

155 FERC ¶ 61,023  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Cheryl A. LaFleur, Tony Clark,  
and Colette D. Honorable.

ISO New England Inc. and New England Power Pool      Docket No. ER14-1639-004  
Participants Committee

ORDER ON REMAND

(Issued April 8, 2016)

Table of Contents

	<u>Paragraph Numbers</u>
I. Background .....	<u>3.</u>
A. Prior Orders .....	<u>3.</u>
B. Demand Curve Order and Rehearing Order.....	<u>9.</u>
1. Demand Curve Order.....	<u>9.</u>
2. Rehearing Order.....	<u>19.</u>
C. Appeal.....	<u>21.</u>
II. Discussion .....	<u>23.</u>
A. Overview .....	<u>23.</u>
B. Whether Artificial Price Suppression is <i>Per Se</i> Unjust and Unreasonable .....	<u>30.</u>
1. Parties' Arguments .....	<u>30.</u>
2. Commission Determination .....	<u>32.</u>
C. Whether the Commission Failed to Consider Certain Specific Arguments as to the Extent of Price Suppression .....	<u>37.</u>
1. Failure to Address Hunger and Schnitzer Testimony.....	<u>37.</u>
a. Parties' Arguments .....	<u>37.</u>
b. Commission Determination .....	<u>39.</u>
2. Zonal Demand Curves and Proration .....	<u>45.</u>
a. Parties' Arguments .....	<u>45.</u>
b. Commission Determination .....	<u>46.</u>
3. Reliance on Load Growth to Offset Price Suppression.....	<u>49.</u>

- a. Parties’ Arguments .....[49.](#)
    - b. Commission Determination .....[52.](#)
  - 4. Use of 1,100 MW of Past Uneconomic Entry .....[54.](#)
    - a. Parties’ Arguments .....[54.](#)
    - b. Commission Determination .....[56.](#)
- D. Price Suppression in Energy Markets and Impact on Winter Reliability .....[58.](#)
  - 1. Parties’ Arguments .....[58.](#)
  - 2. Commission Determination .....[62.](#)
- E. Failure to Follow Precedent .....[66.](#)
  - 1. Parties’ Arguments .....[66.](#)
  - 2. Commission Determination .....[67.](#)
- F. Failure to Hold Hearing .....[69.](#)
  - 1. Parties’ Arguments .....[69.](#)
  - 2. Commission Determination .....[70.](#)

1. This case is before the Commission on voluntary remand from the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit).<sup>1</sup> On May 30, 2014, the Commission approved a package of changes jointly submitted by ISO New England Inc. (ISO-NE) and the New England Power Pool Participants Committee (NEPOOL), under Federal Power Act (FPA) section 205<sup>2</sup> relating to ISO-NE’s Forward Capacity Market (FCM).<sup>3</sup> Those changes implemented a system-wide sloped demand curve, eliminated certain system-wide administrative pricing rules, and adopted a limited exemption from the minimum offer price rule for certain renewable resources (renewables exemption). The petition for review in the D.C. Circuit concerns only the renewables exemption.

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<sup>1</sup> *NextEra Energy Resources, LLC, et al. v. FERC*, No. 15-1070 (D.C. Cir. Dec. 2015).

<sup>2</sup> 16 U.S.C. § 824d (2012).

<sup>3</sup> *ISO New England, Inc.*, 147 FERC ¶ 61,173 (2014) (Demand Curve Order), *reh’g denied*, 150 FERC ¶ 61,065 (2015) (Rehearing Order).

2. NextEra Energy Resources, LLC (NextEra), the NRG Companies,<sup>4</sup> and the PSEG Companies<sup>5</sup> petitioned the D.C. Circuit for review of the Commission's orders. The D.C. Circuit remanded the case to the Commission following an unopposed motion for voluntary remand that the Commission filed. Below, the Commission continues to affirm its finding that the renewables exemption from the minimum offer price rule is just and reasonable, and not unduly discriminatory or preferential.

## **I. Background**

### **A. Prior Orders**

3. In order to prevent the exercise of buyer-side market power in the FCM, ISO-NE has adopted a minimum offer price rule,<sup>6</sup> requiring new capacity resources to supply capacity above a price floor.<sup>7</sup>

4. As the Commission considered mechanisms to mitigate the exercise of buyer-side market power in New England, it also considered the question of whether an exemption from the minimum offer price rule might be appropriate for renewable resources in the New England region. The Commission addressed the possibility that "states and state agencies may conclude that the procurement of new capacity . . . will further specific legitimate policy goals and, therefore, argue that certain resources that receive payments pursuant to state programs, which would otherwise trigger [buyer market power] mitigation, should nonetheless be exempt" from the price floor.<sup>8</sup> While the Commission "acknowledg[ed] the rights of states to pursue policy interests within their jurisdiction," it rejected the possibility of such an exemption in that proceeding, stating that out-of-

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<sup>4</sup> NRG Power Marketing LLC, GenOn Energy Management, LLC, Connecticut Jet Power LLC, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, NRG Canal LLC, and Energy Curtailment Specialists, Inc.

<sup>5</sup> PSEG Power LLC, PSEG Energy Resources & Trade LLC, and PSEG Power Connecticut LLC.

<sup>6</sup> *ISO New England Inc.*, 135 FERC ¶ 61,029, at P 165 (2011) (Buyer Market Power Order), *reh. denied in pertinent part*, 138 FERC ¶ 61,027 (2012).

<sup>7</sup> For a general discussion of the minimum offer price rule mechanism, *see New Jersey Bd. of Public Utilities v. FERC*, 744 F.3d 74, 85 (3d Cir. 2014).

<sup>8</sup> Buyer Market Power Order, 135 FERC ¶ 61,029 at P 20.

market entry “suppresses prices *regardless of intent*” and that “uneconomic entry can produce unjust and unreasonable prices by artificially depressing capacity prices.”<sup>9</sup> The Commission additionally found, however, that:

Whether to grant an exemption is based on each case’s unique facts. Parties have not provided sufficient specificity to allow us to approve an appropriately narrow exemption and we cannot establish an exemption in a vacuum or without facts supporting a specific exemption. Of course, nothing in this order eliminates any rights entities may have under section 206 of the FPA[<sup>10</sup>] to request [an exemption from buyer side mitigation]. At that time, we will evaluate the merits of a proposed exemption.<sup>11</sup>

5. Subsequently, the New England States Committee on Electricity (NESCOE) filed a complaint with the Commission under FPA section 206, alleging that the minimum offer price rule mechanism would result in unjust and unreasonable rates, absent an exemption for resources developed pursuant to state policies to support renewable generation. NESCOE argued that the six New England states had all enacted policies to provide financial support to the development of renewable generation resources.<sup>12</sup> But, under ISO-NE’s minimum offer price rule, those resources could not clear in the FCM at their offer price. Therefore, the FCM would result in the construction of additional resources. NESCOE argued that the operation of the minimum offer price rule in this fashion required customers to fund the development of redundant resources and would thus render capacity prices unjust and unreasonable.<sup>13</sup>

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<sup>9</sup> *Id.* P 170 (footnotes omitted, emphasis added).

<sup>10</sup> 16 U.S.C. § 824e (2012).

<sup>11</sup> Buyer Market Power Order, 135 FERC ¶ 61,029 at P 171.

<sup>12</sup> New England States Committee on Electricity v. ISO New England Inc., Complaint, Docket No. EL13-34-000 at 6 (filed Dec. 28, 2012) (NESCOE Complaint) (“five of the six New England states have enacted Renewable and Alternative Portfolio Standards (RPS). The other New England state, Vermont, requires its electric distribution companies to enter into long-term contracts with renewable resources for a certain portion of the companies’ loads”) (footnotes omitted).

<sup>13</sup> NESCOE Complaint at 13-14.

6. The Commission rejected the complaint.<sup>14</sup> It noted that it had granted an exemption for wind and solar resources from the minimum offer price rule mechanism in *PJM Interconnection, L.L.C.*,<sup>15</sup> but stated that, in considering NESCOE's proposed exemption, the Commission was required to 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. . . . In order to promote efficient markets, ISO-NE has proposed [its minimum offer price rule] 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.<sup>16</sup>

7. The Commission noted that the effect of an exemption for renewables would be greater in New England than in PJM, because the ISO-NE capacity market is smaller than PJM's, and the ISO-NE capacity market at that time used a vertical demand curve while PJM's capacity market used a sloped demand curve. As a result, the Commission found that "the effect of a given amount of additional capacity has a greater depressing effect on prices in New England than in PJM,"<sup>17</sup> and that the amount of new renewable capacity anticipated in New England through 2021 was likely to exceed the amount of load growth in the region over that same period. The Commission thus stated that, "while we previously have found that an exemption from the [minimum offer price rule] is just and reasonable for the PJM capacity market, we cannot find based on the record here that

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<sup>14</sup> *New England States Committee on Electricity v. ISO New England Inc.*, 142 FERC ¶ 61,108, at P 12 (2013) (*NESCOE*), *reh'g denied*, 151 FERC ¶ 61,056 (2015).

<sup>15</sup> *See PJM Interconnection L.L.C.*, 135 FERC ¶ 61,022 (2011) (*PJM*), *reh'g denied*, 138 FERC ¶ 61,194, at PP 109-11 (2012), *aff'd sub nom. New Jersey Bd. of Public Utilities v. FERC*, 744 F.3d 74, 85.

<sup>16</sup> *NESCOE*, 142 FERC ¶ 61,108 at P 35.

<sup>17</sup> *Id.*

NESCOE has shown that the [minimum offer price rule] is unjust and unreasonable as applied to the ISO-NE capacity market.”<sup>18</sup>

8. However, in a related order accepting revisions to ISO-NE’s minimum offer price rule, the Commission noted that “given the large number of stakeholders that supported some form of renewable resource exemption, we encourage ISO-NE to undertake the development of a stakeholder process for such an exemption which could include the development of a [downward-sloping] demand curve.”<sup>19</sup>

## **B. Demand Curve Order and Rehearing Order**

### **1. Demand Curve Order**

9. On April 1, 2014, ISO-NE and NEPOOL jointly submitted the revisions at issue here under section 205 of the FPA to the ISO-NE Transmission, Markets and Services Tariff (Tariff) to establish a system-wide sloped demand curve and related parameters for use in ISO-NE’s FCM (Demand Curve Changes).<sup>20</sup> Relevant to this order, ISO-NE stated that “[i]n response to the Commission’s suggestion that the ISO work with its stakeholders to design a renewable resources exemption, the ISO, supported by the majority of its stakeholders, has developed the [renewables] exemption.”<sup>21</sup>

10. The Demand Curve Changes proposed a 200 MW per year renewables exemption from the minimum offer price rule. The exemption allows any unused portion of the 200 MW not subject to the minimum offer price rule to carry forward for up to three years for a possible total of 600 MW of exempt capacity in any given delivery year.<sup>22</sup> ISO-NE explained that its proposed adoption of a sloped demand curve along

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<sup>18</sup> *Id.*

<sup>19</sup> *ISO New England Inc.*, 142 FERC ¶ 61,107, at P 97 (2013).

<sup>20</sup> In a January 24, 2014 order, the Commission had directed ISO-NE to submit a sloped demand curve by April 1, 2014, to allow sufficient time for implementation prior to the ninth Forward Capacity Auction (FCA 9). *ISO New England Inc.*, 146 FERC ¶ 61,038 (2014).

<sup>21</sup> *ISO New England Inc.*, Attachment to Transmittal, Docket No. ER14-639-000 (Testimony of Dr. Robert G Ethier) at 38 (Ethier Testimony).

<sup>22</sup> *Id.* at 37-38.

with an exemption cap tied to estimated load growth in the region<sup>23</sup> limits concerns about price suppression from this renewables exemption.

11. The Demand Curve Changes proposed a system-wide, sloped demand curve construct in the FCM. ISO-NE stated that time constraints prevented it from developing sloped demand curves for its constrained zones (zonal sloped demand curves) in time for FCA 9. As a result, if any zonal constraints bind during the auction, thus requiring a local zone to be modeled separately,<sup>24</sup> that capacity would still face a vertical demand curve. ISO-NE stated its intention to complete the work required in order to implement sloped demand curves at the zonal level for the tenth FCA (FCA 10).<sup>25</sup>

12. ISO-NE acknowledged in its filing that accommodating state public policy choices, without vitiating the intent and purpose of the FCM, would be challenging, and that such accommodation would only be possible if paired with a sloped demand curve to moderate the price impact of the exemption.<sup>26</sup> It also stated, however, that not recognizing the capacity constructed as a result of those programs would require customers to pay for redundant capacity through the FCM:

[I]f resources are to be built pursuant to state-sponsored initiatives, it would be economically inefficient not to include them as counting toward meeting regional capacity requirements, because excluding them would require the building of a second, redundant set of resources to meet the same need.<sup>27</sup>

13. ISO-NE stated that its proposed renewables exemption “acknowledges that these state sponsored resources do or will exist and reasonably addresses the inherent conflict

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<sup>23</sup> *Id.* at 41.

<sup>24</sup> *See* Tariff Section III.12.4, “Capacity Zones” (providing that, for each Forward Capacity Auction, ISO-NE will model export-constrained and import-constrained zones, using the results of its most recent annual assessment of transmission transfer capability).

<sup>25</sup> ISO New England Inc. and New England Power Pool, 2014 Demand Curve Changes Tariff Revisions Filing, Docket No. ER14-1639-000, at 2-3 (Transmittal).

<sup>26</sup> Ethier Testimony at 38.

<sup>27</sup> *Id.* at 39.

between certain legitimate state actions and setting appropriate prices in the FCM.”<sup>28</sup> It further noted that the price-suppressive effect of the renewables exemption was limited by the small amount of renewable generation to which the exemption would apply and the new system-wide downward-sloping demand curve.<sup>29</sup>

14. Multiple opponents of the renewables exemption, including New England Power Generators Association, Inc. (NEPGA), Electric Power Supply Association (EPSA), NextEra, Entergy Nuclear Power Marketing, LLC (Entergy) and Exelon Corporation (Exelon), argued that, even with a system-wide sloped demand curve, the price suppressing effects of the renewables exemption remained significant, particularly in the relatively smaller ISO-NE market.<sup>30</sup> Opponents relied substantially on the Commission’s 2013 rejection of the section 206 complaint seeking a similar renewables exemption in *NESCOE*.<sup>31</sup> Further, NextEra and others modeled the proposed exemption and argued that the exemption could potentially decrease FCA clearing prices by \$0.50/kW-month to \$2.50/kW-month, and suppress capacity revenues by up to \$1 billion in a single year.<sup>32</sup> Entergy and Exelon argued that ISO-NE did not explain what the effect of the exemption would be on constrained zones before ISO-NE implemented zonal sloped demand curves.<sup>33</sup> NextEra requested that the Commission reject the renewables exemption or, alternatively, set the matter for hearing.<sup>34</sup>

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<sup>28</sup> *Id.*

<sup>29</sup> Transmittal at 12-13.

<sup>30</sup> Demand Curve Order, 147 FERC ¶ 61,173 at P 67.

<sup>31</sup> NEPGA and EPSA Protest at 13; *see* Demand Curve Order, 147 FERC ¶ 61,173 at P 69.

<sup>32</sup> NEPGA and EPSA Protest at 17-18.

<sup>33</sup> Entergy and Exelon Protest at 10.

<sup>34</sup> Rehearing Order, 150 FERC ¶ 61,065 at P 11.



15. The Commission conditionally accepted the Demand Curve Changes effective June 1, 2014, subject to ISO-NE clarifying in a compliance filing how new resources would qualify for the renewables exemption in future auctions.<sup>35</sup>

16. The Commission approved the system-wide sloped demand curve as “an important improvement” to ISO-NE’s capacity market,<sup>36</sup> and approved the renewables exemption based on ISO-NE’s explanation that “while exemptions in general can lower prices, the exemption proposed here is coupled with a sloped demand curve that will limit the impact of price suppression as compared to the existing vertical demand curve.”<sup>37</sup> The Commission distinguished its 2013 refusal in *NESCOE* to require a similar exemption, relying on the difference between the standard applicable to section 205 proposals, as here, and the standard applicable to a section 206 complaint.<sup>38</sup> The Commission also relied on ISO-NE’s adoption of a sloped demand curve, as “adequately address[ing] concerns that the renewables exemption would severely suppress prices.”<sup>39</sup>

17. The Commission further explained that the “exemption is also tied to load growth.”<sup>40</sup> Noting the annual 200 MW limit on exemptions, the Commission concluded that the market would “likely clear near net [Cost of New Entry (CONE)] and attract merchant entry to meet resource retirement in ISO-NE, thus helping to mitigate any price suppressive effect.”<sup>41</sup> The Commission rejected concerns that the exemption would

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<sup>35</sup> Demand Curve Order, 147 FERC ¶ 61,173. On July 11, 2014, ISO-NE submitted the required compliance filing in Docket No. ER14-1639-002. The compliance filing was accepted via delegated letter order on November 13, 2014.

<sup>36</sup> Demand Curve Order, 147 FERC ¶ 61,173 at P 29.

<sup>37</sup> *Id.* P 83.

<sup>38</sup> *Id.* P 86. As the Commission pointed out, the complainant in *NESCOE* failed to demonstrate that ISO-NE’s tariff was unjust and unreasonable without an exemption for renewable resources.

<sup>39</sup> *Id.* P 84.

<sup>40</sup> Demand Curve Order, 147 FERC ¶ 61,173 at P 83.

<sup>41</sup> *Id.* Net CONE is an administrative estimate of the capacity clearing price on average over time that prospective new entrants would require, when the region is short of its resource target, in order to justify the new entrant’s decision to build a resource in New England. *See* Ethier Testimony at 5-6.

significantly suppress energy market prices, noting that renewable entry is occurring under state programs that “are not generally conditioned upon capacity market participation.”<sup>42</sup>

18. Protesters also expressed concern that, because the demand curves for local capacity zones would still be vertical for the ninth FCA (FCA 9), and because most of the new renewable capacity to enter New England would enter a single zone, there would be a significant impact on price formation in that zone.<sup>43</sup> In response, the Commission stated that it was unlikely that all 200 MW of exempt capacity would be located within a single zone based upon ISO-NE’s proposal to prorate the exemption across resources. It noted that, while approximately 1,751 MW (out of the 2,765 MW of renewable resources in the interconnection queue) had been proposed in Maine, those projects might not qualify in time for FCA 9 and might not be built. The Commission further noted that, since ISO-NE qualifies wind and solar resources for capacity market participation at approximately 20 percent of their nameplate capacity, at least 1,000 MW of renewable resources would have to qualify in Maine for that zone to take up the entire renewables exemption, and that, in fact, “other states in New England will likely qualify resources, leading to prorating; thus, all 200 MW would not be located in Maine.”<sup>44</sup>

## 2. Rehearing Order

19. Several parties requested rehearing regarding the limited renewables exemption from the minimum offer price rule. The parties argued that the Commission failed to adequately address record evidence that the renewables exemption will suppress FCM clearing prices.<sup>45</sup> They further asserted that tying the exemption cap to expected load growth does not ameliorate the effects of price suppression, and questioned whether load growth would increase by 200 MW per year.<sup>46</sup> Finally, some parties reiterated their

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<sup>42</sup> Demand Curve Order, 147 FERC ¶ 61,173 at P 84.

<sup>43</sup> Entergy Protest at 8.

<sup>44</sup> Demand Curve Order, 147 FERC ¶ 61,173 at P 85.

<sup>45</sup> Exelon and Entergy rehearing request at 22-26; NEPGA rehearing request at 3-4; NextEra rehearing request at 3-10, 16, 18-19.

<sup>46</sup> NextEra rehearing request at 16.

arguments that the renewables exemption is inconsistent with the Commission's prior decision in *NESCOE*.<sup>47</sup>

20. In the January 30, 2015 Rehearing Order, the Commission denied the requests for rehearing.<sup>48</sup> The Commission stated that accepting the renewables exemption was not inconsistent with its decision in *NESCOE*, noting that while the complainant in *NESCOE* failed to meet its burden under FPA section 206 of demonstrating that ISO-NE's existing tariff was unjust and unreasonable, that finding did not preclude the Commission from accepting ISO-NE's section 205 filing of a revised tariff provision if it was just and reasonable.<sup>49</sup> With regard to arguments that the renewables exemption would result in price suppression, the Commission reiterated that, while exemptions in general can lower prices, coupling the renewables exemption with the particular parameters of ISO-NE's sloped demand curve would limit the impact of price suppression, and that, since the exemption was limited to 200 MW per FCA, these resources would only displace the new entry required to meet load growth, and merchant entry was still likely to be needed in order to meet anticipated retirements.<sup>50</sup> The Commission further stated that, while load growth might be more or less than ISO-NE anticipated, it was appropriate for ISO-NE to base the exemption on its current estimate of average annual load growth of 189 MW, given that it was the best estimate available to ISO-NE at that time. The Commission also noted that ISO-NE had committed to revisit the cap on the renewables exemption depending on load growth.<sup>51</sup> The Commission additionally stated that, based on ISO-NE's representations, the Commission anticipated that ISO-NE would implement sloped demand curves at the zonal level for FCA 10.<sup>52</sup>

### C. Appeal

21. On March 30, 2015, NextEra (together with NRG and PSEG) petitioned the D.C. Circuit for review of the Demand Curve and Rehearing Orders on the renewables

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<sup>47</sup> Exelon and Entergy rehearing request at 18-22.

<sup>48</sup> Rehearing Order, 150 FERC ¶ 61,065 at P 16.

<sup>49</sup> *Id.* P 17.

<sup>50</sup> *Id.* PP 20-21.

<sup>51</sup> *Id.* P 22.

<sup>52</sup> *Id.* P 24.

exemption issue, and on October 5, 2015 filed an initial brief,<sup>53</sup> and Entergy filed a separate brief as an intervenor supporting NextEra's position.<sup>54</sup>

22. On November 20, 2015, the Commission filed an unopposed motion for voluntary remand, stating that upon review of the opening briefs, it determined that further consideration by the Commission is appropriate and efficient.<sup>55</sup> The court granted the motion and remanded the proceeding to the Commission on December 1, 2015.<sup>56</sup>

## II. Discussion

### A. Overview

23. The Commission has sought to ensure that capacity prices are at a just and reasonable level, sufficient to incent economically-efficient existing resources to stay in the capacity market and new resources to enter, so as to enable ISO-NE to meet its reliability requirements.<sup>57</sup> In pursuing that goal, the Commission has also sought to accommodate the ability of states to pursue their policy goals.<sup>58</sup>

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<sup>53</sup> Brief of Petitioners, *NextEra Energy Resources, LLC, et al. v. FERC*, No. 15-1070 (D.C. Cir. filed Oct. 5, 2015) (NextEra Brief).

<sup>54</sup> Brief of Entergy Nuclear Power Marketing, LLC, *NextEra Energy Resources, LLC, et al. v. FERC*, No. 15-1070 (D.C. Cir. filed Oct. 20, 2015) (Entergy Brief).

<sup>55</sup> Unopposed Motion of Respondent, *NextEra Energy Resources, LLC, et al. v. FERC* No. 15-1070 (D.C. Cir. filed Nov. 20, 2015).

<sup>56</sup> *NextEra Energy Resources, LLC, et al. v. FERC*, No. 15-1070 (D.C. Cir. Dec. 1, 2015).

<sup>57</sup> *ISO New England Inc.*, 125 FERC ¶ 61,102, at P 43 (2008) (“The purpose of the New England [Forward Capacity Market] is to attract and retain sufficient capacity to maintain ISO-NE’s Installed Capacity Requirement, and to do so, [Forward Capacity Market] capacity prices will need to average out over time to the cost of new entry”).

<sup>58</sup> *NESCOE*, 142 FERC ¶ 61,108 at P 35 (“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”).

24. In this proceeding, ISO-NE stated that the purpose of the renewables exemption was to reconcile those competing objectives:

The renewables exemption included in the Demand Curve Changes is a reasonable means of accommodating legitimate state policies that favor renewable resources and that are not intended to suppress market-clearing prices, *while being sufficiently limited to alleviate design concerns.*<sup>59</sup>

25. ISO-NE acknowledged that “certain market participants have a legitimate need to satisfy their renewable portfolio standard obligations,” but also noted that, absent the renewables exemption, renewable resources developed to meet those obligations may not clear in the FCM due to the minimum offer price rule.<sup>60</sup> ISO-NE additionally recognized that “compared to the alternative of clearing the capacity market to satisfy [ISO-NE’s reliability targets] with non-renewable resources and then building renewable resources outside the market to satisfy renewable portfolio standards, the exemption does not require consumers to pay for additional capacity that exceeds the requirements of the demand curve.”<sup>61</sup>

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<sup>59</sup> Transmittal at 12 (emphasis added); *see also* Ethier Testimony at 39:

If resources are to be built pursuant to state-sponsored initiatives, it would be economically inefficient not to include them as counting toward meeting regional capacity requirements, because excluding them would require the building of a second, redundant set of resources to meet the same need. The [renewables] exemption acknowledges that these state sponsored resources do or will exist and reasonably addresses the inherent conflict between certain legitimate state actions and setting appropriate prices in the FCM.

<sup>60</sup> Transmittal at 12.

<sup>61</sup> *Id.* Under ISO-NE’s minimum offer price rule, renewable resources receiving state subsidies would not clear the FCA and would not be “counted” as part of the region’s capacity, and therefore, the FCA would require the procurement of additional resources to meet New England’s reliability targets. *See NESCOE*, 142 FERC ¶ 61,108 at PP 8-9. Thus if, for example, ISO-NE determines that it will need 300 MW of new capacity in a particular year, and 60 MW of new state-subsidized resources are developed

(continued ...)

26. Thus, ISO-NE's filing made clear that the decision to include a renewables exemption was an attempt to balance multiple considerations. In ruling on the renewables exemption, the Commission found that a sloped demand curve, together with a renewables exemption tied to load growth, would largely mitigate the impact associated with the renewables exemption:

Certain parties argue that price suppression resulting from the exemption is still a significant concern. We disagree. As ISO-NE explains, while exemptions in general can lower prices, the exemption proposed here is coupled with a sloped demand curve that will limit the impact of price suppression as compared to the existing vertical demand curve. . . . The renewable resource exemption is also tied to load growth . . . , so entry of renewable resources will, in most cases, only displace the new entry required to meet load growth. In such an eventuality, an FCM in equilibrium would likely clear near net CONE and attract merchant entry to meet resource retirement in ISO-NE, thus helping to mitigate any price suppressive effect of a renewable resource exemption.<sup>62</sup>

27. The Commission recognized the renewables exemption's potential to suppress capacity prices, and based its acceptance of the exemption in part on factors that would limit its price impact.

28. We are satisfied with the steps ISO-NE has taken to minimize any price suppression that might result from the renewables exemption, so that the FCM can still accomplish its purpose of procuring sufficient capacity for the region's reliability needs. The implementation of a sloped demand curve means that small changes in quantity will have a smaller impact on price than would be the case under a vertical demand curve construct. Additionally, capping the renewables exemption at 200 MWs per year will also temper the exemption's price suppressive effects.

29. We will now address the specific arguments raised by NextEra and Entergy on appeal of the Demand Curve Order.

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but cannot clear the FCA, the FCA would nevertheless clear (and require customers to fund the construction of) 300 MW of new capacity, when it would only be necessary to fund the construction of 240 MW of capacity through the FCA.

<sup>62</sup> Demand Curve Order, 147 FERC ¶ 61,173 at P 83.

**B. Whether Artificial Price Suppression is *Per Se* Unjust and Unreasonable**

**1. Parties' Arguments**

30. NextEra and Entergy argue that the Commission's authorization of artificial price suppression is *per se* unjust and unreasonable.<sup>63</sup> They challenge the renewables exemption, stating that all artificial price suppression creates unjust and unreasonable prices. NextEra asserts that the renewables exemption will lower the prices that would otherwise be paid to merchant generation resources that entered the market absent such an exemption, and that this result constitutes a "subsidy" of renewable resources by merchant generation.<sup>64</sup> Entergy considers price suppression to create "a transfer payment" from merchant generators to load.<sup>65</sup>

31. NextEra argues that, even if the renewables exemption will have less of an effect on prices with a sloped demand curve than with a vertical demand curve, permitting any price suppression is contrary to the purpose of the FCM – that is, to attract and retain sufficient capacity to maintain ISO-NE's Installed Capacity Requirement.<sup>66</sup> According to NextEra, the renewables exemption destroys the market-based price signals that the FCM was designed to provide, thus stifling economically efficient new investment and possibly causing existing resources to retire prematurely. NextEra states that under *Hope Natural*

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<sup>63</sup> NextEra Brief at 24-26, 32; Entergy Brief at 6-7.

<sup>64</sup> NextEra Brief at 24 ("Artificial suppression of capacity prices through out-of-market entry is *per se* unjust and unreasonable because it constitutes an unduly discriminatory preference that requires competitive merchant generation resources who are already in the market to bear the cost of new entry by uneconomic resources") and at 41 (citing Affidavit of Professor Joseph P. Kalt, Appendix A to NextEra Protest at 16:2-6 (Kalt Affidavit) ("This price suppression means that such subsidization is effectively paid for by third party suppliers who would otherwise realize competitively-set market-clearing prices"))).

<sup>65</sup> Entergy Brief at 16 (citing Affidavit of Michael M. Schnitzer on behalf of Entergy Nuclear Power Marketing, LLC and Exelon Corporation at 14 (Schnitzer Affidavit) ("A rejection of the [renewables] exemption would 'eliminate [a] transfer payment from generators to customers,' who would otherwise see reduced energy and capacity prices as a result of the exemption"))).

<sup>66</sup> NextEra Brief at 39.

*Gas*,<sup>67</sup> the Commission was required to evaluate the end result of ratemaking to determine whether a rate is just and reasonable, and that the Commission has failed to do so.<sup>68</sup>

## 2. Commission Determination

32. We continue to find that including an exemption to ISO-NE's minimum offer price rule is not *per se* unjust and unreasonable simply because it has the potential to suppress prices in the FCM.

33. The Commission must balance competing goals to assure just and reasonable rates. For example, with respect to market mitigation rules, the Commission has previously balanced the need for mitigating the potential exercise of market power and the risk of over-mitigation. As an example, in *PJM*, the Commission found that exempting wind and solar generation from PJM's minimum offer price rule appropriately met the balance between the need for mitigation of buyer-side market power against the risk of over-mitigation.<sup>69</sup> In that order, the Commission did not claim that such an exemption would have no impact on prices, but rather, stated that, given the small capacity value of solar and wind resources, such resources are poorly suited for intentionally suppressing market prices when compared to natural gas-fired resources.<sup>70</sup> Similarly, in *N.Y. Pub. Serv. Comm'n v. N.Y. Indep. Sys. Operator, Inc.*, the Commission determined that low capacity values and high development costs of renewable resources provide their developer with limited or no incentive and ability to exercise buyer-side

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<sup>67</sup> *FPC v. Hope Natural Gas Co.*, 320 U.S. 591 (1944) (*Hope Natural Gas*).

<sup>68</sup> NextEra Brief at 38, 40.

<sup>69</sup> See *PJM Interconnection L.L.C.*, 143 FERC ¶ 61,090, at P 26 (2013) (in addressing an adjustment to PJM's minimum offer price rule, the Commission stated that the modified rule "appropriately balances the need for mitigation of buyer-side market power against the risk of over-mitigation").

<sup>70</sup> *PJM*, 135 FERC ¶ 61,022 at P 153 ("wind and solar resources are a poor choice if a developer's primary purpose is to suppress capacity market prices. Due to the intermittent energy output of wind and solar resources, the capacity value of these resources is only a fraction of the nameplate capacity. This means that wind and solar resources would need to offer as much as eight times the nameplate capacity of a [natural gas] resource in order to achieve the same price suppression effect").



market power to artificially suppress capacity market prices.<sup>71</sup> Our finding here is consistent with the foregoing precedent. The renewables exemption fulfills the Commission's statutory mandate by protecting consumers from paying for redundant capacity. As discussed in ISO-NE's filing, the redundant capacity results from consumers paying for capacity that cleared through the FCA and separately paying for renewable resources built by state entities to meet state policy objectives.<sup>72</sup>

34. The Commission has previously explained that in assuring just and reasonable rates, the Commission "must strike a balance between, on one hand, setting a price that will retain enough existing resources to maintain reliability and, on the other hand, protecting consumers from overpaying for that capacity and minimizing price volatility that could undermine both investor and consumer confidence in the market."<sup>73</sup>

35. Accordingly, in this proceeding, we find that even though some price impact could occur from the renewables exemption, the Demand Curve Changes filing, including the renewables exemption, is consistent with the purpose of the FCM – namely, ensuring that price signals are sufficient to incent existing resources to stay in the capacity market, and new resources to enter, so that ISO-NE meets its reliability requirements at least cost.<sup>74</sup> Here, the record reflects that ISO-NE's stakeholders sought to accommodate the public

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<sup>71</sup> 153 FERC ¶ 61,022, at P 10 (2015) (*NYPSC Complaint Order*), ("Complainants have demonstrated that [New York Independent System Operator, Inc.]'s Services Tariff is unjust, unreasonable, or unduly discriminatory or preferential, pursuant to section 206 of the FPA, because it applies buyer-side market power mitigation to certain renewable and self-supply resources that have limited or no incentive and ability to artificially suppress [Installed Capacity] market prices").

<sup>72</sup> Transmittal at 12; *see also* Ethier Testimony at 39.

<sup>73</sup> *New England Power Generators Association, Inc. v. ISO New England Inc.*, 146 FERC ¶ 61,039, at P 52 (2014) (citations omitted). *See also New York Indep. System Operator, Inc.*, 122 FERC ¶ 61,064, at P 54, *order on reh'g*, 125 FERC ¶ 61,299 (2008) (rejecting use of updated demand curve factors that "do not recognize the need to balance the impact on consumers with the need to provide correct price signals for new generation entry").

<sup>74</sup> *See ISO New England Inc.*, 125 FERC ¶ 61,102, at P 43 (2008). We further note that a party may seek an exemption to the minimum offer price rule under FPA section 206, and the Commission's decision will be based on the unique facts of every such proposal. Buyer Market Power Order, 135 FERC ¶ 61,029 at PP 170-171.

policy objectives of the six New England states. Moreover, although ISO-NE recognized that the renewables exemption was likely to result in some degree of price suppression, it provided testimony to support its position that the impact on price would not be significant when paired with a downward-sloping demand curve,<sup>75</sup> thus addressing concerns that the renewables exemption would vitiate the FCM's primary function of ensuring that the region has sufficient capacity to meet reliability needs.

36. Although the Commission has previously agreed with arguments that uneconomic capacity suppresses prices, regardless of intent, and that such uneconomic entry can produce unjust and unreasonable prices by artificially depressing capacity prices,<sup>76</sup> the Commission also explained in those cases that "parties [had] not provided sufficient specificity to allow us to approve an appropriately narrow exemption."<sup>77</sup> In the instant proceeding, ISO-NE proposed under FPA section 205 an exemption for renewables that struck an appropriate balance of competing interests on this issue and presented evidence that the impact on price from the limited renewables exemption would not be

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<sup>75</sup> Ethier Testimony at 39-42 (providing demonstration of how capacity prices will be affected by zero-priced renewables under both a vertical and a downward-sloping demand curve, and also noting that "[u]nder a demand curve, as long as exempted renewable entry does not exceed average annual load growth, and consequent growth in the installed capacity requirement, there will not be systematic downward pressure on prices").

<sup>76</sup> See Buyer Market Power Order, 135 FERC ¶ 61,029 at P 170:

The Commission acknowledges the rights of states to pursue policy interests within their jurisdiction. Our concern, however, is where pursuit of these policy interests allows uneconomic entry of [out-of-market] capacity into the capacity market that is subject to our jurisdiction, with the effect of suppressing capacity prices in those markets. . . . [out-of-market] capacity suppresses prices regardless of intent and . . . the Commission has previously found that uneconomic entry can produce unjust and unreasonable prices by artificially depressing capacity prices, and therefore, the deterrence of uneconomic entry falls within the Commission's jurisdiction [citation omitted]. . . .

<sup>77</sup> *Id.* P 171.

significant.<sup>78</sup> As the Commission noted in the *NYPSC Complaint Order*, the Commission agrees that limiting the amount of renewable resources that may qualify for the exemption each year mitigates concerns about the potential for artificial price suppression.<sup>79</sup>

**C. Whether the Commission Failed to Consider Certain Specific Arguments as to the Extent of Price Suppression**

**1. Failure to Address Hunger and Schnitzer Testimony**

**a. Parties' Arguments**

37. NextEra and Entergy contend that the Commission failed to examine evidence provided by Dr. Hunger<sup>80</sup> and Mr. Schnitzer<sup>81</sup> showing that the renewables exemption would severely suppress prices even under a sloped demand curve,<sup>82</sup> and argue that the Commission did not explain how it factored this evidence into its reasoning or purport to balance any particular quantity of price suppression against any particular value (monetary or otherwise) achieved by permitting uneconomic new entry.

38. NextEra argues that a sloped demand curve is not “a panacea for price suppression,” in that even though the demand curve is no longer vertical, the supply curve is still very steep at the margin where it intersects the demand curve, so that even a small change in supply conditions at the margin will significantly affect the market. It asserts that, as there is no cumulative limit to the renewables exemption, other than the 600 MW cap on new out-of-market entry in a single auction, the price suppressive effects

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<sup>78</sup> Ethier Testimony at 39-42 (“Under a demand curve, as long as exempted renewable entry does not exceed average annual load growth, and consequent growth in the installed capacity requirement, there will not be systematic downward pressure on prices”).

<sup>79</sup> See, *NYPSC Complaint Order*, 153 FERC ¶ 61,022, at P 49.

<sup>80</sup> NextEra Brief at 22-26 and 33-38 (citing Affidavit of Dr. David Hunger in Support of Limited Protest of New England Power Generators Association, Inc., Docket No. ER14-1639-000 (Apr. 22, 2014) (Hunger Affidavit)).

<sup>81</sup> Entergy Brief at 5-10 and 12-13 (citing Schnitzer Affidavit)).

<sup>82</sup> NextEra Brief at 33-38, Entergy at 5-10.

of the exemption continue for years to come. NextEra therefore asserts that the amount of price suppression that will occur even under a sloped demand curve will be sufficiently significant to cause concern.<sup>83</sup>

**b. Commission Determination**

39. Although we discuss below the evidence developed by NextEra's and Entergy's witnesses Hunger and Schnitzer, we reject the implied assumption that the Commission must develop a bright line for the amount of artificial price suppression that is or is not acceptable. As stated above, the Commission finds that ISO-NE supported as just and reasonable its proposal to exempt renewables from the minimum offer price rule, given that the exemption's impact on price would be limited by the sloped demand curve and the 200-MW limit on the amount of resources that could qualify for the exemption.

40. ISO-NE and petitioners presented conflicting estimates of how greatly prices would be affected under the renewables exemption. This difference in estimates is largely based on ISO-NE and petitioners making different assumptions about the steepness of the supply curve at the point that it intersects with the demand curve. We disagree with petitioners' assumption that the sloped demand curve will not sufficiently address price suppression because the supply curve is very steep at its intersection with the demand curve.<sup>84</sup> First, we note that, for a given auction, the characteristics of the FCA supply curve may be such that the renewables exemption has little to no impact on the FCA clearing price when new capacity is needed. As ISO-NE stated, for auctions in which new capacity is needed and there is a deep pool of competitive entrants, the part of the supply curve that the demand curve intersects will be relatively flat (elastic).<sup>85</sup> This is because, in a deep, competitive pool, we would expect several suppliers with offers near net CONE. Accordingly, in such instances, ISO-NE has concluded that allowing a limited number of renewable resources to enter the FCA at a zero price should not result in a clearing price that deviates far from net CONE.<sup>86</sup> In contrast, petitioners reasoned

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<sup>83</sup> NextEra Brief at 35-38.

<sup>84</sup> NextEra Brief at 35.

<sup>85</sup> See Ethier Testimony at 8-9.

<sup>86</sup> Ethier Testimony at 40:

Under the ISO sloped demand curve, the [scenario in which] all resources offering as price takers at a quantity equal to [the Net Installed Capacity Requirement, the quantity of capacity

(continued ...)

that low load growth, clearing non-divisible bids in a prior auction,<sup>87</sup> and the presence of low priced new resources, such as demand response, would cause the supply curve to be much steeper at the point of intersection.<sup>88</sup>

41. After considering both arguments, we agree with ISO-NE's assessment of the steepness of the supply curve at the point of intersection when new entry is needed. Load growth and retirements should ensure that, in years where new entry is needed, the supply curve is relatively flat at the point of intersection (i.e., the point of intersection will occur on the portion of the supply curve that reflects new entrants).<sup>89</sup> And, as we have noted below, while load growth may be limited, ISO-NE anticipates significant retirements in upcoming years.<sup>90</sup>

42. Moreover, in response to NextEra's concern that there is no cumulative limit to the amount of renewables that can enter the market indefinitely under this exemption, we note that in no circumstances will more than 600 MW of renewable resources enter the FCM in any given year, and once that 600 MW is met, in the next year, only 200 MW of

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required to meet reliability targets] (which implies that there is no new merchant entry) – results not in a zero price, but in a price of approximately \$13.00/kW-month – the price at which the demand curve crosses [the Net Installed Capacity Requirement]. This is a substantial improvement in pricing that will significantly reduce the expected impacts of subsidized renewables entering the market.

<sup>87</sup> For example, if a 500 MW new entrant cleared in the prior auction, but 300 MW of the new resource was excess, then, in the next auction, load growth/retirements of at least 300 MW would be required to fully absorb the excess from the prior auction.

<sup>88</sup> See Schnitzer Affidavit at 7-9.

<sup>89</sup> Although, as noted by petitioners, non-divisible bids and low priced new resources may also affect the point of intersection, this would be the case even if there were no renewables exemption. Any price suppression caused by non-divisible bids and lower priced new resources is thus irrelevant to our analysis.

<sup>90</sup> ISO-NE has estimated that by 2020, resources representing about 30 percent of regional capacity have committed to cease operation or are at risk of retirement. [http://www.iso-ne.com/static-assets/documents/2016/03/2016\\_reo.pdf](http://www.iso-ne.com/static-assets/documents/2016/03/2016_reo.pdf).

renewable capacity will be able to enter through this exemption.<sup>91</sup> Thus, we find that the record adequately supports the economic principles upon which the Commission relied in accepting ISO-NE's proposed renewables exemption.<sup>92</sup>

43. With regard to the specifics of NextEra's attempts to quantify the effect the renewables exemption will have on prices, NextEra claimed that the renewables exemption would lower capacity prices by up to eight percent annually.<sup>93</sup> However, such evidence offered by NextEra assumed that 100 MW, 200 MW, or as much as 600 MW of renewables would utilize the exemption, and it based its estimates of lost revenues on these 100-600 MW quantities. ISO-NE points out in its answer that the 200 MW and 600 MW amounts are caps based on capacity value; the amount of renewable capacity that will actually qualify for any exemption in most years is likely to be lower than these

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<sup>91</sup> Ethier Testimony at 37-38:

If no resources are classified as Renewable Technology Resources in FCA 9, the 200 MW limit will be carried-forward and the limit in the second year (FCA 10) will be raised to 400 MW. If once again no resources are classified as Renewable Technology Resources, the limit in the third year (FCA 11) will be raised to 600 MW. But if in the fourth year (FCA 12) again no resources qualify as Renewable Technology Resources, the limit will stay at 600 MW (and will not exceed 600 MW going forward). If in any FCA the total limit is met, the following FCA will return to a 200 MW limit.

<sup>92</sup> The Commission "may permissibly rely on economic theory alone to support its conclusions so long as it has applied the relevant economic principles in a reasonable manner and adequately explained its reasoning." *Cent. Hudson Gas & Elec. Corp. v. FERC*, 783 F.3d 92, 109 (2d Cir. 2015). *See also Sacramento Mun. Util. Dist. v. FERC*, 616 F.3d 520, 531 (D.C. Cir. 2010) ("[I]t was perfectly legitimate for the Commission to base its findings about the benefits of marginal loss charges on basic economic theory, given that it explained and applied the relevant economic principles in a reasonable manner").

<sup>93</sup> NextEra Protest at 11-12. Mr. Schnitzer performed a similar analysis to Dr. Hunger, but he concluded that capacity prices would decrease roughly five to ten percent. He notes that his conclusions differ from Dr. Hunger's because they used different assumptions as to the slope of the supply curve. Schnitzer Affidavit at 6.

caps. That is because there is a large gap between the capacity value of renewable resources and their nameplate capacity. In New England, the capacity value of wind and solar resources is approximately 20 percent of nameplate capacity,<sup>94</sup> reflecting the fact that a renewable resource is typically not able to consistently provide to the energy market 100 percent of its nameplate capacity value. Therefore, about 1000 MW of renewable nameplate capacity would need to qualify as renewable capacity in each year to reach the 200 MW cap.

44. The qualification of resources for FCA 9 and the results of FCA 10 demonstrate that petitioners' projections appear to have been unrealistic. In fact, only 79 MW of renewable resources qualified for the auction in FCA 9,<sup>95</sup> and only 71 MW of new wind and solar resources cleared in FCA 10.<sup>96</sup> Using Dr. Hunger's own assumptions, as presented in tabular form by NextEra, as less than 100 MW of renewable resources qualified for the exemption in FCA 9, the price impact would be less than five percent in that given year.<sup>97</sup> Similarly, with regard to Mr. Schnitzer's assumptions, given that his testimony estimated that 200 MW of exempt renewables would reduce prices by 53 cents/kw-month, we note that the entry of roughly 70 MW of renewables would reduce prices by far less than that. Thus, the auctions to date have resulted in a lower price impact than predicted by Dr. Hunger and Mr. Schnitzer.

## **2. Zonal Demand Curves and Proration**

### **a. Parties' Arguments**

45. Entergy and NextEra argue that the Commission's acceptance of the renewables exemption presumed that vertical demand curves would only be in place in local capacity

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<sup>94</sup> See ISO-NE May 1, 2014 Answer at 15 (ISO-NE qualifies wind and solar resources at a capacity value that is approximately 20 percent of their nameplate capacity value).

<sup>95</sup> ISO-NE Transmittal in Docket No. ER15-328-000 at 16.

<sup>96</sup> ISO New England Inc., *ISO-NE Finalized Capacity Auction Results Confirm 10th FCA Procured Sufficient Resources, at a Lower Price, for 2019–2020*, at 1 (Feb. 2016), [http://www.iso-ne.com/static-assets/documents/2016/02/20160229\\_fca10\\_finalresults.pdf](http://www.iso-ne.com/static-assets/documents/2016/02/20160229_fca10_finalresults.pdf).

<sup>97</sup> NextEra Protest at 12, Table 1.

zones for FCA 9, limiting the duration of any price suppression from the exemption.<sup>98</sup> Entergy states that while there is a fundamental dispute regarding the degree to which a renewables exemption coupled with a sloped demand curve will suppress capacity prices, there is no dispute that a renewables exemption would have a large “downward effect on prices” under a vertical demand curve,<sup>99</sup> and the Commission failed to consider that if a large amount of renewable resources entered a single zone with a vertical demand curve, that would have a more significant effect on the price in that zone than would be the case in the entire New England market.<sup>100</sup> Entergy further asserts that the Commission’s rationales for supporting the renewables exemption in the local capacity zones are no longer valid because ISO-NE has not submitted zonal sloped demand curves as expected.<sup>101</sup>

**b. Commission Determination**

46. As discussed above, in the Demand Curve Order the Commission recognized that a sloped demand curve was important to help mitigate price suppression created by the renewables exemption. The Commission noted ISO-NE’s commitment to propose zonal sloped demand curves for use in FCA 10, and reasoned that allowing the renewables exemption to be used for a single auction (FCA 9) in which some zones may retain a vertical demand curve would not significantly suppress prices.<sup>102</sup> We continue to believe that the Commission’s acceptance of ISO-NE’s proposal was appropriate, since it allowed the New England region to begin experiencing the benefits of a system-wide sloped demand curve, and since it was based on the best information available about ISO-NE’s schedule to implement zonal sloped demand curves. With regard to Entergy’s concern that a sufficiently large number of renewable resources will enter a single zone to

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<sup>98</sup> Entergy Brief at 4; NextEra Brief at 42.

<sup>99</sup> Entergy Brief at 6.

<sup>100</sup> *Id.* at 7.

<sup>101</sup> *Id.* at 8.

<sup>102</sup> Demand Curve Order, 147 FERC ¶ 61,173 at P 85, Rehearing Order, 150 FERC ¶ 61,065 at P 24.



significantly impact that zonal price, we reiterate that we consider this possibility to be no more than speculative.<sup>103</sup>

47. We note that the Commission has since directed ISO-NE to file a proposal to implement such zonal curves for FCA 11. Specifically, on December 28, 2015, the Commission issued an order finding ISO-NE's Tariff unjust, unreasonable, unduly discriminatory or preferential because its FCM rules continue to apply vertical demand curves within constrained zones and instituted a FPA section 206<sup>104</sup> proceeding to require ISO-NE to submit Tariff revisions that provide for inclusion of zonal sloped demand curves in its FCM rules, to be implemented beginning with FCA 11.<sup>105</sup> ISO-NE requested, and the Commission granted, a limited extension of time until April 15, 2016, in order to "permit New England stakeholders to complete the stakeholder process," to make the required filing.<sup>106</sup> Thus, going forward, arguments based on the circumstance that certain zones retain a vertical demand curve will be moot.

48. Although the Commission expected ISO-NE to file zonal sloped demand curves in time for FCA 10, ISO-NE and its stakeholders had difficulty developing a proposal that would reasonably satisfy reliability, market efficiency and pricing objectives with reasonable market power protections.<sup>107</sup> Despite this delay, ISO-NE has now announced that it was able to procure sufficient capacity in FCA 10 to meet its reliability

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<sup>103</sup> Demand Curve Order, 147 FERC ¶ 61,173 at P 85 ("We do not share concerns regarding the effect of the exemption on zones that retain the vertical demand curve for FCA 9 (and specifically on Maine . . .) . . . . Even if 1,000 MW of renewable resources do qualify in Maine (because ISO-NE qualifies wind and solar resources for capacity market participation at approximately 20 percent of their nameplate capacity), other states in New England will likely qualify resources, leading to prorating; thus, all 200 MW would not be located in Maine").

<sup>104</sup> 16 U.S.C. § 824e (2012).

<sup>105</sup> *ISO New England Inc.*, 153 FERC ¶ 61,338, at PP 1, 11 (2015) (requiring ISO-NE to include zonal sloped demand curves in its FCM rules by March 31, 2016).

<sup>106</sup> Notice of Extension of Time, Docket No. EL16-15-000 extending March 31, 2016 deadline to April 15, 2016 (February 3, 2016).

<sup>107</sup> ISO-NE Report on Progress Toward Developing Zonal Demand Curve Improvements, Docket No. ER14-1639-000 (May 18, 2015).

requirements.<sup>108</sup> With regard to Entergy's concern that the renewables exemption could cause excessive price suppression in auctions that occur before the implementation of sloped zonal demand curves, as noted above, only 71 MW of new renewable resources cleared the auction in FCA 10.<sup>109</sup> While ISO-NE does not identify how much of this 71 MW of new renewables relied on the exemption at issue, the total is necessarily well-below the 200 MW cap, indicating that the exemption performed within the limits required by the Demand Curve Order.<sup>110</sup> The Commission determined, and continues to believe, that implementing a sloped demand curve system-wide represented an important improvement to the FCM by addressing some of the challenges presented by the use of a vertical demand curve in previous auctions.<sup>111</sup>

### **3. Reliance on Load Growth to Offset Price Suppression**

#### **a. Parties' Arguments**

49. NextEra argues that the Commission's reliance on load growth to offset the impact of the renewables exemption conflicts with the purpose of the FCM.<sup>112</sup> Specifically, NextEra argues that the renewables exemption will block any competition to meet increased demand from competitive suppliers, because it will meet load growth with resources supported by out-of-market revenues. Thus, NextEra argues, the

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<sup>108</sup> ISO New England Inc., ISO-NE Finalized Capacity Auction Results Confirm 10<sup>th</sup> FCA Procured Sufficient Resources, at a Lower Price, for 2019-2020 (Feb. 2016, [http://www.iso-ne.com/static-assets/documents/2016/02/20160229\\_fca10\\_finalresults.pdf](http://www.iso-ne.com/static-assets/documents/2016/02/20160229_fca10_finalresults.pdf)); *see also* Transmittal, ISO New England Inc., Docket No. ER16-1041-000 (filed Feb. 29, 2016) (transmitting the results of FCA 10 for Commission review).

<sup>109</sup> *See supra* n. 96. Also as noted above, only 79 MW of renewables qualified for the auction in FCA 9, *see supra* n. 95.

<sup>110</sup> *See supra* n.108. The results of FCA 10 are currently under review in Docket No. ER16-1041 and the Commission does not here prejudge the outcome of those proceedings. Any concerns relating to FCA 10 results, including qualification for the renewables exemption, are appropriately addressed in that proceeding.

<sup>111</sup> Demand Curve Order, 147 FERC ¶ 61,173 at P 29.

<sup>112</sup> *Id.* at 45.

Commission's decision conflicts with its previous ruling in *NEPGA*,<sup>113</sup> which rejected the rule that later evolved into the minimum offer price rule on the grounds that "uneconomic capacity would displace 'what would otherwise be the marginal, price-setting existing resource.'"<sup>114</sup>

50. NextEra further argues that the Commission's reasoning fails because the exemption has no "tie" to load growth – that is, the exemption continues whether or not demand actually increases.<sup>115</sup> In fact, NextEra notes, ISO-NE now forecasts that annual load growth will be less than 200 MW.<sup>116</sup> NextEra notes that ISO-NE's witness, Dr. Ethier, conceded that "when the market is long, ... renewable entry would be expected to slow the market's return to equilibrium."<sup>117</sup>

51. Additionally, Entergy and NextEra contend that the Commission's reliance on the 200 MW cap failed to address the argument that this amount would serve a much greater proportion of need in a substantially smaller local capacity zone than it would in the entire New England market.<sup>118</sup> NextEra also argues that, because load growth in any single zone is likely to be less than 200 MW, it is not necessary for the entire 200 MW to clear in a single capacity zone in order for price suppression to occur.<sup>119</sup>

#### **b. Commission Determination**

52. As petitioners note, resources that use the renewables exemption may displace other new entrants into the FCM. However, ISO-NE's proposal to base the renewables exemption on load growth ensures that on average over time, as long as load growth exceeds the entry of renewable resources, other new entrants will be required to meet

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<sup>113</sup> *New England Power Generators Association, Inc. v. FERC*, 757 F.3d 283 (D.C. Cir. 2014) (*NEPGA*).

<sup>114</sup> NextEra Brief at 46 (citing *NEPGA*, 757 F.3d at 293).

<sup>115</sup> NextEra Brief at 47.

<sup>116</sup> *Id.* at 48.

<sup>117</sup> *Id.* at 37 (citing Ethier Testimony at 40).

<sup>118</sup> Entergy Brief at 7; NextEra Brief at 43.

<sup>119</sup> NextEra Brief at 43.

ISO-NE's installed capacity requirement, mitigating the impact of any price suppression. Although petitioners question whether there will actually be 200 MW of load growth on an annual basis, the 200 MW limit represented ISO-NE's best estimate at the time it submitted the Demand Curve Changes.<sup>120</sup>

53. Moreover, we note that, in contrast to the data to which NextEra points (which only involve decreases in load),<sup>121</sup> ISO-NE estimates that resource retirements are predicted to far exceed the exemption cap, increasing the need for new capacity in ISO-NE, and mitigating the price impact of the renewables exemption. Out of a roughly 35,000 MW market, ISO-NE previously estimated that retirements may exceed

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<sup>120</sup> Ethier Testimony at 41:

Under a demand curve, as long as exempted renewable entry does not exceed average annual load growth, and consequent growth in the installed capacity requirement, there will not be systematic downward pressure on prices. The [renewables] limit is therefore set at the ISO's estimate of average annual load growth (net of energy efficiency) of 189 MW, plus an adjustment for the reserve margin required to meet the installed capacity requirement, resulting in 200 MW as a reasonable [cap on the renewables exemption] that also accommodates the states' renewable energy goals. . . . [If renewables entry occurs up to the cap,] an FCM in equilibrium would still be expected [to] clear near Net CONE, and merchant entry would be required to meet retirements, which are expected to be significant – by some estimates, retirements in New England may exceed 6,500 MW by 2020.

Moreover, we note ISO-NE's commitment to revisit the cap on the renewables exemption in the future, should the entry of renewable resources exceed load growth. Rehearing Order, 150 FERC ¶ 61,065 at P 22 (citing ISO-NE Answer, Docket No. ER14-1639-000, at 16 (filed May 1, 2014)).

<sup>121</sup> NextEra Brief at 48 (citing ISO-NE's 2015 Regional Electricity Outlook and noting that ISO-NE's updated assumptions for the 2017/18 delivery year decrease the Load Forecast by 589 MW and decrease the Installed Capacity Requirement by 413 MW, and the updated assumptions for the 2018/19 delivery year decrease the Load Forecast by 486 MW and decrease the Installed Capacity Requirement by 305 MW).

6,500 MW by 2020.<sup>122</sup> More recently, ISO-NE has estimated that by 2020, resources representing about 30 percent of regional capacity have committed to cease operation or are at risk of retirement.<sup>123</sup> This underscores the need for new entry in the FCM, which will mitigate the impact of the renewables exemption. And, as noted above, we consider the possibility that a sufficiently large number of renewable resources will enter a single zone to significantly impact that zonal price to be speculative.<sup>124</sup>

#### **4. Use of 1,100 MW of Past Uneconomic Entry**

##### **a. Parties' Arguments**

54. During Commission proceedings leading up to the issuance of the Demand Curve Order, ISO-NE stated in response to protests that, although the modeling of the sloped demand curve provided by the Brattle Group<sup>125</sup> did not include the 200 MW of renewables that might suppress price under the exemption, “historical entry (and therefore Brattle’s modeling) did include over 1,100 MW of zero-priced state-sponsored natural gas entry that would be prohibited under today’s minimum offer price rules,” and that, since those “substantial additions of zero-priced capacity” were considered as part of ISO-NE’s modeling of the demand curve, they were “a more than adequate proxy for the expected renewable entry under the proposed exemption.”<sup>126</sup> In the Demand Curve Order, the Commission agreed that ISO-NE’s modeling adequately addresses concerns about potential price suppression.<sup>127</sup>

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<sup>122</sup> Ethier Testimony at 41.

<sup>123</sup> ISO New England Inc., *2016 Regional Electricity Outlook* (March 2016), [http://www.iso-ne.com/static-assets/documents/2016/03/2016\\_reo.pdf](http://www.iso-ne.com/static-assets/documents/2016/03/2016_reo.pdf).

<sup>124</sup> *See supra* P 46 and accompanying note 103.

<sup>125</sup> *See* ISO New England Inc., Attachment to Transmittal, Docket No. ER14-1639-000, (Testimony of Dr. Samuel Newell and Dr. Kathleen Spees) (Newell-Spees Testimony).

<sup>126</sup> ISO-NE May 1, 2014 Answer at 16.

<sup>127</sup> *See* Demand Curve Order, 147 FERC ¶ 61,173 at P 84; *see also* Rehearing Order, 150 FERC ¶ 61,065 at P 23.

55. NextEra argues that, contrary to the Commission's finding, ISO-NE's inclusion of 1,100 MW of zero-priced state-sponsored entry in its modeling fails to adequately address concerns that the renewables exemption would severely suppress prices under a sloped demand curve, because the Commission does not explain how past uneconomic entry can justify new uneconomic entry.<sup>128</sup> Moreover, according to NextEra, the Commission's response did not recognize that the renewables exemption has no sunset provision and therefore permits up to 1,200 MW of new uneconomic entry in six years.<sup>129</sup>

**b. Commission Determination**

56. NextEra misunderstands the manner in which ISO-NE used the 1,100 MW of zero-priced entry in question. ISO-NE's statement here, in essence, focused on whether the *supply* curve estimated by ISO-NE – a necessary step in the process of establishing demand curve parameters that achieve the reliability objective – incorporated an adequate proxy for the supply that may enter under the renewables exemption. We find that it did.

57. As explained in the Newell-Spees Testimony, a realistic supply curve was shaped by using historical FCM offer prices and quantities in conjunction with a series of modeling techniques. ISO-NE data was used where available, but the FCM price floors which were in effect for FCAs 1-7 prevented the revelation of offers below the price floor.<sup>130</sup> However, Drs. Newell and Spees did include, in their modeling of the supply curve, over 1,100 MW of zero-priced state-sponsored natural gas entry that would be prohibited under today's minimum offer price rules.<sup>131</sup> Thus, ISO-NE's argument was not that past zero-priced state-sponsored entry justifies new zero-priced state-sponsored entry, as NextEra suggests. Rather, ISO-NE's argument was that the effect of the renewables exemption of 200 - 600 MW per year on the supply curve used to establish the demand curve parameters for the future is adequately demonstrated by the inclusion of 1,100 MW of historical uneconomic entry to the supply curve. Thus, no further modeling of the renewables exemption is necessary to approximate the price impact of the exemption. We agree with the latter argument.

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<sup>128</sup> Next Era Brief at 51 (citing Demand Curve Order, 147 FERC ¶ 61,173 at P 84).

<sup>129</sup> NextEra Brief at 51-52.

<sup>130</sup> See Newell-Spees Testimony at 14-16. In such cases, PJM supply curves were used to construct the portions of the supply curve at lower prices.

<sup>131</sup> ISO-NE Answer at 16.

**D. Price Suppression in Energy Markets and Impact on Winter Reliability**

**1. Parties' Arguments**

58. Entergy asserts that the Commission should have considered the impact the renewables exemption would have on the energy market. Entergy argues that the Commission's view is that "such harms can be ignored because they occur with or without the exemption."<sup>132</sup> Entergy states that if renewable entry would occur with or without a renewables exemption in the capacity market, then the exemption is not needed to support state policies meant to encourage the development of renewable resources.<sup>133</sup>

59. Entergy argues that the renewables exemption in the capacity market will lead to price suppression in the energy market because the exempt renewables would most likely be price takers and offer zero or negative bids.<sup>134</sup> Entergy contends that price suppression will follow because adding subsidized capacity at zero or negative offer prices shifts the energy supply curve to the right and results in lower energy clearing prices than would otherwise occur.<sup>135</sup> Furthermore, Entergy states that such price impacts are more pronounced in the energy market than in the capacity market, because the renewable resources qualify for only a portion of their nameplate capacity in the capacity auction. Therefore, Entergy concludes, a cumulative 600 MW capacity exemption could correspond to at least 2,400 MW of entry into the energy market which

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<sup>132</sup> Entergy Brief at 15-16 (citing Demand Curve Order, 147 FERC ¶ 61,173 at P 84) ("the renewables exemption should not have any meaningful effect on energy market prices because the renewable entry is occurring pursuant to state laws and programs that are not generally conditioned upon capacity market participation").

<sup>133</sup> See Entergy Brief at 15-16 (citing Entergy Rehearing Request at 24) ("FERC's view is that such harms can be ignored because they occur with or without the exemption. See Demand Curve Order[, 147 FERC ¶ 61,173, at] P 84. This view is inconsistent with FERC's approval of the exemption: if renewable entry would occur with or without a renewable exemption in the capacity market, then the exemption is not needed to support state policies, and 'there is no need to allow below-cost offers to skew resulting market clearing prices' in the capacity market").

<sup>134</sup> Entergy Brief at 11.

<sup>135</sup> *Id.* at 12 (citing Schnitzer Affidavit at 10).

translates into energy market price suppression of at least \$3 to \$6 per megawatt-hour annually.<sup>136</sup>

60. Entergy asserts that the renewables exemption would significantly harm baseload generators in the New England market, because merchant baseload generators like nuclear facilities typically rely on both energy and capacity revenues to remain economically viable, with energy revenues being the more significant component. Entergy states that its witness Mr. Schnitzer calculated that a 1,000 MW baseload facility would lose \$25 million to \$50 million in revenues each year as a result of the renewables exemption, which combined with annual losses of \$6 million to \$17 million in the capacity markets, is significant enough to increase the retirement risk of a baseload generator. Entergy argues that this process will lead to a loss of fuel diversity, increase in emissions (in the case of nuclear retirements), and further stress on winter fuel supplies.<sup>137</sup>

61. Entergy also argues that the Commission ignored evidence that price suppression in the energy market resulting from the renewables exemption could threaten winter reliability in New England. It states that winter natural gas supplies in New England have been barely adequate or slightly in deficit of peak requirements through 2020. It argues that Mr. Schnitzer's analysis shows that the largest price suppressive effects of the renewables exemption occur during the winter peak period, which in turn reduces the likelihood of investment in winter fuel supply arrangements such as dual fuel capability or liquefied natural gas.

## 2. Commission Determination

62. As to Entergy's assertion that the renewables exemption will harm the energy market, Entergy has misconstrued the Commission's intent in stating that "the renewables exemption should not have any meaningful effect on energy market prices because the renewable entry is occurring pursuant to state laws and programs that are not generally conditioned upon capacity market participation."<sup>138</sup> The Commission did not mean, as Entergy suggests, that the renewables exemption from the minimum offer price rule is necessary to support state objectives, such as the development of renewable resources. To the contrary, the Commission's acceptance of the renewables exemption is an

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<sup>136</sup> Entergy Brief at 12 (citing Schnitzer Affidavit at 10).

<sup>137</sup> Entergy Brief at 13 (citing Schnitzer Affidavit at 12-13).

<sup>138</sup> Demand Curve Order, 147 FERC ¶ 61,173 at P 84.



acknowledgement that those resources will be constructed with or without a renewables exemption. As part of the Commission's obligation to ensure just and reasonable prices to consumers, the Commission may consider those external circumstances, and their impact on rates, in balance with the intent and purpose of the FCM – namely, to ensure reliability. In our view, ISO-NE's proposed renewables exemption, together with protections against excessive price suppression contained in that proposal, meets that goal.

63. We disagree with Entergy's argument that the price impact of the renewables exemption will be more pronounced in the energy market than in the capacity market. Entergy asserts that the renewables exemption "is a financial incentive, which will attract additional renewable capacity" that will create a greater impact on energy market prices than would otherwise be the case.<sup>139</sup> As discussed above, we anticipate that renewable resources will be constructed, and will participate in the energy market, regardless of the renewables exemption, as these resources are needed to accomplish state policy goals. Thus, we do not view the renewables exemption here as having an impact on energy market prices that would not occur absent the exemption. Additionally, as Entergy observes, because the capacity market qualification is only a portion of a renewable resource's nameplate capacity, 600 MW of exempted resources in the capacity market corresponds to at least 2,400 MW of renewable resources in the energy market. As noted above,<sup>140</sup> the reduction taken in the capacity market reflects the fact that a renewable resource is typically not able to consistently provide to the energy market 100 percent of its nameplate capacity value, and this reduced value more accurately estimates a resource's energy market contribution, on average. For example, wind resources will not likely suppress peak period energy prices with zero or negative bids as these resources tend to be dispatched in the energy market at off-peak periods.

64. We also disagree with the assertion that the renewables exemption will lead to less fuel diversity in New England, or will imperil winter reliability. We note that ISO-NE's recent *Regional Electricity Outlook*, published in early 2016, shows that the most significant shift in the region's generation fuel mix has been the shift to natural gas-powered resources: between 2000 and 2015, the percentage of natural gas used in New England's energy market has gone from 15 to 49 percent, largely replacing coal (which went from 18 to 4 percent) and oil (which went from 22 to 2 percent). By contrast, the amount of renewable energy in New England shifted during this period from 8 percent to

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<sup>139</sup> Entergy Brief at 5.

<sup>140</sup> See *supra* note 94.

9 percent.<sup>141</sup> To the extent that ISO-NE or its stakeholders view this as a reliability problem, we encourage stakeholders to work together with ISO-NE to develop a solution that addresses all aspects of the situation.

65. With regard specifically to winter reliability, we note that ISO-NE has now implemented its two-settlement capacity market,<sup>142</sup> to address the fleet performance problems to which Entergy alludes. It is our expectation that the significant financial awards for performance and financial penalties for resource non-performance that are now present through the two-settlement mechanism will provide the necessary incentive to ensure that resources take the appropriate steps to meet their capacity obligations.

## **E. Failure to Follow Precedent**

### **1. Parties' Arguments**

66. NextEra argues that the Commission departed from “prior and contemporaneous holdings” regarding the effects of out-of-market resource entering the New England capacity markets and in its prior rejection of a similar renewables exemption to that at issue here.<sup>143</sup> NextEra further asserts that the Commission’s orders in this proceeding “contravene New England capacity market fundamentals laid down as the basis for reforming the market and adopting a minimum offer price rule.”<sup>144</sup> NextEra argues that the Commission focused on distinguishing one case – *NESCOE*– on procedural grounds, but failed to address other precedent.<sup>145</sup>

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<sup>141</sup> ISO New England Inc., *2016 Regional Electricity Outlook* (March 2016), [http://www.iso-ne.com/static-assets/documents/2016/03/2016\\_reo.pdf](http://www.iso-ne.com/static-assets/documents/2016/03/2016_reo.pdf).

<sup>142</sup> *ISO New England Inc.*, 149 FERC ¶ 61,009 (2014), *reh. denied*, 153 FERC ¶ 61,223 (2015).

<sup>143</sup> NextEra Brief at 52.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.* at 28, 52-56 (citing *NESCOE*, *supra* note 14).

## 2. Commission Determination

67. As discussed above,<sup>146</sup> both in the proceedings leading to the issuance of the Buyer Market Power order, and in *NESCOE*, the Commission allowed for the possibility that a party might file a complaint under section 206 where an exemption to the minimum offer price rule could be shown to be just and reasonable. The Commission additionally stated, in an order issued contemporaneously with *NESCOE*, that “given the large number of stakeholders that supported some form of renewable resource exemption, we encourage ISO-NE to undertake the development of a stakeholder process for such an exemption which could include the development of a [downward-sloping] demand curve.”<sup>147</sup> In its order on rehearing in this proceeding, the Commission explained that “complainants in *NESCOE* failed to meet their burden under section 206 of the FPA to show that then-existing buyer-side mitigation provisions in ISO-NE’s tariff were unjust, unreasonable, unduly discriminatory or preferential absent the requested exemption,” but “[t]hat finding does not preclude either ISO-NE from proposing a similar provision at a later date or the Commission from accepting it if it is shown to be just and reasonable.”<sup>148</sup> The Commission also discussed and dismissed NextEra’s argument that the decision here was inconsistent with the Commission’s order on the two-settlement capacity market design,<sup>149</sup> noting that the comparison is inapt, because each mechanism addresses a different aspect of ISO-NE’s market design and serves a different purpose.<sup>150</sup>

68. As NextEra noted in its rehearing request, the Commission has previously outlined the principles by which it would evaluate exemptions from the minimum offer price rule,<sup>151</sup> and we disagree that the Commission’s actions in this proceeding are in conflict with those principles. The renewables exemption here is limited in scope, and the Commission evaluated it and accepted it based on the specific conditions placed on it by

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<sup>146</sup> See *supra* PP 3-8.

<sup>147</sup> *ISO New England Inc.*, 142 FERC ¶ 61,107 at P 97.

<sup>148</sup> Rehearing Order, 150 FERC ¶ 61,065, at P 17 (citations omitted).

<sup>149</sup> See *ISO New England Inc.*, 147 FERC ¶ 61,172 (2014).

<sup>150</sup> Rehearing Order, 150 FERC ¶ 61,065 at P 19 and n.30.

<sup>151</sup> NextEra Request for Rehearing at 22-23 (citing Buyer Market Power Order, 135 FERC ¶ 61,029).

ISO-NE.<sup>152</sup> NextEra alleges that previously, the Commission found that out-of-market entry can suppress prices regardless of intent, and should be prohibited on that basis.<sup>153</sup> But, even in that previous order, the Commission noted that it would evaluate any future exemption requests for specific resources on their own merits.<sup>154</sup> At most, the orders cited by NextEra and the first two orders in this proceeding demonstrate that the Commission's view on the question of a broad (i.e., not resource-by-resource) exemption for renewable resources has evolved.<sup>155</sup> In the specific circumstances of this case, where ISO-NE sought to balance both the harms and the benefits to customers from an exemption that might result in some price suppression, and took steps to limit the amount of price suppression so as to enable the FCM to continue procuring sufficient capacity to meet reliability targets, we find the renewables exemption to be just and reasonable.

## **F. Failure to Hold Hearing**

### **1. Parties' Arguments**

69. NextEra argues that the Commission erred in not setting the proceeding for hearing. NextEra asserts that the dispute presents issues of material fact regarding the effect the renewables exemption would have on rates, particularly regarding the extent of artificial price suppression caused by the renewables exemption on a system-wide basis using the new sloped demand curve as well as within the local capacity zones using vertical demand curves, and whether ISO-NE's load forecast in support of the 200 MW

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<sup>152</sup> We note that ISO-NE has committed to review the exemption if the entry of renewable technology resources were to exceed load growth over several years. ISO-NE Answer, Docket No. ER14-1639-000, at 16 (filed May 1, 2014).

<sup>153</sup> NextEra Brief at 53 (citing Buyer Market Power Order, 135 FERC ¶ 61,029 at P 170 (denying exemption of all resources developed to meet state policies on the basis that "uneconomic entry can produce unjust and unreasonable prices by artificially depressing capacity prices")).

<sup>154</sup> Buyer Market Power Order, 135 FERC ¶ 61,029 at P 171.

<sup>155</sup> An agency may change its position, so long as it acknowledges and satisfactorily explains the reasoning behind any such change. *See F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

cap was reliable or whether the goals of the renewables exemption could be accomplished without artificial price suppression.<sup>156</sup>

## 2. Commission Determination

70. The Commission recognized the request for a hearing and implicitly denied it by addressing the issues raised based on the record before it. NextEra correctly cites *Cajun Elec. Power Coop., Inc. v. FERC*<sup>157</sup> and *La. Pub. Serv. Comm'n v. FERC*<sup>158</sup> as stating that the Commission must hold a hearing to resolve disputed issues of material fact; however, these cases also state that the Commission “need not conduct such a hearing if [the disputed issues] may be adequately resolved on the written record.”<sup>159</sup> A trial-type hearing is appropriate where cross-examination of witnesses would facilitate resolution of the controversy.<sup>160</sup>

71. Here, we find that the written record was sufficient for us to resolve any material issue of fact. We addressed NextEra’s and other protestors’ arguments and concerns in the underlying orders, as supplemented here. Neither discovery nor cross-examination was necessary to address these arguments.

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<sup>156</sup> NextEra Brief at 58-59.

<sup>157</sup> 28 F.3d 173, 177 (D.C. Cir. 1994) (*Cajun*).

<sup>158</sup> 184 F.3d 892, 895 (D.C. Cir. 1994) (*Louisiana PSC*).

<sup>159</sup> *Cajun*, 28 F.3d 173, 177.

<sup>160</sup> *La. Assoc’n of Independent Producers and Royalty Owners v. FERC*, 958 F.2d 1101, 1113-5 (D.C. Cir. 1992).

The Commission orders:

The Commission hereby responds to the voluntary remand from the D.C. Circuit, as set forth in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.