

**ELIMINATION OF THE MINIMUM OFFER PRICE
RULE AND THE NEED TO REVIEW MARKET-
BASED RATES FOR THE EXERCISE OF BUYER-SIDE
MARKET POWER**

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ELIMINATING THE MINIMUM OFFER PRICE RULE

- **ISO-NE** has stated that it plans to make a **FPA Section 205** filing with the **Commission** in **2022** eliminating the **Minimum Offer Price Rule (MOPR)**.
- The **MOPR** to date has served as the mechanism by which **ISO-NE** and the **Internal Market Monitor** ensure a level playing field so market outcomes are set by competition not impacted by market power and result in a just and reasonable **FCM** auction price.
- **NEPGA** asks **ISO-NE** and **NEPOOL** stakeholders to consider, quantify and qualifying the potential consequences of eliminating **MOPR** without a replacement buyer-side market power mitigation mechanism.

MARKET-BASED RATES ARE JUST AND REASONABLE ONLY IF THEY ARE FREE OF SUPPLIER AND BUYER-SIDE MARKET POWER

- **The ISO-NE Tariff defines the rules by which the Internal Market Monitor may consider and protect against the exercise of market power, both supplier and buyer-side.**
 - **Supplier-side market power rules: For example, Pivotal Supplier Test (III.A.23), Retirement Portfolio Test (III.A.24) and substitution of supplier offer price with IMM-mitigated price (III.13.2.3.2).**
 - **Buyer-side market power rules: For example, Offer Review Trigger Prices (III.A.21) and qualification determination notification for New Generating Capacity Resources (III.13.1.1.2.8).**
- **These Tariff provisions are intended to ensure that the FCM rates are just and reasonable – in that they are the product of an auction free of the exercise of market power.**
- **It is self-evident that removing the MOPR, without any substitute to evaluate non-competitive offers, leaves the FCM at risk of producing unjust rates due to buyer-side market power.**
- **Not only must the rates be free of market power and the product of competitive offers, but the filing party must make a showing that it reasonably evaluated the rate for the exercise of market power.**

BUYER-SIDE MARKET POWER

- **Buyer-side market power** requires neither intent nor the action of a single or cooperating actors.
- The Commission has found that capacity entered into the market through below-cost bids can unjustly and unreasonably suppress prices even when no actor has the intent to do so. See, e.g., *N.Y State Pub. Serv. Comm., et al., v, NYISO*, 170 FERC 61,119, at PP 36-43 (“[B]uyer-side market power mitigation is driven not by the size of individual projects, but by the aggregate amount of generating capacity that receives out-of-market subsidies.”).
- The precursor proposal to MOPR, the **Alternative Price Rule** was “a market power mitigation rule intended to discourage buyers who have *the incentive and ability* to suppress market clearing capacity below a competitive level from doing so.” 131 FERC 61,065, at P 69 (2010) (emphasis added).
- The D.C. Circuit has held that the Commission’s decision to mitigate buyer-side market power through the MOPR, with no need to show intent, was “a proper exercise of its role in balancing competing interests.” *New Eng. Power Generators Ass’n v. FERC*, 757 F.3d 283, at 293 (D.C. Cir. 2014); see also, *id.*, at 295 (“FERC is within its jurisdiction to consider the economic, as well as the technical, attributes of a capacity resource.”).

INFORMATION REQUEST

- **ISO-NE** has long maintained that the **MOPR** is necessary to protect the **FCM** from unjust and unreasonable price suppression.
- In proposing to eliminate **MOPR**, **NEPGA** asks that **ISO-NE** consider and provide quantitative information estimating the impact of removing **MOPR** on capacity market prices, and quantitative and/or qualitative information on the potential impact on resource adequacy, energy security, and system reliability.
- This information would serve to better understand the potential consequences of eliminating **MOPR**, and potential solutions for maintaining a buyer-side market power screen and remedy.

DEVELOPMENT OF BUYER-SIDE MARKET POWER PROTECTIONS

- **NEPGA is in the process of considering proposals to address the potential exercise of buyer-side market power in the absence of the Minimum Offer Price Rule.**
- **NEPGA seeks to collaborate with ISO-NE, the Internal Market Monitor, the External Market Monitor, and NEPOOL stakeholders to develop a buyer-side market power screening tool that satisfies the legal requirement that market-based rates must be free of the influence of market power to be just and reasonable.**

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Questions?

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