

# **ELIMINATION OF THE MINIMUM OFFER PRICE RULE AND COMPETITIVE MARKET OUTCOMES**

**BRUCE ANDERSON**

**NEW ENGLAND POWER GENERATORS ASSOCIATION, INC.**

**OCTOBER 13, 2021, NEPOOL MARKETS COMMITTEE MEETING**

# INITIAL CONCERNS WITH THE MITIGATION PROPOSAL

- ISO-NE proposes to subject a New Capacity Resource (NCR) offer to review for its competitiveness if one (or both) of two conditions exist:
  - The Market Participant self-reports that its “primary purpose” in offering at that price is to suppress capacity prices below competitive levels; or
  - The Market Participant’s resource is under a contract conditioned on the resource clearing in the FCA.
- NEPGA today offers some initial concerns with the mitigation and MOPR elimination proposal:
  - Fails to address the legal issues NEPGA has raised to date (slide 3);
  - Must coincide, if at all, with two planned improvements to the wholesale markets (slides 4-6);
  - Eliminates the distinction between competitive and uncompetitive offers and clearing prices (slide 7); and
  - Renders ISO-NE/ the IMM unable to find the FCA results competitive (slides 8-9).

# THE MITIGATION PROPOSAL DOES NOT ALLEVIATE THE LEGAL RISKS RAISED BY NEPGA

- The mitigation proposal fails to ensure competitive rates and creates a significant imbalance in consumer and investor interests.
- The second prong restates the facts of *Hughes v. Talen* – a contract tethered to clearing the capacity market - which the Court found is unlawful state action preempted by Federal jurisdiction under the Federal Power Act.
  - The second prong is superfluous, in that it subjects a Market Participant to mitigation review for an offer incited/made possible by unlawful state action.
- The first prong says nothing about whether an offer is competitive, but only that the Market Participant has “self-certified” that the “primary purpose” of the offer price is not to suppress price.
  - Neither purpose nor intent has ever served as the basis for FCM mitigation review in ISO-NE, particularly on the buyer-side – it instead has applied in recognition that parties (e.g., Net Buyers) may have the ability and incentive to suppress prices below competitive levels.
  - Further, “secondary” intent to suppress price remains permissible – with no apparent rationale for finding that “primary” intent is impermissible whereas “secondary” intent is permissible.
- The absence of new capacity offer review causes allows for the clearing of uncompetitive offers, benefitting consumer interests with no counter-balance of investor interests (e.g., existing resource mitigation review remains as is).

# MOPR ELIMINATION SHOULD NOT PRECEDE OTHER URGENT WHOLESALE MARKET DESIGN CHANGES

- ISO-NE intends for the MOPR-elimination proposal to take effect prior to the adoption of other major design changes that ISO-NE explains are necessary improvements to the wholesale markets: (1) capacity accreditation; and (2) pricing forward reserves.
- ISO-NE should ask the Commission to accept MOPR elimination for effect, if at all, coincident with the effectiveness of capacity accreditation reform and meaningful forward reserve pricing.
- ISO-NE explains that its MOPR elimination proposal itself will create a greater risk of inefficient retirements and has for some time explained the “gaps” in the wholesale markets that need to be remedied through these two major design changes.
- Delaying the remedies for the two existing gaps in the wholesale markets, while creating a third issue to be remedied, is poor planning and should be avoided through the concurrent application of these wholesale market design changes.

# CAPACITY ACCREDITATION IMPROVEMENTS ARE NECESSARY CHANGES TO THE MARKETS

- Resource Capacity Accreditation reform in the Forward Capacity Market is included in ISO-NE's Draft 2022 Work Plan. ISO-NE currently contemplates putting these reforms into effect in two stages, the first for effect in FCA 18 and the second in FCA 19.
- ISO-NE has identified capacity accreditation reform as a necessary improvement to “more appropriately accredit resource contributions to resource adequacy as the resource mix transforms.”
- ISO-NE has explained two possible consequences of maintaining the current accreditation methodologies, including insufficient capacity to meet ISO-NE's energy needs and inefficient market signals.
- ISO-NE has further explained that capacity accreditation reform is necessary for “accreditation and compensation to be properly aligned with individual resources' expected reliability benefit to consumers.” *Pre-Conference Statement of ISO New England Inc., Attachment, Foundational Market Objectives for a Reliable Future Grid*, at 4Docket No. AD21-10

# MATERIAL FORWARD ANCILLARY SERVICE PRICE SIGNALS ARE A NECESSARY IMPROVEMENT TO THE MARKETS

- Day-Ahead Ancillary Services Improvements is included in ISO-NE's Draft 2022 Work Plan. ISO-NE anticipates that the Commission could accept a proposal by mid to late 2023.
- A lack of day-ahead reserve product (or something similar) has persistently denied resources revenue opportunities for critical contributions to real-time operation and muted price signals.
- The DA Improvements initiative "revisits" the absence of material forward price signals for reserves that the Energy Security Improvements (ESI) proposal was designed to address.
  - ISO-NE proposed ESI "to improve the current market structure to create incentives for its fleet to invest in the energy supply arrangements and technologies on which the region depends."
  - ISO-NE explained that what load has long enjoyed for free is "no longer free," and that the markets must be modified to "procure and provide compensation for the operational capabilities that these resources provide and the ISO depends on to ensure a reliable power system, so that resources are incented to invest in additional energy supply arrangements and the technologies that ensure these capabilities remain available to the power system each day." ESI Filing, Transmittal Letter at 4.
- The need to compensate these resources will become increasingly important as the system adds more intermittent generation and as ISO-NE increasingly understands and plans for the mitigation of tail-risk on system reliability and serving load.

# THE MITIGATION PROPOSAL ELIMINATES THE DISTINCTION BETWEEN COMPETITIVE AND UNCOMPETITIVE NEW CAPACITY OFFER PRICES

- The contractual and regulatory design of the ISO-NE wholesale markets requires pricing energy, capacity and ancillary services at competitive rates.
  - The FCA Settlement Agreement emphasizes that a key design element is “an auction format to derive competitive prices approximating the cost of new entry” and price formation that “will rely primarily on the bids of New Capacity.” Explanatory Statement at 26 (emphasis added).
  - “A capacity market should facilitate robust competition for capacity supply obligations, provide price signals that guide the orderly entry and exit of capacity resources, result in the selection of the least-cost set of resources that possess the attributes sought by the markets, provide price transparency, shift risk as appropriate from customers to private capital, and mitigate market power.” *ISO New England Inc.*, 162 FERC ¶ 61,205, at P 21 (2018) (emphasis added) (CASPR Order).
- Under the ISO-NE mitigation proposal, New Capacity Resources may offer at any price, competitive or not.
- This eliminates the key market design relationship between competitive offers and competitive rates, *i.e.*, competitive offers produce competitive rates, whereas uncompetitive offers produce uncompetitive rates.

## THE MITIGATION PROPOSAL RENDERS THE IMM UNABLE TO SATISFY ITS TARIFF OBLIGATIONS

- The mitigation proposal renders the IMM unable to satisfy its obligations under the Tariff to perform the “day-to-day, real-time review of market behavior.” Cite above.
  - Among its “day-to-day” responsibilities is to “perform monitoring of potential mitigation [for] ... *Anti-Competitive Demand Bids.*” Tariff III.A.2.3(j)(iv) (emphasis in original).
  - The IMM also “shall seek to amend *Appendix A* as may be appropriate to include any such conduct that would substantially distort or impair the competitiveness of any of the New England Markets; and seek such other authorization to mitigate the effects of such conduct from the Commission as may be appropriate.” *Id.* at (v).
- The IMM’s additional responsibilities includes those necessary for the wholesale markets to produce competitive outcomes. See *Id.* at (k)(ii), v).
- The IMM has testified following FCAs 1-12 that the FCA results were competitive based in part on its review of New Capacity Resource offers for their competitiveness.



## THE MITIGATION PROPOSAL RENDERS ISO-NE UNABLE TO SATISFY ITS TARIFF OBLIGATIONS

- Following each FCA, ISO-NE must file the auction results under FPA Section 205, including “documentation regarding the competitiveness of the Forward Capacity Auction.” ISO-NE Tariff at 13.8.2(b) .
- ISO-NE discharged that obligation, for example, following FCA 15, by testifying to the Commission that “all entities offering and bidding in the FCA were properly qualified in accordance with Section III.13.1 of the Tariff.” *FCA 15 Results Filing, Testimony of Robert G. Ethier on Behalf of ISO New England Inc.*, at 2.
  - Section III.13.1 includes, *inter alia*, that a New Capacity Resource offer include “supporting documentation justifying that price as competitive in light of the resource’s costs” for IMM review. Tariff III.13.1.1.2.2.3 (a).
  - Contrast the definition of Renewable Technology Resource, including that to qualify a resource “receive an out-of-market revenue source supported by a state- or federally-regulated rate, charge or other regulated cost recovery mechanism.” Tariff III.13.1.1.1.7.
- With New Capacity Resource offers opaque, it is unclear how ISO-NE can certify that the auction results are competitive.

# CONCLUSIONS

- The MOPR elimination proposal allows for uncompetitive rates and fails to create a proper balance between consumer and investor interests in the Forward Capacity Market.
- ISO-NE should eliminate MOPR, if at all, together with changes to capacity accreditation and to the creation of material forward reserve pricing.
- ISO-NE has not explained how the FCA will produce competitive clearing prices when there is no review of New Capacity Resource offers for their competitiveness.
  - It likewise has not explained how it or the IMM can testify to the competitiveness of the FCA clearing price without any transparency on New Capacity Resource offers.
- Eliminating MOPR, with no counter-balancing changes in the wholesale markets, violates the need for wholesale market to properly balance consumer and investor interests.

# ELIMINATION OF THE MINIMUM OFFER PRICE RULE AND COMPETITIVE MARKET OUTCOMES

## Questions?

**Bruce Anderson**  
**New England Power Generators Association, Inc.**  
**[banderson@nepga.org](mailto:banderson@nepga.org)**  
**617-817-6774**