

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

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| State Policies and Wholesale Markets |) | Docket No. AD17-11-000 |
| Operated by ISO New England Inc., |) | |
| New York Independent System Operator, Inc., |) | |
| and PJM Interconnection, L.L.C. |) | |
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**POST-TECHNICAL CONFERENCE COMMENTS OF THE
NEW ENGLAND STATES COMMITTEE ON ELECTRICITY**

The New England States Committee on Electricity (“NESCOE”) provides these comments to the Federal Energy Regulatory Commission (“FERC” or “Commission”) in response to the May 23, 2017 Notice Inviting Post-Technical Conference Comments regarding the relationship between the wholesale markets and state public policy requirements (the “Notice”). NESCOE participated in the technical conference held on May 1-2, 2017 (the “Technical Conference”) and submitted a statement in advance of the Technical Conference.¹ NESCOE appreciated the opportunity to share its perspectives with the Commission, FERC staff, and others at the Technical Conference.

NESCOE addresses below the list of issues set out in the Notice. In summary, given circumstances in New England, NESCOE does not believe there is a need—urgent or otherwise—for prescriptive action by the Commission. Such prescriptive action could interrupt or worse, unwind, the process New England is using now to address the interaction between wholesale markets and state policy requirements, primarily through the New England Power Pool (“NEPOOL”) Integrating Markets and Public Policy (“IMAPP”) initiative.

¹ NESCOE’s statement is available at <http://nescoe.com/resource-center/markets-policies-techconf-may2017/>.

ISO New England Inc. (“ISO-NE”), New England states, market participants, and stakeholders have spent the past year exploring potential solutions. The same parties are now engaged in active discussions around an “accommodation-style” proposal (i.e., a Path 2 approach as set out in the Notice) for potential near-term implementation, which ISO-NE has called Competitive Auctions with Subsidized Policy Resources or “CASPR.” Several market participants have also put forward “achieve-style” proposals (i.e., Path 4). Among the proposals under active discussion is a forward clean energy market design. At a high level, it would create a centralized auction platform to help satisfy state-identified clean and renewable energy needs. NESCOE is conducting some analysis of both proposals to further inform state officials’ consideration of options that make sense for consumers. The Commission should encourage these continued discussions in New England and should not establish deadlines for regulatory filings.

There are some near-term actions that the Commission can take to assist in these discussions. As discussed at the Technical Conference, the Commission’s issuance of principles and objectives for regions to consider as they develop potential market rule reforms could serve as helpful guide posts in how to potentially harmonize wholesale markets and state public policy requirements. NESCOE offers below some suggested principles and objectives based on related input NESCOE provided to stakeholders earlier in time as part of the IMAPP process.

As a complementary action, the Commission could also provide guidance with respect to mechanisms or tools that regions might use to address the risk that market rules designed to help execute or integrate state requirements could be altered at any point in time without states’ support. Given the direct implication regarding the execution of state laws, the New England

states consider that risk to be material. Any Commission guidance on possible means to guard against such an outcome would add value to this effort.

I. COMMENTS

These comments are organized consistent with the numbering in the Notice, except NESCOE begins by addressing the four topics on which FERC staff seeks input later in the Notice.

1. The principles and objectives that should guide the selection of a path forward, as well as the principles and objectives that should guide rule changes that would be required by their suggested approach.

To the extent the Commission provides guidance regarding the development of market rules or other mechanisms to integrate wholesale markets and state public policy requirements, NESCOE respectfully offers the following for the Commission's consideration:

- States must determine the specifics associated with the execution of state laws.
- The competitive wholesale markets and the requirements of state laws both exist to serve consumers. Any approach to harmonize wholesale markets and state policies must be driven by and serve consumer interests. This includes, but is not limited to, avoiding incremental consumer cost risk.
- Any market mechanism to achieve or accommodate state policy requirements must:
 - Minimize the potential for the wholesale market to procure far more resources than are needed for reliable power system operation (i.e., consumers must not overpay for the resources consumers require, once in furtherance of state laws and again through the wholesale markets);
 - Appropriately allocate resource investment risk to investors;
 - Address consumer cost risks. These risks include but are not limited to providing existing resources that already receive economic support through state programs with incremental support through the wholesale markets and creating an increased revenue stream applicable to all non-carbon emitting resources without identifying whether, or the conditions under which, such need would be determined. In short, no market design should increase consumer costs without a corresponding consumer benefit;
 - Enable reaction to different market conditions and changing public policy priorities over time (i.e., not assume that the requirements of state laws are static over time);
 - Address states' cost allocation concerns;

- Allow states to achieve requirements of state laws without impairing the ability of competitive markets to ensure long-term least cost electricity supply for consumers and without adding incremental consumer cost risk; and
- Accomplish the above with a reasonable degree of certainty. Any structure must allow a known minimum entry level of state-sponsored resources into the capacity market over a reasonable period of time while balancing other design objectives.

In addition, it would be helpful if the Commission provided guidance regarding mechanisms or tools that could be employed to guard against the risk of decisions about the execution of state laws not remaining with states. Over the course of IMAPP discussions, states have raised threshold questions about the risk to state authorities—and how their statutes are implemented—associated with using a FERC-jurisdictional tariff to achieve a state’s statutory requirements. The risk is that market rule language filed with the Commission, with states’ support, could be changed under one of the following scenarios: (1) ISO-NE files tariff implementation language with FERC under Section 205 of the Federal Power Act (“FPA”) and FERC directs changes to proposed rules at the outset pursuant to its authority under Section 206 of the FPA or in response to a protest, or (2) FERC orders tariff changes in response to a complaint filed later in time—perhaps years later—under Section 206 of the FPA or on FERC’s own initiative under Section 206.²

² As a recent example of this risk, last month the Conservation Law Foundation (“CLF”) sent a request to ISO-NE seeking to override the New England states’ determination regarding whether state laws identified by stakeholders drive policy-driven transmission needs in the current planning cycle as part of an Order 1000 planning process. The states’ determination was provided pursuant to settled and uncontested tariff provisions approved by the Commission over four years ago. As NESCOE stated in response to the CLF request, “[t]he very thing that CLF advocates in the context of Order 1000—a change to NESCOE’s role in the identification of Public Policy Requirements driving transmission needs—is precisely the kind of after-the-fact market participant action that causes the states serious pause in using a FERC- jurisdictional tariff to achieve their clean energy requirements.” NESCOE Communication to ISO-NE, Response to CLF’s May 16, 2017 Request, June 1, 2017, at 5, available at <http://nescoe.com/resource-center/response-ppt-jun2017/>. NESCOE also stated that it “is disappointed that, in the midst of collaborative efforts to explore market-based proposals through IMAPP, CLF”—one of the sponsors of an achieve-style proposal currently under discussion—“now asks ISO-NE to assume the role that belongs to state officials, namely, determinations in connection with the execution of state laws.” *Id.*

The question is whether and how market rule language broadly agreed to by states, an ISO/RTO, and stakeholders—which reflects an appropriate states’ role and includes other features important to states—will remain intact. NESCOE is interested in exploring with the Commission approaches that would give states confidence that tariff language used to execute or integrate state requirements cannot be altered without states’ consent. Such approaches might, for example, include a memorandum of understanding, granting a form of Section 205 rights to regional state committees, structuring market rules as an “elective-type” program, protections granted under the *Mobile-Sierra* doctrine, or a combination of these tools and others. Commission guidance on these or other approaches would be helpful. If, on the other hand, the Commission does not foresee workable protections it would be helpful to states to be made aware of that perspective as well.

2. The degree of urgency for reconciling wholesale markets and state policies and if that urgency necessitates both a near-term (e.g., next one to three years) approach and a different long-term approach. To the extent commenters advocate for different near-term and long-term solutions, please explain what type of transition is needed and why, and how the suggested near-term approach will facilitate achievement of the suggested long-term approach.

Given circumstances in New England, near-term Commission action is not needed to help reconcile wholesale markets and state requirements. First, the overall level of state-sponsored clean energy procurements that have taken place or are expected in the near-term comprises a small percentage of installed resources on the system. ISO-NE put this into context at the Technical Conference: “[T]he sum of the procurements pending under the Massachusetts legislation that may procure hydro . . . plus things in the works under . . . previously enacted legislation might add up to as much as maybe 6% of total capacity on a capacity value.”³

³ *State Policies and Wholesale Markets Operated by ISO New England Inc., New York Independent System Operator, Inc., and PJM Interconnection, L.L.C.*, Docket No. AD17-11-000, Technical Conference, Day Two Transcript, May 2, 2017 (“Technical Conference Transcript”), at 549.

Moreover, the timeline for such procurements, including regulatory requirements, processes, and reviews can extend over multiple years. These solicitations are structured to provide substantive process and notice to market participants. For example, a joint request for proposals (“RFP”) was recently conducted in furtherance of clean energy requirements in Connecticut, Massachusetts, and Rhode Island. While the draft RFP was issued over two years ago in February 2015, the procurement process stretched into 2017 and NESCOE understands that regulatory action by state commissions in the three states has yet to commence.⁴

Second, years ago our region identified the tension that can arise between the design of the wholesale market and state requirements and fashioned a remedy that was tailored to New England’s needs and supported by NEPOOL, ISO-NE, and the six New England states. Specifically, since the ninth Forward Capacity Auction (“FCA”), New England has had in place a Renewable Technology Resource (“RTR”) exemption to the Minimum Offer Price Rule. This exemption recognizes the resource adequacy contributions of resources developed in furtherance of state laws and, in turn, the need to safeguard consumers against overpaying for capacity.⁵ The RTR exemption, which achieved broad stakeholder support and the Commission’s approval, has been used sparingly since its implementation. Within the context of approximately 35,800 MW acquired in the last auction (i.e., FCA 11), just over 100 MW of capacity-rated renewable power has cleared the Forward Capacity Market to date under the exemption.⁶

⁴ See New England Clean Energy RFP, Timeline, at <https://cleanenergyrfp.com/timeline/>.

⁵ See generally *ISO New England Inc. and New England Power Pool Participants Committee*, Docket No. ER14-1639-005, Order on Rehearing, 158 FERC ¶ 61,138 (Feb. 3, 2017) (“Rehearing Order”).

⁶ See ISO New England, Eleventh Forward Capacity Auction for the 2020/2021 Capacity Commitment Period Results Summary & Trends, Mar. 21, 2017 Reliability Committee Meeting, at Slides 3, 8 (“March 21 Presentation”), available at https://www.iso-ne.com/static-assets/documents/2017/03/a6_fca_11_auction_results.pdf.

Market participant investment decisions underscore that the exemption has not adversely affected the market. New generation continues to exhibit strong interest in New England’s capacity market. Over the last three auctions, which coincide with both the implementation of the RTR exemption beginning in FCA 9 and the public issuance of larger scale state-sponsored solicitations, over 2,700 MW of new generation has cleared the market.⁷ While much of this new capacity cleared in FCAs 9 and 10, in FCA 11 “[g]eneration participation in the qualification process continue[d] to be strong.”⁸ Earlier this year, the Commission observed that “participation in the FCAs has been and continues to be robust” and that “as evidenced by the results of FCA 9 and FCA 10 . . . and the qualification filing for FCA 11 . . . ISO-NE has had a ‘deep, competitive pool’ of new entry available to meet its reliability targets.”⁹ ISO-NE has also reported that for the upcoming FCA 12—scheduled for February 2018—new resource participation “is similar to FCA #11.”¹⁰

In short, if the “town was burning down,” as some characterized the sense of urgency at the Technical Conference,¹¹ companies would not continue to develop new resources in the “town center” the way they have in New England’s capacity market. Rather than direct a prescriptive course and impose a one-size-fits-all regulatory calendar, the Commission should support ongoing efforts in New England to explore potential paths forward in a flexible manner.

⁷ See ISO New England Inc., Results of the Annual Forward Capacity Auctions (“FCA Results”), at <https://www.iso-ne.com/about/key-stats/markets#fcaresults>.

⁸ March 21 Presentation at Slide 14. See also *id.* at Slide 4 (stating that “6,076 MW of new resources were qualified to participate” in FCA 11).

⁹ Rehearing Order at PP 28, 36.

¹⁰ ISO New England, NEPOOL Participants Committee Report of the Chief Operating Officer, May 2017, at Slide 8, available at <https://www.iso-ne.com/static-assets/documents/2017/05/may-2017-coo-report.pdf>.

¹¹ See Technical Conference Transcript at 487 (summarizing panel discussions on the question of urgency).

3. Long-term expectations regarding the relative roles of wholesale energy and capacity markets and state policies in the Eastern RTOs/ISOs in shaping the quantity and composition of resources needed to cost-effectively meet future reliability and operational needs.

Over the last twenty years, natural-gas fired generation has been the dominant source of new capacity additions in New England and the primary producer of electric energy in the region.¹² This trend continues today, with natural gas-fired resources composing most of the new generation that has cleared in the last three FCAs.¹³ The percentage of renewable resource penetration has also increased in New England over the last two decades.¹⁴ The growth of these and other clean energy resources is expected to continue in connection with New England states' implementation of their carbon reduction mandates and pursuit of clean energy programs.

NESCOE cannot predict the pace of clean energy resource installations and overall changes to the resource mix in New England. That will, of course, be dependent on many factors, including global economics and supply, future legislative and regulatory actions, and system operational needs.

However, current state laws in connection with resource procurements do not foretell that New England will significantly alter the role of the wholesale markets in serving as the central mechanism for securing resource adequacy in our region. As discussed above, ISO-NE stated at the Technical Conference that “the sum of the procurements pending under the Massachusetts legislation that may procure hydro . . . plus things in the works under . . . previously enacted

¹² NESCOE, *Renewable and Clean Energy Mechanisms 2.0 Study - Phase 1: Scenario Analysis*, Winter 2017 (“Phase 1 Study”), at 10, available at <http://nescoe.com/resource-center/mechanisms-scenario-analysis-mar2017/>.

¹³ See FCA Results; ISO-NE, ISO New England Update: Consumer Liaison Meeting, Mar. 2, 2017, at Slide 12, available at https://www.iso-ne.com/static-assets/documents/2017/03/clg_meeting_nuara_iso_update_presentation_march_02_2017.pdf.

¹⁴ See Phase 1 Study at 10.

legislation might add up to as much as maybe 6% of total capacity on a capacity value.”¹⁵ Also, the regulatory requirements, processes, reviews and their timelines for any clean energy resource solicitations conducted pursuant to state laws in New England will be public and publicized years in advance of any resulting resources being placed into service. Wholesale market participants and ISO-NE will have ample ability to consider, as they can today, potential future changes in market conditions and operational needs in connection with state clean energy requirements.

Based on these considerations and current laws, “the relative roles of wholesale energy and capacity markets and state policies . . . in shaping the quantity and composition of resources” are more likely than not to remain static in New England over the coming years. Our region has time to sort through the interaction between wholesale markets and state policies and to develop thoughtful and well-vetted approaches. New England already has in place a market rule—the RTR exemption—that, according to the Commission, “achieve[s] a reasonable balance between market-based procurement and acknowledgment of state public policies.”¹⁶ NESCOE is interested in continuing to engage in serious efforts with ISO-NE and market participants towards developing mechanisms that can improve on the RTR exemption.

4. What procedural steps the Commission should take, if any, to reconcile the competitive market framework with the increasing interest by states to support particular resources and resource attributes that might facilitate such reconciliation.

As discussed above, the Commission’s issuance of principles and objectives could serve as helpful guide posts to regions like New England that are considering mechanisms to integrate wholesale markets and state public policy requirements. As a related step, the Commission

¹⁵ Technical Conference Transcript at 549.

¹⁶ Rehearing Order at P 27.

could set forth some approaches, even if preliminary, that might help address the risk that market rules designed to help execute or integrate state law requirements would be altered without states' support. For the reasons provided above, NESCOE does not believe that other actions by the Commission would be helpful in New England at this time.

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Five Paths Described in the Notice

The Notice listed five potential paths forward that FERC staff identified at the Technical Conference:

- Path 1 – Limited or No Minimum Offer Price Rule
- Path 2 – Accommodation of State Actions
- Path 3 – Status Quo
- Path 4 – Pricing State Policy Choices
- Path 5 – Expanded Minimum Offer Price Rule

Through the IMAPP initiative, New England has focused on developing approaches that align with Paths 2 and 4. As discussed above, there are ongoing and active regional discussions underway regarding proposals that seek either to “accommodate” or “achieve” state policy requirements. NESCOE will continue to work with ISO-NE, market participants, and others to explore potential solutions that could improve upon the status quo.

In addition, as part of an ongoing study, NESCOE expects to provide analysis later this year on a variety of mechanisms through which states could execute policy objectives. The purpose of the analysis is to help inform state officials' consideration of a host of mechanisms, which will include but not be limited to ISO-NE's CASPR proposal and the potential implementation of a forward clean energy market. Phase 1 of the study, *Renewable and Clean*

Energy Mechanisms 2.0 Study, was completed last winter.¹⁷ The Phase 2 analysis is anticipated in the second half of 2017.

To date, the IMAPP process has not considered the bookends of the paths listed, elimination of the Minimum Offer Price Rule (“MOPR”) on one end and expansion of the MOPR on the other. Prior to implementation of the RTR exemption, NESCOE had cautioned that the absence of accommodations for state policy requirements (i.e., application of a strict MOPR) would render the capacity market unsustainable over the long-term. To the extent the Commission considers reforms that go down Path 5, there are many threshold issues that must be fully and carefully addressed before the MOPR rule is accorded a greater role in excluding resources that meet the requirements of state laws but are not counted toward meeting the region’s resource adequacy needs.

¹⁷ See *supra* note 12.

II. CONCLUSION

For the reasons stated herein, NESCOE respectfully requests that the Commission consider the above comments in its review of the interaction between wholesale markets and state policy requirements.

Respectfully submitted,

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