

179 FERC ¶ 61,139
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
James P. Danly, Allison Clements,
Mark C. Christie, and Willie L. Phillips.

ISO New England Inc.
New England Power Pool Participants Committee

Docket No. ER22-1528-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued May 27, 2022)

1. On March 31, 2022, pursuant to section 205 of the Federal Power Act (FPA),¹ ISO New England Inc. (ISO-NE) and the New England Power Pool Participants Committee (NEPOOL) jointly submitted proposed revisions to the Transmission, Markets and Services Tariff (Tariff) to modify the current minimum offer price rule (MOPR) in the Forward Capacity Market (FCM).² ISO-NE proposes to permit a specified quantity of Sponsored Policy Resources³ to enter the market without being subject to buyer-side market power mitigation review during the next two Forward Capacity Auctions (FCA) 17 and 18 (Transition Mechanism), and thereafter, beginning with FCA 19, eliminate the current MOPR and replace it with a reformed buyer-side market power mitigation construct (MOPR Reforms). In this order, we accept ISO-NE's proposed Tariff revisions, with an effective date of May 30, 2022 for the Transition Mechanism and an effective date of March 1, 2024 for the MOPR Reforms, as requested.

I. Background

2. As part of its FCM, ISO-NE holds an annual FCA in which capacity suppliers compete to provide capacity to the New England region for the relevant delivery year, three years in the future. Suppliers of capacity that receive a capacity supply obligation

¹ 16 U.S.C. § 824d.

² In this order, we refer to the joint proposal as ISO-NE's filing or ISO-NE's proposal, recognizing that NEPOOL also submitted the proposal jointly with ISO-NE.

³ In this order, we also use state-sponsored resource to refer to a resource that meets the proposed definition of Sponsored Policy Resource. *See infra* n.32.

(CSO) in an FCA commit to, and receive payment for, providing capacity for that one-year period associated with that FCA.

3. Currently, ISO-NE's buyer-side market power mitigation rules utilize a minimum offer price rule, or MOPR, that requires new capacity resources to offer their capacity at prices that are at or above a price floor set for each type of resource (referred to as the Offer Review Trigger Price or ORTP).⁴ ISO-NE's Tariff requires ISO-NE's Internal Market Monitor (IMM) to review any new resource offers below the ORTP. The ORTP serves as a proxy for the price at which a given resource technology is expected to offer into the FCA were it not to receive out-of-market revenue as defined in ISO-NE's Tariff.⁵ All new resource offers below the ORTP undergo a unit-specific review by the IMM and are potentially subject to mitigation.

4. Over the past decade, New England states have sought to reduce greenhouse gas emissions and meet climate goals through various mechanisms outside of the ISO-NE markets.⁶ Those efforts have included legislation that allowed state-regulated utilities to enter into long-term contracts with certain defined resource types.⁷ However, the MOPR does not allow resources receiving out-of-market revenues to account for that support in their offer prices, unless the support is widely available to other market participants.⁸ As noted by ISO-NE in its filing, new resources supported through state legislation carry an elevated risk that their subsidized offers will be mitigated, making it more likely that they will fail to clear in the FCA.⁹ ISO-NE acknowledges that exclusion of state-sponsored resources from the FCM forces consumers to effectively pay for capacity twice – once to meet the resource adequacy objectives of the FCM and a second time to meet the policy objectives of the states.¹⁰

⁴ ISO-NE, Tariff, § III (Market Rule 1), app. A (Market Monitoring, Reporting and Market Power Mitigation) (60.0.0), § III.A.21.1.

⁵ *See id.*, § III.A.21.2(b)(i).

⁶ Transmittal at 12.

⁷ *Id.* at 14-19.

⁸ *See* ISO-NE Tariff, § III.A.21.2(b)(i).

⁹ Transmittal at 5, 21-22.

¹⁰ *Id.* at 21-22, 31.

5. ISO-NE has attempted to accommodate state policies into the FCM.¹¹ In 2014, ISO-NE established a Renewable Technology Resource (RTR) exemption, which allowed, in any auction, between 200 MW and 600 MW (200 MW plus any unused portion(s) of the 200 MW allowances from the previous two auctions) of defined state-sponsored resources developed to meet environmental targets to bypass the MOPR.¹² In 2018, recognizing that the quantity of state-supported resources would likely exceed the RTR exemption or not qualify as eligible for the RTR exemption, ISO-NE replaced the RTR exemption with Competitive Auctions with Sponsored Policy Resources (CASPR).¹³ CASPR, which is currently in effect, is a market-based solution designed to meet the region's objectives of accommodating the entry of specifically defined state-supported new resources into the FCM over time while maintaining competitive capacity pricing.¹⁴

6. CASPR includes a primary auction, which maintains the MOPR for all new resources. It then includes a second auction, known as a substitution auction, held immediately after the primary auction clears. During the substitution auction, existing resources that were awarded CSO in the primary auction can permanently transfer those CSOs in their entirety to new state-sponsored resources that did not acquire CSOs in the primary auction. As compensation for agreeing to take on the existing resource's CSO, the new state-sponsored resource receives the substitution auction clearing price, the existing resource permanently retires, and following its first year of participation, the state-sponsored resource continues in the market as an existing resource.¹⁵

¹¹ *Id.* at 22-28.

¹² *ISO New Eng. Inc. & NEPOOL Participants Comm'n*, 147 FERC ¶ 61,173 (2014) (RTR Exemption Order), *clarification granted, reh'g denied*, 150 FERC ¶ 61,065 (2015), *order on remand*, 155 FERC ¶ 61,023 (2016), *reh'g denied*, 158 FERC ¶ 61,138 (2017) (RTR Remand Rehearing Order). The Commission's acceptance of the RTR exemption was the subject of a petition for review, which the D.C. Circuit Court of Appeals denied. *See NextEra Energy Res., LLC v. FERC*, 898 F.3d 14, 26 (D.C. Cir. 2018).

¹³ Transmittal at 25-27.

¹⁴ *ISO New Eng. Inc. & NEPOOL Participants Comm'n*, 162 FERC ¶ 61,205 (2018) (CASPR Initial Order), *reh'g denied*, 173 FERC ¶ 61,161 (2020) (CASPR Initial Rehearing Order), *reh'g denied*, 174 FERC ¶ 62,041 (explaining that rehearing is deemed denied by operation of law but noting that the Commission may address the issues raised in a future order), *reh'g denied*, 174 FERC ¶ 61,120 (2021).

¹⁵ CASPR Initial Order, 162 FERC ¶ 61,205 at PP 7-9.

II. Filing

7. ISO-NE's proposal includes two sets of revisions to the Tariff: (1) a Transition Mechanism for FCAs 17 and 18, with an effective date of May 30, 2022, and (2) MOPR Reforms, which revise the buyer-side market power review and mitigation rules beginning with FCA 19, with an effective date of March 1, 2024.

A. MOPR Reforms

8. ISO-NE asserts that its MOPR Reforms are necessary to facilitate entry into the FCM of substantial amounts of capacity from state-sponsored resources over the next several decades, avoiding the potential for an inefficient overbuild of the region's capacity. ISO-NE explains that New England states have undertaken significant clean energy and decarbonization initiatives over the last five years such that the market rules designed to accommodate the participation of state-sponsored resources within the FCM (e.g., CASPR) are unlikely to sufficiently address the potential for excess capacity procurement throughout the region.¹⁶ Accordingly, ISO-NE proposes to implement certain MOPR Reforms, discussed in more detail below, to replace CASPR, following a two-year transition period.¹⁷

9. ISO-NE explains that these MOPR Reforms create a sponsored policy resource exclusion to ISO-NE's buyer-side market power mitigation to balance, *inter alia*, the economic inefficiencies of the overbuild problem with the market inefficiencies of allowing new resources to submit offers in the FCA that reflect out-of-market revenues.¹⁸ ISO-NE states that excluding state-supported resources from buyer-side mitigation is not without precedent in the history of the FCM; for example, the current Tariff excludes broadly available state and local economic development incentives from its definition of out-of-market revenues such that they are not included when ISO-NE calculates ORTPs and the IMM calculates resource-specific capacity price estimates for new capacity resources.¹⁹

B. Transition Mechanism

10. ISO-NE explains that it proposes a Transition Mechanism for FCAs 17-18 to permit a defined quantity of state-sponsored resources unmitigated entry into the FCA in

¹⁶ Transmittal at 29-32.

¹⁷ *Id.* at 32-34.

¹⁸ *See, e.g., id.* at 33.

¹⁹ *Id.* at 56-57.

a measured fashion to protect reliability, investors, and consumers.²⁰ ISO-NE states that it proposes a graduated replacement of the MOPR for two central reasons: (1) concerns about adverse impacts to reliability from inefficient retirements and from likely delays in the development of state-sponsored resources, and (2) the need to provide the region time to undertake market reforms to facilitate the reliable transition to the new resource mix.²¹

11. With respect to the first concern, ISO-NE states that allowing significant quantities of state-sponsored resources to enter the market unmitigated is likely to decrease the clearing price in a manner that could lead to premature retirement of resources that have important reliability benefits for the region.²² ISO-NE explains that the adverse effects of such inefficient retirements could include that the region is unable to balance supply and demand for certain periods due to the influx of weather-dependent renewable resources and inefficient retirements of resources that are not dependent on the weather.²³ ISO-NE states that this could be of particular concern during severe weather events when solar and wind generation can be limited. ISO-NE additionally states that the transition affords more time for large-scale state-sponsored resources to complete construction before retirements occur.²⁴

12. ISO-NE illustrates its reliability concern with a possible scenario in which MOPR's immediate elimination prompts entry into the FCM for FCA 17 of 1,269 MW in qualified capacity of offshore wind projects that have been awarded long-term contracts and are in various stages of development, prompting retirement of a similar quantity of existing resources in the same timeframe.²⁵ ISO-NE explains that, should those new projects face delays of even a single year beyond the date at which the existing resources will retire, the existing forecasted capacity surplus from FCA 16 of 1,165 MW could result in a capacity deficit, or negative planning margin, of roughly 104 MW, which would pose a resource adequacy concern for the region for that commitment period.²⁶

²⁰ *Id.* at 32.

²¹ *Id.* at 36.

²² *Id.* at 36-37.

²³ *Id.* at 36.

²⁴ *Id.* at 38.

²⁵ Transmittal, attach. (Testimony of Vamsi Chadavada) at 38 (Chadavada Test.).

²⁶ *Id.* at 36.

13. With respect to the second concern, ISO-NE explains that it is working on two “important market design enhancements.”²⁷ First, ISO-NE has started the process to overhaul the accreditation of capacity values of resources participating in the FCM and is planning to move away from the current approach that produces values based on a resource’s ability to serve gross peak load to a methodology that accredits resource capacity values based on their marginal reliability contribution to reducing expected unserved load.²⁸ ISO-NE states that completing this transition by the time the MOPR Reforms are implemented in FCA 19 will allow ISO-NE to more accurately account for the relative reliability benefits of new, state-sponsored resources and the loss of such benefits from exiting resources. ISO-NE states that it also plans to re-propose the day-ahead ancillary services that the Commission previously rejected.²⁹ ISO-NE states that it remains convinced that employing at least some portion of those ancillary services will help ensure the markets properly compensate resources and states that the ancillary services will be more important once the system is more heavily dependent on intermittent renewable resources. ISO-NE asserts, however, that the instant MOPR Reforms proposal is not contingent on the completion of the planned proposals for capacity resource accreditation and ancillary services by FCA 19, although ISO-NE strongly desires to accomplish this.³⁰

III. Notice of Filing and Responsive Pleadings

14. Notice of the filing was published in the *Federal Register*, 87 Fed. Reg. 19,912 (Apr. 6, 2022), with interventions, comments and protests due on or before April 21, 2022. The entities filing notices of intervention, motions to intervene, comments, protests, and answers, along with their acronyms, are listed in the Appendix to this order.

15. No party argues that the MOPR Reforms are unjust and unreasonable. Rather, the comments focus on the merits of the Transition Mechanism. Such comments fall into three categories.

16. First, some parties—including Calpine, EPSA, IMM, NEPGA, Renewable Owners, and Shell Energy—support the proposal, including the Transition Mechanism,

²⁷ *Id.* at 39.

²⁸ Transmittal at 37-40.

²⁹ *Id.* at 41 (citing *ISO New Eng. Inc.*, 173 FERC ¶ 61,106 (2020)).

³⁰ Chadalavada Test. at 46 (“It is simply not possible to guarantee to the region that those market design enhancements will be completed for FCA 19, despite our very strong desire to complete both projects for implementation simultaneously with the BSMR Reforms in FCA 19.”).

and urge the Commission to accept the filing in its entirety as just and reasonable. They note that the Transition Mechanism was the result of stakeholder negotiations and compromise and support ISO-NE's arguments for the need for the Transition Mechanism. The EMM, despite observing that there might be certain improvements to the proposal, recommends that the Commission accept the proposal and notes that the Transition Mechanism, while not ideal is a "reasonable means to address these efficiency concerns and to help support the performance of ISO-NE's capacity market while the essential improvements to capacity accreditation and the capacity demand curves are developed and implemented."³¹ NESCOE similarly supports MOPR reform and does not oppose the Transition Mechanism, urging the Commission not to leave ISO-NE in the untenable position of remaining in the status quo.

17. Second, some parties—including AEE, CT DEEP, and SEIA—also support the proposal as a just and reasonable improvement over the status quo and do not oppose the Transition Mechanism despite not explicitly supporting it. CT DEEP states that the Transition Mechanism is not the ideal outcome and states that it would prefer elimination of the MOPR as soon as possible and that any transition must hardwire into the Tariff elimination of the current MOPR as of FCA 19. AEE disagrees that the Transition Mechanism is necessary; however, AEE and CT DEEP caution that rejecting the filing may cause more harm to the market given the uncertainty, delay, and additional process that would be required, and highlight concerns with having the existing MOPR in place for FCA 17.

18. Lastly, some parties—including over 120 Concerned Citizens, three members of Congress, ACORE, BEAT, CECA, E2, Consumer Advocates, NCEL, and Offshore Wind Coalition—urge the Commission to reject the proposal and require immediate elimination of the MOPR. Some of these parties assert that ISO-NE has not justified the Transition Mechanism or that the Transition Mechanism is not just and reasonable. Some also claim that the current ISO-NE MOPR is unjust and unreasonable.

IV. Procedural Matters

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2021), the timely, unopposed motions to intervene filed by the parties listed in the Appendix serve to make the entities that filed them parties to this proceeding.

20. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2021), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We accept the answers filed by Calpine, CECA,

³¹ EMM Comments at 7, 9.

ISO-NE, NEPGA, NEPOOL and North East Offshore because they have provided information that has assisted us in our decision-making process.

V. Substantive Matters

21. We find that ISO-NE's proposed Tariff revisions, including implementation of the MOPR Reforms following the Transition Mechanism, are just and reasonable. We find that ISO-NE has demonstrated that the proposed revisions appropriately balance the need to mitigate the potential exercise of buyer-side market power against the harms of over-mitigation. We agree with commenters that rejecting the filing would cause harm to the market and to consumers given the uncertainty, delay, and additional process that would be required, noting that the qualification process for FCA 17 is already underway. As discussed further below, we find that ISO-NE's proposal minimizes the potential for an inefficient overbuild of capacity while providing the necessary time for an orderly transition of the region's resource mix that will protect reliability and provide market certainty.

A. MOPR Reforms

1. Proposal

22. As part of its MOPR Reforms, ISO-NE states that it will divide new resources into three tranches: (1) resources with a qualified capacity of 5 MW or less (*de minimis* resources) and passive demand-response resources; (2) competitive entrants and Sponsored Policy Resources;³² and (3) all other resources. ISO-NE proposes exemptions from buyer-side review and offer mitigation for resources in the first and second tranches. Any resources in the third tranche that fail the conduct test (that is, make a below-cost offer) must also pass an "incentive rebuttal" process, i.e., demonstrate an associated load serving entity's (LSE) lack of financial incentive to exercise buyer-side market power. If such resources do not pass the incentive rebuttal process, they will be restricted from

³² Under the proposal, Sponsored Policy Resource is defined as "a New Capacity Resource that: receives a revenue source, other than revenues from ISO-administered markets, that is supported by a government-regulated rate, charge, or other regulated cost recovery mechanism, and; qualifies as a renewable, clean, zero-carbon, or alternative energy resource under a renewable energy portfolio standard, clean energy standard, decarbonization or net-zero carbon standard, alternative energy portfolio standard, renewable energy goal, clean energy goal, or decarbonization or net-zero carbon goal enacted by federal or New England state statute, regulation, or executive or administrative order and as a result of which the resource receives the revenue source." Proposed Tariff, § I.2, I.2 Rules of Construction; Definitions (146.0.0).

offering their capacity in the FCA at a price below an IMM-determined, resource-specific New Resource Offer Floor Price.³³

23. ISO-NE states that its proposed MOPR Reforms strike a reasonable balance between under- and over-mitigation of new capacity resource offers in the FCM.³⁴

a. **First Tranche (*De Minimis* and Passive Demand Response Resources): No Review or Mitigation**

24. ISO-NE explains that it proposes to exclude *de minimis* resources from buyer-side review because there is little likelihood that offers from these resources will meaningfully affect FCA clearing prices.³⁵ ISO-NE states that the determination of which new resources qualify as *de minimis* or passive demand-response resources will be made from the materials already submitted as part of the new resource qualification packages. ISO-NE states that the Commission has accepted similar size-based exclusions from market power review and mitigation where resource size made the ability to exercise market power unlikely and where the exclusion was administratively efficient.³⁶

25. ISO-NE explains that it proposes to exclude passive demand response resources (i.e., On-Peak Demand Resources and Seasonal Peak Demand Resources) from buyer-side review because a load-side interest would find it nearly impossible to impact market clearing prices through their offers in the FCA. ISO-NE further explains that the lack of ability to impact prices is related to the way the capacity of these resources is treated in the construction of the load data used to determine the FCA's demand curve.³⁷

³³ Transmittal at 49-63.

³⁴ *Id.* at 48.

³⁵ ISO-NE states that, based on FCAs 13 through 16, the *de minimis* exclusion exempts roughly 80% of new capacity resources by count and 9% of total qualified MW from buyer-side review and offer mitigation. *Id.* at 49-50.

³⁶ *Id.* at 49-51 (citing *ISO New Eng. Inc.*, 155 FERC ¶ 61,029, at P 1 (2016) (accepting filing subject to condition), *clarification and reh'g denied*, 161 FERC ¶ 61,115 (2017), *order on remand and clarification*, 166 FERC ¶ 61,060 (2019); *ISO New Eng. Inc.*, Filing of ISO New England Inc. Regarding Forward Capacity Market Retirement Reforms, Prepared Testimony of Jeffrey D. McDonald on Behalf of ISO New England Inc., Docket No. ER16-551-000, at 9–10 (filed Dec. 17, 2016)).

³⁷ *Id.* at 52.

b. **Second Tranche (Competitive Entrants and Sponsored Policy Resources): No Review or Mitigation, Contingent on Certification**

26. ISO-NE states that it proposes to exclude new competitive entrants and new Sponsored Policy Resources from buyer-side review contingent on such resources demonstrating through a certification that they qualify in either category. ISO-NE states that the certification must include a sworn affidavit from an officer or principal of the project sponsor that includes sufficient factual detail to make such a demonstration.³⁸ ISO-NE explains that if it accepts the certification, the resource may proceed to the FCA without any buyer-side review or mitigation, but if ISO-NE rejects the certification, the resource will be treated as though it is in the third tranche of new capacity resources.³⁹

27. To qualify for the competitive entrant exclusion, ISO-NE states that the resource must certify that it is not an LSE, is not affiliated with an LSE, and is not receiving out-of-market support from an LSE or state or local public entity. ISO-NE explains that it proposes the competitive-entrant exclusion because competitive entrants do not have the requisite incentive to exercise buyer-side market power; there is no load-side interest that would benefit from lowering capacity clearing prices.⁴⁰ ISO-NE states that the Commission has previously determined in other regions that buyer-side mitigation rules should not be applied to competitive, unsubsidized merchant resources as such resources do not have incentive to exercise buyer-side market power.⁴¹ ISO-NE further states that the Commission has indicated that it is reasonable to exclude competitive entrants from

³⁸ *Id.* at 52-53 (citing Section III.A.21.1.3 of the MOPR Reforms revisions).

³⁹ *Id.* at 53.

⁴⁰ To the extent the new resource is receiving revenues outside of ISO-administered markets from a commercial entity that is not a load-side interest, ISO-NE explains that it is not economically logical to presume that such an entity has an incentive to lower market clearing prices or is in the position to exercise buyer-side market power; the entity is likely to have an incentive to want higher clearing prices, such as an investor seeking a return on its investment. *Id.* at 54.

⁴¹ *Id.* at 54 (citing *Consol. Edison Co. of N.Y., Inc. v. N.Y. Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,139, at P 46 (2015) (granting complaint challenging application of rules to competitive entrants) (*Consol. Edison*), *clarification granted in part and denied in part, reh'g denied*, 152 FERC ¶ 61,110 (2015)).

buyer-side mitigation and has approved competitive entrant exemptions that rely on market participant certifications.⁴²

28. To qualify for the Sponsored Policy Resource exclusion, ISO-NE states that a project sponsor must certify that the new resource meets all three elements of the updated Sponsored Policy Resource definition, which include: (1) receives a revenue source, other than revenues from ISO-administered markets, that is supported by a government regulated rate, charge, or other regulated cost recovery mechanism; (2) qualifies as a renewable, clean, zero carbon, or alternative energy resource under a renewable energy portfolio standard, clean energy standard, decarbonization or net-zero carbon standard, alternative energy portfolio standard, renewable energy goal, clean energy goal, or decarbonization or net-zero carbon goal enacted by federal or New England state statute, regulation, or executive or administrative order; and (3) as a result the resource receives the revenue source.⁴³

29. ISO-NE states that it proposes to update the Sponsored Policy Resource definition, which sets forth the exclusion's qualification requirements, to better encompass all federal and state-sponsored policy resources receiving support from federal and New England state decarbonization programs that have the force of law, both now and in the future.⁴⁴

c. **Third Tranche (All Other Resources): Resource-Specific Buyer-Side Review**

30. ISO-NE states that for new resources that do not meet the requirements of any of the above exclusions, the IMM will conduct a resource-specific buyer-side review similar to the review the IMM currently conducts when a resource seeks to offer its capacity in the FCA at a price below the ORTP. ISO-NE states that a third-tranche resource must submit a qualification package including the lowest price at which it requests to offer

⁴² *Id.* at 55 (citing *Calpine Corp. v. PJM Interconnection L.L.C.*, 169 FERC ¶ 61,239, at P 15 (2019) (*Calpine Corp.*) (allowing certification-based exemption for competitive entrants other than new gas-fired resources); *Consol. Edison*, 150 FERC ¶ 61,139 at P 79).

⁴³ *Id.* at 55-56 (citing the updated Sponsored Policy Resource definition proposed as part of Section I.2.2 of the Transition Mechanism revisions).

⁴⁴ *Id.* at 58.

capacity in the FCA and supporting cost workbooks with sufficient documentation for the IMM to conduct its review.⁴⁵

i. Step 1: Conduct Test

31. ISO-NE explains that the IMM will perform a conduct test to determine whether a new resource's requested lowest offer price represents a below-cost offer. ISO-NE states that the conduct test requires the IMM to determine a New Resource Offer Floor Price using the same methodology as it currently uses for resources seeking to offer below the ORTP. ISO-NE states that if the IMM-determined offer floor price exceeds the requested lowest offer price, then the requested price fails the conduct test. ISO-NE states that failing the conduct test does not necessarily result in offer mitigation, and the project sponsor has the opportunity to submit documentation to rebut the presumption that an LSE supporting the resource with out-of-market revenues has an incentive to exercise buyer-side market power through the resource's offer (i.e., undergo the incentive rebuttal process).⁴⁶

ii. Step 2: Incentive Rebuttal Process

32. ISO-NE explains that the documentation submitted for the incentive rebuttal process must demonstrate that any associated LSE would be unlikely to realize a net financial benefit from any reduction in clearing prices resulting from entry of the resource into the FCM. ISO-NE further states that if the project sponsor fails to provide sufficient documentation or information, the IMM will deem the presumption not rebutted.⁴⁷ ISO-NE notes that as part of the IMM's analysis, the IMM must consider whether the resource's capacity offered in the FCA at the resource's requested lowest offer price can lower clearing prices at all. ISO-NE states that if the offer from the resource could not lower clearing prices, there would be no benefit to the LSE's load position and thus no net financial benefit.⁴⁸

33. ISO-NE states that it proposed the incentive rebuttal process in recognition that when an LSE's out-of-market support for a new resource is more costly than any potential gain from reduced clearing prices, the LSE supporting the resource does not have an incentive to exercise buyer-side market power. ISO-NE states

⁴⁵ *Id.* at 59.

⁴⁶ *Id.* at 60.

⁴⁷ *Id.* at 60-61.

⁴⁸ *Id.* at 62.

that this is consistent with the Commission's acceptance of self-supply exemptions in other regions.⁴⁹

34. ISO-NE states that third-tranche resources receiving out-of-market revenues from a state or local government (i.e., resources that do not meet the Sponsored Policy Resource definition) cannot take advantage of the incentive rebuttal process because the IMM cannot determine whether these entities receive net financial benefits. ISO-NE states that these entities are only subject to the conduct test, while the incentive rebuttal process is available to publicly owned and municipal electric distribution systems because they are LSEs for which the IMM should be able to perform a net-benefits test.⁵⁰

2. Comments

35. As noted above, no party protests the MOPR Reforms. Calpine, the EMM, the IMM, and Shell Energy support the MOPR Reforms.⁵¹ ACORE, AEE, CECA, CT DEEP, Consumer Advocates, E2, MA Office of Energy and Environmental Affairs, NESCOE, Offshore Wind Coalition, and SEIA support the MOPR Reforms and argue that the current MOPR as applied to state-sponsored resources and other resources is unjust and unreasonable.⁵² EPSA, NEPGA, and Renewable Owners argue that the current MOPR remains a just and reasonable mechanism to protect against buyer-side market power, but support the MOPR Reforms as the chosen market design of ISO-NE and a majority of stakeholders.⁵³

36. ACORE, AEE, CECA, Consumer Advocates, NESCOE, and Offshore Wind Coalition agree with ISO-NE that the continued application of the existing MOPR to state-sponsored resources could lead to inefficient outcomes in ISO-NE's FCM

⁴⁹ *Id.* at 62 (citing *N.Y. Pub. Serv. Comm'n v. N.Y. Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,022, at P 61 (2015), *clarification and reh'g denied*, 154 FERC ¶ 61,088 (2016); *PJM Interconnection*, 143 FERC ¶ 61,090 at PP 107-108, 112 (2013)).

⁵⁰ *Id.* at 62.

⁵¹ Calpine Comments at 1; EMM Comments at 9; IMM Comments at 2-3, 22; Shell Energy Comments at 15-16.

⁵² ACORE Protest at 1; AEE Comments at 4-14; Consumer Advocates Comments and Protest at 1, 13; CECA Protest at 1-3; CT DEEP Comments at 13; E2 Comments at 1; MA Office of Energy and Environmental Affairs Comments at 1; NESCOE Comments at 2; Offshore Wind Coalition Comments at 4; SEIA Comments at 2-5.

⁵³ EPSA Comments at 1-2; NEPGA Comments at 1-3; Renewable Owners Comments at 2-6.

auctions.⁵⁴ For example, ACORE, AEE, and CECA allege that the continued use of the MOPR would cause all New England consumers to pay inefficiently high capacity prices, while requiring consumers in states with state-sponsored resources to pay for redundant capacity.⁵⁵ NESCOE states that during the stakeholder process, it argued that it is fundamentally inappropriate to apply the MOPR to state investments to meet clean energy mandates, and that such a market is not sustainable because whether the existing MOPR is in place or not, state-sponsored resources will continue to come online.⁵⁶ AEE argues that the continued application of the current MOPR: (1) is unduly discriminatory toward new clean resources and serves to preserve market share for incumbent, emitting resources, noting that the current CASPR mechanism has blocked FCM participation by over 800 MW of new clean resources;⁵⁷ (2) interferes with the states' exercise of their lawful authority over generation resources and the mix of generation used to serve customers;⁵⁸ and (3) mitigates actions that are not motivated by an incentive to exercise buyer-side market power, but rather are "aimed at protecting the health and welfare of their residents."⁵⁹ SEIA likewise argues that the states are attempting to use their power of demand to send price signals to encourage the entry of low-cost clean energy resources and the exit of higher-cost fossil fuel resources, and the current MOPR dampens that signal.⁶⁰ ACORE argues that state policies are not an exercise of market power, but a correction of the market failure that occurs when externalities, such as pollution and contribution to climate change, are not accounted for in prices.⁶¹

⁵⁴ ACORE Protest at 3-5; AEE Comments at 3-9; CECA Protest at 18-40; Consumer Advocates Comments and Protest at 14; NESCOE Comments at 9-10; Offshore Wind Coalition Comments at 3-4.

⁵⁵ ACORE Protest at 4-5; AEE Comments at 5; CECA Protest at 36.

⁵⁶ NESCOE Comments at 9.

⁵⁷ AEE Comments at 6.

⁵⁸ *Id.* at 7.

⁵⁹ *Id.* (citing Transmittal at 59).

⁶⁰ SEIA Comments at 5-6.

⁶¹ ACORE Protest at 4.

37. Several parties argue that the MOPR Reforms will appropriately balance state jurisdiction over the generation mix with the need to ensure just and reasonable wholesale rates.⁶² For example, AEE argues that ISO-NE's proposal to exclude Sponsored Policy Resources from buyer-side market power review appropriately reflects the intent of state actions to address environmental policy goals entirely within their authority and avoids the harm of the current MOPR.⁶³ Similarly, Shell Energy notes that ISO-NE justifies its proposal to exclude state sponsored resources from buyer-side market power review by recognizing that these resources both provide environmental attributes for which there is currently no remuneration in wholesale markets *and* contribute to system reliability.⁶⁴ SEIA asserts that the Market Reforms respect the jurisdictional boundary between the Commission and the states while recognizing the delicate balance of state and federal authority in the FPA.⁶⁵

38. Furthermore, several parties argue that the MOPR Reforms balance over-mitigation with under-mitigation. For example, AEE asserts that the MOPR Reforms would appropriately avoid costly and unjust and unreasonable over-mitigation in line with judicial and Commission precedent, which have consistently held that in the regulation of competitive markets, a balance must be struck between over-mitigation and under-mitigation.⁶⁶ AEE argues that the Commission has recognized that it is just and reasonable and not unduly discriminatory or preferential for market mitigation rules to reflect the realities of what resources are likely to be built given the impacts of state policies.⁶⁷ AEE states that for these reasons, the MOPR Reforms resolve the over-

⁶² AEE Comments at 4-6; Offshore Wind Coalition Comments at 4; SEIA Comments at 2, 5.

⁶³ AEE Comments at 5.

⁶⁴ Shell Energy Comments at 4 (citing Transmittal at 22, 31).

⁶⁵ SEIA Comments at 2, 4.

⁶⁶ AEE Comments at 7-8 (citing *Edison Mission Energy v. FERC*, 394 F.3d 964, 969 (D.C. Cir. 2005) (“[Mitigation] may well do some good by protecting consumers and utilities against ... the exercise of market power. But the Commission gave no reason to suppose that it does not also wreak substantial harm.”); *Midwest Indep. Sys. Operator, Inc.*, 109 FERC ¶ 61,157, at P 238 (2004) (explaining that assuring just and reasonable rates requires the Commission to “balance under-mitigation and over-mitigation”)).

⁶⁷ *Id.* at 8 (citing *N. Y. Indep. Sys. Operator, Inc.*, 178 FERC ¶ 61,101, at PP 19-23 (2022) (NYISO BSM Revisions Order) (approving, on rehearing, the New York Independent System Operator's (NYISO's) proposal to distinguish between “Public

mitigation that occurs under the existing MOPR and strike a more appropriate and legally sustainable balance.⁶⁸ Similarly, SEIA argues that the MOPR Reforms are just and reasonable because they mitigate buyer-side market power only when the market seller has both the incentive and ability to exercise that power (i.e., the limited instance when such power can interfere with the market).⁶⁹

39. AEE, the EMM, EPSA, and the IMM specifically support the four proposed categorical exemptions of the MOPR Reforms.⁷⁰ For example, AEE argues that excluding *de minimis* resources from buyer-side market power review will remove this undue barrier to participation while avoiding the need for ISO-NE to devote more staff to the “pointless endeavor” of reviewing the offers of resources that cannot exercise buyer-side market power.⁷¹ The EMM similarly contends that it is not reasonable to apply the MOPR to entrants that would not materially affect capacity market outcomes or for the MOPR to serve as an inefficient barrier to competitive entrants that are investing based on their capacity revenue expectations and not receiving any out-of-market revenues.⁷² AEE also contends that the revised definition of Sponsored Policy Resource recognizes that states have expanded their decarbonization policies and procurement efforts to include energy storage, which was previously excluded due to the limitation of the definition of Sponsored Policy Resources to those resource types selected by state policies prior to January 1, 2018.⁷³ The IMM argues that ISO-NE is appropriately proposing an exemption-based approach over alternative approaches.⁷⁴

Policy Resources” and “non-Public Policy Resources” because under New York law Public Policy Resources are more likely to be successfully developed)).

⁶⁸ *Id.* at 8.

⁶⁹ SEIA Comments at 2.

⁷⁰ AEE Comments at 10-14; EMM Comments at 3; EPSA Comments at 4; IMM Comments at 11.

⁷¹ AEE Comments at 12.

⁷² EMM Comments at 3.

⁷³ AEE Comments at 14 (citing CASPR Initial Order, 162 FERC ¶ 61,205 at P 34; Transmittal, attach. (Testimony of Ryan McCarthy regarding BSMR Reforms) at 52 (McCarthy BSMR Reforms Test.)).

⁷⁴ IMM Comments at 8-11.

40. CT DEEP, EPSA, Renewable Owners, and Shell Energy state that the Commission's approval of the MOPR Reforms should encourage ISO-NE to correct its additional market inefficiencies.⁷⁵ EPSA argues that simply eliminating the current MOPR without a just and reasonable replacement or accompanying market reforms is untenable and states that it views the capacity accreditation and day-ahead ancillary services market enhancements as critical aspects of any transition away from the current MOPR as the buyer-side mitigation mechanism.⁷⁶ Shell Energy requests that the Commission issue questions for ISO-NE to establish a precise timeline for these enhancements.⁷⁷ The IMM also notes that these reforms could diminish the risk that entry of Sponsored Policy Resources will undercut the region's ability to efficiently acquire and retain resources needed for reliability.⁷⁸ In addition to suggesting that ISO-NE develop accreditation reforms, the EMM notes that ISO-NE has expressed an intention to file with the Commission an increase in the net cost of new entry (Net CONE) to complement the increase in risk caused by the MOPR Reforms.⁷⁹ The EMM argues that the reasonableness of the proposed changes in this docket and the competitive performance of the FCM partly depend on this Net CONE filing.⁸⁰ The IMM also supports further consideration of an adjustment to Net CONE.⁸¹

⁷⁵ CT DEEP Comments at 9; EPSA Comments at 4; Renewable Owners Comments at 3-4; Shell Energy Comments at 16.

⁷⁶ EPSA Comments at 3.

⁷⁷ Shell Energy Comments at 16.

⁷⁸ IMM Comments at 15.

⁷⁹ EMM Comments at 5. The EMM explains that one key factor that increases revenue volatility is out-of-market investments. The EMM states that higher price volatility increases investment risk and the cost of capital, which partly determines the Net CONE value used to set the height of the capacity demand curves. *Id.* at 4-5 (citing EMM, *EMM Evaluation of Changes in the Minimum Offer Price Rule on Financial Risk in New England* (November 2021), available at <https://www.potomaceconomics.com/document-library/?filtermarket=ISO-NE>).

⁸⁰ EMM Comments at 5.

⁸¹ IMM Comments at 2 (citing Transmittal at 46).

41. The IMM and EMM contend that the MOPR Reforms, while “acceptable,” would be improved by the removal of the incentive rebuttal test for the financial incentive to exercise buyer-side market power.⁸² In particular, the IMM argues that because project sponsors would provide rebuttal evidence that they are “unlikely to realize a material net financial benefit,” the proposal exposes the IMM’s assessment to the risk of receiving incomplete information. The IMM also notes that the proposal is silent on what is “material” and how such materiality is determined. Noting that the incentive rebuttal test necessarily includes an ability test, the IMM also argues that “[i]t is inherently difficult to forecast the impact on clearing prices on the next auction with limited information, let alone on subsequent auctions.”⁸³ Nevertheless, the IMM also confirms that it could administer the incentive rebuttal process, adding that “it is likely that time and experience in applying the incentive rebuttal component will help inform the IMM and participants as to the implementation.”⁸⁴ The EMM prefers use of only conduct and ability tests, an approach it claims “would eliminate all of the practical concerns.”⁸⁵

3. Answers

42. ISO-NE reiterates that the MOPR Reforms are the result of a robust stakeholder process that received broad support and are just and reasonable. Further, ISO-NE states that while some parties support the continued application of the MOPR to state-sponsored resources, no party protests the MOPR Reforms.⁸⁶

43. ISO-NE contends that the EMM’s and IMM’s concerns regarding the incentive rebuttal will be addressed as part of implementation and do not require adjustment to the proposal.⁸⁷ Regarding the concerns that the IMM will have to determine whether an LSE might indirectly receive state funding for the project at issue, ISO-NE states that it intends for the proposed Tariff changes to cover indirect state funding that might be provided through another entity, including an LSE receiving indirect funding from a

⁸² EMM Comments at 7-8; IMM Comments at 17-21. The EMM and IMM suggest eliminating the proposed incentive rebuttal provision and either relying exclusively on the existing conduct test or supplementing the conduct test with an impact test to determine when non-exempt resources should be mitigated.

⁸³ IMM Comments at 20.

⁸⁴ *Id.* at 21.

⁸⁵ EMM Comments at 8.

⁸⁶ ISO-NE Answer at 8-10.

⁸⁷ *Id.* at 50, 54.

state.⁸⁸ ISO-NE additionally states that the proposed Tariff language intentionally does not address the time period for the IMM to conduct the net-benefits analysis so that the IMM has the flexibility to use its judgment to determine the most appropriate time horizon for the new resource offer it is reviewing.

44. Similarly, in response to the IMM's data and information concerns, ISO-NE states that the proposed Tariff revisions explicitly place the burden on the project sponsor to convincingly demonstrate to the IMM the lack of an incentive, and that the IMM is empowered to determine that the project sponsor has not rebutted the presumption of an incentive if it does not provide all information or data necessary to demonstrate as much.⁸⁹ Regarding the concern that all below-cost offers from LSEs reflect an incentive to exercise buyer-side market power, ISO-NE contends that this is not an implementation concern but a disagreement about whether to consider incentives, and that the Commission has recognized exemptions from mitigation for LSEs that self-supply, implicitly recognizing that below-cost offers do not necessarily reflect an incentive to exercise buyer-side market power.⁹⁰ ISO-NE states that the EMM and IMM raise concerns about the use of the word "material" and that the purpose of the term in the proposed Tariff language is to provide the IMM with discretion in assessing whether the potential net benefit to the LSE demonstrated by the IMM's quantitative analysis reflects an incentive to exercise buyer-side market power.⁹¹

4. Commission Determination

45. We find that the MOPR Reforms are just and reasonable and not unduly discriminatory or preferential. ISO-NE has met its burden to show that the proposed revisions appropriately balance the need to mitigate the potential exercise of buyer-side market power against the harms of over-mitigation.

46. ISO-NE's current Tariff requires the IMM to review offers below an established reference point and authorizes the IMM to mitigate those offers regardless of whether bidders have the ability and incentive to depress the capacity price below competitive levels and to benefit their own position in the capacity market.⁹² When performing its

⁸⁸ *Id.* at 51.

⁸⁹ *Id.* at 52.

⁹⁰ *Id.* at 53 (citing *N.Y. Pub. Serv. Comm'n*, 153 FERC ¶ 61,022 at P 61).

⁹¹ *Id.* at 53-54.

⁹² IMM Comments at 2 ("From the inception of the Forward Capacity Market, the IMM has reviewed all offers from New Capacity Resources that are below a reference point to ensure competitive outcomes and to prevent price distortion in the FCA," citing

calculations, the IMM excludes “out-of-market revenues” such as state support associated with clean energy goals.⁹³ Because of this exclusion, the offer calculated by the IMM can be higher than if such revenues were included, and that in turn affects the new resource’s ability to clear the auction.⁹⁴

47. The record before us indicates that the current MOPR construct has a number of drawbacks, including that it may increase capacity costs, over-procure capacity, distort FCM price signals, and, in so doing, interfere with the ability of New England states to meet their policy objectives by mitigating state-sponsored new entrants. Accordingly, we agree with ISO-NE that it is appropriate to revise the MOPR construct to exclude: (1) resources that serve the state policy goals of New England states, and (2) resources that are not capable of exercising buyer-side market power. Doing so not only avoids the harms associated with over-mitigation, but also focuses buyer-side market power mitigation on those resources most likely to behave uncompetitively through the exercise of buyer-side market power.

48. We acknowledge that in accepting ISO-NE’s proposal we are changing policy from previous Commission decisions regarding ISO-NE’s MOPR construct.⁹⁵ Under the

Devon Power LLC, 115 FERC ¶ 61,340, at P 28 (2006) (“[T]he Market Monitor will review any new capacity or imported capacity bid below 0.75 times CONE, to determine whether the bids are consistent with the long run average costs of that new capacity resource or the opportunity cost (or another reasonable economic measure) for the import.”)).

⁹³ ISO-NE, Tariff, § III.A.21.2(b)(i) states that “[o]ut-of-market revenues are any revenues that are: (a) not tradable throughout the New England Control Area or that are restricted to resources within a particular state or other geographic sub-region; or (b) not available to all resources of the same physical type within the New England Control Area, regardless of the resource owner. Expected revenues associated with economic development incentives that are offered broadly by state or local government and that are not expressly intended to reduce prices in the Forward Capacity Market are not considered out-of-market revenues for this purpose.”

⁹⁴ In addition, project sponsors “shall indicate whether and which project cash flows are supported by a regulated rate, charge, or other regulated cost recovery mechanism.” If so, “then that rate will be replaced with the [IMM’s] estimate of energy revenues.” *Id.*

⁹⁵ See *New Eng. States Comm. on Electricity v. ISO New Eng. Inc.*, 142 FERC ¶ 61,108, at P 35 (2013) (Commission rejected complaint seeking to create an exemption for renewable resources to ISO-NE’s MOPR, on the basis that the exemption would significantly depress capacity prices), *reh’g denied*, 151 FERC ¶ 61,056 (2015).

Administrative Procedure Act, the Commission may re-evaluate a prior policy and subsequently reach a different conclusion, provided that “the new policy is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better.”⁹⁶ In the following paragraphs, we explain why we conclude that today’s order satisfies that standard.

49. As an initial matter, we note that no party contends that ISO-NE’s proposal is inconsistent with the FPA. Indeed, no party protests the proposed MOPR construct in any respect.⁹⁷ The Commission has taken different approaches to MOPRs over the years and recently accepted a similar proposal by the New York Independent System Operator (NYISO), which was also unopposed.⁹⁸

50. In addition, we find that the MOPR Reforms strike an appropriate balance between the harms of over- and under-mitigation and are well supported by the record before us. In particular, we find that the MOPR Reforms reduce the risk, present under the current MOPR, of at least three significant harms: over-procurement of capacity, potentially inflated capacity market prices, and inefficient price signals from the capacity market.⁹⁹ First, because state policies typically mandate their development, these state-

⁹⁶ *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (stating that an agency “need not demonstrate to a court’s satisfaction that the reasons for the new policy are better than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better, which the conscious change of course adequately indicates”); *Motor Vehicle Mfrs. Ass’n of United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 57 (1983) (“An agency’s view of what is in the public interest may change, either with or without a change in circumstances.”) (internal citations omitted); *N.J. Bd. of Pub. Utils. v. FERC*, 744 F.3d 74, 100 (3rd Cir. 2014) (*NJBPU*) (noting that “[c]ourts have repeatedly held that an agency may alter its policies despite the absence of a change in circumstances,” citation omitted); *Tenn. Gas Pipeline Co.*, 105 FERC ¶ 61,120, at P 35 (2003) (stating that the Commission’s prior acceptance of tariff provisions does not preclude the Commission from reconsidering its policies), *aff’d sub nom. Tenn. Gas Pipeline Co. v. FERC*, 400 F.3d 23 (D.C. Cir. 2005).

⁹⁷ As noted, certain parties contested the Transition Mechanism, but not the proposed MOPR Reforms. *See supra* PP 15-18.

⁹⁸ *N. Y. Indep. Sys. Operator, Inc.*, 179 FERC ¶ 61,102 (2022) (NYISO MOPR Order).

⁹⁹ Transmittal at 29, 33, 56-59; McCarthy BSMR Reforms Test. at 21-22, 43 (explaining that “ISO-NE is excluding Sponsored Policy Resources from buyer-side market power review in order to reduce the potential for an inefficient overbuild of the

sponsored resources will likely be developed and available to contribute to ISO-NE's resource adequacy needs.¹⁰⁰ However, their contribution to resource adequacy could be effectively ignored in the FCM to the extent the current MOPR prevents them from clearing.¹⁰¹ If so, the capacity market would clear surplus resources that are not actually needed to maintain resource adequacy.¹⁰² And while those surplus resources would not be needed to meet ISO-NE's resource adequacy requirements, consumers would still be required to pay their capacity costs.¹⁰³ Second, not only might consumers pay for unneeded capacity, but “[i]f a resource does not clear due to the application of the [current MOPR], it will be replaced by a resource with a higher-priced offer, which will raise the market clearing price insofar as it causes a more expensive resource to clear on the margin than would otherwise occur.”¹⁰⁴

51. ISO-NE explains that this tension between the state policy goals and the MOPR will grow over time as more of such resources seek to enter the FCM. For example, ISO-NE notes that four of the six New England states have increased their renewable energy targets or have implemented even more aggressive economy-wide decarbonization mandates.¹⁰⁵ ISO-NE also demonstrates how these initiatives are reflected in the most

New England power system over time, which could result in unnecessarily high costs to consumers”); ACORE Protest at 3-5; AEE Comments at 3-9; Consumer Advocates Comments and Protest at 14; NESCOE Comments at 9-10; Offshore Wind Coalition Comments at 3-4.

¹⁰⁰ Transmittal at 7; Chadalavada Test. at 46-47.

¹⁰¹ Transmittal at 21 (asserting that “the fact remains that the long-standing buyer-side mitigation rules will prevent a significant quantity of [state-sponsored] resources from clearing in the market”).

¹⁰² *Id.* at 5, 29; EMM Comments at 3 (supporting the MOPR Reforms “because applying the MOPR to large quantities of resources that are nevertheless entering is costly and inefficient”).

¹⁰³ Transmittal at 29-32; *see also* AEE Comments at 5 (“Forcing consumers to pay for the same service twice over is patently unjust and unreasonable.”).

¹⁰⁴ NYISO MOPR Order, 179 FERC ¶ 61,102 at P 39.

¹⁰⁵ Transmittal at 30.

current interconnection queue data, which indicates that the vast majority of resources looking to enter the market are renewables.¹⁰⁶

52. Third, and relatedly, ISO-NE's proposed revisions will help address the concern that the MOPR causes the FCM to send price signals that do not accurately reflect the region's capacity needs.¹⁰⁷ As described above, because the current MOPR will preclude certain resources from receiving a capacity obligation even though they will be constructed, the FCM will send price signals that are not reflective of the actual resource mix, interfering with efficient market entry and exit.¹⁰⁸ Taken together, these three potential harms associated with the current MOPR interfere with the capacity market's ability to ensure resource adequacy at just and reasonable rates.¹⁰⁹

¹⁰⁶ *Id.* ISO-NE states that, whereas in 2017, 49% of new resource proposals were for natural-gas or oil-fired resources, today the new resource proposal queue is dominated by wind (60%), solar (15%) and battery storage (21%) resources, with natural gas comprising just three percent of the new resources in the queue; *see also id.* at 6 (“All new resources that cleared in the most recent Forward Capacity Auction were renewable or clean.”); *id.* at 31 (“Under the current buyer-side mitigation construct, it is possible, indeed likely, that a majority of the capacity in the current interconnection queue will be excluded from entry into the market. This is particularly so for offshore wind resources, which comprise a significant percentage of proposed new resources and a vast majority of the state procurements. . . . Simply put, this situation is no longer sustainable.”).

¹⁰⁷ *Id.* at 29 (“A market that precludes entry of capacity that nonetheless contributes to the resource adequacy objectives of the region can lead to substantial inefficiencies, as the market will fail to send accurate price signals about the need for new capacity and the need to maintain existing capacity.”); SEIA Comments at 5-6 (“The states are attempting to use their power of demand to send price signals to encourage the entry of low-cost clean energy resources and the exit of higher-cost fossil fuel resources. The MOPR dampens that signal.”).

¹⁰⁸ CASPR Initial Order, 162 FERC ¶ 61,205 at P 21 (finding that “[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.”).

¹⁰⁹ AEE Comments at 24 (“[T]he instant filing ... provides substantial evidence that [the] MOPR is unjust and unreasonable and must be ended.”); SEIA Comments at 5

53. In addition, we find that ISO-NE's proposal better comports with the FPA's express reservation to the states of authority over generation facilities.¹¹⁰ In prior orders, the Commission treated the indirect price impacts of state policy choices as equivalent to anti-competitive conduct.¹¹¹ Upon further review, we no longer find it appropriate to presume that states' exercise of their reserved authority over generation facilities is the equivalent of anticompetitive conduct, simply because of the inevitable, albeit indirect, effect on FCA prices. Instead, we recognize that the FPA was "drawn with meticulous regard for the continued exercise of state power."¹¹² And we find that market rules seeking to "hermetically seal[]"¹¹³ ISO-NE's markets from the indirect effects of state policies are not necessary to ensure that Commission-jurisdictional rates remain just and reasonable and not unduly discriminatory or preferential.

54. Regarding the individual components of the MOPR Reforms, we accept ISO-NE's proposal to exclude *de minimis* resources and passive demand-response resources from the MOPR because we agree that these resources lack the ability to meaningfully affect prices.¹¹⁴ We also find just and reasonable ISO-NE's proposal to exclude from the

(arguing that "allowing the current MOPR to stay in effect will result in unjust and unreasonable rates").

¹¹⁰ 16 U.S.C. § 824(b)(1); *Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150, 154, (2016) (describing the jurisdictional divide set forth in the FPA); *FERC v. Elec. Power Supply Ass'n*, 577 U.S. 260, 266 (2016) (*EPSA*) (explaining that "the [FPA] also limits FERC's regulatory reach, and thereby maintains a zone of exclusive state jurisdiction").

¹¹¹ See NYISO MOPR Order, 179 FERC ¶ 61,102 at P 42 (prior rules treated state policy choices as "equivalent to anti-competitive conduct"); see also *ISO New Eng. Inc.*, 162 FERC ¶ 61,205 at P 24 ("It is . . . imperative that such a market construct include rules that appropriately manage the impact of out-of-market state support."); *Calpine Corp.*, 169 FERC ¶ 61,239 at P 5 (explaining that the Commission is applying a minimum offer price rule to state-sponsored resources in order to "protect PJM's capacity market from the price-suppressive effects of resources receiving out-of-market support").

¹¹² *Panhandle E. Pipe Line Co. v. Pub. Serv. Comm'n of Ind.*, 332 U.S. 507, 517-18 (1947).

¹¹³ *EPSA*, 577 U.S. at 281 ("It is a fact of economic life that the wholesale and retail markets in electricity, as in every other known product, are not hermetically sealed from each other. To the contrary, transactions that occur on the wholesale market have natural consequences at the retail level. And so too, of necessity, will FERC's regulation of those wholesale matters.").

¹¹⁴ We note that, with respect to seller-side market power, ISO-NE already employs a similar size-based exclusion from market power review and mitigation. See

MOPR new competitive entrants. Because new competitive entrants have no financial ties to load-side interests, they have no incentive to exercise buyer-side market power.¹¹⁵ Finally, substantially for the reasons discussed above, we also find just and reasonable the proposal to exclude Sponsored Policy Resources.

55. For new capacity resources not qualified for an exclusion, ISO-NE proposes to retain its current buyer-side market power review process with one substantial addition: the incentive rebuttal “net benefits” analysis of certain resources that fail the conduct test (i.e., offer lower than the IMM’s estimate of a competitive offer). Because the incentive rebuttal test allows these resources to demonstrate that they have no incentive to lower capacity prices, we find that the proposal is in line with ISO-NE’s goal of targeting resources that have both the incentive and ability to exercise buyer-side market power.¹¹⁶ Both the IMM and the EMM contend that the MOPR Reforms, while acceptable, would be improved by removing the incentive test, which they claim will be difficult to administer and open to challenge. However, we note that the IMM already rejects requested offer floor prices due to insufficient information, a process that is similar in scope.¹¹⁷ Although such rejections have led to contested proceedings,¹¹⁸ under the proposal here, the IMM will likely be reviewing relatively few resources.¹¹⁹ In addition,

ISO-NE Tariff, § III.13.1.2.3.2.1 (Market Rule 1) (67.0.0) (excluding from IMM review certain bids when the total of such bids from a single market participant or its affiliate is equal to or less than 20 MW); *ISO New England Inc.*, 155 FERC ¶ 61,029 at P 1 (2016) (accepting filing subject to condition), *clarification and reh’g denied*, 161 FERC ¶ 61,115 (2017), *order on remand and clarification*, 166 FERC ¶ 61,060 (2019). We also acknowledge ISO-NE’s commitment to propose changes to the *de minimis* threshold when necessary due to changing market conditions. Transmittal at 51 & n.189.

¹¹⁵ See *Consol. Edison*, 150 FERC ¶ 61,139 at P 46 (finding that buyer-side mitigation rules should not be applied to unsubsidized, competitive entrants who have no incentive to inappropriately suppress capacity market prices).

¹¹⁶ See Transmittal at 47.

¹¹⁷ *ISO New Eng. Inc.*, 178 FERC ¶ 61,050 (2022).

¹¹⁸ See, e.g., *ISO New Eng. Inc.*, 174 FERC ¶ 61,046 at P 36 (2021) (finding that the project sponsors had failed to provide sufficient documentation and information for certain component values they used to calculate their proposed offer floor price).

¹¹⁹ For example, ISO-NE states that the *de minimis* exclusion alone will exempt from review and mitigation about 80% of new capacity resources (by count). Transmittal at 49.

as ISO-NE explains, an incentive test necessarily includes an ability test.¹²⁰ If the IMM finds that the resource has no ability to affect the capacity market price, the IMM will never reach the question of whether the project sponsor could benefit from a lower price.¹²¹ Finally, we note that NYISO already employs a similar incentive test in its application of buyer-side mitigation in its capacity market.¹²² In sum, we find that ISO-NE's proposal reasonably limits buyer-side market power concerns, focusing the MOPR to those circumstances directly linked to uncompetitive offers that benefit the portfolio of the offering resource.

56. Finally, as several parties request, we encourage ISO-NE and stakeholders to continue their work on market reforms that will complement the MOPR Reforms, including reforms to qualified capacity accreditation. We acknowledge ISO-NE's willingness to commit to filing accreditation reforms with the Commission in time for FCA 19.¹²³ We disagree, however, with parties that assert that any future market enhancements are necessary for the MOPR Reforms to be just and reasonable. Our reasoning above does not depend on any future market reforms.

¹²⁰ *Id.* at 62.

¹²¹ We acknowledge that the IMM argues that “[i]t is inherently difficult to forecast the impact on clearing prices on the next auction with limited information, let alone on subsequent auctions.” IMM Comments at 20. Nevertheless, based on the record before us, we have no reason to believe that such forecasts are impractical. Indeed, the IMM itself confirms that it could administer the incentive rebuttal test, adding that “it is likely that time and experience in applying the incentive rebuttal component will help inform the IMM and participants as to the implementation.” *Id.* at 21. The IMM also concedes that “[i]n theory, the assessment of market power should consider the ability and incentive of the entities connected to the resource to suppress prices.” *Id.* at 20.

¹²² See NYISO, Market Administration and Control Area Services Tariff, § 23.4.5.7.14 (MST) attach. H (Self Supply Exemption) (6.0.0) (describing the net-short and net-long thresholds associated with NYISO's self-supply exemption).

¹²³ ISO-NE Answer at 30. ISO-NE states that it plans to begin the formal stakeholder process to develop a proposal beginning in June 2022 and completed in June of 2023, with a filing to the Commission to follow shortly thereafter to permit ISO-NE to incorporate the new resource capacity accreditation methodology for FCA 19 (to be held in February 2025), a process that begins in February of 2024. Chadalavada Test. at 44.

B. Transition Mechanism

1. Proposal

57. As part of the filing, ISO-NE proposes retention of the existing MOPR until FCA 19, with a two-year transition period that involves several key revisions.¹²⁴ During this transition, ISO-NE proposes the following: (1) an RTR exemption; (2) retention of CASPR with elimination of the CASPR test price; and (3) an updated definition of Sponsored Policy Resource, consistent with the definition proposed as part of the MOPR Reforms.

a. RTR Exemption

58. ISO-NE states that the purpose of the RTR exemption is to introduce a controlled amount of unmitigated capacity offers from new state-sponsored resources in FCAs 17 and 18.¹²⁵ ISO-NE explains that the proposed RTR exemption functions similarly to the former RTR exemption, with two exceptions: (1) the cap on state-sponsored capacity that may proceed to each FCA without offer mitigation, and (2) the resource qualification requirements. With respect to the cap, ISO-NE states that it proposes a 300 MW cap on RTR capacity for FCA 17 and a 400 MW cap on RTR capacity for FCA 18—a total of 700 MW—with a carryforward provision for unused RTR MW from FCA 17. ISO-NE explains that in FCA 18, the cap on RTR capacity will be reduced by the MW amount of capacity that clears in the FCA 17 substitution auction, such that state-sponsored resources that come in through the FCA 17 substitution auction will be able to offer their capacity in the FCA 18 primary auction without being subject to the MOPR. As a result, ISO-NE states that the proposal caps the total amount of state-sponsored resource capacity permitted to enter the market through the primary auction with offers unmitigated by the MOPR at 700 MW during the transition period.

59. ISO-NE explains that the stakeholder-derived 700 MW value is reasonable, given (1) the recent precedent of the RTR exemption, which permitted up to 600 MW of entry over a three-year period, (2) the agreement and support by a broad section of stakeholders, and (3) that sponsored resources such as solar, onshore wind, battery storage, and hybrid technologies, have lower market entry costs that increase significantly the likelihood of those resources clearing and receiving a CSO despite being subject to the MOPR.¹²⁶

¹²⁴ Transmittal at 63.

¹²⁵ *Id.* at 63-65.

¹²⁶ *Id.* at 42.

b. Removal of Substitution Auction Test Price

60. ISO-NE states that the Transition Mechanism also eliminates the test price rules that apply to the CASPR substitution auction.¹²⁷ ISO-NE states that it implemented the test price rules in response to stakeholder concerns that existing resources nearing retirement may have an incentive to make uncompetitively low de-list bids in the primary auction to improve their chances of obtaining a CSO that could then be shed in the substitution auction (i.e., bid shading). ISO-NE explains that the test price mechanism evaluates whether an existing resource seeking to participate in the substitution auction retained its CSO in the primary auction at a competitive price for the resource. However, ISO-NE states that both it and the Commission acknowledged that financial risks for a resource engaged in bid shading are high, thus tempering concerns about bid shading behavior, and therefore ISO-NE does not believe removal of the test price mechanism will cause any harm to the FCM.¹²⁸ In addition, according to ISO-NE and the IMM, removal of the test price may facilitate more participation by existing resources in the substitution auction.

c. Updated Definition of Sponsored Policy Resource

61. In order to qualify for the RTR exemption in FCAs 17 and 18 under the Transition Mechanism, ISO-NE explains that new resources must meet the revised definition of Sponsored Policy Resource proposed in the MOPR Reforms.¹²⁹ According to ISO-NE, the updated definition will accommodate state programs that were recently implemented and that may be implemented in time for use by resources participating in FCAs 17 and 18. The updated definition adds language to include resources qualifying under decarbonization or net-zero carbon standards, broadens the types of applicable policies to include executive or administrative orders, and removes the current requirement that the relevant policy must be in effect on January 1, 2018.¹³⁰

¹²⁷ *Id.* at 66-68.

¹²⁸ *Id.* at 67-68, (citing Transmittal, attach. (Testimony of Ryan McCarthy regarding Transition Mechanism) at 18-20 (McCarthy Transition Mechanism Test.).

¹²⁹ *Id.* at 55-56.

¹³⁰ *See supra* n.32.

2. Comments

a. General Comments and Protests

62. Several commenters support the Transition Mechanism as just and reasonable.¹³¹ They contend that the Transition Mechanism was refined through extensive stakeholder negotiations, including the term of the transition and the MW amount and types of sponsored policy resources that could qualify through the RTR exemption.¹³² Commenters argue that ISO-NE's proposal strikes an appropriate balance among reliability concerns, efficient pricing, cost risks to consumers, investor confidence in the markets, and accommodating regional clean-energy goals.¹³³ Commenters state that the Transition Mechanism also will reduce the likelihood that ISO-NE will need to rely on out-of-market solutions, such as Reliability Must Run (RMR) agreements, that distort market outcomes and breed regulatory uncertainty.¹³⁴ Commenters state that the Transition Mechanism is a reasonable means to address ISO-NE's reliability and efficiency concerns while essential market improvements are developed.¹³⁵

63. Several commenters do not oppose ISO-NE's proposed Transition Mechanism.¹³⁶ Some of those commenters indicate that accepting the MOPR Reforms—even on an “unnecessarily extended” timeframe under the Transition Mechanism—is an improvement over the current market rules.¹³⁷ They contend that the uncertainty or delay that could result from a rejection of ISO-NE's filing would be harmful to other efforts to

¹³¹ Calpine Comments at 11; IMM Comments at 7; EPSA Comments at 3; EMM Comments at 15-16; NEPGA Comments at 2-3; NEPOOL Comments at 13; Renewable Owners Comments at 2-6; Shell Energy Comments at 6-8.

¹³² Calpine Comments at 8-10; NEPGA Comments at 1-2; NEPOOL Comments at 13; Renewable Owners Comments at 3, 5.

¹³³ Calpine Comments at 11-12; IMM Comments at 1; NEPGA Comments at 2; NEPOOL Comments at 13; Shell Energy Comments at 5-6.

¹³⁴ Calpine Comments at 19; EPSA Comments at 2; EMM Comments at 16; NEPGA Comments at 7-8, 11-12; Shell Energy Comments at 10-11.

¹³⁵ Calpine Comments at 1, 19; EMM Comments at 7, 9; EPSA Comments at 3-4; IMM Comments at 15; NEPGA Comments at 2, 8-10; Renewable Owners Comments at 4-6; Shell Energy Comments at 12-14.

¹³⁶ AEE Comments at 3; NESCOE Comments at 11; SEIA Comments at 6-7.

¹³⁷ AEE Comments at 3; SEIA Comments at 6-7.

ensure that ISO-NE and NEPOOL stakeholders comprehensively address reliability issues and market reforms such as capacity accreditation to ensure a swift and reliable transition to a clean energy system in New England.¹³⁸ However, these commenters urge the Commission to make clear, if it approves ISO-NE's filing, that the MOPR Reforms must go into effect in FCA 19 as proposed in ISO-NE's filing.¹³⁹

64. In contrast, other parties argue that the Transition Mechanism perpetuates a rule that is unjust, unreasonable and unduly discriminatory and should be rejected.¹⁴⁰ Some protesters urge the Commission to act under its authority under section 206 of the FPA and require that ISO-NE implement a replacement rate that removes the MOPR immediately beginning with FCA 17.¹⁴¹ Many such parties express concern about ISO-NE's proposal disadvantaging renewable resources and highlight the climate, environmental, and economic benefits of immediate implementation of MOPR reforms in New England.¹⁴²

b. Standard for Transition Mechanism

65. In support of the Transition Mechanism, Calpine asserts that MOPR Reforms are at least as significant a reform as the previous CASPR market design changes that

¹³⁸ AEE Comments at 3, 23-26; SEIA Comments at 6-7. *See also* NESCOE Comments at 11-12 (asserting that permitting the status quo to remain would leave "New England in an untenable position that is the worst of both worlds for the next auction: the existing MOPR remains in place with no RTR exemption.").

¹³⁹ AEE Comments at 27. *See also* NESCOE Comments at 11 (noting that during the stakeholder process NESCOE made clear that it would oppose attempts to extend the MOPR beyond FCA 19 and that any proposal by ISO-NE would need to hardwire the elimination of the MOPR as of that auction. In its comments, NESCOE makes clear that ISO-NE's proposal "does just that.").

¹⁴⁰ ACORE Protest at 1; CECA Protest at 2, 45-79; E2 Protest at 1; Healthlink Comments at 1; Consumer Advocates Comments and Protest at 13; New England Offshore Wind Protest at 1.

¹⁴¹ ACORE Protest at 1, 8-9; BEAT Comments at 1; CECA Protest at 3, 81-82; E2 Protest at 1; Consumer Advocates Comments and Protest at 24; NCEL Comments at 1; Offshore Wind Coalition Comments at 1; Protests of Concerned Citizens.

¹⁴² BEAT Comments at 1; CECA Protest at 7; E2 Comments at 1-2; Healthlink Comments at 1; MA Office of Energy and Environment Comments at 1; NCEL Comments at 1; Offshore Wind Coalition Comments at 3-4; Protests of Concerned Citizens.

warranted a transition mechanism.¹⁴³ They argue that the Transition Mechanism consists of market design elements, including using an RTR exemption concurrently with the CASPR framework, that the Commission has previously found to be just and reasonable.¹⁴⁴

66. In contrast, CECA and Consumer Advocates contend that Commission precedent supports rejecting ISO-NE's proposal because of the Transition Mechanism. CECA states that in prior cases, the Commission has approved transition mechanisms when the applicant provided a reasoned analysis, supported by modeling or other evidence, and the purpose of the transition mechanism was to give notice to market participants or avoid market volatility; however, CECA argues, the Commission has rejected transition mechanisms that do not meet these criteria.¹⁴⁵ CECA asserts that here ISO-NE only provided vague and unsubstantiated claims about reliability that lack evidentiary support,¹⁴⁶ has not shown that its transition proposal would provide market benefits, and has failed to address the substantial costs that delaying MOPR reforms would impose on consumers.¹⁴⁷ Consumer Advocates also note that the Commission has found that "stakeholder approval of a proposal is insufficient to carry the burden of proof that a rate is just and reasonable."¹⁴⁸

¹⁴³ Calpine Comments at 12 (citing CASPR Initial Order, 162 FERC ¶ 61,205 at P 100; *ISO New Eng. Inc.*, 155 FERC ¶ 61,319, at P 62 (2016) (MRI Demand Curves Order); and *ISO New Eng. Inc.*, 147 FERC ¶ 61,172, at P 73 (2013) (Pay for Performance Order)).

¹⁴⁴ Calpine Comments at 13-14.

¹⁴⁵ CECA Protest at 75, 78 (citing *PJM Interconnection, LLC*, 175 FERC ¶ 61,084, at P 17 (2021) and *N. Y. Indep. Sys. Operator, Inc.*, 158 FERC ¶ 61,064, at PP 55-56 (2017)).

¹⁴⁶ For example, CECA challenges ISO-NE's prediction that 4,700 MW of offshore wind could offer into FCA 17 (since 1,600 MW of that amount comes from contracts have not yet been approved by the Massachusetts Department of Public Utilities), and states it is more likely that 3,100 MW (of nameplate, or 837 MW in qualified capacity) of new offshore wind would offer into FCA 17, which is less than ISO-NE's forecasted capacity surplus. CECA Protest at 63.

¹⁴⁷ ACORE Protest at 6-7; AEE Comments at 15-16; CECA Protest at 47-48; Consumer Advocates Protest and Comments at 18.

¹⁴⁸ Consumer Advocates Protest and Comments at 16 (citing *Am. Elec. Power Serv. Corp. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,083,

67. Additionally, some commenters argue that the Transition Mechanism is unduly discriminatory, in that it assumes that only large new state-sponsored projects are likely to be delayed and cause reliability problems. These commenters state that all types of new projects face potential delays, and ISO-NE has not shown that state policy resources are more likely to experience delays than non-state-policy resources in order to justify different treatment.¹⁴⁹

c. Promoting Reliability

68. Some commenters agree with ISO-NE that the Transition Mechanism will help alleviate potential reliability concerns.¹⁵⁰ Commenters state that eliminating the existing MOPR likely will exacerbate ISO-NE's concern about the region's reliability issues, by driving existing resources—particularly those that are able to operate in extended cold-weather conditions—to prematurely retire.¹⁵¹ They contend that certain new resources might face development delays that will prevent the necessary replacement capacity from coming onto the system in time to make up for those inefficient retirements.¹⁵²

69. In contrast, several protesters assert that ISO-NE failed to substantiate that the Transition Mechanism will address ISO-NE's reliability concerns.¹⁵³ Some parties

at P 172 (*AEP Service Corp.*) (stakeholder support is relevant but cannot alone prove that a rate design is just and reasonable), *reh'g denied*, 125 FERC ¶ 61,341 (2008)).

¹⁴⁹ CECA Protest at 61; Consumer Advocates Comments and Protest at 18.

¹⁵⁰ Calpine Comments at 10-11, 17-19 (citing ISO-NE, Memorandum re: ISO Support and Preference of Transition to Minimum Offer Price Rule (MOPR) Elimination, at 3 (Jan. 26, 2022), *available at* <https://www.iso-ne.com/static-assets/documents/2022/01/npc-2022-02-03-supplemental.pdf>); EMM Comments at 9; EPSA Comments at 2-3; IMM Comments at 15; NEPGA Comments at 8-12; Renewable Owners Comments at 5-6; Shell Energy Comments at 13-14, 16.

¹⁵¹ Calpine Comments at 18; EPSA Comments at 2; NEPGA Comments at 6.

¹⁵² Calpine Comments at 18; NEPGA Comments at 6-7. For example, Calpine states that approximately 4,000 MW of offshore wind resources have a delivery target date within the next three years, but there are still no wind turbine installation vessels available to support construction of such projects. *Id.* at 18-19 (citing Transmittal at 20-21; Chadalavada Test. at 29, 31-38); Renewable Owners Comments at 5; Shell Energy Comments at 8.

¹⁵³ ACORE Protest at 5-6; AEE Comments at 2, 15; CECA Protest at 46-54; E2 Protest at 2; Consumer Advocates Comments and Protest at 18; NCEL Protest at 1.

contend that ISO-NE's reliability concerns are not quantified, and that conjecture cannot be used to support retaining an unjust and unreasonable rate.¹⁵⁴ Protesters argue that ISO-NE's reference to the August 2020 outages in California does not support the need for the Transition Mechanism and ignores the analysis that the California heat wave negatively impacted conventional generation, and in particular, individual gas plants.¹⁵⁵ CECA disagrees with ISO-NE's reliance on its 2050 Transmission Study as justification to preserve resources that could provide services that might be needed 30 years in the future, and asserts that the role of the capacity market is to ensure resource adequacy, not to procure attributes like flexibility, which are more efficiently procured and compensated through more granular and locational markets like energy and operating reserves.¹⁵⁶ CECA also notes that ISO-NE has done numerous studies in recent years that examine the reliability impacts of the changing resource mix, none of which have shown that the kinds of state policy resources that would be excluded by the MOPR heighten reliability risks.¹⁵⁷ CECA also contends that ISO-NE does not explain whether or how the retirements that may result from the 700 MW RTR exemption would affect reliability—and why the corresponding level of retirements is acceptable.¹⁵⁸

¹⁵⁴ ACORE Protest at 5-6; AEE Comments at 15-16; CECA Protest at 47-51; E2 Comments at 2; Consumer Advocates Comments and Protest at 18.

¹⁵⁵ ACORE Protest at 6 (citing Chadalavada Test. at 17; California ISO, California Public Utilities Commission and California Energy Commission, *Final Root Cause Analysis, Mid-August 2020 Extreme Heat Wave* (January 13, 2021) at 21).

¹⁵⁶ CECA Protest at 52-53 (citing Chadalavada Test. at 12, 17; Tr. of the October 12, 2021 Technical Conference Regarding Energy and Ancillary Markets at 75: 2–6, Docket No. AD21-10 (Oct. 12, 2021) (“We don’t see that the right answer is to focus on capacity market compensation for flexibility because it’s just not at the right time when we need it, and it’s hard at that point to match sort of performance with what it is that was purchased.”) (Dr. Nicole Bouchez, Principal Economist, Market Design for NYISO speaking)).

¹⁵⁷ CECA Protest at 48 (citing Testimony of Abigail Krich on Behalf of Acadia Center, Conservation Law Foundation, Environmental Defense Fund, Natural Resources Defense Council, Renew Northeast, Sierra Club, and Sustainable FERC Project at 34:3–10, 26–28 (Apr. 21, 2022) (Krich Test.) (discussing ISO-NE's Operational Fuel-Security Analysis (OFSA) and New England Wind Integration Study (NEWIS) studies)).

¹⁵⁸ CECA Protest at 50.

70. In addition, parties allege that the Transition Mechanism does not prevent the retirement of resources needed for reliability.¹⁵⁹ They argue that retirement in and of itself is not the problem, and that low FCM prices should signal that retirements are needed to bring supply and demand back into balance.¹⁶⁰ Moreover, CECA indicates that the Transition Mechanism may actually accelerate retirements over FCA 17 and 18 as a result of over-accredited resources exiting through the substitution auction in part due to removal of the CASPR test price.¹⁶¹

71. Parties suggest that ISO-NE's reliability concerns could be addressed by capacity accreditation reforms instead of the Transition Mechanism.¹⁶² CECA asserts, however, that there is no basis for asserting that offshore wind, the primary resource disadvantaged by the delay in MOPR Reforms, is over-accredited, and that offshore wind performs very well during the winter, when the New England grid is currently the most stressed.¹⁶³ Commenters therefore assert that the Transition Mechanism is not an appropriate stop-gap reliability measure while other market reforms are undertaken.¹⁶⁴

72. Protesters also note that all infrastructure projects, not only new state-sponsored resources, may be susceptible to delays.¹⁶⁵ They state that two of the most notable delays or cancellations thus far within the ISO-NE region involve natural-gas fired resources.¹⁶⁶

¹⁵⁹ AEE Comments at 17-19.

¹⁶⁰ *Id.* at 17; CECA Protest at 49-50.

¹⁶¹ CECA Protest at 68-70.

¹⁶² AEE Comments at 18; CECA Protest at 54-58.

¹⁶³ CECA Protest at 55-56 (citing OFSA at 5, 48; ISO-NE, *High-Level Assessment of Potential Impacts of Offshore Wind Additions to the New England Power System During the 2017-2018 Cold Spell*, at 1 (Dec. 17, 2018) (ISO-NE Offshore Wind Analysis)). CECA argues that, in contrast, gas-only resources, which are susceptible to unavailability of natural gas during the coldest days, present possibly the most significant error in ISO-NE's current accreditation scheme. CECA Protest at 56 (citing Chadalavada Test. at 23).

¹⁶⁴ AEE Comments at 19-20.

¹⁶⁵ ACORE Protest at 7; AEE Comments at 20-23; CECA Protest at 59-60.

¹⁶⁶ ACORE Protest at 7; AEE Comments at 21 n.54; CECA Protest at 60 (citing *ISO New Eng. Inc.*, 178 FERC ¶ 61,001, *order on reh'g*, 178 FERC ¶ 61,130 (2022) (terminating CSO for Killingly Energy Center)); *ISO New Eng., Inc.*, 165 FERC ¶ 61,137 (2018) (terminating CSO for Clear River Unit 1); *Footprint Power Salem Harbor Dev.*

CECA contends that ISO-NE overstates the risk of delays in commercial operation of offshore wind, and that state policy resources are actually more likely to enter commercial service because of their state policy support and the revenues they receive from outside the FCM.¹⁶⁷ AEE and CECA note that the potential capacity deficit of 104 MW that ISO-NE identifies as a result of potential delays is a worst-case scenario in which all sponsored policy resources entering the market without being subject to the MOPR face multi-year delays, and in which an equivalent quantity in qualified capacity of existing resources retire in the same timeframe.¹⁶⁸ Moreover, AEE notes that many advanced energy technologies—particularly demand response and passive demand response—have very short development timelines and can come online very quickly if needed.¹⁶⁹ AEE urges that Commission not to endorse reliability concerns as justification for the Transition Mechanism.¹⁷⁰

73. Rather than address the root problem ISO-NE has identified, protesters argue that the Transition Mechanism simply erects a barrier to the entry of some new sponsored policy resources.¹⁷¹ They state that ISO-NE has other tools and potential market improvements at its disposal to minimize the potential for a capacity deficit, such as financial assurance requirements for FCA qualification, the timeout provisions in the interconnection procedures, and annual reconfiguration auctions.¹⁷² In addition, CECA argues that ISO-NE has not articulated or supported any differences between state policy resources and non-state-policy resources in terms of the likelihood that such resources will experience commercial-operation delays, or the harms that such delays might cause,

LP, 149 FERC ¶ 61,211 (2014) (deferring the CSO for Footprint Power Salem Harbor Development LP)).

¹⁶⁷ CECA Protest at 59-60, 62. CECA claims that ISO-NE is incorrect that only Jones Act-qualified vessels can be used for wind turbine installation, and notes that shipbuilding of the turbine installation vessel for the Revolution Wind project is underway and scheduled for completion in December 2023. *Id.* (citing Krich Test. at 14).

¹⁶⁸ AEE Comments at 23; CECA Protest at 64 (citing Chadalavada Test. at 31-38).

¹⁶⁹ AEE Comments at 23 (citing National Renewable Energy Laboratory, *Potential Roles for Demand Response in High-Growth Electric Systems with Increasing Shares of Renewable Generation* (Dec. 2018), <https://www.nrel.gov/docs/fy19osti/70630.pdf>, at 1).

¹⁷⁰ *Id.* at 15.

¹⁷¹ *Id.* at 21.

¹⁷² *Id.* at 21-22; CECA Protest at 64-68.

that would justify different treatment.¹⁷³ Therefore, CECA contends that ISO-NE's narrow solution to slow offshore wind entry in the FCM rather than revising the broader set of market rules to address the risk of delays in commercial operation by all resource types is unduly discriminatory, in contravention of section 206 of the FPA.¹⁷⁴

74. Finally, AEE suggests that the Commission consider additional steps it can take to engage in a transparent and open dialogue with ISO-NE, NEPOOL stakeholders, the states, and others in the region that is focused on ensuring that all solutions to the region's reliability needs are considered and addressed through necessary market reforms, such as capacity accreditation reform.¹⁷⁵

d. Potential Costs to Consumers

75. Some commenters state that the Transition Mechanism balances consumer costs with other factors to ensure ISO-NE can reliably operate its system.¹⁷⁶ Calpine states that the Transition Mechanism reinstates the RTR exemption, which the Commission previously found "fulfills the Commission's statutory mandate by protecting consumers from paying for redundant capacity" while "ensuring that price signals are sufficient to incent existing resources to stay in the capacity market, and new resources to enter, so that ISO-NE meets its reliability requirements at least cost."¹⁷⁷ Shell Energy states that the regulatory certainty of the transition period will help lower financing costs for resource owners and developers.¹⁷⁸

76. Some commenters suggest that the Transition Mechanism may result in avoided costs to consumers. Calpine, CT DEEP, and EPSA state that the Transition Mechanism alleviates the risk of premature retirements such that ISO-NE likely would need to rely on

¹⁷³ CECA Protest at 61.

¹⁷⁴ *Id.* at 61-62.

¹⁷⁵ AEE Comments at 4.

¹⁷⁶ Calpine Comments at 21; Shell Energy Comments at 8.

¹⁷⁷ Calpine Comments at 13 (citing *ISO New Eng. Inc.*, 155 FERC ¶ 61,023 at PP 33, 35).

¹⁷⁸ Shell Energy Comments at 8-11.

out-of-market actions, like retaining resources through RMR agreements, which distort market outcomes and could impose unreasonable costs on consumers.¹⁷⁹

77. In contrast, other protesters argue that ISO-NE has failed to evaluate the consumer impacts of the Transition Mechanism.¹⁸⁰ NCEL and Offshore Wind Coalition state that immediate MOPR reform is needed to not impose unnecessary costs on consumers.¹⁸¹ CECA argues that keeping the MOPR in place for state-sponsored resources for two additional capacity auctions will impose excess costs on customers in every New England state, with the largest costs imposed on states whose policies support the largest portfolio of resources.¹⁸² CECA estimates that the Transition Mechanism could saddle New England consumers with \$197 million to \$1.35 billion in excess capacity costs over the next two capacity auctions relative to an immediate adoption of the MOPR Reforms.¹⁸³

e. **Avoiding Harms of Over-Mitigation by Better Accommodating State Policies**

78. Some commenters agree with ISO-NE that the Transition Mechanism is appropriately tailored to serve two important objectives: (1) to better accommodate Sponsored Policy Resources relative to the existing Tariff; and (2) address specific problems that would result from immediate MOPR elimination for these resources.¹⁸⁴ For example, Shell Energy contends that investors in all types of resources will benefit

¹⁷⁹ Calpine Comments at 19; CT DEEP Comments at 3; EPSA Comments at 4 n.7.

¹⁸⁰ CECA Protest at 45, 75; Consumer Advocates Comments and Protest at 15-17, 22; AEE Comments at 15-17.

¹⁸¹ NCEL Protest at 1; Offshore Wind Coalition Comments at 4.

¹⁸² CECA Protest at 39.

¹⁸³ CECA Protest at 72 (citing CECA Protest, Ex. C (Affidavit of Michael Goggin) at 8-9 (Goggin Aff.)). CECA indicates that, even in a best-case scenario under the Transition Mechanism, in which all resources except offshore wind are able to clear the FCM, MOPR will impose excess costs of nearly \$200 million on New England ratepayers. Under a less optimistic scenario that assumes all renewable and storage resources are unable to clear the FCM due to MOPR, consumer costs will total \$1.35 billion. Goggin Aff. at 12.

¹⁸⁴ Calpine Comments at 14, NEPGA Comments at 13-15, Shell Energy Comments at 7-8.

from a defined market structure and implementation timeline.¹⁸⁵ Calpine notes that eliminating the test price in the CASPR substitution auction should give state-supported resources that are mitigated a better chance of entering the market through that mechanism.¹⁸⁶ Renewable Owners argue that without a transition to allow additional market reforms to be put in place, elimination of the MOPR will adversely affect existing renewable resources.¹⁸⁷

79. Some parties support the filing overall but suggest that the Transition Mechanism may not sufficiently accommodate all state-supported resources. SEIA notes that, while the Transition Mechanism could cause some difficulty for developers of state-supported resources, establishing a specific end to the application of MOPR to state-supported resources will ameliorate some of those difficulties.¹⁸⁸ AEE argues that the Transition Mechanism threatens to prevent new sponsored policy resources from entering and clearing the capacity market in FCA 17 and FCA 18, perpetuating undue discrimination against state-sponsored resources that are mitigated and leading to over-procurement of capacity that will raise costs to customers.¹⁸⁹ CT DEEP argues that MOPR is only a mitigation mechanism meant to address buyer-side market power and that it is inappropriate to apply MOPR to state-sponsored resources or to use MOPR as a tool to ensure reliability.¹⁹⁰

80. Other protesters contend that the Transition Mechanism unreasonably prevents states from achieving their policy objectives. CECA contends that the continued application of MOPR to state-supported resources increases regulatory risks and threatens to undermine the future of competitive wholesale electricity markets by making the capacity market an impediment for states to cost-effectively meet state clean energy mandates.¹⁹¹ ACORE contends that the proposed RTR exemption is far from sufficient

¹⁸⁵ Shell Energy Comments at 11.

¹⁸⁶ Calpine Comments at 15-17.

¹⁸⁷ Renewable Owners Comments at 2-3.

¹⁸⁸ SEIA Comments at 7.

¹⁸⁹ AEE Comments at 15-17.

¹⁹⁰ CT DEEP Comments at 8-9.

¹⁹¹ CECA Protest at 34.

to account for the thousands of megawatts of renewable resources that will be seeking to enter the market in the near future.¹⁹²

f. Providing Time to Complete Necessary Market Reforms

81. Several commenters who support the Transition Mechanism concur with ISO-NE that the transition is needed to allow time for ISO-NE and stakeholders to make the market reforms that are necessary to create an enduring market design without negative risks to reliability, to consumers, and to investors.¹⁹³ The EMM states that capacity accreditation rules would ideally be implemented at the same time as the proposed MOPR change but recognizes that these changes are not feasible at this time.¹⁹⁴

82. Some commenters who support accepting ISO-NE's proposal agree that market reforms, and in particular capacity accreditation reform, are needed and should be the focus for stakeholders rather than additional process related to MOPR reform.¹⁹⁵

83. In contrast, other protesters assert that the need for such reforms does not justify the Transition Mechanism.¹⁹⁶ Protesters note that, while these reforms may be beneficial, ISO-NE's proposal is not contingent on these changes being implemented prior to the MOPR Reforms.¹⁹⁷ Consumer Advocates note that during the stakeholder process, ISO-NE conceded that MOPR reform was possible for FCA 17 without such reforms.¹⁹⁸

84. Finally, some protesters question whether capacity accreditation reforms would necessarily support ISO-NE's rationale for the Transition Mechanism. ACORE contends that capacity accreditation rules may overstate the capacity value of natural gas-fired resources, especially those resources without on-site storage, so improvements in capacity accreditation could actually demonstrate that there is an excess reliability

¹⁹² ACORE Protest at 8.

¹⁹³ Calpine Comments at 1, 3-7; EPSA Comments at 3-4; Renewable Owners Comments at 3; EMM Comments at 5-6; IMM Comments at 15; Shell Energy Comments at 4; NEPGA Comments at 2, 8-11.

¹⁹⁴ EMM Comments at 7.

¹⁹⁵ AEE Comments at 25; CT DEEP Comments at 4.

¹⁹⁶ CECA Protest at 54-59; Consumer Advocates Comments and Protest at 18-19.

¹⁹⁷ Consumer Advocates Comments and Protest at 18-19.

¹⁹⁸ *Id.* at 24.

valuation currently assigned to conventional resources.¹⁹⁹ In addition, CECA contends that there is no basis for asserting that offshore wind is over-accredited, and that a 2010 New England Wind Integration Study by ISO-NE concluded that wind resources were actually under-valued (relative to an effective load carrying capacity (ELCC) approach) at low levels of penetration.²⁰⁰

3. Answers

a. Standard for Transition Mechanism

85. In response to protesters urging the Commission to reject ISO-NE's proposal, ISO-NE, NEPOOL, and NEPGA contend that the revisions presented in the proposal, including the Transition Mechanism, are just and reasonable revisions to the current effective Tariff.²⁰¹ NEPOOL argues that, "due consideration should be given to a stakeholder process that is open to all interested parties and allows representatives of the various stakeholder sectors to participate,"²⁰² and that, although stakeholder support does not alone prove that proposal is just and reasonable, "stakeholder consensus is an important factor to be considered in reviewing the justness and reasonableness of a rate design."²⁰³ In addition, NEPOOL and ISO-NE argue that Commission does not have authority under section 205 of the FPA to grant protesters' request for immediate

¹⁹⁹ ACORE Protest at 6-7 (citing *RENEW Northeast, Inc., v. ISO New England Inc.*, Docket No. EL22-42-000, Complaint and Request for Expedited Consideration (filed March 15, 2022)).

²⁰⁰ CECA Protest at 55 (citing Krich Test. at 26).

²⁰¹ ISO-NE Answer at 3-5, 8, 11-12, 41-42; NEPOOL Answer at 4-7; NEPGA Answer at 2-3. ISO-NE also notes that concerns about how and when ISO-NE expressed its preference for the Transition Mechanism are irrelevant to the Commission's determination. ISO-NE Answer at 54-55.

²⁰² NEPOOL Answer at 6 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,241, at P 21 (2006)).

²⁰³ *Id.* at 7 (citing *AEP Serv. Corp.*, 122 FERC ¶ 61,083 at P 172; *see also PJM Interconnection LLC*, 119 FERC ¶ 61,063, at P 56 (2007) (finding that the position of the majority of stakeholders, even when there is not complete stakeholder consensus, should be considered in a finding of justness and reasonableness); *New Eng. Power Pool*, 105 FERC ¶ 61,300, at P 23 (2003)).

elimination of the MOPR, and that the current record does not support a section 206 order compelling the alternative proposal sought by protesters.²⁰⁴

86. ISO-NE also contends that the Commission should dismiss protests that argue that ISO-NE's current MOPR is unjust and unreasonable because they are complaints masquerading as protests.²⁰⁵ ISO-NE alleges that protesters mistakenly presume that ISO-NE has determined the existence of an inefficient-overbuild problem that must be remedied immediately.²⁰⁶ Instead, ISO-NE reiterates that it recognizes the potential for the inefficiencies caused by overbuild of capacity resources to *eventually* outweigh the market inefficiencies of allowing unmitigated, below-cost offers in the FCA in a way that could harm consumers.²⁰⁷ However, ISO-NE argues that the potential for any inefficient overbuild that would harm consumers over the next two auctions as a result of the 700 MW RTR exemption is non-existent.²⁰⁸

87. In response to protesters concerned about the delay in implementing the MOPR Reforms, ISO-NE and Calpine argue that accepting ISO-NE's Transition Mechanism is the quickest path to eliminating the existing MOPR that poses the fewest legal, market, and reliability risks, and it is the only option that provides certainty that the existing MOPR will be eliminated by FCA 19.²⁰⁹ They allege that rejecting the filing or commencing a section 206 proceeding would reduce the likelihood that the existing MOPR will be eliminated by introducing legal risks.²¹⁰ Calpine states that any Commission order directing elimination of the existing MOPR on terms other than those ISO-NE proposed would be aggressively litigated on rehearing and appeal, extending uncertainty for consumers and investors for years.²¹¹

88. CECA disagrees with the argument that rejecting ISO-NE's proposal under FPA section 205 and requiring ISO-NE to adopt a just and reasonable replacement rate would

²⁰⁴ *Id.* at 7-13; ISO-NE Answer at 6-7; *see also* NEPGA Answer at 5-6.

²⁰⁵ ISO-NE Answer at 42-44.

²⁰⁶ *Id.* at 14.

²⁰⁷ *Id.*

²⁰⁸ *Id.* at 15.

²⁰⁹ Calpine Answer at 2-3; ISO-NE Answer at 46-50.

²¹⁰ Calpine Answer at 8-11.

²¹¹ *Id.* at 12.

be overly burdensome, and contends that the Commission has substantial evidence to implement a replacement rate.²¹² In addition, CECA argues that the Commission's obligation under FPA section 205 prevents it from making decisions based on whether a party will petition for appeal.²¹³

b. Promoting Reliability

89. NEPOOL and ISO-NE reiterate that the immediate elimination of the MOPR could serve as a catalyst for inefficient retirements, which in turn could endanger system reliability, as well as worsen the region's resource adequacy challenges.²¹⁴ NEPOOL contends that the Commission should give due consideration to the fact that ISO-NE, as the entity ultimately responsible for maintaining the reliability of the New England bulk power system, is concerned that immediate elimination of the MOPR creates reliability concerns.²¹⁵

90. In response to protesters that argue that the CASPR test price elimination undermines the reliability goals of the RTR exemption cap, ISO-NE explains that the elimination of the CASPR test price under the Transition Mechanism will encourage further existing resource participation in the substitution auction without hastening inefficient retirements, and that substitution auction participation is unlikely to impact primary auction clearing prices.²¹⁶ ISO-NE states that the RTR exemption's netting provision—which reduces the 400 MW RTR cap for FCA 18 by any state-sponsored resource capacity that clears in the FCA 17 substitution auction—limits the price impacts of any state-sponsored capacity that clears in the substitution auction.²¹⁷

91. In addition, ISO-NE states that no protester refutes ISO-NE's concern that the replacement of existing resources with state-sponsored resources presents uncertain reliability impacts.²¹⁸ ISO-NE contends that protesters also fail to address ISO-NE's

²¹² CECA Answer at 16-18.

²¹³ *Id.* at 18-19.

²¹⁴ NEPOOL Answer at 12 (citing Chadalavada Test. at 11-14, 22-24); ISO-NE Answer at 6.

²¹⁵ NEPOOL Answer at 12-13 (citing Transmittal at 7).

²¹⁶ ISO-NE Answer at 24-28.

²¹⁷ *Id.* at 26-27 (citing McCarthy Transition Mechanism Test. at 11.).

²¹⁸ *Id.* at 29-32.

concern that state-sponsored resource development delays could undermine reliability if existing resources are prematurely displaced during the next two auction cycles.²¹⁹ ISO-NE explains that, this past winter, New England experienced outages of several large units, including of a nuclear unit, the temporary outage of the largest liquefied natural gas (LNG) source for the region, a hydroelectric imports outage, and potential loss of imports from New York, and that during these outages, ISO-NE relied on resources that had quick start and ramping capabilities to maintain the reliability of the system.²²⁰ ISO-NE states that it is concerned about the retirement and replacement of resources such as coal, oil, and dual-fuel resources that provide reliability when needed, including when interstate natural gas pipelines are constrained.²²¹

92. CECA argues that ISO-NE's elimination of the CASPR test price undermines its reliability rationale because it would encourage uncompetitive incumbent generators to submit low bids in the FCM's primary auctions—thus leading to lower primary auction clearing prices—in order to be eligible to receive a severance payment in the substitution auctions in FCA 17 and FCA 18.²²² In addition, CECA argues that a previous ISO-NE study assumed significant additional retirements of coal- and oil-fired generators in the region and entry of new renewable energy resources that did not result in load shedding.²²³ Further, CECA contends that ISO-NE already has authority under the existing Tariff to evaluate the schedules that new resources—including new state policy resources—submit as part of the FCM's new resource qualification process and to address the potential for development delays through that process.²²⁴

c. Potential Costs to Consumers

93. In response to protesters concerned about the cost of the Transition Mechanism to consumers, Calpine argues that the Transition Mechanism could prevent all double payments for “redundant capacity” in FCA 17 and FCA 18 because the RTR exemption and the substitution auction could accommodate all state-supported resources seeking to

²¹⁹ *Id.* at 32-38.

²²⁰ *Id.* at 29 n.79 (citing Chadalavada Test. at 24-25).

²²¹ *Id.* at 32 n.87 (citing Chadalavada Test. at 11).

²²² CECA Answer at 8-9.

²²³ *Id.* at 12-13 (citing OFSA at A16, A17, 16, 42).

²²⁴ *Id.* at 15-16.

enter the market.²²⁵ Calpine also contends that the amount of redundant capacity in both auctions will be limited because nearly all Sponsored Policy Resources seeking to enter the market will be able to avoid mitigation by virtue of their offers being at or above the relevant ORTP.²²⁶ Calpine argues that based on the ORTP values for FCA 17, it is possible, if not likely, that the only resource type that will be mitigated in FCA 17 (and likely FCA 18) is offshore wind.²²⁷ Both Calpine and ISO-NE contend that by CECA's own worst-case estimate, a mere 100 MW of summer capacity of offshore wind might be subject to the MOPR in the two auctions.²²⁸

94. Calpine argues that, by reducing the potential for litigation, the Transition Mechanism benefits consumers by helping ensure that resources can more accurately account for their expected FCM revenues when negotiating state-mandated power purchase agreements.²²⁹

95. ISO-NE and NEPGA also argue that CECA overstates the Transition Mechanism's potential cost to consumers.²³⁰ ISO-NE asserts that although capacity overbuild could eventually harm consumers, ISO-NE has not claimed that such harm

²²⁵ Calpine Answer at 3-5.

²²⁶ *Id.* at 5. Calpine notes that pursuant to the Tariff, the ORTP values that will apply in FCA 17 for photovoltaic solar, lithium-ion battery storage, onshore wind, and offshore wind—i.e., the four technologies that represent most Sponsored Policy Resources under development—are as follows: \$0.000 for solar, \$0.789 for battery storage, \$0.000 for onshore wind, and the auction starting price (i.e., \$12.761) for offshore wind. *Id.* (citing Transmittal at 20-21).

²²⁷ *Id.* at 6. Calpine states that the ORTPs for FCA 18 are not yet known, but that it is reasonable to expect that they will be similar to the ORTPs for FCA 17. *Id.* at 5 n.11.

²²⁸ *Id.* at 6; ISO-NE Answer at 16-17.

²²⁹ Calpine Answer at 7.

²³⁰ NEPGA Answer at 8 & n.11 (claiming that CECA's analysis overstates the estimated "excess cost of MOPR" by 400% or more.); ISO-NE Answer at 20-24 (claiming that the "analysis rests on unfounded (and unsupported) assumptions that are contrary to other assumptions in the [CECA] Protest, the ISO's existing market rules, and sound economic logic").

exists today or will result from retention of the MOPR, as modified by the Transition Mechanism, over the next two auctions.²³¹

96. More specifically, in response to CECA's protest, ISO-NE argues that if the MOPR would prevent entry of 680 to 800 MW of state-sponsored capacity in FCAs 17 and 18, as CECA claims, and the proposed RTR exemption would eliminate that obstacle, then there is no consumer harm to quantify.²³² Further, ISO-NE contends that CECA does not describe the method by which it estimates consumer costs, and that the analysis rests on unsupported assumptions and appears to contain basic mathematical errors. For example, ISO-NE notes that CECA assumes 1,310 MW of state-sponsored offshore wind qualified capacity will be available for FCAs 17 and 18 to support its "low estimate," even though the 1,310 MW assumption contradicts CECA's estimate of 800 MW in another analysis.²³³ Second, ISO-NE notes that CECA assumes that the 1,310 MW, after application of the 700 MW RTR exemption, will result in 910 MW (not 610 MW) of qualified capacity of offshore wind that will be unable to claim the RTR exemption in FCA 18, indicating a misunderstanding of a central design element. ISO-NE notes further that CECA calculates consumer harm using an outdated, hypothetical gross CONE value for a combustion turbine.²³⁴ ISO-NE argues that using a gross CONE value rather than a Net CONE value fails to account for the fact that any such new resources would also expect to receive revenues that would reduce their capacity market offer price. In addition, ISO-NE argues that CECA fails to recognize that the price of capacity in recent auctions has been well below CECA's estimate. Regarding CECA's "high estimate" of the consumer harm, ISO-NE argues that CECA's analysis assumes that the MOPR prevents all existing and future wind, solar, and battery resources from clearing the capacity market, while making other questionable assumptions.²³⁵ ISO-NE contends that with the FCA 17 ORTPs as low as they are for onshore wind, photovoltaic solar, and battery storage resources, CECA cannot credibly assume that such resources will not clear the auction on account of the MOPR or the 700 MW cap.

97. In response to ISO-NE's and NEPGA's criticisms of CECA's estimates of consumer costs associated with the Transition Mechanism, CECA argues that under FPA section 205, it is ISO-NE's duty—not that of protesters—to conduct a reasoned analysis

²³¹ ISO-NE Answer at 14 (citing Transmittal at 5).

²³² *Id.* at 20-24.

²³³ *Id.* at 21 (citing Goggin Aff. at 8).

²³⁴ *Id.* at 22 (citing Goggin Aff. at 8).

²³⁵ *Id.* at 23 (citing Goggin Aff. at 8-9).

of the impacts to consumers (quantitative or otherwise).²³⁶ CECA reiterates that ISO-NE has not performed such an analysis. In addition, CECA states that even when adjusting its consumer cost estimates to incorporate ISO-NE's and NEPGA's critiques regarding pricing assumptions, the Transition Mechanism still entails significant cost impacts to consumers—ranging from \$36 million to \$654 million.²³⁷

d. Avoiding Harms of Over-Mitigation by Better Accommodating State Policies

98. ISO-NE contends that protesters fail to challenge the reasonableness of the proposed RTR exemption as a means of accommodating the entry of state-sponsored resources during FCAs 17 and 18, rather that protesters largely agree that the RTR exemption will accomplish this goal.²³⁸

99. Calpine contends that the Transition Mechanism will not prevent resources that are unable to use the RTR exemption in FCA 17 and FCA 18 from being built, and although some amount of offshore wind might not be able to receive a capacity supply obligation in FCA 17 or FCA 18, such resources will still be compensated for their capacity value through state-mandated transactions and can move forward with development on that basis.²³⁹ Calpine asserts that these resources will have the option to obtain a capacity supply obligation through the substitution auction in either FCA 17 or FCA 18—or, alternatively, in FCA 19 when the existing MOPR is no longer in place.²⁴⁰

100. In response to protesters that argue that the RTR exemption protects incumbent generators and will harm development of offshore wind resources, ISO-NE and NEPGA assert that the proposed RTR exemption quantity was a reasonable compromise among stakeholders who objected to immediate MOPR elimination and state representatives and others who desired more rapid elimination of the MOPR.²⁴¹ ISO-NE and NEPGA state that the 700 MW cap, which accommodates about 2,000 MW of installed capacity from state-sponsored resources, is a meaningful accommodation for state-sponsored resources

²³⁶ CECA Answer at 9-10 (citing ISO-NE Answer at 20-24; NEPGA Answer at 8).

²³⁷ *Id.* at 12.

²³⁸ ISO-NE Answer at 6.

²³⁹ Calpine Answer at 7.

²⁴⁰ *Id.* at 7.

²⁴¹ NEPGA Answer at 6-7.

over the next two auctions.²⁴² NEPGA also highlights that Shell Energy, a large offshore wind developer active in Northeast wholesale markets, and a party to multiple state contracts for offshore wind, supports the proposal as a balanced NEPOOL response to evolving system needs.²⁴³ In addition, NEPGA indicates that AEE, representing several developers of resources favored by the New England states, concludes that the proposal is “a significant improvement over current market rules,”²⁴⁴ and that NESCOE, representing the New England states, does not oppose ISO-NE’s proposal.²⁴⁵ However, North East Offshore, an offshore wind developer, disagrees that all offshore wind developers support the Transition Mechanism, and states that North East Offshore supports elimination of the MOPR as soon as reasonably possible, but recognizes that ISO-NE’s proposal, including the Transition Mechanism, is an improvement over the status quo.²⁴⁶

101. In response to ISO-NE and Calpine, CECA asserts that, notwithstanding the RTR exemption, the Transition Mechanism renders ISO-NE’s Tariff unjust and unreasonable.²⁴⁷ CECA argues that both ISO-NE and Calpine incorrectly assert that CECA is only concerned that up to 800 MW of offshore wind is at stake in FCA 17 and FCA 18.²⁴⁸ On the contrary, CECA states that the upper bound of offshore wind summer capacity that could seek to enter the next two FCAs is 1,300 MW, with between 1,650 and 2,460 MW of winter capacity, which substantially exceeds the 700 MW RTR exemption. According to CECA, these parties therefore misstate that CECA is only concerned that up to 100 MW of state policy resources might not be able to enter the market.²⁴⁹ In addition, CECA contends that these parties fail to consider that the low

²⁴² ISO-NE Answer at 12-20; NEPGA Answer at 7. ISO-NE contends that, according to CECA, the 700 MW RTR exemption cap appears to, at most, prevent 100 MW of state-sponsored offshore wind capacity from clearing in the next two primary auctions (not including the substitution auction), and protesters fail to provide any evidence that this 100 MW difference demonstrates that ISO-NE’s proposal is not just and reasonable. ISO-NE Answer at 16-17 (citing Krich Test. at 6–8).

²⁴³ NEPGA Answer at 3, 7.

²⁴⁴ *Id.* at 3 (citing AEE Comments at 25).

²⁴⁵ *Id.* at 4.

²⁴⁶ North East Offshore Answer at 5-7 (citing ISO-NE Answer at 20).

²⁴⁷ CECA Answer at 6-8.

²⁴⁸ *Id.* at 6 (citing ISO-NE Answer at 16-17; Calpine Answer at 6).

²⁴⁹ CECA Answer at 7.

FCA 17 ORTP values for solar, onshore wind, and battery storage do not foreclose the possibility that these resources may receive different ORTP values for FCA 18 that could preclude them from clearing.²⁵⁰

e. **Providing Time to Complete Necessary Market Reforms**

102. ISO-NE and NEPOOL both note ISO-NE's commitment to completing market reforms in the areas of capacity accreditation and ancillary services markets in time for implementation for FCA 19.²⁵¹ ISO-NE reiterates that having time to complete these reforms is a driving force behind its and others' support for the Transition Mechanism, noting that CECA acknowledges in its protest the importance of the capacity accreditation reforms, particularly as more offshore wind comes into the system.²⁵²

4. **Commission Determination**

103. Under FPA section 205, ISO-NE bears the burden to show that its filing is *a* just and reasonable proposal, but need not show that it is the best or most just and reasonable option.²⁵³ The proposal here includes a package of reforms: tariff revisions to implement MOPR Reforms for FCA 19, and a limited-duration Transition Mechanism for FCAs 17 and 18. When viewed together, ISO-NE's proposal represents a just and reasonable approach to transitioning from its current MOPR construct to a new MOPR construct. No party disputes the ultimate objective of ISO-NE's proposal to revise the current MOPR construct, and no party in this proceeding has advocated for preserving the existing MOPR past FCA 19. Rather, the protesters would like the MOPR Reforms to be effective before FCA 19. However, ISO-NE did not propose immediate MOPR reform in this proceeding, and we need only determine whether the proposal put before us—MOPR

²⁵⁰ *Id.* at 7. CECA claims that new resources are experiencing rising costs due to recent supply chain and labor market issues, and the IMM will consider these rising costs when performing its annual update of the ORTP values. As an example of how ORTPs can fluctuate, CECA notes that the onshore wind ORTPs for FCA 13, FCA 14, and FCA 15 were \$8.472/kW-month, \$13.099/kW-month, and \$0.000/kW-month, respectively. CECA Protest at 8 (citing ISO-NE, Filing, Docket No. ER21-1637-000, at 51 (filed Apr. 7, 2021)).

²⁵¹ ISO-NE Answer at 39-40; NEPOOL Answer at 5.

²⁵² ISO-NE Answer at 39 (citing Krich Test. at 28; Shell Energy Comments at 14).

²⁵³ *City of Winnfield*, 744 F.2d at 874-75; *PJM Interconnection, L.L.C.*, 170 FERC ¶ 61,243, P 57 (2020) (citing *Petal Gas Storage, L.L.C. v. FERC*, 496 F.3d 695, 703 (D.C. Cir. 2007); *Cities of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984); *Cal. Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,282, at P 31 (2009)).

Reforms preceded by the Transition Mechanism—is just and reasonable and not unduly discriminatory or preferential.²⁵⁴

104. We find that it is. Specifically, we find that implementing the MOPR Reforms in conjunction with this limited Transition Mechanism is a just and reasonable approach in this circumstance because it strikes a reasonable balance among the different considerations raised here, including efforts to ensure resource adequacy, minimize potential adverse effects on reliability that could result from an immediate change to the market rules, promote market certainty, and limit the costs associated with over-mitigation.

105. The purpose of the MOPR is to prevent the exercise of buyer-side market power; it is not a tool designed to maintain reliability. The MOPR does not change the capacity accreditation of resources nor the total amount of capacity targeted in an auction. However, as it does directly change resources' offers by imposing offer floors, it can impact the clearing price of an auction and alter which resources clear the auction. Therefore, ISO-NE has presented a reasonable case for why immediate removal of the MOPR in ISO-NE could exacerbate existing reliability challenges insofar as a one-time price shock to the capacity market could cause what it describes as the “disorderly” or inefficient retirement of resources that could prove necessary to maintain reliability during extended cold conditions. As ISO-NE explains, the region’s experience in the past winter demonstrated the need for resources that provide specific reliability attributes such as energy security, ramping, and dispatchability during winter cold snaps.²⁵⁵ For example, ISO-NE points to an occasion in January 2022 on which units totaling approximately 1,100 MW of capacity became unavailable at the same time that the region experienced outages of other transmission and import facilities. Dr. Chadalavada states that these events “illustrate the importance of maintaining . . . other resources that can quickly replace the loss of energy when such contingencies occur” and noted that if those resources were to exit the market through inefficient retirements, the region would face

²⁵⁴ When the Commission reviews a rate proposal under Section 205, it may accept or reject the proposal, but may not alter the utility’s proposal (by, for example, accepting a part of the proposal and rejecting another part, so as to in essence create a different rate) without the consent of the utility. *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108, 116 (D.C. Cir. 2017).

²⁵⁵ ISO-NE highlights that the region experienced outages of several large units, including of a nuclear unit, the temporary outage of the largest LNG source for the region, a hydroelectric imports outage, and potential loss of imports from New York, and during these outages, ISO-NE relied on resources that had quick start and ramping capabilities to maintain the reliability of the system. Chadalavada Test. at 29; ISO-NE Answer at 29-30.

“even more significant constraints” on its ability to call needed resources.²⁵⁶ ISO-NE also points to several factors that complicate its ability to maintain reliability during extreme cold weather events—including gas pipeline constraints and challenges related to oil and LNG deliverability—and has reasonably explained how the Transition Mechanism can, at least in theory, help mitigate those challenges.²⁵⁷ In particular, we agree that the possibility of a significant, one-time capacity price impact could cause resources that depend disproportionately on capacity market revenue to retire, and that a more graduated change in the MOPR framework could reduce that risk, with consequent benefits for reliability in the face of extreme cold-weather events. In addition, ISO-NE explains that existing resources “whose flexibility, dependability and/or sustainability may be far more valuable in the future, with high renewables penetration, than the wholesale markets currently remunerate”²⁵⁸ could retire if the MOPR reform is immediate.²⁵⁹ Here too, we agree that to the extent such needed resources have higher net going forward costs than other supply resources, e.g., due to wholesale market failures to properly compensate those resources for their value, it is theoretically possible that an immediate phase-in of the MOPR reforms could result in the retirement of resources that could be particularly important to maintaining reliability in the future.

106. Relatedly, we find that the Transition Mechanism promotes market stability and provides a measure of predictability to market participants by specifying the maximum amount of state-supported resources that may clear in FCAs 17 and 18 prior to implementation of the MOPR Reforms in FCA 19. The Commission has previously found the use of limited transition periods to be just and reasonable when they allow

²⁵⁶ Chadalavada Test. at 26.

²⁵⁷ ISO-NE Answer at 29 (citing Press Release, *Harsh Weather Conditions Could Pose Challenges to New England’s Power System This Winter*, ISO New England (Dec. 6, 2021), <https://isonewswire.com/2021/12/06/harsh-weather-conditions-could-pose-challenges-to-new-englands-power-system-this-winter/>; see also ISO New England Response to Commission Request for Additional Information Regarding the Inventoried Energy Program, *ISO New England Inc.*, Docket No. ER19-1428-001, at 15 (filed June 6, 2019) (identifying approximately 5,000 MW of oil and coal units believed to be at risk of retirement).

²⁵⁸ Chadalavada Test. at 12.

²⁵⁹ ISO-NE has identified 7,000 MW of existing capacity that have retired or announced plans to retire since 2013. These resources are fueled by LNG, coal, or oil and generate electricity for the system at times of limited natural gas supply and system constraints. ISO-NE Answer at 29-30 (citing Chadalavada Test. at 15).

significant market design changes to be phased in gradually.²⁶⁰ Such transitions can represent a “balanced approach” to “attenuat[e] potential abrupt changes in market signals.”²⁶¹ Similar to the finding the Commission made with regard to the transition in the MRI Demand Curves Order, ISO-NE’s proposed two-year limited Transition Mechanism in this case mitigates “potential abrupt changes in market signals” resulting from the MOPR Reforms, thereby “promot[ing] the long-term cost effectiveness of the market.”²⁶² Likewise, the Commission has supported such transitions that “promote[] long-term cost-effectiveness for the market,” even when immediate implementation of the proposal without the transition “could result in additional short-term consumer savings,”²⁶³ and accepted transitions that provide a phase-in to “allow suppliers to gain experience with the new market design at reduced risk exposure.”²⁶⁴

107. In addition, we find that ISO-NE’s proposed Transition Mechanism—including the RTR exemption, elimination of the CASPR test price, and revised definition of Sponsored Policy Resource—reduces the harms of over-mitigation relative to the *status quo* by allowing a significant amount of state-sponsored capacity to enter the market without the MOPR. When viewed in light of the potential benefits of the Transition Mechanism, we find that these measures reflect a reasonable balancing of consumer and investor interests as ISO-NE moves to a new MOPR construct.²⁶⁵

²⁶⁰ See, e.g., CASPR Initial Order, 162 FERC ¶ 61,205 at P 100 (finding it is consistent with precedent “to permit a transition mechanism to a new regulatory construct”); MRI Demand Curves Order, 155 FERC ¶ 61,319 at P 62 (approving the use of a transition mechanism for implementing zonal demand curves in ISO-NE); Pay for Performance Order, 147 FERC ¶ 61,172 at P 73 (approving a transition plan to phase in ISO-NE’s Pay for Performance provisions).

²⁶¹ See, e.g., MRI Demand Curves Order, 155 FERC ¶ 61,319 at P 62 (establishing sloped demand curve to be phased in after certain parameters met, but the transition will not last longer than three auctions).

²⁶² *Id.* P 62.

²⁶³ *Id.*

²⁶⁴ Pay for Performance Order, 147 FERC ¶ 61,172 at P 73.

²⁶⁵ As the Commission has stated, “buyer-side market power mitigation measures must balance investor and consumer interests.” NYISO MOPR Order, 179 FERC ¶ 61,102 at P 26; see also *Wis. Pub. Power, Inc. v. FERC*, 493 F.3d 239, 262 (D.C. Cir. 2007) (“setting a just and reasonable rate necessarily ‘involves a balancing

108. In addition, we are not persuaded by protesters' arguments that ISO-NE has failed to quantify the need for, or the benefits to be gained from, the Transition Mechanism through a reliability study or otherwise. The Commission has previously stated that "a detailed cost-benefit analysis is not required for the Commission to find proposed Tariff provisions just and reasonable."²⁶⁶

109. Similarly, we reject arguments that ISO-NE's proposal should be rejected on the basis that it fails to accommodate state-supported resources that seek to enter the FCM in FCA 17 and 18, or that ISO-NE has failed to provide analyses to justify the 700 MW cap on the RTR exemption. As ISO-NE explains, the total 700 MW cap for FCA 17 and FCA 18 represents a rational increase over state-sponsored capacity offered into the FCA 13, 14, and 15 substitution auctions, which were 273 MW, 292 MW, and 229 MW, respectively.²⁶⁷ ISO-NE also explains that, using an estimated qualified capacity value of 35% for the portfolio of new state-sponsored resources seeking entry, approximately 2,000 MW of installed capacity could clear under the proposed RTR exemption (i.e., 700 MW of qualified capacity). In addition, resources such as solar, onshore wind, battery storage, and hybrid technologies have relatively low entry costs that increase the likelihood of those resources clearing and receiving a CSO despite having an offer floor. As a result, these resources will likely not rely on the RTR exemption to clear the FCM, increasing the quantity of other resource types, such as offshore wind resources, that will

of the investor and the consumer interests," citing *FPC v. Hope Nat. Gas Co.*, 320 U.S. 591, 603 (1944)).

²⁶⁶ *ISO New Eng. Inc.*, 171 FERC ¶ 61,235, at P 58 (2020), *appeal pending sub nom. Belmont Mun. Light Dept. v. FERC*, D.C. Cir. Case No. 19-1224 (citing *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208, at P 49, *order denying clarification*, 152 FERC ¶ 61,064 (2015), *order on reh'g*, 155 FERC ¶ 61,157 (PJM Capacity Performance Order)). See, similarly, *Neb. Pub. Power Dist. v. FERC*, 957 F.3d 932, 942 (8th Cir. 2020) (while the Commission's "attempt to match costs and benefits might have been crude . . . if crude is all that is possible, it will have to suffice") (citing *Illinois Com. Comm'n v. FERC*, 721 F.3d 764, 776 (7th Cir. 2013)); *Ill. Commerce Comm'n v. FERC*, 576 F.3d 470, 477 (7th Cir. 2009) ("We do not suggest that the Commission has to calculate benefits to the last penny, or for that matter to the last million or ten million or perhaps hundred million dollars") (citing *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1369 (D.C. Cir. 2004)), and noting that even if the Commission cannot quantify the benefits to customers from new lines, it can approve a pricing proposal if it has "an articulable and plausible reason to believe" that customers are receiving appropriate benefits).

²⁶⁷ McCarthy Transition Mechanism Test. at 10.

be able to utilize this exemption.²⁶⁸ Moreover, as ISO-NE explains, elimination of the test price in the CASPR substitution auctions could facilitate increased participation in the substitution auction by exiting resources and increase the opportunities for state-sponsored resources to enter the market,²⁶⁹ further mitigating protesters' concerns with the RTR exemption quantity. We also note that the majority of stakeholders and New England states agreed to the proposed RTR exemption quantity and have not opposed the Transition Mechanism as a means to accommodate state-sponsored capacity into the FCM in the near-term.

110. We similarly reject protesters' argument that the Transition Mechanism is unduly discriminatory to state-sponsored resources. These parties allege that in order to address the potential delays in completing new resources during the next two years, ISO-NE is taking an action, in implementing the Transition Mechanism, that solely disadvantages state-sponsored resources. We disagree that the Transition Mechanism is unduly discriminatory. The Transition Mechanism allows the currently effective MOPR provisions in the Tariff to remain in effect,²⁷⁰ while also permitting a significantly increased quantity of additional state-sponsored resources to enter the market without being subject to a MOPR. We do not believe that creates undue discrimination against state-sponsored resources.

111. We also disagree with protesters who argue that the Transition Mechanism will impose unjust and unreasonable costs on consumers. While CECA's study estimates that the Transition Mechanism may cost consumers between \$36 million to \$1 billion over FCAs 17 and 18 relative to an immediate transition to the MOPR Reforms, ISO-NE and NEPGA explain why several of the study assumptions are not well supported.²⁷¹ Further, CECA's study assumes that ISO-NE does not encounter a reliability concern during the transition period that requires ISO-NE to take out-of-market actions that may exceed CECA's estimated cost savings from implementing the MOPR Reforms in FCA 17. In

²⁶⁸ Chadalavada Test. at 41.

²⁶⁹ Transmittal at 68.

²⁷⁰ Some parties allege that the MOPR itself, as it exists today, is unduly discriminatory and is therefore unjust and unreasonable. AEE Comments at 4-5, ACORE Protest at 4. We do not address that argument in this order, since only arguments regarding the proposed MOPR Reforms, including the Transition Mechanism, are properly before us: the existing MOPR mechanism was previously approved by the Commission and is not before us in this FPA section 205 proceeding.

²⁷¹ CECA Protest at 72 (citing Goggin Aff. at 8-9); ISO-NE Answer at 20-24; NEPGA Answer at 8; CECA Answer at 12 (citing CECA Answer, Ex. A (Supplemental Affidavit of Michael Goggin) at 3-5 (Goggin Suppl. Aff)).

addition, CECA's study does not consider the costs of the package of reforms before us here as compared to the status quo. On balance, we believe the proposal reasonably protects consumers from the costs of inefficient overbuild prior to the MOPR Reform by allowing state-sponsored entry via the RTR exemption, eliminating the CASPR test price, and revising the definition of Sponsored Policy Resource, while also recognizing ISO-NE's reliability concerns.

112. Finally, recognizing that our finding that ISO-NE's proposal is just and reasonable is not contingent upon ISO-NE implementing other market enhancements, we find that the Transition Mechanism provides ISO-NE and stakeholders with an acceptable amount of time to conduct a stakeholder process and to develop additional market reforms, including capacity accreditation. We encourage ISO-NE to continue to work on market enhancements that it believes are needed but reiterate that the implementation of the MOPR Reforms in FCA 19 should not be delayed regardless of the status of those reforms.

The Commission orders:

ISO-NE's filing is hereby accepted, as discussed in the body of this order.

By the Commission. Chairman Glick is concurring with a separate statement attached.
Commissioner Danly is dissenting with a separate statement attached.
Commissioners Clements and Phillips are concurring with a joint separate statement attached.
Commissioner Christie is concurring with a separate statement attached.

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.

Appendix

Entities filing interventions, protests and/or comments, and answers are as follows:

Entity	Short Name or Acronym
Acadia Center**	
Advanced Energy Economy†	AEE
American Clean Power Association**	
American Council on Renewable Energy†	ACORE
Avangrid, Inc.*	
Berkshire Environmental Action Team, Inc.^ †	BEAT
Borrego Solar Systems, Inc.*	
Calpine Corporation ²⁷² ** ±†	Calpine
Clean Energy and Consumer Advocates ²⁷³ ^†±	CECA
Cogentrix Energy Power Management, LLC** ±	Cogentrix
Connecticut Department of Energy and Environmental Protection†	CT DEEP
Connecticut Public Utilities Regulatory Authority*	
Conservation Law Foundation**	
Constellation Energy Generation, LLC*	Constellation
CPV Towantic, LLC*	
Dominion Energy Services, Inc.*	
Electric Power Supply Association†	EPSA
Environmental Defense Fund**	
Environmental Entrepreneurs**†	E2
Eversource Energy Service Company*	
FirstLight Power, Inc.*	
Great River Hydro LLC et. al.^	Renewable Owners
H.Q. Energy Services (U.S.) Inc.*	
Healthlink ^	Healthlink

²⁷² Calpine Corporation, Cogentrix Energy Power Management, LLC, and Vistra Corp. et al. (jointly, Calpine) jointly submitted comments.

²⁷³ CECA includes: RENEW Northeast; Natural Resources Defense Council; Sierra Club; Conservation Law Foundation; Acadia Center; the Environmental Defense Fund; Sustainable FERC Project; Massachusetts Climate Action Network; PowerOptions; E2 (Environmental Entrepreneurs); and American Clean Power Association.

Maine Office of the Public Advocate ^{274**†}	Consumer Advocates
Maine Public Utilities Commission*	
Massachusetts Attorney General Maura Healey ^{**†}	Consumer Advocates
Massachusetts Climate Action Network**	
Massachusetts Department of Public Utilities*	
Massachusetts Executive Office of Energy and Environmental Affairs ^	MA Office of Energy and Environmental Affairs
National Caucus of Environmental Legislators ^	NCEL
National Grid*	
National Hydropower Association*	
NEPOOL Participants Committee ±	NEPOOL
New England for Offshore Wind Coalition ^{275 ^}	Offshore Wind Coalition
New England Power Generators Association Inc. ±†	NEPGA
New England States Committee on Electricity †	NESCOE
North East Offshore, LLC±	North East Offshore
NRG Power Marketing LLC *	NRG
Ocean Winds NA*	
Poweroptions Inc. **	
Potomac Economics, Ltd., ISO-NE's External Market Monitor^	EMM

²⁷⁴ Maine Office of the Public Advocate and Massachusetts Attorney General Maura Healey jointly submitted comments as Consumer Advocates.

²⁷⁵ The Offshore Wind Coalition consists of: Amalgamated Bank; Atrevida Science; Ben Hillman & Company; Berkshire Bank; Black Economic Council of MA; Boston Energy Wind Power Services; Cape Cod 5; Cape Cod Chamber of Commerce; Cape Code Climate Change Collab.; Climate Action Now. Western MA; Climate Reality Project – MA Southcoast; E. Hampton Clean Energy Task Force; Eastern Bank; Eastern CT Green Action; Energy Efficiency Associates, LLC; Environmental Council of RI; eWind Consultants; Faith Communities Enviro. Network; Flashover LLC; Greater Boston Physicians for Social Responsibility; Green Newton; Greenwater Marine Sciences Offshore; Hollis Line Machine; Iron Workers Local 7; IUPAT DC11; Keuka Nergy; Lautec US Inc.; League of Women Voters, MA; MA AFL-CIO; MassMEP; MCAN; Mills Public Relations; MOCA Westport; Muggventures; Nashoba Conservation Trust; New Hampshire Audubon; NH Businesses for Social Responsibility; NH Citizens for Progress; NH EEC Network; People's Action for Clean Energy; Philip Conkling & Associates; POWER-US | MA; Rangel Renewables; Rhode Island Building Trades; Robert E Derecktor Inc.; Seacoast Anti-Pollution League; Self-Reliance; Skunk Works Fund; Stantec; Turnstone; University of Maine; Vineyard Power Cooperative Inc.

PUBLIC CITIZEN, INC*	
Public Systems, et. al.* †	
RENEW Northeast, Inc.**	RENEW
Repsol Energy North America Corporation*	
Shell Energy North America (United States), L.P. †	Shell Energy
Sierra Club**	
Solar Energy Industries Association	SEIA
Sustainable FERC Project and Natural Resources Defense Council **	SFP/NRDC
The Internal Market Monitor of ISO New England Inc.^	IMM
U.S. Senators Elizabeth Warren, Edward J. Markey and Bernard Sanders^	Senators
Vistra Corp., et al.** ±	Vistra
Concerned Citizens ²⁷⁶ ^	Concerned Citizens

²⁷⁶ The following individuals submitted comments: Adam Maynard, Adele Franks, Alan Gordon, Amanda L Nash, Andrew D Oram, Aruni Kacker, Becky L Bartovics, Betsy J Sowers, Betty G Barrer, Bonnie Massie, Caitlin Vinter, Carolyn C. Barthel, Carrie Katan, Casey Bolduc, Chagit Steiner, Charles W Lidz, Christine Zende, Cindy Callaway, Clarissa Rodriguez, Colby Lawless, David Greenberg, David Nathanson, David O'Leary, David Schneider, Dawn Durning-Hammond, Deborah D Peterson, Deborah G. Roher, Deborah Wolozin, Dianne Plantamura, Dorothy A Savarese, Dylan T Lucas, Edward McIntyre, Eileen E. Ryan, Elizabeth N. Snellings, ESQ, Eva Wilson, Fred Cunningham, Gail Page, Gail R. Fleischaker, Ian D McDonald, Jacqueline F. Salit, James C Mulloy, Jane c Bergen, Janet Bellamy, Janet Miller, Jean M Duffy, Jeanne K Krieger, Jeanette Fariborz, Jeff Cohen, Jeff J Clark, Jennifer Smith, Jerome Halberstadt, Joan B. Saxe, Joan R. Levinsohn, Joanne M Pohl, John Player, John Riley, Jon Autiello, Jon Slote, Joseph Wasserman, Joy Gurrie, Judith A. Nichols, Judith O Boroschek, Judith Reilly, June Greig, Karen Slote, Kate O'Connor and Frederick Spence, Kate Wheeler, Katherine Fisher, Katie Vincent, Kent Wittenburg, Kimberly Stoner, Leif Taranta, Leonard C. Yannielli, Liz S Bradt, Lori S. Goldner, Maria Bartlett, Mark Viola, Martha Rogers, Martha Simon, Mary E McDougall, Mary Fischer, Mary Jane J Else, Mary Pritchard, Mary Rydingsward, Marya Axner, Melinda Tuhus, Melissa Ludtke, Mireille Bejjani, Monte L Pearson, Nancy Morgan, Nannette K Trinkaus, P.J. Gardner, Pat Konecky, Patricia Arrington, Patricia N. Burdick, Paul B. Popinchalk, Peter J Barrer, P. J. Gardner, Rand K Barthel, Richard Halpern, Robert A Armstrong, JR, Robert Bonney, Robert F Thurman, Robert Gamer, Robert M Miller, Robert W. Persons, Ron Blau, Ron Smoller, Ryan Hines,# Samuel Schacht, Sandy Tosi, Shelly Stuler, Solstice Initiative, Stephen F. Derdarian, Steven Botkin, Susan Donaldson, Susan Eastwood, Susan Malloy, Susan M. Smoller, Susan Redlich, T. Stephen Jones, MD, Tali Smookler.

* Entities submitting interventions only

** Entities submitting comments and/or answers as part of a coalition

† Entities submitting motions to intervene and protests or comments

± Entities submitting answers

^ Entities submitting comments and/or answers but no motion to intervene

Individuals submitting comments out of time

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England Inc.
New England Power Pool Participants Committee

Docket No. ER22-1528-000

(Issued May 27, 2022)

GLICK, Chairman, *concurring*:

1. I believe that the best outcome here would have been for ISO New England Inc. (ISO-NE) to immediately implement its new Minimum Offer Price Rule (MOPR)—*i.e.*, without the Transition Mechanism. Simply put, ISO-NE could have, and should have, done better. Nevertheless, ISO-NE submitted a different proposal—one that delays reform of the MOPR by two years—and we must evaluate the filing before. When considered in that context,¹ I believe that the proposed Transition Mechanism is part of a just and reasonable package of reforms.² In addition, and critically, the New England States have explained that they do not oppose the Transition Mechanism.³

2. Nevertheless, it is important to take a step back and not lose sight of how far we have come in this debate. It was a little over four years ago, in response to another ISO-NE filing establishing the Competitive Auctions with Sponsored Policy Resources (CASPR) construct, that the Commission laid the foundation for its recent MOPR

¹ As today’s order notes, “best” is not the standard we apply in reviewing this Federal Power Act (FPA) section 205 filing. *ISO New England Inc.*, 179 FERC ¶ 61,139, at P 103 (2022) (Order); *see Petal Gas Storage, L.L.C. v. FERC*, 496 F.3d 695, 703 (D.C. Cir. 2007) (“FERC is not required to choose the best solution, only a reasonable one”); *PJM Interconnection, L.L.C.*, 170 FERC ¶ 61,243, at P 57 (2020) (“A party filing a proposal pursuant to FPA section 205 need not demonstrate that its proposal is the best option, but only that it is just and reasonable.”); *see also NRG Power Mktg., LLC v. FERC*, 862 F.3d 108, 114 (D.C. Cir. 2017) (Section 205 puts FERC in a “passive and reactive role.”). Instead, under section 205, when a public utility—in this case, ISO-NE—submits a proposal that is itself just and reasonable, we must accept that proposal even when there is a superior option, as there was here. *See Cities of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984) (utility needs to establish that its proposed rate design is reasonable, not that it is superior to all alternatives).

² Order, 179 FERC ¶ 61,139 at P 104.

³ New England States Committee on Electricity Comments at 2.

misadventures.⁴ In that order, the Commission announced its intention to coopt MOPRs, turning them into a means to block the effects of states' exercise of their reserved authority under section 201(b) of the FPA.⁵ Time has proven what I said at the time: the Commission's antagonistic approach to the states would "come to rank as a historically serious misstep" that represented a "threat to consumers, the environment and, in fact, the long-term viability" of capacity markets more generally.⁶ And how. Over the ensuing two years, the Commission engaged in a quixotic campaign to use its authority under the FPA to effectively "nullify" certain disfavored state public policies.⁷ Far from protecting consumers and creating confidence in capacity markets, the Commission's orders risked causing serious harm to those very markets and led numerous states to consider abandoning them altogether.

3. In his dissent, Commissioner Danly continues to beat the drum via an ahistorical attempt to recast the MOPR as a reliability tool. Not only is that characterization unsupported by Commission precedent, the evident antipathy to state resource decisionmaking—equating states' exercise of their authority under section 201(b) to a "manipulative scheme"⁸—only underscores the extent to which nullification was the goal all along. There can be no winners in a regulatory civil war between FERC and the

⁴ *ISO New England Inc.*, 162 FERC ¶ 61,205 (2018) (CASPR Order).

⁵ CASPR Order, 162 FERC ¶ 61,205 at P 22; *see generally Hughes v. Talen Energy Mktg., LLC*, 136 S. Ct. 1288, 1292 (2016) (describing the jurisdictional divide set forth in the FPA); *FERC v. Elec. Power Supply Ass'n*, 136 S. Ct. 760, 767 (2016) (EPSA) (explaining that "the [FPA] also limits FERC's regulatory reach, and thereby maintains a zone of exclusive state jurisdiction"); *Panhandle E. Pipe Line Co. v. Pub. Serv. Comm'n of Ind.*, 332 U.S. 507, 517-18 (1947) (recognizing that the analogous provisions of the NGA were "drawn with meticulous regard for the continued exercise of state power").

⁶ CASPR Order, 162 FERC ¶ 61,205 (Glick, Comm'r, dissenting in part and concurring in part at 1).

⁷ In a moment of candor the Commission's December 2019 order on PJM MOPR forthrightly acknowledged that the application of the MOPR would have the effect of "nullify[ing]" the policies that trigger it. *See Calpine Corp. v. PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,239, at PP 10, 89 (2019); *id.* (Glick, Comm'r, dissenting at n.26) ("The Commission justifies its refusal to extend the MOPR to federal subsidies because to do so would 'disregard or nullify the effect of federal legislation.' But that can only mean that the Commission is fully aware that this is what it is doing to state policies, notwithstanding its repeated assurances that it respects state jurisdiction over generation facilities.") (citations omitted).

⁸ Order, 179 FERC ¶ 61,139 (Danly, Comm'r, dissenting at P 8).

states. Although the professed rationale for using the MOPR against state resource decisionmaking has whipsawed back-and-forth in recent years⁹—from buyer-side market power, to “price suppression,” to “market integrity,” to, now, reliability—none of those rationales can avoid the fact that any approach that puts the Commission, and by extension, the RTOs, at loggerheads with the states is bound to fail, with customers, as usual, being stuck with the tab. Ending the federal-state antagonism over the MOPR represents a significant step forward toward ensuring resource adequacy at just and reasonable rates, which is, after all, the entire purpose of a capacity market.¹⁰

4. I recognize that the changing resource mix is forcing the Commission, RTOs, and the states to take a new tack to ensuring reliability. No one can dispute that. But the right way—and, in my view, the only just and reasonable way—to do so is by designing wholesale electricity markets to ensure reliability *in light of* that changing resource mix rather than trying to roll back the resource mix clock. It is not the Commission’s role to choose one resource type over another, or to second guess the wisdom of state resource decisionmaking. Instead, we must ensure, in a resource-neutral manner, that wholesale electricity markets are procuring the services need to keep the lights on and the grid in balance.

5. As a result of today’s order, ISO-NE is free to do just that rather than engaging in a Sisyphean attempt to stymie state efforts through the capacity market. In this respect, I strongly encourage ISO-NE to move forward expeditiously in developing and filing a capacity accreditation proposal to ensure that the FCM is accurately valuing the capacity contribution of all resources. Done right, capacity accreditation can serve as a prime example of how Commission-jurisdictional markets can ensure reliability in a manner that compliments, rather than contradicts, states’ exercise of their sovereign authority—exactly the type of “cooperative federalism”¹¹ that I believe should typify the Commission’s interaction with the states and its regulation of wholesale markets more generally. Similarly, I urge ISO-NE to consider how the unique winter reliability issues facing New England are reflected in its markets, and whether those markets require modifications—such as a seasonal reserve product¹²—or additional products in order to

⁹ Cf. *Calpine Corp. v. PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,034 (2020) (Glick, Comm’r, dissenting at P 33) (“Throughout this proceeding, the Commission has relied on various inscrutable principles, such as ‘investor confidence’ or ‘market integrity,’ to justify its new MOPR.”).

¹⁰ See, e.g., CASPR Order, 162 FERC ¶ 61,205 at P 23 (“The objective of the [Forward Capacity Market (FCM)], a market mechanism adopted by the New England region, is to ensure resource adequacy at just and reasonable rates.”).

¹¹ Cf. *EPSA*, 136 S. Ct. 760.

¹² The Commission has already once rejected ISO-NE’s attempt to address

maintain reliability at just and reasonable rates, both in the near-term and as the resource mix continues to evolve in the years ahead.

For these reasons, I respectfully concur.

Richard Glick
Chairman

reliability issues through relatively short-term methods, such as the day-ahead-market, *see ISO New England Inc.*, 173 FERC ¶ 61,106 (2020). Although I will review any filing made by the ISO with an open mind, and consistent with the standard of review, I believe the better course of action for a durable solution to ISO-NE's winter reliability issues may lie in a seasonal approach to procuring the services that will ensure the reliable operation of the grid.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England Inc.
New England Power Pool Participants Committee

Docket No. ER22-1528-000

(Issued May 27, 2022)

DANLY, Commissioner, *dissenting*:

1. I dissent from this order¹ accepting the Federal Power Act (FPA) section 205² filing by ISO New England Inc. (ISO-NE) and the New England Power Pool largely eliminating the Minimum Offer Price Rule (MOPR), which was designed to protect ISO-NE's capacity markets from the exercise of buyer-side market power. This "compromise" filing³ ensures that the capacity market in New England will no longer serve any meaningful purpose except to be used as a tool to suppress prices paid to existing generators. Meanwhile, a fleet of new, state-subsidized renewable resources will force any generator that is not receiving a subsidy—potentially including older renewables—into premature retirement or into expensive, out-of-market reliability must-run contracts (RMR).⁴ I dissent because a market rate design cannot be just and reasonable if it is not competitive, and it cannot be competitive when it permits states to freely manipulate prices.⁵ The proposed rate does exactly that and is therefore manifestly unjust and unreasonable.

2. I have explained, at length, the legal requirements of competitive markets and our obligation to mitigate the exercise of buyer-side market power via state-sponsored

¹ *ISO New England Inc.*, 179 FERC ¶ 61,139 (2022).

² 16 U.S.C. § 824d.

³ New England Power Generators Association, Inc. April 21, 2022 Comments at 3-4 (NEPGA April 21, 2022 Comments).

⁴ *See, e.g., Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267 (2018), *order on clarif.*, 172 FERC ¶ 61,044 (2020).

⁵ *Cal. ex rel. Lockyer v. FERC*, 383 F.3d 1006, 1013 (9th Cir. 2004) (quoting *Tejas Power Corp. v. FERC*, 908 F.2d 998, 1004 (D.C. Cir. 1990)) ("In a competitive market, where *neither buyer nor seller has significant market power*, it is rational to assume that the terms of their voluntary exchange are reasonable, and specifically to infer that the price is close to marginal cost, such that the seller makes only a normal return on its investment.") (emphasis added).

resources bidding below cost and suppressing capacity prices.⁶ While in theory a MOPR is not the only mechanism a market could adopt to prevent state-sponsored resources from suppressing capacity prices, a properly designed market must employ *some* mechanism to prevent the exercise of buyer-side market power. The one thing it cannot do is simply allow the exercise of that market power to happen. And that is precisely what the majority allows today: the states pay new renewables out of market, and these resources—now made indifferent to price—turn around and bid zero in the capacity market. Such bids, we are told, are to make certain the subsidized resource gets a commitment, and are *never* (we are told) for the purpose of suppressing prices. Nevertheless, these bids will have an “inevitable, albeit indirect, effect on FCA prices.”⁷ The result will be the elimination of competition in the capacity market and the certainty that capacity market rates will bear no relation to the market rates that would have resulted had there been no exercise of market power. The rate, consequently, *is not a market rate*, and cannot, therefore, be just and reasonable *as* a market rate.

3. This is the majority’s doing. ISO-NE justifies this “more nuanced mechanism” because “[s]everal New England state policymakers and *federal regulators* have made it clear: the MOPR must go or be overhauled.”⁸ Chairman Glick expressly threatened that

⁶ Comm’r James P. Danly, *White Paper: Commissioner James Danly on the Requirement that Competitive Markets be Protected from the Exercise of Market Power Applied to RTO Capacity Markets*, FERC (June 17, 2021), <https://cms.ferc.gov/news-events/news/white-paper-commissioner-james-danly-requirement-competitive-markets-be-protected>; Comm’r James P. Danly, *Danly Office White Paper: The Requirement that Competitive Markets be Protected from the Exercise of Market Power Applied to RTO Capacity Markets*, FERC (May 20, 2021), <https://www.ferc.gov/news-events/news/danly-office-white-paper-requirement-competitive-markets-be-protected-exercise>; Comm’r James P. Danly, *Danly Office White Paper: The Requirement that Competitive Markets be Protected from the Exercise of Market Power Applied to RTO Capacity Markets*, FERC (May 20, 2021), <https://www.ferc.gov/news-events/news/danly-office-white-paper-requirement-competitive-markets-be-protected-exercise>.

⁷ *ISO New England Inc.*, 179 FERC ¶ 61,139 at P 53.

⁸ Transmittal at 6 (emphasis added). I must take a moment to address Commissioner Christie’s concurrence. Noting that five of the six New England states joined the New England States Committee on Electricity’s (NESCOE) comments, and no state opposed the ISO-NE MOPR reform proposal although some states did not support the Transition Mechanism, he says that the “obvious conclusion is that the ISO-NE MOPR reform proposal is in furtherance of the public policies chosen by the elected policy makers of New England.” *ISO New England Inc.*, 179 FERC ¶ 61,139 (Christie, Comm’r, concurring at P 4). He also notes that the sixth state—New Hampshire—*opposed* and did not join certain of NESCOE’s comments in the stakeholder process. *See*

RTOs must get rid of MOPRs or the Commission would do so unilaterally.⁹ ISO-NE quotes Chairman Glick and Commissioner Clements arguing that “the [ISO-NE] MOPR

id. (Christie, Comm’r, concurring at P 4 n.11). Because five states support the ISO-NE MOPR reform proposal and New Hampshire failed to oppose the proposal in this docket, he concludes that the New England states’ elected leaders support the proposal. *See id.* (Christie, Comm’r, concurring at P 4). Such support and New Hampshire’s lack of opposition in the record, he argues, *see id.* (Christie, Comm’r, concurring at PP 4, 6), resolves the issue in favor of accepting ISO-NE’s tariff revisions. I cannot agree with this. Though I, too, believe that the states play an inestimably important role under the FPA, it is the Commission that is charged with ensuring that rates are just and reasonable and no amount of state acquiescence (or, as in this case, partial acquiescence) can overcome that obligation. State agreement is but one of many indicators that a proposal *might* be just and reasonable. In any event, the D.C. Circuit has squarely found that “mitigation measures . . . do not entail direct regulation of facilities, a matter within the exclusive control of the states. *See* 16 U.S.C. § 824(b)(1).” *New Eng. Power Generators Ass’n, Inc. v. FERC*, 757 F.3d 283, 290 (D.C. Cir. 2014). The Third Circuit also has rejected a state’s claim that the Commission “is preventing New Jersey from using the resources it has chosen to promote,” holding that “FERC is doing no such thing.” *N.J. Bd. of Pub. Utils. v. FERC*, 744 F.3d 74, 97 (3d Cir. 2014) (*NJBPU*). Finding that ISO-NE’s reforms are not just and reasonable and retaining mitigation measures do not thwart a state’s choice to promote preferred resources. If they want their preferred capacity, even in the face of a Commission-imposed mitigation regime, they are entitled to it. The states simply must pay for it. *See id.*, 744 F.3d at 97 (“Thus, as in *Connecticut Department of Utility Control*, New Jersey and Maryland are free to make their own decisions regarding how to satisfy their capacity needs, but they ‘will appropriately bear the costs of [those] decision[s],’ . . . including possibly having to pay twice for capacity.”) (quoting *Conn. Dep’t of Pub. Util. Control v. FERC*, 569 F.3d 477, 481 (D.C. Cir. 2009)). The states could also exit the market and return to cost-of-service ratemaking. *See, e.g., Ill. Commerce Comm’n v. FERC*, 721 F.3d 764, 776 (7th Cir. 2013) (“A further answer to both the substantive and procedural questions . . . is that [regional transmission organization (RTO)] members who think they’re being mistreated by the . . . tariff, can vote with their feet. Membership in an RTO is voluntary”); *accord* N.H. Rev. Stat. § 3:8 (“The words ‘Live Free or Die,’ written by General John Stark, July 31, 1809, shall be the official motto of the state.”). Fundamentally, I agree with Commissioner Christie that, if a state abandons its duty to advocate for its ratepayers, it will live with the consequences of that choice—the Commission can only rule on the record before it. *ISO New England Inc.*, 179 FERC ¶ 61,139 (Christie, Comm’r, concurring at PP 4-5 & n.11).

⁹ *See* Rich Heidorn Jr., *PJM MOPR in the Crosshairs at FERC Tech Conference*, RTO Insider LLC (March 23, 2021), <https://www.rtoinsider.com/articles/20033-pjm-mopr-in-the-crosshairs-at-ferc-tech-conference> (“Glick also said the commission would

appears to act as a barrier to competition, insulating incumbent generators from having to compete with certain new resources that may be able to provide capacity at lower cost.”¹⁰ Exactly how are incumbent generators supposed to compete with state-subsidized resources? The whole point of a subsidy is to give certain resources an artificial (i.e., anti-competitive) advantage over other market players. Otherwise, what does a subsidy do?

4. The real question is why existing generators support the end of a competitive capacity market in New England. No generator protested. In fact, existing generators filed stomach-churning comments giving up on competitive capacity markets in exchange for a transition mechanism for the next two auction cycles (Forward Capacity Auctions (FCAs) 17 and 18, referred to herein as the Transition Mechanism), featuring somewhat-less-than-fully manipulated capacity markets (up to 700 MWs of subsidized renewables in the next two FCAs) and ISO-NE’s promises for two future reforms.¹¹ The Transition Mechanism to a non-competitive capacity market supposedly remedies “concerns about how the elimination of [the] MOPR would affect investor confidence and reliable operation of the New England Power System.”¹² I do not see how two FCAs of only somewhat manipulated capacity auctions is going to do anything to instill investor confidence or resolve reliability concerns.

5. As for the two promised reforms, the majority already says they are not necessary for this filing to be just and reasonable.¹³ The first promised reform is to credit resources, particularly renewables, for the capacity they actually provide rather than according to fictional aspirations. This reform is fully independent of any questions related to the

act unilaterally if necessary. ‘I think we should, to the extent we can, allow and enable the RTOs themselves and the stakeholders to come up with their own proposals [for] an approach that’s different than the current MOPR rules around the country,’ Glick said. ‘To the extent they don’t come up with something, I think we have an obligation under the Federal Power Act to act where rates and terms in these markets are unjust and unreasonable. In my opinion, I’ve said several times before, they are certainly in PJM, and so, if for whatever reason PJM and the stakeholders aren’t able to act, I think . . . we need to do it for them.’”).

¹⁰ Transmittal at 6 (quoting *ISO New England Inc.*, 178 FERC ¶ 61,050 (2022) (Glick, Chairman & Clements, Comm’r, concurring at 4)).

¹¹ See, e.g., NEPGA April 21, 2022 Comments; Calpine Corporation, et al. April 21, 2022 Comments.

¹² Calpine Corporation, et al. April 21, 2022 Comments at 10.

¹³ *ISO New England Inc.*, 179 FERC ¶ 61,139 at P 56.

MOPR and ought to be made regardless of this proceeding. Why is ISO-NE currently jeopardizing reliability by pretending renewables provide more capacity than they do?¹⁴ The second promised reform is a day-ahead ancillary services market, which is another idea that should be independently pursued and that has nothing to do with whether ISO-NE's capacity market is just and reasonable. As to how that reform will fare should it ever reach the Commission, no one can say. We rejected a section 205 proposal on this very subject less than two years ago.¹⁵

6. Existing generators presumably made this Faustian bargain because they see no practical way to defeat elimination of the MOPR. The majority has made perfectly clear its intent to let states freely manipulate the markets in pursuit of their ambition to develop new renewables.¹⁶ The states have established renewable goals through legislation that

¹⁴ See Transmittal at 40 (“Working with the region, the ISO plans to overhaul the manner in which resources participating in the FCM receive capacity values, away from the current approach that produces values based on the ability of the resource to serve gross peak load, to a methodology that accredits resource capacity values based on their marginal reliability contribution to reducing expected unserved load (whenever it may occur).”) (citation omitted); *id.* at 40 n.142 (“As Dr. Chadalavada explains, ‘It is anticipated that the revised approach will account for intermittency, limitations on fuel supplies, and other factors traditionally ignored in resource adequacy assessment and capacity qualification processes (and largely ignored in the ISO’s current process).’”).

¹⁵ *ISO New England Inc.*, 173 FERC ¶ 61,106 (2020).

¹⁶ As to the concurrence of my colleagues, Commissioner Clements and Commissioner Phillips, they describe the MOPR as “a likely unjust and unreasonable tariff mechanism that, if left uncorrected, could force customers in New England to pay millions or even billions to prop up capacity that they do not want or need.” *ISO New England Inc.*, 179 FERC ¶ 61,139 (Clements, Comm’r, & Phillips, Comm’r, concurring at P 1); *id.* (Clements, Comm’r, & Phillips, Comm’r, concurring at P 2) (“Each of the six New England states have enacted renewable and alternative portfolio standards, and some have enacted statutes and regulations to promote the development of clean energy resources by facilitating their financing through long-term power purchase agreements. Yet, if left unchecked, ISO-NE’s MOPR could exclude many of these resources from the capacity market, essentially ignoring the available capacity from these resources and forcing consumers to pay higher prices for unneeded capacity in a region with among the highest electricity prices in the nation.”) (citations omitted). States appropriately bear the costs of their own public policy decisions, and we at the Commission bear the responsibility of ensuring that capacity market rates are just and reasonable, as the courts have long held. See *NJBPU*, 744 F.3d at 97 (“Thus, as in *Connecticut Department of Utility Control*, New Jersey and Maryland are free to make their own decisions regarding how to satisfy their capacity needs, but they ‘will appropriately bear the costs of [those]

simply ignores inconvenient nuances like their policies' effects on cost and reliability. This is unlikely to change absent a major reliability crisis, which, as NERC¹⁷ and other entities¹⁸ have made clear, seems more and more likely by the day.¹⁹

7. The more cynical answer for why generators did not protest this filing is that existing generator owners also tend to be developers and may have decided they can earn

decision[s],’ . . . including possibly having to pay twice for capacity.”) (quoting *Conn. Dep’t of Pub. Util. Control v. FERC*, 569 F.3d at 481).

¹⁷ See N. Am. Elec. Reliability Corp., *2022 Summer Reliability Assessment* (May 2022), https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_SRA_2022.pdf.

¹⁸ See, e.g., Cal. Indep. Sys. Operator Corp., *2022 Summer Loads and Resources Assessment* (May 18, 2022), <http://www.caiso.com/Documents/2022-Summer-Loads-and-Resources-Assessment.pdf>; Midcontinent Indep. Sys. Operator, *Lack of Firm generation may necessitate increased reliance on imports and use of emergency procedures to maintain reliability* (Apr. 28, 2022), <https://www.misoenergy.org/about/media-center/miso-projects-risk-of-insufficient-firm-generation-resources-to-cover-peak-load-in-summer-months/>; PJM Interconnection, L.L.C., *Energy Transition in PJM: Frameworks for Analysis* (Dec. 15, 2021), <https://pjm.com/-/media/committees-groups/committees/mrc/2021/20211215/20211215-item-09-energy-transition-in-pjm-whitepaper.ashx> (addressing renewable integration).

¹⁹ Chairman Glick says that I am “prone to hyperbole” when I warn that blackouts are the likely outcome of the majority’s misguided policies to prop up renewables at the expense of competitive markets and existing fossil resources. Rich Heidorn Jr., *Summer Forecasts Spark Warnings of “Reliability Crisis” at FERC*, RTO Insider LLC (May 19, 2022), <https://www.rtoinsider.com/articles/30170-summer-forecasts-spark-warnings-reliability-crisis-ferc>. Chairman Glick appears to be confusing “hyperbole” with “reality.” California and Texas have already experienced blackouts. Over two-thirds of the nation faces “elevated [reliability] risk” this summer. Ethan Howland, *FERC commissioners respond to elevated power outage risks across two-thirds of US*, Utility Dive (May 20, 2022), <https://www.utilitydive.com/news/ferc-nerc-power-outage-risks-summer-drought/624111/> (“At its monthly meeting Thursday, Federal Energy Regulatory Commission members dissected the North American Electric Reliability Corp.’s warning that roughly two-thirds of the United States faces [sic] heightened risks of power outages this summer.”). I prefer a policy correction before we have more blackouts. Today’s order makes blackouts in New England, and their grave attendant consequences, far more likely.

more by getting in line for their own handouts²⁰ or from RMRs.²¹ This begs the question, if all new entry is state-sponsored, and all necessary existing generation can obtain RMRs, why not simply return to cost-of-service ratemaking, thereby protecting ratepayers, ensuring reliability, and saving us all the trouble?

8. Since no one dared to protest, this order only hints at much of the “debate” on the topic of buyer-side market power mitigation, such as the trope that new renewables have no incentive to manipulate capacity prices so therefore there is no market manipulation.²² This ignores the role of the states who pay the subsidies (via taxpayers, of course) and obviously (think they) benefit from these same bought and paid-for resources bidding zero and “reducing” costs in the capacity market. The question is not whether the tiny brand-new solar farm has market power. The question is whether the state subsidies supporting that new solar project amount to market power. The *states* have the taxpayer dollars, and the *states* have the market power. This is not a complicated manipulative scheme as far as they go, yet nearly the entire industry has adopted it as a mantra for

²⁰ See, e.g., Kavya Balaraman, *California governor floats 5-GW, \$5.2B ‘reliability reserve’ amid possible electricity shortfalls*, Utility Dive (May 17, 2022), <https://www.utilitydive.com/news/california-5-gw-reliability-reserve-shortfall-caiso-puc/623864/> (“Newsom is requesting that the state legislature create a strategic electricity reliability reserve, which he referred to as ‘a fancy way of saying putting together 5,000 MW that’s available at a moment’s notice.’ The reserve could include ‘existing generation capacity that was scheduled to retire,’ as well as new storage projects and diesel and natural gas back-up generation, according to the revised budget.”); Evan Halper, *Biden administration launches \$6 billion nuclear plant bailout*, The Washington Post (Apr. 19, 2022), <https://www.washingtonpost.com/business/2022/04/19/biden-administration-launches-6-billion-nuclear-plant-bailout/> (“The Biden administration moved Tuesday to revive America’s troubled nuclear power industry with \$6 billion in spending aimed at keeping open financially strapped plants.”); Timothy Gardner, *Illinois approves \$700 million in subsidies to Exelon, prevents nuclear plant closures*, Reuters (Sept. 13, 2021), <https://www.reuters.com/world/us/illinois-senate-close-providing-lifeline-3-nuclear-power-plants-2021-09-13/> (“The Illinois Senate on Monday saved two Exelon Corp[.] nuclear power plants from closure by passing a bill that will provide \$700 million in subsidies to the company over five years for generating virtually carbon-free power.”).

²¹ See, e.g., *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267, *order on clarif.*, 172 FERC ¶ 61,044.

²² See, e.g., Joint Statement of Chairman Glick and Commissioner Clements Regarding the Fair RATES Act on PJM MOPR, Docket No. ER21-2582-000, at P 20 (Oct. 19, 2021).

eliminating genuine competition in the capacity markets. That obviously includes the majority.

9. Chairman Glick’s concurrence misapprehends my dissent, stating that I have “recast the MOPR as a reliability tool.”²³ Not so. What I am saying is that it is necessary (both legally and economically) to mitigate the anticompetitive, price-suppressive effects of state subsidies on the prices in our capacity markets. To do otherwise is to abandon our statutory duty to ensure that the market’s formula rate is just and reasonable. To do otherwise is also to countenance flawed market design which will (ultimately) result in reliability failures. The MOPR is but one mechanism by which to ensure just and reasonable rates through mitigation of but one form of market-skewing price suppression.

10. Perhaps a moment of remedial instruction is called for: capacity markets are there for a purpose—to obtain a sufficient quantity of a commodity. That commodity is generation capacity, and that quantity is the administratively-established reserve requirement. Why obtain this commodity at such expense and trouble at all? In order to guarantee that the markets will have adequate generation resources to meet peak demand. The only way to ensure that there are adequate resources to meet peak demand is to have a market that sends the correct price signals to encourage the orderly entry and exit of the right quantity of the right type of resources. If the market is flawed, the wrong price signals will be sent. The wrong price signals will imperil the market’s ability to ensure resource adequacy. And one of the best ways to *ensure* that price signals are skewed is to suppress prices by means of out-of-market subsidies.

11. I conclude with a dose of reality: this scheme will fail. This order will compromise reliability. All-in ratepayer costs will increase substantially. Placed beside the Commission’s draft natural gas pipeline policy statements, which seem geared toward discouraging—if not outright prohibiting—the development of new natural gas pipelines,²⁴ the New England region appears severely exposed. And New England is not alone. With every day that passes, with every pipeline that is delayed, and with every order that undermines the price signals in the markets, we come closer to a disaster. And when it happens, my colleagues will have presided over a predictable, avoidable, and

²³ *ISO New England Inc.*, 179 FERC ¶ 61,139 (Glick, Chairman, concurring at P 3).

²⁴ See *Certification of New Interstate Nat. Gas Facilities*, 178 FERC ¶ 61,107 (2022) (Updated Certificate Policy Statement); *Consideration of Greenhouse Gas Emissions in Nat. Gas Infrastructure Project Revs.*, 178 FERC ¶ 61,108 (2022) (Interim GHG Policy Statement); see also *Certification of New Interstate Nat. Gas Facilities*, 178 FERC ¶ 61,197, at P 2 (2022) (converting the two policy statements issued on February 18, 2022, Updated Certificate Policy Statement, 178 FERC ¶ 61,107 and Interim GHG Policy Statement, 178 FERC ¶ 61,108, to “draft policy statements”).

catastrophic failure. Perhaps then they will stop accommodating the states' uneconomic policies and will instead, consistent with our statutory obligations, act to ensure that our markets are just and reasonable and can function as intended.

For these reasons, I respectfully dissent.

James P. Danly
Commissioner

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England Inc.
New England Power Pool Participants Committee

Docket No. ER22-1528-000

(Issued May 27, 2022)

CLEMENTS and PHILLIPS, Commissioners, *concurring*:

1. We vote to accept ISO-NE's tariff filing because it sets the region on course to eliminate the Minimum Offer Price Rule (MOPR), a likely unjust and unreasonable tariff mechanism that, if left uncorrected, could force customers in New England to pay millions or even billions to prop up capacity that they do not want or need.

2. Each of the six New England states have enacted renewable and alternative portfolio standards, and some have enacted statutes and regulations to promote the development of clean energy resources by facilitating their financing through long-term power purchase agreements.¹ Yet, if left unchecked, ISO-NE's MOPR could exclude many of these resources from the capacity market, essentially ignoring the available capacity from these resources and forcing consumers to pay higher prices for unneeded capacity in a region with among the highest electricity prices in the nation.² A just and reasonable market design should reflect actual supply available. Instead, the existing MOPR actively disregards those resources most likely to come online and interferes with legitimate action by states to shape their generation mix.

3. While immediate elimination of the MOPR would likely better serve ISO-NE's customers than the proposal that has been filed, such a proposal is unfortunately not before us. And at this late hour, nor could the MOPR be immediately eliminated without causing great uncertainty and delay for FCA 17.³ As ISO-NE explains in its answer, "[i]n a standalone Section 205 proceeding such as this, where the only issue before the

¹ See New England States Committee on Electricity Comments at 3-4 (NESCOE Comments).

² See Clean Energy and Consumer Advocates Protest, Ex. B, Brattle Aff. at 6.

³ Alternatively, leaving status quo rules in place for FCA 17 threatens to expose states and customers to "the worst of both worlds for the next auction: the existing MOPR remains in place with no RTR exemption." NESCOE Comments at 11.

Commission is the proposed tariff changes,”⁴ the Commission could institute a Federal Power Act section 206 proceeding via an order establishing further process, but a replacement rate may only be instituted “after a hearing held upon [the Commission’s] own motion or upon complaint.”⁵ Even the most expeditious action on a paper hearing could be months in the future, and would necessitate granting ISO-NE permission “to open a new retirement and permanent de-list bid window for resources to provide contingent bids pending the outcome of any Section 206 proceeding, [] the IMM [would] have to begin its review period anew,” and “numerous other qualification review windows and ISO review processes” would need to be adjusted because they are “tied to or are influenced by the retirement and permanent de-list bid review window.”⁶

4. Given this reality, accepting ISO-NE’s tariff filing is the “path forward” to eliminating MOPR that “provides the greatest certainty to the marketplace,”⁷ and the fastest way to reform the existing capacity market rules.⁸ As such, we reluctantly accept ISO-NE’s proposal, while cautioning that we believe this proceeding presents unique circumstances, which may not be present in the case of a similar transition mechanism in a different setting. Finally, with respect to the concerns about a reliable transition to a new resource mix and potential flaws in ISO-NE’s markets identified by ISO-NE and other commenters,⁹ such as ISO-NE’s capacity accreditation method, we emphasize that while appropriately addressed separately from this section 205 proceeding, we take these

⁴ ISO-NE Answer at 47.

⁵ 16 U.S.C. 824e(a).

⁶ ISO-NE Answer at 49.

⁷ *Id.* at 49-50.

⁸ NESCOE Comments at 11.

⁹ *See, e.g.*, ISO-NE Filing at 37-41 (discussing the need for necessary market reforms); Advanced Energy Economy Comments at 20 (discussing the need for capacity accreditation and day-ahead ancillary service reforms to “address the underlying reliability challenges ISO-NE has identified”); Connecticut Department of Energy and Environmental Protection Comments at 7-8, 8 n. 19 (discussing flaws and deficiencies in the wholesale markets, including need for energy and ancillary service market reforms, seasonal markets, and reforms to capacity accreditation); ISO New England’s External Market Monitor Comments at 5-6 (discussing the need for “accreditation improvements”); ISO New England’s Internal Market Monitor Comments at 15 (noting importance of resource accreditation reforms and day-ahead ancillary services improvements); NESCOE Comments at 8-9 (citing 2021 NESCOE report to Governors recommending various wholesale market reforms).

concerns very seriously and urge ISO-NE and stakeholders to address them promptly. In the absence of swift action on the part of ISO-NE, Commission action to ensure reliability in the New England region may well prove necessary.

For these reasons, we respectfully concur.

Allison Clements
Commissioner

Willie Phillips
Commissioner

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England Inc.
New England Power Pool Participants Committee

Docket No. ER22-1528-000

(Issued May 27, 2022)

CHRISTIE, Commissioner, *concurring*:

1. Last December, ISO New England Inc. (ISO-NE) warned about possible threats to the reliability of power service in the coming months.¹ The warning cited, among other reasons, constraints on natural gas pipeline capacity and the potential lack of sufficient fuel supply as negatively impacting the performance of necessary baseload dispatchable generation.² Warnings with a similar theme – that while various factors threaten

¹ See, e.g., Gordon van Welie, Pres. and CEO of ISO-NE, Opening Remarks, *Winter 2021/2022 Outlook Media Briefing* (Dec. 6, 2021), https://www.iso-ne.com/static-assets/documents/2021/12/20211206_winteroutlook2122_pressconference.pdf; Press Release, ISO-NE, *Harsh Weather Conditions Could Pose Challenges to New England's Power System This Winter, Fuel supply issues may threaten ability to meet consumer demand if the region sees extended periods of extreme cold weather* (Dec. 6, 2021), https://www.iso-ne.com/static-assets/documents/2021/12/20211206_pr_winteroutlook2122.pdf; Press Release, *ISO New England's 2021/2022 Winter Outlook* (Dec. 10, 2021), <https://www.iso-ne.com/static-assets/documents/2021/12/2021-22-winter-outlook.pdf>; Letter from Gordon van Welie, Pres. and CEO of ISO-NE to Comm'r Katie S. Dykes, Conn. Dept. of Energy and Env'tl Protection (Dec. 23, 2021), https://www.iso-ne.com/static-assets/documents/2022/01/isone_ct_deep_combined_ltrs.pdf.

² See materials cited *supra* n.1.

reliability, shortfalls of baseload, dispatchable generation is a significant factor – subsequently were made regarding the Midwest³ and other parts of the country.⁴

³ Improper price signals in capacity markets were cited as a major reason for losses of needed dispatchable generation in the Midwest Independent System Operator (MISO). *See, e.g.,* Jeffrey Tomich, *Soaring prices signal challenges ahead for Midwest grid*, ENERGYWIRE (Apr. 18, 2022), <https://www.eenews.net/articles/soaring-prices-signal-challenges-ahead-for-midwest-grid/> (“David Patton, MISO’s independent market monitor, said during a MISO call on Friday that the auction results are ‘the outcome we’ve been worried about for a decade.’ MISO market rules that suppressed capacity prices in previous years, he said, have led to the *retirement of otherwise economic power plants . . .*”) (emphasis added); Ethan Howland, *Capacity prices jump across MISO’s central and northern regions, driven by supply shortfall*, UTILITY DIVE (Apr. 18, 2022), <https://www.utilitydive.com/news/capacity-prices-auction-miso-midcontinent/622186/> (“MISO’s market is flawed, according to [David] Patton. ‘If we’re going to say that reliability is an imperative, we need to fix this market because *we can’t expect the market to support reliability if we know that it’s not designed to produce efficient economic signals,*’ Patton said during the conference call. . . . *In the last four years, power plants totaling 4 GW to 5 GW retired, even though they appear ‘clearly economic,’* Patton said. ‘*Our capacity market doesn’t price capacity efficiently, so it sends out a clear economic signal to retire.*’”) (emphases added). *See also, e.g.,* Robert Walton, *MISO prepares for “worst-case scenarios,” heads into summer with insufficient firm generation*, UTILITY DIVE (Apr. 29, 2022), <https://www.utilitydive.com/news/miso-prepares-for-worst-case-scenarios-heads-into-summer-with-insufficie/622932/> (“[MISO] is projecting a 5 GW shortfall in firm generation to meet projected load this summer . . . The grid operator is forecasting a summer peak of 124 GW, with about 119 GW of ‘projected regularly available generation.’”).

⁴ *See* Jeff Beattie, *MISO at high risk of summer outages, threat “spreading,”* THE ENERGY DAILY (May 19, 2022) (“In a media event releasing the [NERC Summer 2022 Reliability Assessment], John Moura, NERC’s director of reliability assessment and performance analysis, suggested the nation’s grid reliability is deteriorating *because utilities are switching too rapidly from baseload power plants to intermittent renewables and demand-side resources* to achieve decarbonization goals. ‘The conclusions are concerning; it’s a very sobering report,’ Moura said. ‘It is clear that the risk is spreading, and while we have initiated action on a number of fronts and sounded the alarm for many years, *there is clear, objective, conclusive data indicating that the pace of our grid transformation is a bit out of sync with the underlying realities and physics of the system,*’ he said.”) (emphases added). *See also* Naureen Malik and David R Baker, *Vast Swath of US at Risk of Summer Blackouts, Regulator Warns*, BLOOMBERG (May 18, 2022), <https://www.bloomberg.com/news/articles/2022-05-18/vast-swath-of-us-is-at-risk->

2. Reforming the MOPR in ISO-NE's capacity market as proposed in this filing not only will, but is intended to, bring about the replacement of dispatchable natural gas generating resources with intermittent resources. That result is in furtherance of the public policies of the states in ISO-NE, as the New England States Committee on Electricity (NESCOE) makes clear in its filing supporting elimination of the MOPR.⁵

3. I will concur in approving this filing due largely to my belief that RTO capacity markets – which are administrative constructs, not true markets⁶ – should attempt to accommodate the public policies of the states *as long as the impacts*, both in costs and reliability, of one or more states' public policies are *not* being forced onto other states not sharing those public policies.⁷ The threat of such impact-shifting to other states in a

[of-summer-blackouts-regulator-warns](#) (“A vast swath of North America from the Great Lakes to the West Coast is at risk of blackouts this summer as heat, drought, *shuttered power plants* and supply-chain woes strain the electric grid. Power supplies in much of the US and part of Canada will be stretched, with demand growing again after two years of pandemic disruptions, according to an annual report. It’s among the most dire assessments yet from the North American Electric Reliability Corporation [NERC], a regulatory body that oversees grid stability. ‘It’s a pretty sobering report, and it’s clear the risks are spreading,’ John Moura, director of reliability assessment and performance analysis, said in a press briefing. . . . ‘The pace of our grid transformation is out of sync’ with the physical realities of the existing power network, Moura said.”) (emphasis added).

⁵ NESCOE April 21, 2022 Comments at 2 (“NESCOE strongly supports the elimination of the current MOPR and has for a decade advocated for fundamental changes to ISO-NE’s capacity market rules to remove barriers to the participation of clean energy resources developed in furtherance of state clean energy and environmental laws.”) (footnote omitted). In its comments NESCOE also makes clear that it does not oppose ISO-NE’s transition period. *Id.* New Hampshire did not join the NESCOE filing. *Id.* at 2 n.6.

⁶ In his dissent, Commissioner Danly says: “This begs the question, if all new entry is state-sponsored, and all necessary existing generation can obtain RMRs, why not simply return to cost-of-service ratemaking, thereby protecting ratepayers, ensuring reliability, and saving us all the trouble?” *ISO New England Inc.*, 179 FERC ¶ 61,139 (2022) (Danly, Comm’r, dissenting at P 7). I agree.

⁷ *N.Y. Indep. Sys. Operator, Inc.*, 179 FERC ¶ 61,102 (2022) (Christie, Comm’r, concurring at P 3) (available at <https://www.ferc.gov/news-events/news/commissioner-christies-concurrence-nyiso-tariff-revisions-re-marginal-capacity>) (quoting *N.Y. Indep. Sys. Operator, Inc.*, 178 FERC ¶ 61,101 (2022) (Christie, Comm’r, concurring at PP 4-6),

multi-state RTO was present in PJM's proposal last year to eliminate its MOPR, as pointed out by Pennsylvania and Ohio, two states that opposed PJM's MOPR proposal.⁸ Given the strong opposition of Pennsylvania and Ohio, as well as for other reasons expressed in my Fair RATES Act statement in that docket, I opposed PJM's MOPR proposal.⁹

4. Here, however, and in distinct contrast to the PJM MOPR proceeding in which Pennsylvania and Ohio expressed strong opposition in a filing in the proceeding, no state in ISO-NE has filed in this record opposing the MOPR's reform in ISO-NE.¹⁰ Five of the

(available at <https://www.ferc.gov/news-events/news/item-e-2-commissioner-mark-c-christie-concurrence-regarding-new-york-independent>)).

⁸ Pennsylvania and Ohio alleged that the PJM MOPR Proposal “*unjustly transfers the consequences of a particular state’s policy preference(s) to all states and consumers within the PJM region.*” Pennsylvania Public Utility Commission and Public Utilities Commission of Ohio, Joint Protest, Docket No. ER21-2582-000, at 4 (filed Aug. 20, 2021) (PAPUC and PUCO Joint Protest) (emphasis added); *see also* Commissioner Mark C. Christie, Fair RATES Act Statement on PJM Minimum Offer Price Rule (MOPR) Revisions, Docket No. ER21-2582-000 (filed Oct. 19, 2021) (Christie PJM MOPR Fair RATES Act Statement) at P 10 & n.17 (quoting PAPUC and PUCO Joint Protest at 4) (available at <https://www.ferc.gov/news-events/news/commissioner-christies-fair-rates-act-statement-pjm-mopr>).

⁹ Christie PJM MOPR Fair RATES Act Statement (available at <https://www.ferc.gov/news-events/news/commissioner-christies-fair-rates-act-statement-pjm-mopr>). The PJM proposal was also adamantly opposed by PJM's Independent Market Monitor (IMM). *See, e.g., id.* P 9 (citing IMM, Protest, Docket No. ER21-2582-000, at 1 (filed Aug. 20, 2021)). In contrast, Dr. Patton, President of Potomac Economics, ISO-NE's External Market Monitor (EMM), while noting that ISO-NE's proposal could be improved by eliminating the incentive rebuttal provision and while expressly recommending that the ISO pursue marginal capacity accreditation rules and changes to its capacity demand curves “recommend[ed] that the Commission approve the proposed changes to the MOPR provisions filed by [ISO-NE and NEPOOL].” EMM April 21, 2022 Comments at 9.

¹⁰ Disagreement does appear to revolve around the existence or duration of the transition mechanism. For example, representatives of the Commonwealth of Massachusetts and State of Maine made a filing in this docket requesting that the Commission reject ISO-NE's MOPR reform and transition proposal based on their belief that the transition mechanism is improper and unsupported under FPA section 205. Massachusetts Attorney General and Maine Office of the Public Advocate April 21, 2022

six states joined the NESCOE Comments strongly supporting the elimination of ISO NE's MOPR and not opposing the transition mechanism.¹¹ Accordingly, the obvious conclusion is that the ISO-NE MOPR reform proposal is in furtherance of the public policies chosen by the elected policy makers of New England. I believe we should respect those policy decisions.

5. While the policy makers of New England have made their choices and I respect them, I believe that this proposal, even given the transition mechanism, holds the potential for negative effects on the reliability of electric power service in New England and may even cause higher prices for consumers when state officials find it necessary to procure back-up sources of dispatchable power to keep the lights on, as California is now evidently finding it necessary to do.¹² However, in my concurrence to approve New York ISO's recent proposal to "exclude [intermittent] resources that further the goals of New York State's Climate Leadership and Community Protection Act (CLCPA) from

Joint Comments and Protest. *See also* Sec'y Kathleen Theoharides, Commonwealth of Mass., Exec. Office of Energy and Env'tl Affairs April 21, 2022 Letter at 1 ("The Commonwealth supports elimination of the MOPR, but opposes an approach to elimination that prolongs the effects of the MOPR any longer than necessary.").

¹¹ NESCOE April 21, 2022 Comments at 3 ("These comments represent the collective view of five of the New England states, with New Hampshire not joining this filing as noted above."). *See also id.* at 2. NESCOE states that "After listening to deliberations in the many months-long stakeholder process, NESCOE expressed the view (with New Hampshire opposing) that MOPR reform should be enacted as soon as possible in a manner that supports system reliability." *Id.* at 10. The NESCOE April 21, 2022 Comments include a footnote stating, "New Hampshire does not join this filing, and instead may present its view on the various issues in this proceeding in a separate pleading." *Id.* at 2 n.6. The record in this docket, however, does not include any filing opposing MOPR reform from any state officials purporting to represent the interests of New Hampshire or, specifically, New Hampshire consumers.

¹² *See, e.g.,* [Kavya Balaraman](https://www.utilitydive.com/news/california-5-gw-reliability-reserve-shortfall-caiso-puc/623864/), *California governor floats 5-GW, \$5.2B 'reliability reserve' amid possible electricity shortfalls*, UTILITY DIVE (May 17, 2022), <https://www.utilitydive.com/news/california-5-gw-reliability-reserve-shortfall-caiso-puc/623864/> ("The reserve could include 'existing generation capacity that was scheduled to retire,' as well as new storage projects and *diesel and natural gas back-up generation . . .*") (emphases added). *See also* Colby Bermel, *California could get \$5.2B strategic electricity reserve*, POLITICAL PRO (May 13, 2022) ("[Governor] Newsom . . . announced a \$5.2 billion Strategic Electricity Reliability Reserve . . . [including] *diesel and natural gas backup generation . . .*") (emphasis added).

application of NYISO's buyer-side market power mitigation rules,"¹³ I emphasized: "If the people and businesses of New York do not like the impacts of their new state laws, their recourse is to the ballot box."¹⁴ The same principle applies in New England.

6. While I concur with today's order due primarily to NESCOE's support of ISO-NE's filing, I would caution that the absence of a new and credible marginal accreditation mechanism represents a potential flaw that could render the elimination of the MOPR unjust and unreasonable if that accreditation mechanism is not in place by the end of the transition period. In supporting NYISO's recent revisions to its buyer-side mitigation rules, mentioned above, I emphasized that NYISO *simultaneously* adopted a new accreditation mechanism based on marginal values. In this proceeding the EMM, Dr. Patton, has emphasized the importance of adopting a marginal accreditation mechanism.¹⁵ In my view a marginal capacity accreditation mechanism is essential to protect consumers from paying for capacity that does not deliver when needed.

For these reasons, I respectfully concur.

Mark C. Christie
Commissioner

¹³ *N.Y. Indep. Sys. Operator, Inc.*, 179 FERC ¶ 61,102 at P 1.

¹⁴ *Id.* (Christie, Comm'r, concurring at P 3) (available at <https://www.ferc.gov/news-events/news/commissioner-christies-concurrence-nyiso-tariff-revisions-re-marginal-capacity>) (quoting *N.Y. Indep. Sys. Operator, Inc.*, 178 FERC ¶ 61,101 (2022) (Christie, Comm'r, concurring at PP 4-6) (emphases in the original and added) (available at <https://www.ferc.gov/news-events/news/item-e-2-commissioner-mark-c-christie-concurrence-regarding-new-york-independent>)).

¹⁵ *See* EMM April 21, 2022 Comments at 6 ("[W]e have recommended that the ISO develop capacity accreditation rules based on each resource's marginal reliability value. This is particularly important because some of the resources that will be the most over-accredited under ISO-NE's current rules are the Sponsored Policy Resources. Because they are over-accredited, they will have a larger adverse effect on capacity clearing prices and the incentives for existing resources needed for reliability to remain in operation when the MOPR is eliminated.").