to this dynamic, non-state-supported resources will either be forced to prematurely exit the market or, if they are needed to support reliability, will seek out their own out-of-market contracts to continue operating.

110. Public Citizen and Consumer-Owned Systems argue that the lack of stakeholder support for CASPR is evidence that the proposal is unjust and unreasonable. Public Citizen argues that CASPR was not properly vetted through the stakeholder process and therefore is premature and likely to lead to unjust and unreasonable rates.¹⁹⁴ Consumer-Owned Systems claim that CASPR did not garner stakeholder support because the proposal is unduly discriminatory.¹⁹⁵ Connecticut Parties argue that CASPR contains two features (specifically, the definition of Sponsored Policy Resources and the limitations on capacity transfers between zones) that were added by ISO-NE at the last minute despite having been previously rejected by stakeholders earlier in the development of CASPR.¹⁹⁶ Consequently, Connecticut Parties contend, these two features of the CASPR proposal currently before the Commission have not been properly developed and vetted through the stakeholder process.

111. Several commenters assert that CASPR will undermine regional reliability and exacerbate fuel security concerns by speeding the retirement of non-natural gas-fired resources. Connecticut Parties and NEPGA argue that CASPR is likely to incentivize the retirement of coal- and oil-fired generation that they contend are essential for winter reliability and fuel security.¹⁹⁷ NEPGA also argues that these same resources provide ramping, voltage control, and other ancillary services needed for reliability. NEPGA asks the Commission to direct ISO-NE, contemporaneously with implementing CASPR,

¹⁹⁴ Public Citizen Comments at 1.

¹⁹⁵ Consumer-

to identify needed reliability services and design market mechanisms to compensate those services.¹⁹⁸

3. Answers

112. ISO-NE states that it prioritized CASPR's ability to preserve competitively-based capacity prices over the potentially more rapid accommodation of additional Sponsored Policy Resources when it proposed to limit transfers between zones in the substitution auction.¹⁹⁹ ISO-NE asserts that Exelon's argument that inter-zonal transfers are permitted in the recent redesign of Annual Reconfiguration Transactions is not an apt comparison because Annual Reconfiguration Transactions occur within the FCM's annual reconfiguration auctions, which use demand curves based on the marginal

none of these parties explain in what way they believe the NEPOOL process violated any governance rules in the Participants Agreement.²⁰⁸ The record is therefore devoid of any evidence that ISO-NE or NEPOOL violated its agreement during that process.

120. Connecticut Parties and NEPGA assert that CASPR will exacerbate regional fuel security concerns by speeding the retirement of non-natural gas-fired resources. We take seriously the fuel security concerns raised by these parties and that are the subject of ongoing discussions in the NEPOOL stakeholder process. ISO-

grid resilience that the Commission has initiated in Docket No. AD18-7-000 and ISO-NE's own recently published fuel security study.²¹¹

The Commission orders:

ISO-NE's filing is hereby accepted, as discussed in the body of this order. ISO-NE's revisions to Tariff section III.13.7 are effective June 1, 2018, and all other revisions are effective March 9, 2018, as requested.

By the Commission. Commissioner LaFleur is concurring in part with a separate statement attached.

Commissioner Powelson is dissenting with a separate statement attached.

Commissioner Glick is dissenting in part and concurring in part with a separate statement.

(S E A L)

Kimberly D. Bose,
Secretary.

²¹¹ ISO-NE Answer at 5.

Appendix

Intervention and Protest and/or Comment

Advanced Energy Management Alliance (AEMA)‡
American Public Power Association (APPA)
American Wind Energy Association**
Avangrid Networks, Inc.*
Avangrid Renewables, LLC*
Calpine Corporation (Calpine)
Champlain VT, LLC*
Cogentrix Energy Power Management, LLC*
Connecticut Department of Energy & Environmental Protection**
Connecticut Municipal Electric Energy Cooperative; Massachusetts Municipal Wholesale Electric Company; New Hampshire Electric Cooperative, Inc.; Vermont Public Power Supply Authority (Public Systems)
Connecticut Office of Consumer Counsel** †
Connecticut Public Utilities Regulatory Authority**
Conservation Law Foundation**
Consolidated Edison Energy, Inc.*
CPV Towantic, LLC (CPV Towantic)
Direct Energy; Direct Energy Business Marketing, LLC; Direct Energy Business, LLC*
Dominion Energy Services, Inc. (Dominion)
Dynergy Marketing and Trade, LLC*
Eastern New England Consumer-Owned Systems (Consumer-Owned Systems)
Edison Electric Institute*
Emera Energy Services, Inc.*
Energy New England, LLC*
Eversource Energy Service Company; Northeast Utilities Service Company*
Exelon Corporation (Exelon)
FirstLight Power Resources, Inc. (FirstLight)
H.Q. Energy Services (U.S.) Inc., Hydro-Quebec Energy Services (U.S.) Inc.*
LS Power Associates, L.P.*
Maine Public Utilities Commission (Maine PUC)
Massachusetts Attorney General Maura Healey (Massachusetts AG)
Massachusetts Department of Public Utilities (Massachusetts DPU)
National Grid*
National Rural Electric Cooperative Association*
Natural Gas Supply Association (NGSA)
New England Power Generators Association Inc. (NEPGA)
New England Power Pool Participants Committee (NEPOOL)
New England States Committee on Electricity (NESCOE)
New Hampshire Public Utilities Commission; New Hampshire Office of Consumer

Advocate (New Hampshire Parties)
NextEra Energy Resources, LLC (NextEra)
NRG Power Marketing LLC and GenOn Energy Management, LLC (NRG-GenOn)
Potomac Economics (External Market Monitor)†
PSEG Companies*
Public Citizen
RENEW Northeast, Inc.**
Retail Energy Supply Association
Shell Energy North America (US), L.P.*
Sierra Club Environmental Law Program**
Sustainable FERC Project; Natural Resources Defense Council**
Verso Corporation (Verso)

* Entities submitting interventions only

** Entities submitting comments as part of a coalition

† Entities submitting motions to intervene out of time

‡ Entities submitting comments and no motion to intervene

List of Coalitions' Individual Members

Clean Energy Advocates

American Wind Energy Association

Conservation Law Foundation

Natural Resources Defense Council

RENEW Northeast, Inc.

Sierra Club Environmental Law Program

Sustainable FERC Project

Connecticut Parties

Connecticut Public Utilities Regulatory Authority

Connecticut Department of Energy & Environmental Protection

Connecticut Office of Consumer Counsel

mandatory centralized capacity markets to sustain resource adequacy and reliability.

In recent years, some states in these regions have increasingly focused on supporting specific resources through out-of-market compensation to promote various policy objectives, rather than relying on market prices to attract desired investment. I agree with ISO-NE that there is an inherent tension between relying on capacity markets to attract investment and state-mandated support for specific resources. Indeed, there were strong disagreements among stakeholders, and even among states, regarding the path that ISO-NE should take to address this tension. To its credit, I believe that ISO-NE crafted a just and reasonable proposal that balances these competing objectives. I particularly appreciate that ISO-NE utilized a competitive, auction-based approach to introduce state-supported resources into the wholesale capacity market. I intend to closely monitor the effectiveness of this market construct in practice. As noted in the order, I also appreciate ISO-NE's commitment to continue to work with stakeholders on the definition of sponsored policy resources

affected regional markets do not adapt their market design to the reality of the growing number of state targets and initiatives, I fear that the result could be gradual, unplanned reregulation, making the transition to clean energy in those regions more expensive than necessary and less reliable for customers. The value of markets to customers makes it well worth the effort to adapt them to accommodate or achieve state policy objectives, and today's order approving CASPR is an important milestone in that ongoing effort.

For these reasons, I respectfully concur.

Cheryl A. LaFleur
Commissioner

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ISO-New England Inc.

Docket No. ER18-619-000

(Issued March 9, 2018)

supply obligation. Consequently, under CASPR's "competitively-based" pricing, total resource costs are not internalized in the market clearing price, and the ability of the market to produce a transparent price is eroded. As more subsidized resources enter the market, the less reflective the "competitively-based" price will be of total resource costs.

The "competitively-based" market clearing price under the CASPR proposal delays the suppressive effect that subsidized resources have on the market clearing price from the first year to subsequent years. As a result, the "competitively-based" price in any given year will not be reflective of the total costs of the resources procured to meet resource adequacy requirements in ISO-NE. It is unclear what value, if any, such a price signal will provide. Without clear price signals, private investment will not respond when needed, and as a result, the market will no longer achieve what it was designed to do – ensure that the least-cost capacity resources are there when needed. Thus, while CASPR appears to avoid a tradeoff between the two objectives of accommodation and competitive capacity pricing, ultimately it cannot.

I am further concerned about the signals that today's decision sends to New England stakeholders. Instead of incentivizing developers to compete for market revenues, the message the Commission is sending to market participants is that the best way to ensure the future vision is to . ad310 Td [(req ult.2(orf)-9tSs, hatl0 sE3.3(. [rtad3-9(hatxh9.

Instead, it is a complicated, patchwork solution that will neither accommodate the desires of the states, nor send proper price signals to market participants. I will not be surprised if, in the near future, the Commission is once again in the position of changing market rules to accommodate the states.

In some cases, there may be sufficient justification to accommodate a limited amount of state-supported resources in the market. Today's order acknowledges this but ultimately goes too far. Innovative technologies just entering the marketplace that ha14

supporting a proposal that is the outcome of such negotiations, I must stay firm in my beliefs regarding the value of competitive markets and the role of the Commission to protect the integrity of those markets. I understand that states wish to choose the resources that produce energy in their state. Nevertheless, if states do want to be in control of those choices, they should also assume the responsibility for resource adequacy and reliability.

Ultimately, CASPR is unjust and unreasonable because it attempts to accomplish two fundamentally conflicting goals, and in doing so, jeopardizes the integrity of the FCM.⁶ Today's decision fails to recognize this, and therefore precludes us from considering the future of the New England market. If the region wants to focus on state-supported resources as the source of entry in the market, then states should first consider whether a change in the current responsibilities for resource adequacy is necessary. However, if the states are comfortable with the *status quo* with respect to the responsibilities for resource adequacy, they should work with stakeholders to develop a long-term solution that considers alternative market designs that solve the problem as opposed to accommodating it.

Accordingly, I respectfully dissent.

Robert F. Powelson,
Commissioner

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England Inc.

The FPA is clear that states, not the Commission, are the entities primarily responsible for shaping the generation mix.² Of course, by virtue of the FPA’s jurisdictional scheme, in which authority over the electricity sector is divided between the Commission and the various states, actions taken pursuant to the states’ legitimate authority will inevitably affect matters within the Commission’s jurisdiction. As the Supreme Court has explained, the federal and state spheres of jurisdiction “are not hermetically sealed from each other”³ and are instead the product of a ““congressionally designed interplay between state and federal regulation.””⁴ Accordingly, the fact that state policies are affecting matters within the Commission’s jurisdiction is not necessarily a problem for the Commission to “solve,” but rather the natural consequence of congressional intent.

Given Congress’ design and, in particular, the allocation of jurisdiction over generation to the states, I believe that a Commission policy of “mitigating,” rather than facilitating, state public policy preferences places the Commission in a role that Congress never intended it to play.⁵ Although a broad application of the MOPR may not technically amount to the regulation of generation,⁶ it has the potential to erect a

² 16 U.S.C. § 824(b) (2012); *Hughes v. Talen Energy Mktg., LLC*, 136 S. Ct. 1288, 1292 (2016); see also *Pacific Gas & Elec. Co. v. State Energy Resources Conservation & Development Comm’n*, 463 U.S. 509, 521 (1983); *California v. FERC*, 701 F.2d 727, 734 (9th Cir. 1982); *California v. FERC*, 701 F.2d 727, 734 (9th Cir. 1982); *California v. FERC*, 701 F.2d 727, 734 (9th Cir. 1982).
³ *California v. FERC*, 701 F.2d 727, 734 (9th Cir. 1982).
⁴ *California v. FERC*, 701 F.2d 727, 734 (9th Cir. 1982).
⁵ *California v. FERC*, 701 F.2d 727, 734 (9th Cir. 1982).
⁶ *California v. FERC*, 701 F.2d 727, 734 (9th Cir. 1982).

significant impediment to states' efforts to shape the generation mix within their borders. By effectively making a state pay twice for capacity that is subject to the MOPR, the Commission is greatly increasing the cost that a state must bear in order to exercise the authority that Congress reserved to the state under the FPA.

Our federal, state, and local governments have long played a pivotal role in shaping all aspects of the energy sector, including electricity generation. The extent of government involvement in the electricity sector is neither surprising nor concerning. After all, the electricity sector “is affected with a public interest” and the manner in which electricity is generated, transmitted, and consumed presents numerous important social and economic considerations.⁷ I do not believe that it is—or should be—the

priori when government support warrants subjecting a resource subject to a MOPR and when it does not. That may be because any such effort is, in the words of former Commission Chairman Norman Bay, “unsound in principle and unworkable in practice.”⁹ There is no way to truly untangle the capacity market from the various government programs that shape the current electricity sector, and there is nothing in the FPA that supports the Commission’s current approach of applying the MOPR to only particular forms of state government involvement while ignoring other, perhaps more significant, governmental actions.¹⁰

In addition, the Commission’s application of the MOPR is constructed on the tenuous theoretical basis that capacity markets should treat certain types of government support as a “cost” when determining the lowest-cost set of resources needed to provide adequate capacity. Where implemented, this means that the Commission is using its authority over wholesale rates to effectively require load-serving entities (LSEs) to meet their capacity needs through resources that may conflict with the public policy priorities of the state in which the LSE is located. That is not, in my opinion, the role that Congress envisioned for the Commission when it provided the Commission with the authority to ensure that wholesale rates are just and reasonable and not unduly discriminatory or preferential.

Today’s order suggests that “investor confidence” is the Commission’s guiding principle for capacity market design.¹¹ This vague term—which today’s order makes no effort to define—implies that the Commission must ensure that a capacity market construct provides investors with certainty that they will recover their costs (presumably also with a handsome return on their investments). But that misses the mark for competitive markets. In the past, the Commission has always sought to protect competition, but not individual competitors.¹² This pursuit of investor confidence will

⁹ *New York Pub. Serv. Comm’n v. N.Y. Indep. Sys. Operator*, 150 FERC ¶ 61,137 (Chairman Bay, Concurring).

¹⁰ The Commission has never seriously attempted to justify its policy of picking and choosing which types of government support should implicate the MOPR. For instance, the Commission has not come close to explaining why it is appropriate to apply the MOPR to Massachusetts’ clean energy procurements while ignoring Federal government programs that subsidize a discrete group of generating resources, such as the Price Anderson Act, which imposes indemnity limits for nuclear power generators, see 42 U.S.C. § 2210(c) (2012). Even assuming that the Commission could justify its selective application of the MOPR, its failure to do so to date is both arbitrary and capricious and not the product of reasoned decision-making.

¹¹ *ISO New England Inc*, 162 FERC ¶ 61,205, at P 21 (2018).

¹² *El Paso Elec. Cov. Sw. Pub. Serv. Co.*, 68 FERC ¶ 61,182, 61,939 n.41 (1994).

cause the **over**-procurement of capacity, the imposition of unnecessary costs on consumers, and the outright frustration of state public policies. ¹³

ISO-NE states in its transmittal letter that its region now has significant excess capacity,¹⁴ demonstrating that the capacity market should send a price signal that induces existing resources to retire rather than cause new resources to enter the market. There is nothing in the record that supports the conclusion that, to ensure resource adequacy in New England, the Commission must act to ensure that investors in all forms of generation—both existing and new—remain confident that they will recover their costs.

My concerns with the MOPR go beyond its effect on state public policies. By preventing state-sponsored resources from clearing the capacity market, the MOPR has the potential to impose enormous costs on consumers. In particular, by not giving a capacity supply obligation to resources that will be built **regardless** whether they receive such an obligation, the MOPR will force LSEs to procure more capacity than they need. (the um(os -9.6(D4 642b)

In short, the Commission should get out of the business of mitigating the effects of state public policies and instead encourage the RTOs/ISOs to work with the states to pursue a resource adequacy paradigm that respects states' role in shaping the generation mix and while at the same time ensuring that we satisfy our responsibilities under the FPA.

* * *

Nevertheless, notwithstanding my concerns regarding the MOPR more generally, I believe that ISO-NE has satisfied its burden to show that the CASPR proposal is just and reasonable and not unduly discriminatory or preferential. The CASPR proposal addresses aspects of the current ISO-NE MOPR that could frustrate state clean energy policies within New England. For example, without CASPR, certain zero-carbon resources procured pursuant to Massachusetts' clean energy and diversity goals¹⁵ would be subject to MOPR and might not clear the Forward Capacity Auction (FCA). This would result in an over-procurement of capacity in ISO-NE and require consumers to pay

¹⁵ An Act to Promote Energy Diversity, St. 2016, c. 188, § 12 (requiring that electric distribution companies jointly and competitively solicit cost-effective long-term contracts for clean energy generation, in part to help meet Massachusetts' greenhouse gas emission reductions requirements); **see also** Global Warming Solutions Act, MASS. GEN. LAWS ch. 21N, § 3 (2016) (creating a comprehensive framework for reducing greenhouse gas emissions in the state). CASPR applies only to state policies that were enacted prior to January 1, 2018. ISO-

twice for capacity. Absent a mechanism to better accommodate state public policies, state efforts to meet clean energy targets will be stymied and the region could develop more generation resources than needed, all at an unnecessarily high total cost to consumers.

The CASPR proposal will establish a substitution auction to enable certain state supported resources to receive a capacity supply obligation, displacing existing resources that elect to retire. I believe that this mechanism is just and reasonable and not unduly discriminatory or preferential insofar as it provides a mechanism by which state sponsored resources may secure a capacity supply obligation in the Forward Capacity Market (FCM), even if those resources are subjected to a MOPR that prevents them from clearing the primary auction. However, CASPR's success will ultimately depend on whether it facilitates the entry of state supported resources into the FCM. To the extent that, as implemented, the CASPR proposal does not facilitate the entry of state-sponsored resources, it may render ISO-NE's tariff unjust and unreasonable insofar as it leads to the over-procurement of capacity and the imposition of unjustifiable costs on consumers.

Richard Glick
Commissioner