

142 FERC ¶ 61,108
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

New England States
Committee on Electricity

Docket No. EL13-34-000

v.

ISO New England Inc.

ORDER DENYING COMPLAINT

(Issued February 12, 2013)

1. On December 28, 2012, the New England States Committee on Electricity (NESCOE)¹ filed a complaint pursuant to section 206 of the Federal Power Act (FPA)² against ISO New England Inc. (ISO-NE), arguing that ISO-NE's proposed tariff revisions, submitted to comply with three prior Commission orders³ on the Forward Capacity Market (FCM), are unjust, unreasonable and unduly discriminatory.⁴ Specifically, NESCOE argues that the implementation of buyer-side mitigation without an exemption for state-sponsored public policy resources is unjust and unreasonable. For the reasons discussed below, NESCOE's complaint is denied.

¹ NESCOE is the Regional State Committee for New England.

² 16 U.S.C. § 824e (2006).

³ *ISO New England Inc. and New England Power Pool Participants Committee*, 138 FERC ¶ 61,238 (2012) (March 30 Order); *ISO New England Inc. and New England Power Pool Participants Committee*, 135 FERC ¶ 61,029 (2011) (April 13, 2011 Order); *order on reh'g and clarification*, 138 FERC ¶ 61,027 (2012) (January 19, 2012 Order).

⁴ In an order being issued concurrently with this one in Docket No. ER12-953-001, the Commission accepts ISO-NE's filing as being in compliance with the March 30, April 13, 2011 and January 19, 2012 Orders. *ISO New England Inc.*, 142 FERC ¶ 61,107 (2013).

I. Background

A. FCM

2. ISO-NE administers a forward market for capacity, in which resources compete in an annual Forward Capacity Auction (FCA) to provide capacity on a three-year-forward basis. Providers whose capacity is taken in the FCA acquire Capacity Supply Obligations, which they must fulfill approximately three years later.⁵ ISO-NE held the first two FCAs in 2008, the third FCA in October 2009, the fourth in August 2010, the fifth in June 2011, the sixth in April 2012, and the seventh in February 2013. The eighth FCA (FCA 8) will take place in February 2014 and will procure capacity for the Capacity Commitment Period beginning June 1, 2017.

B. Prior FCM Revisions

3. In the April 13, 2011 Order, the Commission issued an order on revisions to the FCM that, among other things, found unjust and unreasonable the buyer-side market power mitigation regime then in effect and directed ISO-NE to work with stakeholders to instead develop and implement an offer floor mitigation regime using asset-class specific benchmarks.

4. In an order on rehearing and compliance issued January 19, 2012, the Commission accepted, among other things, ISO-NE's proposal to implement the offer floor mechanism.

5. However, on, January 31, 2012, ISO-NE and NEPOOL filed jointly to extend the implementation of several of the changes required by the April 13, 2011 Order, including the implementation of an offer floor mechanism. The Commission accepted this proposal in an order⁶ issued on March 30, 2012, directing that ISO-NE file rules fulfilling the remainder of its compliance obligations under the April 13, 2011 and January 19, 2012 Orders in time for implementation by FCA 8, that is, by December 3, 2012.

6. On December 3, 2012, ISO-NE submitted its compliance filing in Docket No. ER12-953-001. ISO-NE states in that filing that its proposed revisions implement the directives of the Commission by, among other things, instituting a buyer-side offer-floor

⁵ The Commission accepted a portion of the market rules that implemented the FCM on April 16, 2007 (*ISO New England Inc.*, 119 FERC ¶ 61,045, *order on reh'g*, 120 FERC ¶ 61,087 (2007)), and the remainder on June 5, 2007 (*ISO New England Inc.*, 119 FERC ¶ 61,239 (2007), *reh'g denied*, 122 FERC ¶ 61,171 (2008)).

⁶ *ISO New England Inc. and New England Power Pool Participants Committee*, 138 FERC ¶ 61,238 (2012).

mitigation mechanism, including a minimum offer price rule or MOPR.⁷ In its protest to the compliance filing, NESCOE raises the same arguments that it asserts in this section 206 complaint.

II. Instant Complaint and Motion to Consolidate

7. NESCOE argues that the tariff revisions proposed by ISO-NE in its compliance filing in Docket No. ER12-953-001 are unjust, unreasonable and unduly discriminatory. NESCOE notes that in the January 19 2012 Order, the Commission ruled that a complaint under section 206 is the appropriate statutory vehicle for demonstrating “that ISO-NE’s offer floor mitigation tariff rules are unjust and unreasonable as applied to a particular project or projects.”⁸ NESCOE requests that the Commission find the MOPR provisions of ISO-NE’s proposed tariff revisions to be unjust, unreasonable and unduly discriminatory, to find that NESCOE’s alternate proposal is just and reasonable, and to amend ISO-NE’s proposed tariff revisions to incorporate NESCOE’s proposal.

8. NESCOE specifically challenges the implementation of buyer-side mitigation without an exemption for state-sponsored public policy resources. NESCOE explains that the MOPR will result in an over-procurement of capacity and will unreasonably undermine state laws supporting the development of renewable resources. NESCOE contends that because renewable resources are unlikely, in the short-term, to be a lower-cost solution than gas-fired resources for meeting the region’s resource adequacy targets, the MOPR will likely completely exclude many, if not all, new renewable resources from the FCM.⁹ NESCOE argues that this exclusion will result in violation of a “bedrock” principle of the FCM: not to procure more capacity than is necessary for resource adequacy.¹⁰ It contends that codified state policies supporting new renewable resources were enacted to promote and facilitate their development without regard to the FCM clearing price and corresponding revenue. It explains that, accordingly, new renewable resources will be placed in service irrespective of the MOPR’s exclusion. NESCOE explains that this will lead to an over-procurement of capacity by the FCM, and will undermine state policy goals related to renewable resource development.

⁷ As noted above, the Commission accepted ISO-NE’s compliance filing in an order being issued contemporaneously with this one. *ISO New England Inc.*, 142 FERC ¶ 61,107 (2013).

⁸ NESCOE Complaint at 7-8 (citing January 19, 2012 Order, 138 FERC ¶ 61,027 at P 89).

⁹ NESCOE Complaint at 10.

¹⁰ *Id.* (citing April 13, 2011 Order, 135 FERC ¶ 61,029 at P 164).

9. Specifically, NESCOE contends that renewable resources excluded from the FCM will not count toward the Installed Capacity Requirement (ICR). It explains that according to the tariff, the resources included in the ICR include resources that are considered “existing” or that have cleared in the FCA.¹¹ NESCOE argues that, under ISO-NE’s proposed tariff revisions, when new renewable resources begin commercial operation, the MOPR will most likely prevent them from receiving a capacity supply obligation in the FCM and their capacity will not be counted toward the ICR. NESCOE explains that this is because the FCM does not include resources that fail to clear, even if they exist, are commercially operational, and are providing capacity value. It contends that when the capacity provided by new renewable resources is not counted towards ICR and the FCM procures more capacity than is necessary for resource adequacy, the region’s transmission ratepayers do not receive the full value of their investments in all capacity resources and pay more for capacity than is necessary.¹²

10. NESCOE argues that electricity customers should not be required to purchase more capacity than necessary for resource adequacy. It contends that the blanket exclusion of all out-of-market resources ignores the need to integrate and respect federal and state policies, which, it contends, the Commission itself recognized by referencing the potential for resources to seek case-by-case exemption.¹³ NESCOE adds that effectively precluding renewable resources from clearing in the FCM and contributing to resource adequacy economically harms transmission customers subject to the Commission’s jurisdiction, which also must pay for compliance with state laws.

11. NESCOE argues that overly broad application of the MOPR would disregard an achievable balance with legitimate state policy goals. It contends that long-term contracts intended to support the continued development of renewable resources are not an intentional exercise of buyer-side market power. NESCOE further contends that when the MOPR excludes new renewable resources from counting toward the region’s adequacy targets, legitimate public policies supporting fuel diversity and emissions through the development of renewable resources are unreasonably undermined.¹⁴

12. NESCOE argues that while the Commission has found that out-of-market capacity “suppresses prices regardless of intent,”¹⁵ the absence of intent to suppress prices remains

¹¹ *Id.* at 12 (citing ISO-NE Tariff § III.13.2).

¹² *Id.* at 13.

¹³ *Id.* at 14.

¹⁴ *Id.* at 15.

¹⁵ *Id.* (citing April 13, 2011 Order, 135 FERC ¶ 61,029 at P 170).

relevant to the scope of the remedy. NESCOE argues that rules intended to curb the exercise of market power through support for resources intended to suppress price should not be permitted to impede legitimate state policies. NESCOE adds that other resource adequacy markets have taken a more balanced approach to buyer-side mitigation, noting that wind and solar resources are exempt from the PJM Interconnection, L.L.C. (PJM) MOPR.¹⁶

13. NESCOE further offers an alternative proposal that it states is just and reasonable because it is narrowly tailored to achieve specific objectives. NESCOE explains that its proposal would permit certain statutorily-defined renewable resources to clear in the FCM. Specifically, NESCOE proposes defining a Renewable Technology Resource as a new generating capacity resource that is supported by an out-of-market revenue source that is supported by a state- or federally-regulated rate, charge, other regulated cost recovery mechanism and:

(i) [w]hose energy is derived from wind power, solar power, methane gas from landfills, biomass facilities, hydro facilities with a generating capacity of no more than 30 megawatts, or ocean power, and is eligible as a renewable resource in the state in which it is located; or (ii) [q]ualifies as a renewable or alternative energy generating resource under any New England State's mandated (either by statute or regulations) renewable or alternative energy portfolio standards or other state renewable energy goals in states without a standard, so long as the resource's Forward Capacity Auction Qualified Capacity does not exceed 10 MW.¹⁷

14. NESCOE explains that its proposal is a categorical exemption to the MOPR based on the overarching principle that legitimate state statutory goals can and must be integrated within a competitive market structure.¹⁸ NESCOE explains that four factors underlie this principle and are reflected in NESCOE's proposed renewable exemption: first, resources that all six New England states define as renewable are unlikely to have been intended as a mechanism for deliberate price suppression; second, resources that are small in size are less likely to have a significant individual impact on the market-clearing price; third, a multi-fuel resource should only benefit from the exemption commensurate with the renewable portion of its energy generation; and, last, eligibility for the

¹⁶ *Id.* at 16-17; see *PJM Interconnection L.L.C.*, 135 FERC ¶ 61,022 (2011).

¹⁷ Bentz Testimony at 21.

¹⁸ *Id.* at 19.

exemption is capped at an approximation of the annual amount needed to meet Renewable Portfolio Standards (RPS) goals.¹⁹

15. NESCOE contends that its proposal would allow state-sponsored public policy resources to be counted toward the region's resource adequacy target. It contends that any incidental price suppression would be limited under its exemption proposal.²⁰ NESCOE notes that the aggregate annual amount of capacity estimated to be needed to satisfy state statutory requirements is the basis for the proposal's cap. It explains that the proposed cap of 225 MW places a limit on the quantity of resources eligible for the exemption in any given auction, thereby limiting any price suppression impact that could potentially occur.

16. NESCOE further argues that common issues of law and fact are raised in this proceeding and the compliance filing at issue in Docket No. ER12-953-001 and that consolidation of both cases would serve the public interest.²¹ NESCOE also requests that the Commission initiate a proceeding pursuant to section 206 under "paper hearing" procedures.

III. Notice and Responsive Pleadings

17. Notice of NESCOE's complaint was published in the *Federal Register*, 78 Fed. Reg. 1851 (2013), with interventions and protests due on or before January 9, 2013. ISO-NE filed an answer and a motion for summary dismissal. Exelon Corporation (Exelon) and New England Power Generators Association, Inc. (NEPGA) filed answers to the complaint. The Massachusetts Department of Public Utilities and the Massachusetts Department of Energy Resources (Massachusetts Parties), Dominion Resources Services, Inc. (Dominion), Northeast Utilities Companies²² (NUSCO), and TransCanada Power

¹⁹ NESCOE also lists several limitations in its proposal beyond threshold resources-type eligibility, including (1) the aggregate class of resources offering into a given annual auction is limited to 225 MW, (2) only resources smaller than 10 MW may qualify under the second, more expansive element of the definition, (3) as state policies across the region generally apply to small hydroelectric facilities, only those facilities 30 MW and below may qualify under the first element. NESCOE adds that under these limitations, resources must be eligible for the RPS or comparable program in the state in which it is located. *Id.* at 21-22.

²⁰ NESCOE Complaint at 18.

²¹ *Id.* at 25.

²² The Northeast Utilities Companies are The Connecticut Light and Power Company, Western Massachusetts Electric Company, Public Service Company of New Hampshire, and NSTAR Electric Company.

Marketing Ltd. (TransCanada) filed motions to intervene and comments. The Connecticut Public Utilities Regulatory Authority filed a notice of intervention. The Electric Power Supply Association, Massachusetts Attorney General Martha Coakley, GDF Suez Energy North America, Inc., NEPOOL Industrial Customer Coalition, NextEra Energy Resources, LLC, Consolidated Edison Energy, Inc. and Consolidated Edison Solutions, Inc., and the PSEG Companies filed motions to intervene. NESCOE filed an answer to ISO-NE's motion for summary dismissal.

18. ISO-NE, NEPGA and Exelon oppose NESCOE's motion to consolidate. ISO-NE argues that NESCOE's complaint should instead be dismissed summarily, rendering NESCOE's motion to consolidate moot. NEPGA contends that consolidation would cause undue delay in the approval of the FCA 8 market rule changes ordered by the Commission.²³

19. ISO-NE moves for summary dismissal, arguing that, under section 206 a complaint cannot lie against pending or future – rather than currently effective – tariff provisions. ISO-NE argues that under the plain language in section 206, complaints are required to state the change to be made in the “rate, charge, classification, rule, regulation, practice or contract then in force.”²⁴ ISO-NE contends that its December 3 compliance filing may only be challenged under Rule 211 of the Commission's Rules of Practice and Procedure, which provides for any party to file a protest to object to any tariff or rate filing. ISO-NE notes that NESCOE has availed itself of Rule 211 by filing a protest against ISO-NE's compliance filing in Docket No. ER12-953-001, and argues that there is nothing more for NESCOE to achieve by filing a complaint.²⁵

20. NESCOE responds that the Commission should reject ISO-NE's motion to dismiss, arguing that a section 206 complaint is the appropriate statutory vehicle for addressing ISO-NE's proposed tariff revisions.²⁶ NESCOE further argues that filing its section 206 complaint simultaneously with its section 205 protest will enable the Commission to consider the entirety of the public policy implications of ISO-NE's MOPR.

21. ISO-NE argues that if it is not summarily dismissed, NESCOE's complaint should be denied. ISO-NE contends that in its prior orders the Commission did not envision the use of a section 206 filing to seek a categorical exemption for all future renewable

²³ NEPGA Answer at 3.

²⁴ ISO-NE Answer at 4-5.

²⁵ *Id.* at 6.

²⁶ NESCOE Answer to Motion for Summary Dismissal at 6.

resources.²⁷ ISO-NE explains that instead, the Commission stated that whether to grant an exemption would be based on each case's unique facts.²⁸

22. ISO-NE also requests that the Commission consider by incorporation the arguments contained in ISO-NE's answer in Docket No. ER12-953-001. In its answer in that docket, ISO-NE argues, inter alia, that NESCOE ignores the major issue caused by the out-of-market procurement of renewable resources, which is the price suppressing effect on the FCA clearing price that results in lower payments to all other resources.²⁹ It contends that NESCOE seeks to resolve this conflict solely in favor of the state policies, rather than developing a solution that recognizes both legitimate state interests and market efficiency.

23. ISO-NE argues that, even without an exemption for state-sponsored resources, the FCA cannot and will not procure more than the ICR. It contends that if states choose to build uneconomic resources outside of the FCM pursuant to current or future initiatives to further various policy interests, the states, not the FCM, are responsible for the procurement of redundant capacity. ISO-NE adds that comparisons to exemptions for renewable resources in PJM are inappropriate because PJM's model includes other important, differentiating features such as a downward-sloping demand curve that allows for procurement both above and below the capacity requirement and that thereby helps to mitigate the price-suppressing effects of an exemption for state-sponsored resources that would not otherwise clear in the market based on costs alone.³⁰ ISO-NE argues that without such a mitigating feature, the price-suppressing effects of a categorical exemption for state-sponsored resources would be problematic for New England because the current vertical demand curve would allow a small amount of capacity to cause prices to drop precipitously.³¹ ISO-NE contends that NESCOE's proposed cap of 225 MW on resources eligible to be exempt from offer-floor mitigation is actually a relatively large quantity that would impose substantial market distortions. It argues that average annual expected load growth in New England from 2012-2021, after accounting for forecast growth in the quantity of installed passive demand resources also sponsored by the states, is 217 MW per year. ISO-NE explains that if the states succeed in incenting the development of enough new renewable resources to meet their collective RPS

²⁷ *Id.* at 7 (citing April 13, 2011 Order, 135 FERC ¶ 61,029 at P 171).

²⁸ *Id.*

²⁹ ISO-NE, Answer, Docket No. ER12-953-001 (filed January 14, 2012), at 11.

³⁰ *Id.* at 13.

³¹ *Id.* at 14.

requirements, by their own calculations the additional capacity will exceed the new resources needed due to load growth.

24. NEPGA argues that NESCOE's complaint is an impermissible collateral attack on prior orders and that NESCOE is seeking to re-litigate the same arguments rejected in prior orders.³² NEPGA contends that the NEPOOL stakeholder process, not a section 206 filing, is the appropriate vehicle for pursuing a categorical exemption. NEPGA also argues that NESCOE has failed to meet its burden under section 206 of the FPA to show that the MOPR is unjust and unreasonable. It argues that the Commission has already found that a MOPR without a categorical exemption is just and reasonable.³³ NEPGA argues that, contrary to arguments made by NESCOE, the MOPR will not cause the over-procurement of capacity in the FCM, because an FCA that includes the MOPR proposed by ISO-NE will only procure enough capacity to meet the ICR; it will not procure capacity *in addition to* the ICR amount determined by ISO-NE. NEPGA adds that NESCOE incorrectly asserts that the MOPR will undermine state renewable policies, arguing that such policies are not conditioned on capacity market revenues. It contends that NESCOE does not explain how the MOPR would deter states from continuing their renewable resource policies.³⁴ Lastly, NEPGA argues that NESCOE's proposed categorical exemption violates the Commission's primary concern of market price suppression. NEPGA contends that permitting a new resource to offer below its true cost of new entry would allow one market participant, whether it be a state or on behalf of a state, to suppress prices to all other capacity sellers.³⁵

25. Exelon and Dominion filed comments in support of NEPGA's answer.

26. TransCanada argues that NESCOE's proposal should be rejected because it is unduly discriminatory. TransCanada explains that NESCOE's renewables exemption proposal would grant uneconomic, high-cost state-sponsored renewable resources an undue preference by treating them in a disparate manner from all other resources that do not have the benefit of out-of-market, state-sponsored subsidies. TransCanada adds that implementation of NESCOE's proposal would artificially suppress capacity prices in the FCM. It explains that it would do so by permitting uneconomic high-cost state-sponsored

³² NEPGA Answer at 5 (citing, e.g., April 13, 2011 Order, 135 FERC ¶ 61,029 at PP 165-71).

³³ *Id.* at 7 (citing April 13, 2011 Order, 135 FERC ¶ 61,029 at P 164).

³⁴ *Id.* at 12.

³⁵ *Id.* at 13.

renewable resources to clear in the FCM because they would be able to offer capacity at prices that are well below actual costs.³⁶

27. Massachusetts Parties argue that ISO-NE's proposed MOPR will result in the exclusion of new renewable resources, which are developed in furtherance of legitimate public policies embodied in state statutes, from consideration when ISO-NE procures capacity for the region's resource adequacy. They argue that the effect of ISO-NE's proposal to apply buyer-side mitigation to all new FCM resources will be ISO-NE's procuring more capacity than is necessary for resource adequacy. Massachusetts Parties state that they support the NESCOE proposal because it will avoid both the over-procurement of capacity and the frustration of Massachusetts' public policy goal of developing renewable energy resources.³⁷ For example, they note that in 1997, as part of its electricity restructuring, Massachusetts enacted a RPS statute that obligated suppliers to obtain a percentage of electricity from qualifying renewable units for their retail customers.³⁸

28. NUSCO filed comments in support of NESCOE's request that the Commission initiate a paper hearing to consider the consequences that ISO-NE's proposal may have on state public policy initiatives. NUSCO adds that NESCOE's renewables exemption proposal is a just and reasonable alternative to ISO-NE's proposed MOPR.³⁹

IV. Discussion

A. Procedural Matters

29. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

30. With regard to NESCOE's motion to consolidate, because, we are not setting this case for hearing and instead are ruling summarily, as discussed below, we will not consolidate this case with Docket No. ER12-953-001. Accordingly, the motion to consolidate is denied.

31. ISO-NE's motion to dismiss is also denied. Although ISO-NE is correct that tariff provisions that are merely pending before the Commission may not be challenged under

³⁶ TransCanada Comments at 14.

³⁷ Massachusetts Parties Answer at 4.

³⁸ *Id.* at 5 (citing Mass Sess. Laws c. 25A, § 11F0).

³⁹ NUSCO Comments at 4.

section 206,⁴⁰ the Commission is accepting the tariff provisions at issue in an order being issued contemporaneously with this one.

B. Commission Determination

32. The Commission denies NESCOE's complaint. As noted above, in prior orders the Commission expressly allowed for the possibility that under certain circumstances, states or state agencies may argue that resources should be exempt from offer floor mitigation. While the Commission intended to note the possibility of case-by-case, not categorical, exemptions, we recognize that entities have a statutory right to file complaints under section 206. Nevertheless, we find that NESCOE has failed to meet its burden under section 206 to demonstrate that ISO-NE's MOPR is unjust, unreasonable or unduly discriminatory.

33. Instead of seeking a case-specific exemption, NESCOE reiterates arguments that ISO-NE's proposed tariff revisions are unjust and unreasonable because they do not allow a categorical exemption for state-sponsored resources. However, NESCOE has provided no new evidence in that regard.

34. NESCOE argues that not including an exemption for state-sponsored resources would violate the Commission's "bedrock" principle that the FCM should not procure capacity above the ICR.⁴¹ However, even with an exemption for state-sponsored resources, the FCM cannot and will not procure more than the ICR. As noted by ISO-NE, "if the states choose to build uneconomic resources outside of the FCM pursuant to current or future initiatives to further various policy interests, the states, not the FCM are responsible for procuring redundant capacity."⁴² Because nothing in the proposed FCM rules require nor cause the purchase of capacity in excess of the ICR, NESCOE's argument does not persuade us to find the proposed rules to be unjust and unreasonable. In fact, the Commission ordered the MOPR in part because, rather than procuring capacity in excess of the ICR, the MOPR mechanism ensures procurement of "just the ICR and no more."⁴³ Furthermore, while NESCOE argues that its alternative proposal

⁴⁰ See, e.g., *BP West Coast Products, LLC v. SFPP, L.P.*, Order Dismissing Complaint, 120 FERC ¶ 61,014, at P 5 (2007) ("some form of final rate must be effective before a complaint will lie against a given rate").

⁴¹ NESCOE Complaint at 10 (citing April 13, 2011 Order, 135 FERC ¶ 61,029 at P 164).

⁴² ISO-NE, Answer, ER12-953-001 (filed January 14, 2012), at 13.

⁴³ April 13, 2011 Order, 135 FERC ¶ 61,029 at P 168.

will have a limited price-suppression impact, it has failed to provide any evidentiary support for this claim.

35. A broader interpretation of NESCOE's argument is that a renewables exemption is necessary because, otherwise, the total amount of capacity procured in New England – whether or not procured from the FCA – would exceed the ICR, and thus, the amount needed in New England. In considering NESCOE's proposed exemption from this perspective, the Commission must balance two considerations. The first is its responsibility to promote economically efficient markets and efficient prices, and the second is its interest in accommodating the ability of states to pursue other legitimate state policy objectives. The Commission has accepted PJM's proposal to exempt renewables from its MOPR but there are differences between PJM and ISO-NE that affect the balancing of the above considerations. In order to promote efficient markets, ISO-NE has proposed a MOPR whose objective is to prevent uneconomic entry and the associated suppression of capacity prices. Exempting renewables whose costs exceed the market price would result in the uneconomic entry of renewables and thereby reduce capacity prices. The effect of an exemption for renewables would likely be much greater in New England than in PJM. Most importantly, that is because the ISO-NE capacity market relies on a vertical demand curve while PJM's capacity market relies on a sloped demand curve. As a result, the effect of a given amount of additional capacity has a greater depressing effect on prices in New England than in PJM.⁴⁴ In addition, the New England market is substantially smaller than the PJM market. The additional capacity associated with meeting the New England RPS through 2021 will exceed load growth in New England over that same period. A given additional quantity of capacity will have a larger effect on capacity prices in the smaller New England market compared with the larger PJM market. Thus, an exemption for renewables is likely to have a greater depressing effect on capacity prices in New England than in PJM. As a result, while we previously have found that an exemption from the MOPR is just and reasonable for the PJM capacity market, we cannot find based on the record here that NESCOE has shown that the MOPR is unjust and unreasonable as applied to the ISO-NE capacity market.

36. We further find that NESCOE has not adequately supported its assertion that the MOPR undermines state policies or deters states from continuing their renewable resource policies. To the contrary, we note that NESCOE states in its complaint that state energy policies “promote the development of new renewable resources irrespective of the FCM rules and related price signals.”⁴⁵

⁴⁴ According to ISO-NE, it indicated during the stakeholder process that “an exemption could be acceptable if paired with the inclusion of a downward-sloping demand curve in the capacity market.” ISO-NE Answer at 15.

⁴⁵ NESCOE Complaint at 7.

37. As the Commission repeatedly has stated, different rate proposals can be just and reasonable.⁴⁶ Merely noting the existence of another just and reasonable rate, or proposing an alternative rate, as NESCOE does here, does not alone show that an existing rate is unjust and unreasonable. Other than pointing to PJM's MOPR and reasserting arguments previously considered and rejected by the Commission in prior orders, NESCOE has failed to meet its section 206 burden of showing that ISO-NE's MOPR without a categorical exemption for renewable resources is unjust and unreasonable. Any new proposal must do more than rely on findings specific to PJM and address the above-described characteristics of ISO-NE's market.

38. For the reasons discussed above, NESCOE's complaint is denied.

The Commission orders:

NESCOE's complaint is hereby denied as discussed in the body of this order.

By the Commission. Chairman Wellinghoff and Commissioner Norris are dissenting with a joint separate statement attached.
Commissioner LaFleur is concurring in part with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁴⁶ See, e.g., *International Transmission Company*, 123 FERC ¶ 61,065, at P 20 (2008).

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NORRIS, Commissioner, and WELLINGHOFF, Chairman, *dissenting*:

Buyer-side market power mitigation rules in the capacity markets, such as the minimum offer price rule (MOPR) at issue here, should be carefully crafted to ensure just and reasonable wholesale market outcomes without undue discrimination. The Commission acknowledges, as it has before, that it must balance this responsibility with its interest in accommodating the ability of states to pursue legitimate public policy objectives within their jurisdiction. Because we believe valid questions have been raised in these proceedings about whether ISO New England, Inc.'s (ISO-NE) proposed MOPR strikes the proper balance in this regard, we respectfully dissent.

ISO-NE chose to broadly apply its MOPR to all new resources. The New England States Committee on Electricity (NESCOE) and others have raised significant concerns about whether this broad application of the MOPR will impinge on legitimate state policy goals. In particular, they assert that such broad mitigation will unfairly inhibit state efforts to diversify their fuel mix and procure new renewable resources under Renewable Portfolio Standards (RPS) by excluding the capacity provided by such resources from contributing to the region's capacity requirements. NESCOE explains that under ISO-NE's proposed broad mitigation, when new renewable resources begin commercial operation, the MOPR will most likely prevent them from receiving a capacity supply obligation in the Forward Capacity Market (FCM), resulting in their capacity not being counted toward the Installed Capacity Requirement (ICR). NESCOE contends that because the capacity provided by new renewable resources is not counted towards ICR, the FCM procures more capacity than is necessary for resource adequacy. This means that the region's transmission ratepayers do not receive the full value of their investments in all capacity resources and pay more for capacity than is necessary. This result, they argue, will harm consumers by forcing them to procure, and pay for, additional, unneeded capacity resources, ignoring the capacity value provided by the new renewable resources.

NESCOE's arguments raise significant questions about whether ISO-NE's proposed MOPR achieves a proper balance between ensuring just and reasonable rates in the wholesale market and allowing states to pursue legitimate policy objectives within their jurisdiction. The Commission acknowledges the need to strike this balance, but fails to explain how it does so here. Instead, the Commission asserts that it is state actions, and not the capacity market, that will result in procurement of additional unneeded capacity. In addition, the Commission focuses on the structure, size and design of New England's capacity market to conclude that ISO-NE's FCM could not allow for alternative buyer-side mitigation mechanisms to accommodate legitimate state policy goals. These responses fail to grapple with the question of how to accommodate states' legitimate interest in pursuing fuel diversity goals within their resource planning jurisdiction with our responsibility to ensure just and reasonable wholesale rates.

We would have established additional procedures, such as the paper hearing requested by NESCOE, so that the Commission would have a sufficient record to determine whether adjustments in ISO-NE's buyer-side mitigation construct are needed to achieve the balance we all agree is required. While we appreciate that the Commission offers encouragement of an additional stakeholder process to consider the issues raised by NESCOE and others,¹ we believe more formal action on the part of the Commission is required to address the valid concerns raised by policymakers in the New England region in these proceedings.

For these reasons, we respectfully dissent.

John R. Norris, Commissioner

Jon Wellinghoff, Chairman

¹ See *ISO New England, Inc.* 142 FERC ¶ 61,107 at P 97 (2013) (Norris and Wellinghoff, *dissenting in part*).

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LaFLEUR, Commissioner, *concurring in part*:

In April 2011, the Commission directed ISO New England to mitigate buyer-side market power in the Forward Capacity Market (FCM) by developing asset-class specific benchmarks. ISO New England responded by proposing an asset-class specific minimum offer price rule (MOPR) that applies to all new resources, including renewable resources. Today, in a companion order issued concurrently with this order,¹ the Commission largely accepts that proposal.

In this proceeding, the New England States Committee on Electricity alleges that the newly instituted MOPR is unjust and unreasonable because it does not exempt from mitigation state-subsidized renewable resources intended to satisfy state renewable portfolio standards. In the instant order, the Commission denies the complaint.

I join the majority in supporting both orders. I write separately in this case to address my joint concurrence in the April 2011 Order.² In that concurrence, I voiced specific concerns about the ability of the New England states to receive exemptions from the MOPR in light of their escalating renewable portfolio standards. I strongly support renewable energy, and recognize the inherent conflict between renewable portfolio standards and the FCM. However, after careful consideration, I support today's decisions.

I believe that buyer-side market power proceedings present some of the most difficult issues we face at the Commission. These proceedings require the Commission to reconcile important regulatory objectives that are fundamentally in tension. On the one hand, states have

¹ See *ISO New England Inc.*, 142 FERC ¶ 61,107 (2013).

² *ISO New England Inc. and New England Power Pool Participants Committee*, 135 FERC ¶ 61,029 (2011) (April 2011 Order), *order on reh'g and clarification*, 138 FERC ¶ 61,027 (2012) (January 19, 2012 Order).

the unquestioned right to make policy choices through the subsidization of capacity. On the other hand, as the regulator of that market, this Commission has the right—and indeed the responsibility—to assure that capacity bid into the FCM is priced in such a way as to assure that the FCM fulfills its purpose of supporting long-term reliability. As noted in today's orders, the pricing impact of subsidized capacity can be significant, especially in a market like the FCM with a vertical demand curve and relatively small annual load growth. Furthermore, as the Commission has recognized previously, this impact is present even if the intent of such subsidized capacity is to meet other objectives rather than to suppress prices.³

Given the importance of reliability of service to customers, particularly in New England where challenging issues such as gas-electric coordination are presently acute, it is more important than ever that such market prices are accurate. I believe that absent a fundamental revision to the overall design of the FCM, particularly the vertical demand curve, blanket exemptions to the MOPR are on balance harmful to the long-term integrity and sustainability of this market and its ability to fulfill its fundamental purpose. For that reason, I do not believe that further process in this docket is necessary. However, I do believe it would be helpful for the Commission to consider on a generic basis, such as in a technical conference, the overall effectiveness of different capacity market designs in attracting capital, meeting challenges such as gas-electric interdependence, and accommodating different power supply choices.

Accordingly, I respectfully concur.

Cheryl A. LaFleur
Commissioner

³ April 2011 Order, 135 FERC ¶ 61,029 at P 170.