

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

**State Policies and Wholesale Markets
Operated by ISO New England Inc., New York
Independent System Operator, Inc., and
PJM Interconnection, L.L.C.**

Docket No. AD17-11-000

**Statement of Commissioner Sarah Hofmann, Vermont Public Service Board
Member, Executive Committee, National Council on Electricity Policy (NCEP)**

Submitted on April 25, 2017 for Technical Conference on May 1, 2017

Thank you for the opportunity to participate in today's Technical Conference on state policies and wholesale markets in ISO New England Inc., New York Independent System Operator, Inc. and the PJM Interconnection. I appreciate the opportunity to address the interface between state and federal jurisdictional alignment in the electricity sector. Although jurisdictional conflicts can and do exist, such conflicts are best resolved through collaborative conversation, identification of problems, and development of solutions that best serve the public interest mission of state and federal regulators. Today's conference illustrates FERC's commitment to collaboration and I applaud your efforts. Please note that while I serve as a Commissioner with the Vermont Public Service Board, I am speaking today on behalf of the National Council on Electricity Policy (NCEP).

The National Council on Electricity Policy (NCEP) serves as a national marketplace of ideas on electricity issues in the U.S. NCEP convenes state decision-makers, including utility regulators, legislators, energy and air officials, consumer advocates, and Governor's advisors to serve as a forum for electricity discussions. Consistent with NCEP's *Guiding*

Principles,¹ NCEP convenes broad discussion of specific electricity policies, technologies, products, and systems that can best be deployed while being attentive to harmonizing various jurisdictional issues that can come into play. NCEP engages in the sharing of best practices and educational opportunities for state officials, rather than in advocacy or policy-making. Among NCEP's focus areas are the intersection of air and energy policies and regulations; transmission policies and practices at the regional and sub -regional level; the evolving electricity marketplace; resource adequacy, diversity, and flexibility; and reliability, resilience, and recovery.

In convening today's technical workshop, FERC has asked speakers to address six questions, broadly exploring how federally regulated markets can best address state policy preferences. These are six excellent questions and I look forward to hearing the ideas offered today in response to them. Preceding these six, however, are more fundamental questions when exploring areas where state and federal regulatory activities interface: "Does the activity require a federal action to resolve it? Are states and regions already equipped to resolve – to their own satisfaction and within the structure of the law – the situation?"

Many of the benefits of multi-state electric markets and power flows come with inevitable disputes that need resolution. Participants in the National Council on Electricity Policy have always acknowledged the obvious interstate nature of the electricity grid and the interdependence of regional markets. States have built national institutions such as the NCEP and NARUC, and regional organizations such as NECPUC and NESCOE, to address

¹ ***GUIDING PRINCIPLES OF THE NATIONAL COUNCIL ON ELECTRICITY POLICY***
Adopted at the NCEP Annual Meeting on April 1, 2016

them. Market participants have taken similar steps by creating stakeholder groups such as the New England Power Pool (“NEPOOL”) to weigh in on all matters affecting the New England wholesale markets.. These institutions and organizations regularly demonstrate our ability to resolve interstate aspects of complex policy issues and preferences. There are numerous examples of solutions in the institutions and markets today that acknowledge the interstate nature of the electricity grid and interdependence of regional markets that have come from the collaboration between states, market participants, and Independent System Operators.

States’ priorities align in many ways. We want sustainable, reliable, and affordable service. Across state lines, our policies regarding energy efficiency and demand response, support for renewables and utility-scale wind and solar projects, are similar although clearly not identical. Solutions to problems should always reflect state and regional differences. We participate in the regional marketplace so that our customers receive the benefit of resources that bid into the wholesale capacity market, including the output of renewable resources, nuclear, coal, and natural gas plants. When conflict arises, our states work together within multi-state organizations like NARUC, NECPUC, NESCOE NCEP, NEPOOL and others. States *have* to work together to find collaborative solutions when conflicts arise.

Therefore, a second question to add to the questions posed at today’s FERC Technical Conference is: “What other institutions and collaborations provide resources and solutions that avoid conflict between state policies and wholesale markets?”

Our work with the National Council supports the idea that states are well suited to collaboratively working out answers to the policy questions addressed by this Technical

Conference. The National Council on Electricity Policy has sponsored two recent meetings that explore and demonstrate states' ability to collaborate on multi- and inter-state solutions:

- *Blurred Lines: State and Federal Jurisdiction in the Power Sector* meeting [April 2016], at which NCEP members and speakers addressed “simultaneity,” or ambiguous, overlapping, and sometimes uncoordinated actions related to state and federal jurisdictional boundaries in the generation, transmission, and distribution of electricity; and
- *Experts Roundtable on Valuing Baseload Electricity Resources* [January 2017], to explore the impacts of our nation's changing generation fleet on how we price electricity, and the options for state officials to create just and reasonable rates given these changes.

These dialogues have led to the conclusion that where overlaps and conflict between state and federal action exists, the path to resolution that leads through the courts should not be our first and only path. Examples like the *Hughes v Talen Energy Marketing*, *Oneok v. Learjet*, and *FERC v EPSA* cases highlight how narrow a court-derived decision can be, leaving unresolved ambiguity in areas not considered by the courts. Additionally, reading the briefs submitted on these cases show a significant difference of opinion on the appropriate scope of authority between FERC and the states.

Therefore, if a clear federal role exists in these arenas, the National Council on Electricity Policy recommends that FERC, working with states, develop collaborative approaches that resolve conflict, including joint explorations, collaborative efforts similar to the *FERC/NARUC Collaborative on Demand Response and Competitive Procurement*,

regional processes such as New England's efforts through the Integrating Markets and Public Policies (IMAPP) initiative and even today's Technical Conference. These types of processes may yield less ambiguity, better common effort, and the development of tools that bridge and improve policymaking in the public interest.

State officials understand that market designs may evolve to both accommodate state public policies and state resources, and that at the same time maintain the integrity of well-functioning markets. Developing the characteristics of such market designs rests not only with energy regulators, but with other state policy-makers, including air regulators, consumer advocates, both public and private utilities, and others. The National Council on Electricity Policy relies on collaborative input from all state policy-makers to efficiently and effectively make these market decisions, and it also provides educational opportunities for members who may not participate regularly in this arena. NCEP stands ready to assist in regional collaborative efforts currently underway.

In summary, there is no question that state lawmakers will continue passing legislation that sets public policy. It is now our challenge to continue to work together to find effective ways to carry out those policies while also continuing to benefit from competitive wholesale markets. Thank you for holding this technical conference to further collaborative efforts and for the opportunity to participate in today's conversation.