

**To:** NEPOOL Markets Committee

**From:** ISO New England Market Development

**Date:** October 6, 2021

**Subject:** Overview of New Proposed Buyer-Side Market Power Mitigation Measures

With the removal of the Minimum Offer Price Rules (MOPR), the ISO is proposing a narrow buyer-side market power review mechanism that will apply to certain New Capacity Resources. The purpose of this memo is to provide an overview of the proposed new mechanism.

### **Overview of Buyer-side Mitigation (BSM) Proposal**

Broadly, under the proposal, a New Capacity Resource that is qualified to participate in an upcoming Forward Capacity Auction (FCA) will proceed to auction via one of three paths, or “lanes.” Two of these lanes do not involve, or will involve only a limited, review of the New Capacity Resource with respect to potential buyer-side market power and do not result in mitigation. Only New Capacity Resources that cannot proceed down one of those two lanes will receive a more thorough review by the Internal Market Monitor for the exercise of buyer-side market power and potential mitigation. We briefly summarize each of these three lanes.

**A. The “*de minimis*” lane.** First, new resources with a qualified capacity (in MW) below a *de minimis* size threshold enter this path and will not be reviewed for buyer-side market power. The ISO Tariff presently provides analogous *de minimis* exemptions to certain supply-side market power reviews, and the *de minimis* threshold will analogously focus future buyer-side market power reviews on larger new resources.

The ISO is continuing to evaluate an appropriate threshold value and reviewing data to support its recommendation. As context, it is useful to note that the large majority of all New Capacity Resources offered in the Forward Capacity Market are small resources, measured by qualified capacity MW. Most of all new capacity offered in the Forward Capacity Market, measured by qualified capacity MW, is from a small number of large resources. Thus, the ISO anticipates that a *de minimis* threshold will likely exclude from review a majority of New Capacity Resources that are subject to review under the current MOPR. All remaining resources—which are small in

number but constitute most of the new qualified capacity MW offered in the Forward Capacity Market—will need to proceed down one of the two remaining lanes.

In addition, the ISO will propose to categorically exclude energy efficiency from buyer-side market power reviews. This is consistent with the *de facto* treatment of energy efficiency under the current MOPR, as energy efficiency projects have had an Offer Review Trigger Price of zero for many years. As a practical matter, energy efficiency is unique in that it is already accounted for on both the supply and the demand sides of the FCA (demand is adjusted, or “grossed-up,” for energy efficiency); this treatment renders application of buyer-side mitigation to energy efficiency moot, as energy efficiency’s participation should not impact FCA clearing prices.

The *de minimis* lane is addressed under item 3 of the “Key Steps” section below.

- B. The “supported purpose” lane.** Second, a New Capacity Resource can demonstrate it meets certain criteria—such as the absence of any load-side interest or arrangement, or development for the purpose of meeting a specific state regulatory requirement or policy (as discussed further below). Upon such demonstration, via an affidavit submitted as part of a new certification requirement (see item 1. below), the New Capacity Resource will not be subject to buyer-side mitigation. A New Capacity Resource making such a demonstration proceeds down the “supported purpose” lane. Importantly, while resources proceeding down this lane will be required to provide an affidavit demonstrating that they have a “supported purpose,” that demonstration will preclude any further evaluation by the Internal Market Monitor.

Permitting New Capacity Resources that meet certain criteria to avoid further market power review provides a direct means of allowing resources that are being built to further state decarbonization goals and that will contribute to the region’s capacity supply to participate in the Forward Capacity Market. This is consistent with the overall objective of the MOPR’s removal. In addition, it provides a means for purely competitive Project Sponsors with no load-side interest or arrangement whatsoever to avoid an unnecessary further review of their resources for buyer-side market power.

The “supported purpose” lane is addressed under item 1.b of the “Key Steps” section below.

- C. The “full assessment” lane.** Finally, any new resources that cannot proceed down either of the prior two lanes will undergo a more thorough buyer-side market power evaluation by the Internal Market Monitor. Those resources must comply with the new certification requirement, which requires an affidavit certifying that they are not participating in the auction for the purpose of reducing the auction clearing price (see item 1. below), and also must be prepared to

provide further project-specific confidential information in order to facilitate an assessment of buyer-side market power and mitigation, upon request from the Internal Market Monitor.

For any new resource that is subject to this review and for which the Internal Market Monitor finds that its offer must be mitigated to address the exercise of buyer-side market power, the Internal Market Monitor will calculate a New Resource Offer Floor Price using the existing calculation methodology in the ISO Tariff (see item 2. below). The ISO will file any such determinations with FERC, and the Project Sponsor of such a new resource will have the option to protest the Internal Market Monitor's determination prior to the FCA. Such determinations, and the option to protest same, will be addressed in the ISO's pre-auction qualification filing.

The "full assessment" lane is addressed under items 1. and 1.a of the "Key Steps" section below, and the Internal Market Monitor's mitigation is addressed under item 2 below.

### **Additional Details: Key Steps**

**1. Certification and affidavit requirement.** Other than for resources meeting the *de minimis* requirements (addressed below), the Project Sponsor of a New Capacity Resource will be required to provide an affidavit from an authorized officer in which the Project Sponsor certifies that the primary purpose of the New Capacity Resource's offer into the FCA is not to reduce the clearing price of the auction. The affidavit must also explain the basis for this certification, including (1) the details of the Project Sponsor's (and its affiliates') load interests and arrangements with a load interest, if any, and (2) why, despite any such load interest (or arrangement with an entity having such an interest), the primary purpose of the offer is not to reduce the clearing price of the auction. The Internal Market Monitor shall be responsible for evaluating the adequacy of each affidavit, as described below. A Project Sponsor that is unable to provide such an affidavit will be subject to mitigation review in accordance with 2. below.

**1.a Ability and incentive assessment.** Unless the certification and affidavit demonstrate the circumstances described in 1.b below (i.e. those of a "supported purpose" resource), in evaluating the adequacy of a Project Sponsor's certification and affidavit, the Internal Market Monitor shall assess whether the Project Sponsor has the ability and incentive to exercise buyer-side market power to reduce the clearing price for the FCA.

In evaluating ability and incentive, the Internal Market Monitor shall take into consideration a range of factors that reasonably can be expected to have bearing on the exercise of buyer-side market power. These factors may include, but are not limited to: (a) the anticipated supply and demand conditions in the Forward Capacity Market; (b) any arrangement regarding the New Capacity Resource that the Project Sponsor has entered into with an entity having a load-side interest; (c) the anticipated size (Qualified Capacity) of the New Capacity Resource; and (d) the

anticipated cost to develop a resource of the same technology type as the New Capacity Resource.

As a practical matter, the ISO's current thinking is that the certification and affidavit requirement would be fulfilled at the time the Project Sponsor submits its qualification package for the New Capacity Resource, and that the Internal Market Monitor's review of ability and incentive would take place immediately thereafter. This will enable the Internal Market Monitor to request follow-up information, consult with the Project Sponsor, and, if needed, request that the Project Sponsor prepare a cost workbook for any resource for which the Internal Market Monitor determines a New Resource Offer Floor Price must be calculated (see 2. below).

**1.b Circumstances that shall meet the certification criteria.** The following non-exhaustive list of circumstances documented by the Project Sponsor in an affidavit as specified in 1. above will preclude an inquiry into the ability or incentive of the Project Sponsor to exercise buyer-side market power (i.e., would enable the resource to proceed under the "supported purpose" lane discussed previously):

- i. the New Capacity Resource is a merchant generation supply resource for which the Project Sponsor and its affiliates do not have a financial arrangement with an entity with a load-side interest related to the development or operation of the New Capacity Resource;
- ii. the New Capacity Resource is acquired by or under the contractual control of the Project Sponsor through a competitive and non-discriminatory procurement process open to new and existing resources; or
- iii. the New Capacity Resource meets the definition of a Sponsored Policy Resource (absent the current requirement that the statute or regulation be in effect on January 1, 2018).

Please note that the ISO is continuing to evaluate whether changes to the existing definition of Sponsored Policy Resource are necessary to ensure the full scope of state clean energy and related carbon-reduction mandates are covered.

**2. Calculation of a new resource offer floor price.** The Internal Market Monitor will evaluate whether the Project Sponsor has met the certification requirement. If the Internal Market Monitor determines that the requirement has not been met—which could occur because no certification was provided, or because the certification was inadequately supported or inaccurate—the Internal Market Monitor will calculate a New Resource Offer Floor Price using the existing calculation methodology in Section III.A.21.2(b) of Appendix A. The New Resource Offer Floor Price will serve as the floor for the resource's offer in the FCA, unless the Commission directs otherwise in its order on the ISO's FCA qualification filing.

The Project Sponsor may file a protest to the ISO's FCA qualification filing to demonstrate that the Internal Market Monitor's buyer-side market power determination is incorrect or that its calculation of the appropriate New Resource Offer Floor Price is inaccurate. The Commission's disposition of the protest is expected to resolve the matter prior to the upcoming FCA. If the Commission has not issued an order accepting or rejecting the ISO's proposed New Resource Offer Floor Price for a New Capacity Resource before the auction inputs must be finalized for the FCA, the ISO shall utilize the Internal Market Monitor's calculated offer floor price as the floor in the FCA for the New Capacity Resource.

- 3. Exemption for small (*de minimis*) resources and energy efficiency resources.** Any New Capacity Resource with a qualified capacity rating of less than a specific size (*to be determined, as of this writing*), as reflected in the resource's qualification package, shall be exempted from the certification and offer review requirements described above. In addition, any New Capacity Resource that is energy efficiency shall be exempted from the certification and offer review requirements described above.

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We look forward to stakeholder feedback on the ISO's proposal.