

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

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| ISO New England Inc. |) | Docket No. EL13-____-000 |
| |) | Docket No. ER 12-953-001 |
| |) | |

**COMMENTS OF THE MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES
AND THE MASSACHUSETTS DEPARTMENT OF ENERGY RESOURCES**

Pursuant to Rule 214(a)(2) of the Rules of Practice and Procedure of the Federal Regulatory Commission (“Commission”), 18 C.F.R. § 385.214(a)(2), and the Commission’s December 3, 2012 Combined Notice of Filings #1, the Massachusetts Department of Public Utilities (“Mass DPU”) and the Massachusetts Department of Energy Resources (“MDOER”) (collectively, “Massachusetts”) hereby file Comments in the above-captioned matters. This proceeding relates to the filing by ISO New England Inc. (“ISO-NE”) of revisions to the ISO-NE Transmission, Markets and Services Tariff (“Tariff”) in response to the Commission’s March 30, 2012 Order on the Forward Capacity Market (“FCM”).¹ Massachusetts supports the New England States Committee on Electricity (“NESCOE”) in both its Complaint Requesting Fast Track Processing and Motion to Consolidate Proceedings in Docket No. EL13-____-000 and its Motion to Intervene and Protest in Docket No. ER12-953-001.

¹ ISO New England Inc. and New England Power Pool Participants Committee, 138 FERC ¶ 61,238 (2012).

I. COMMUNICATIONS

Massachusetts requests that the individuals identified below be placed on the Commission's official service list in this proceeding and that all communications related to this filing and future filings in this proceeding should be directed to:

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II. DESCRIPTION OF THE COMMENTERS

The Mass DPU is the agency of the Commonwealth of Massachusetts charged with general regulatory supervision over gas and electric companies in Massachusetts and has jurisdiction to regulate rates and charges for the sale of electric energy and natural gas to consumers. Mass. G. L. c. 164, § 76, et seq. Therefore, the Mass DPU is a "state commission" as defined by 16 U.S.C. § 796(15) and 18 C.F.R. § 1.101 (k).

MDOER is the Massachusetts executive agency responsible for establishing and implementing the Commonwealth's energy policies and programs, generally. Pursuant to Mass. G. L. c. 25A, § 6, MDOER is authorized and directed to (1) plan, develop, oversee, and operate

programs to help consumers understand, evaluate, and select retail energy supplies and related services offered as a consequence of electricity and gas utility restructuring; (2) develop and administer programs relating to energy conservation, demand-side management, alternative energy development, non-renewable energy supply and resources development, energy bond authority, energy information and energy emergencies; (3) advise, assist, and cooperate with other state, local, regional, and federal agencies in developing appropriate programs and policies relating to energy planning and regulation in the Commonwealth; (4) develop energy data and information management capabilities to aid energy planning and decision-making; and (5) promote the development of sound energy education programs.²

III. COMMENTS

In its April 13, 2011 Order, the Commission “directed ISO-NE and its stakeholders to develop an offer floor mitigation construct in which asset-class-specific benchmark offer floors are applied to offers from new resources.”³ This instruction was meant to address issues associated with so-called out-of-market resources offering capacity below their cost, resulting in a suppressed FCM clearing price.⁴ In response, ISO-NE proposes to apply buyer-side mitigation to *all* new resources offering capacity in the FCM.⁵

This approach, commonly known as a Minimum Offer Price Rule (“MOPR”), will result in new renewable resources that are developed in furtherance of legitimate public policies embodied in state statutes being excluded from consideration when ISO-NE procures capacity

² On December 21, 2012 the Mass DPU filed a Notice of Intervention in this matter and the Mass DOER filed a Motion to Intervene.

³ ISO New England Inc. and New England Power Pool Participants Committee, Order on H’g and Reh’g, 135 FERC ¶ 61,029 (2011), at P 19.

⁴ See ISO New England Inc., Internal Market Monitoring Unit Review of the Forward Capacity Market Auction Results and Design Elements (June 5, 2009) at 56, *available at* http://www.iso-ne.com/markets/mktmonmit/rpts/other/fcm_report_final.pdf.

⁵ Forward Capacity Market Redesign Compliance Filing of ISO New England Inc. and the Participating Transmission Owners Administrative Committee, filed on Dec. 3, 2012 compliance filing in Docket No. ER12-953-001.

for the region’s resource adequacy. Because states have determined, as evidenced in state laws, that these resources are critically important to their energy and environmental objectives, these resources will be placed in service *irrespective* of FCM capacity revenues. The effect of ISO- NE’s proposal to apply buyer-side mitigation to all new FCM resources will result in ISO-NE procuring more capacity than is necessary for resource adequacy. This intentional disregard for legitimate state public policies is unjust and unreasonable, in contravention of the Federal Power Act (“FPA”).⁶ For this reason, NESCOE submitted its own Renewables Exemption Proposal (“NESCOE Proposal”) for certain renewable resources.

The NESCOE Proposal would permit certain statutorily defined renewable resources to clear in the FCM. This would allow state-sponsored public policy resources to be counted towards the region’s resource adequacy target. At the same time, the proposal limits eligibility in several ways and would allow only enough resources to meet forecasted renewable energy portfolio standards (“RPS”) demand growth to clear in any given auction. Price suppression would be limited⁷, as the aggregate annual amount of capacity estimated to be needed to satisfy state statutory requirements is the basis for the proposal’s cap.⁸ Massachusetts supports the NESCOE proposal because it will avoid both the over-procurement of capacity and the frustration of Massachusetts public policy goals.

The exclusion of state-supported public policy resources from the FCM results in the FCM procuring more capacity than is necessary for resource adequacy. This is a violation of what the Commission has found to be a core requirement: “limiting purchases to the ICR

⁶ 16 U.S.C. § 824e(a).

⁷ See Motion to Intervene and Protest of NESCOE, Prepared Affidavit of Jeffrey W. Bentz (“Bentz Testimony”), section V at pp. 17-23.

⁸ *Id.*, section V at pp. 21-22.

[Installed Capacity Requirement] is a ‘bedrock’ principle of the FCM model.”⁹ By allowing the state-sponsored public policy resources to be counted towards the region’s resource adequacy target, the NESCOE Proposal conforms to this principle.

The NESCOE proposal also avoids interfering with the Massachusetts public policy goal of developing renewable energy resources. In 1997, as part of its electricity industry restructuring, Massachusetts enacted a RPS statute.¹⁰ The law obligated suppliers to obtain a percentage of electricity from qualifying renewable units for their retail customers.¹¹ Additionally, *An Act Relative to Green Communities*, signed by Massachusetts Governor Deval Patrick in 2008, required electric distribution companies to obtain up to three percent of their total annual supply from long-term contracts for renewable energy with terms of ten to 15 years.¹² This year, Governor Patrick signed an *Act Relative to Competitively Priced Electricity in the Commonwealth* (“2012 Energy Act”). The 2012 Energy Act increased the overall percentage of electricity supply that electric distribution companies must purchase from renewable generating facilities under long-term contracts from three percent to seven percent.¹³ These resources will be placed in service irrespective of the proposed MOPR. Excluding them from the FCM only serves to increase the costs that ratepayers must bear to satisfy Massachusetts laws.

Requiring Massachusetts ratepayers to purchase capacity from a market that will procure more capacity than is needed for resource adequacy is unjust and unreasonable in contravention of the Federal Power Act.¹⁴ The NESCOE proposal avoids the over-procurement of capacity and

⁹ *Supra*, n. 2, at P 164.

¹⁰ See Barry G. Rabe, University of Michigan, *Race to the Top: The Expanding Role of U.S. State Renewable Portfolio Standards*, Jun. 2006, at 4, available at www.pewclimate.org/docUploads/RPSReportFinal.pdf.

¹¹ MASS SESS. LAWS c. 25A, § 11F.

¹² MASS SESS. LAWS 169, § 32 (2008).

¹³ MASS SESS. LAWS c. 209, §§ 1 *et. seq.* (2012).

¹⁴ *Supra*, n. 5.

ensures that there will be no interference with legitimate Massachusetts public policy goals. Should the Commission reject the NESCOE proposal, Massachusetts urges the Commission to accept the Massachusetts Attorney General (“Mass AG”) exemption proposal as an alternative.¹⁵

¹⁵ *See* Motion to Intervene of Massachusetts Attorney General Martha Coakley, filed on Dec. 12, 2012 under Docket No. ER12-953-001. (The Mass AG seeks to establish an uncapped exemption from the MOPR for new wind and solar resources only.)

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, Massachusetts supports the NESCOE Proposal.

Respectfully submitted,

MASSACHUSETTS DEPARTMENT OF
PUBLIC UTILITIES

By its attorney,

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Date: December 27, 2012

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document upon each party on the official service list compiled by the Secretary in this proceeding in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.2010 (2008).

Dated at Boston, Massachusetts, this twenty-seventh day of December, 2012.

/s/ Thomas E. Bessette
Thomas E. Bessette