

Alternative Price Rule

Listed below are some concerns that individual states have expressed with both the existing alternative price rule (APR) and with the changes proposed by the Internal Market Monitor (INTMMU) and the Generators. These are NOT official positions of the New England Conference of Public Utilities Commissioners (NECPUC). Rather, they represent areas of concern identified by one or more states that may be addressed as part of the Forward Capacity Market (FCM) Working Group process.

NECPUC as a whole has not yet discussed these issues. Accordingly, NECPUC has not made any conclusions regarding these or any other proposed changes to the FCM rules, nor has NECPUC concluded *any* changes are warranted to the existing FCM rules at this time. NECPUC will be discussing these and other issues as this process moves forward in an effort to reach consensus among the states.

A. Concerns with the Existing APR

1. The Settling Parties carefully constructed the APR to permit and encourage bilateral contracts and self-supply.
 - a. Bilateral contracts and self-supply permit load to hedge against capacity price volatility and help to facilitate debt financing and to lower equity risk, which together can lower power costs for utility purchasers.
 - b. Longer-term bilateral contracts that provide an assured revenue stream for more than the five years that is possible under the FCM may be essential in the current financial markets for investors to obtain financing at reasonable costs, *i.e.*, in the current economy most new generation projects may benefit from a long-term purchased power agreement in order to obtain less expensive financing.
 - c. State requirements – including mandates for renewable generation capacity – often are supplied through bilateral contracts.
 - d. Thus, for many states, the preservation and enhancement of opportunities for bilateral contracting and self-supply rights is a high priority.
 - e. The existing APR may inadvertently affect the FCA results by classifying most, if not all, bilateral contracts and self supply as OOM resources, thereby inhibiting the legitimate use of such means of meeting capacity obligations.
2. The current definition of OOM may be too broad and may need to be modified because it could sweep in all bilateral contracts and self-supply.

- a. The current OOM definition does not differentiate between bilateral contracts entered for sound policy reasons or to avoid price volatility and bilateral contracts or self-supply that may be motivated by a wish to lower the FCA clearing price.
- b. Under the current definition, the APR could become the norm if new generation requires a long-term bilateral contract to obtain financing and States continue to pursue their legitimate policy initiatives (*e.g.*, to develop renewables).
- c. Although we recognize the difficulty, it will be important to establish objective criteria in Rule III.13.1.1.2.6 that will permit the INTMMU to distinguish among bilateral contracts, *i.e.*, between ones that should be classified as OOM and those that should not.
- d. The current threshold for monopsony market power protection serves fairly well as a threshold for defining OOM. A contract would be viewed as OOM if a) it is below 75% of cone and the MMU finds that it is not cost justified, or b) there is evidence of intentional exercise of monopsony power, or c) (as suggested by the INTMMU) there is an intentional decision by ISO-NE to buy too much capacity to obtain an unusually large, lumpy and inexpensive capacity resource.

B. Concerns with the INTMMU and Generator Proposals

1. The Generators' proposal to carry forward excess OOM from prior auctions would disrupt those prior commitments, undermine the economic considerations that supported the decisions to enter into those long-term contracts, and would give load no way to avoid triggering the APR in future auctions.
2. The INTMMU's proposal to pay OOM less than all other capacity appears to be discriminatory and unlawful. Moreover, the stated rationale – to discourage bilateral contracts and self-supply – represents poor public policy and is antithetical to the steps that ISO, NEPOOL, and FERC have all taken to facilitate self-supply and bilateral contracts.
3. The INTMMU's proposal to eliminate the existing cap on the APR adjusted price would create an opportunity for manipulation because the last new “in-market” generation capacity resource may not be representative of the cost of new capacity.
4. The Generators' proposal to expand the definition of OOM to include many more resources – *e.g.*, new capacity treated as existing in the first FCA, denied dynamic delist bids, and demand response bids that benefit from System Benefit Charges or other support – would make the APR the norm, not the exception.