



# Public Service Commission

**Public Service Commission**  
**Gregg C. Sayre**  
Interim Chairman and  
Interim Chief Executive Officer

**Diane X. Burman**  
Commissioner

**Thomas Congdon**  
Deputy Chairman and  
Executive Deputy

**Paul Agresta**  
General Counsel

**Kathleen H. Burgess**  
Secretary

Three Empire State Plaza, Albany, NY 12223-1350  
www.dps.ny.gov

April 25, 2017

**SENT VIA ELECTRONIC FILING**

Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Room 1-A209  
Washington, D.C. 20426

Re: Docket No. AD17-11-000 - State Policies and Wholesale  
Markets Operated by ISO New England Inc., New York  
Independent System Operator, Inc., and  
PJM Interconnection, L.L.C.

Dear Secretary Bose:

For filing, please find the Pre-Technical Conference Statement of Scott Weiner, on behalf of the New York State Public Service Commission in the above-entitled proceeding. The parties have also been provided a copy of this filing, as indicated in the attached Certificate of Service. Should you have any questions, please feel free to contact me at (518) 474-1585.

Very truly yours,

**Alan T. Michaels**  
Alan T. Michaels  
Manager

Attachment  
cc: Service List

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

State Policies and Wholesale )  
Markets Operated by ISO New )  
England Inc., New York ) Docket No. AD17-11-000  
Independent System Operator, )  
Inc., and PJM )  
Interconnection, L.L.C. )

**PRE-TECHNICAL CONFERENCE STATEMENT  
by Scott A. Weiner,  
New York State Public Service Commission**

**April 25, 2017**

## INTRODUCTION

I am Scott Weiner and am participating as a panelist in this Technical Conference on behalf of the New York State Public Service Commission (NYPSC).<sup>1</sup> I appreciate the opportunity to provide my perspective based upon experience as a State energy and environmental regulator, industry executive, and academic.

By way of background, I have previously served as the President of the New Jersey Board of Public Utilities and was later appointed as Commissioner of the New Jersey Department of Environmental Protection and Energy. I was the founding Director of the Center for Energy, Economic & Environmental Policy at Rutgers University. Among other private sector roles, I served as the Senior Vice President for Market Structure and Regulatory Affairs for a merchant generation company that was a market participant in each of the three eastern federal wholesale markets at the time of their inception and initial years of operation. In late 2014, I joined the New York Department of Public Service as Deputy, Markets and Innovation where I have responsibility for leading the development of numerous State policies and programs that comprise New York's Reforming the Energy Vision (REV) including the Clean Energy Standard (CES), Value of Distributed Energy Resources (VDER), Community

---

<sup>1</sup> The views expressed herein are not intended to represent those of any individual member of the NYPSC. Pursuant to Section 12 of the New York Public Service Law, the Chair of the NYPSC is authorized to direct this filing on behalf of the NYPSC, and has selected Scott Weiner to represent the NYPSC at this technical conference.

Choice Aggregation, Community Distributed Generation and the Clean Energy Fund.

### **DISCUSSION**

At the outset, it is important to recognize that States hold settled jurisdiction over environmental policy, resource adequacy, fuel diversity, and reliability. Rather than restating jurisdictional debates, I hope this forum will reaffirm the relationship between the federal and State governments and the accepted principles of federalism. Starting from a foundation of mutual respect for and understanding of each jurisdiction's role, we can effectively explore how to best harmonize the operation of the federal wholesale markets with legitimate State policies. Rather than opening this discussion with the question of *how* State policies can be implemented through federally-regulated wholesale markets, we should ask *should* they. An attempt to select resources through the federally-regulated wholesale markets to achieve individual State policies may undermine, even if unintentionally, those very State programs.

Rather than conducting this discussion based on assumptions that pursuit of State policy can, or should, be incorporated into the federal wholesale market, we should first consider what market rules and programs may assist or deter States in achieving their goals based on legitimate state interests. For example, instead of absorbing State policies into the federal wholesale markets, one way those markets may best promote State policies is by removing barriers to new entry. By removing

barriers, such as buyer-side mitigation, resources promoted by State programs will have an opportunity to enter the market.

Consistent with their reserved authority, States should be allowed to pursue legitimate policy interests without constraints imposed by, or in the name of, federally-regulated wholesale markets. States commonly use their jurisdiction, including policies addressing siting, programmatic support, environmental and economic regulation to accomplish those policy interests. Therefore, it is essential to recognize that policies addressing legitimate state interests may have incidental impacts on wholesale market prices without raising the specter of price suppression or undermining markets. Moreover, it is important to recognize that state efforts to pursue legitimate State policy interests, over the objection of some federal wholesale market participants, do not justify an assertion that New York, or any other state, does not support markets. In fact, New York's support for all markets, not just the federal wholesale market, is evidenced by its policies to establish the consumer oriented, dynamic, transactive distribution level market envisioned through REV. REV envisions a new role for utilities to operate the distribution grid by optimizing all DER and demand side resources. This changing role of the state's utilities must be harmonized by federal and state regulators acting in respectful collaboration without one seeking to subsume the other. Given the broad and rapid evolution occurring around us, the State anticipates

that traditional wholesale markets will also evolve in a flexible manner that complements and respects state policies.

New York, like other States, does not seek to suppress wholesale market prices. Ending application of this false assumption eliminates the need for market rules based on that presumption, designed to counter such ghostly visages of price suppression. If we enter this discussion with mutual respect of each jurisdiction's interests and a commitment to protect and preserve those interests, we will find the application of reactive wholesale market rules are unnecessary. For example, in the absence of facts to the contrary, by accepting that a State policy in pursuit of legitimate state interests is not price suppression, then buyer-side mitigation is an unnecessary antidote in that setting for a problem that does not exist.

States' policies are complex and must be viewed holistically, recognizing they are designed to address multiple goals with overlapping programs. For example, New York's CES represents only some of the components integral to the State's carbon reduction policy and the entire REV initiative. Incorporating a single policy goal into the federal wholesale markets may seemingly help reach that one goal, but may frustrate the multilayered approach carefully designed by the State and reflects a misunderstanding and oversimplification of a State's multi-faceted policy framework. New York's multi-faceted policies include promoting energy efficiency, encouraging DER and renewables, and/or resiliency.

Additionally, State policies and indeed the structure of markets, must change in response to the collective dynamic brought on by evolving consumer choices, changes to demand, and the availability of enabling technologies. Incorporating policy into the federal wholesale markets, without careful collaborative investigation with state policy makers would likely hinder States in adapting to changing times. Because it is impossible to predict how quickly distribution markets will develop, states must be able to develop policies in collaboration with local stakeholders to respond to those evolving market dynamics. By incorporating State policy into the wholesale markets, the State would have to seek a tariff change to reform its own policy. Lastly, States' policies vary and cannot be standardized within wholesale markets, nor should they. Indeed, States should remain the laboratories of innovation.

#### **CONCLUSION**

I appreciate FERC's initiative in convening this unique non-adversarial venue for discussing these critical issues. On behalf of NYPSC, I recommend that the work of this technical conference be continued through the establishment of an ongoing forum where state policy makers and FERC can continue the discussion commenced here of how to operate wholesale markets in unison with State policy including the emergence of distribution level markets. An ongoing dialogue will reaffirm the mutual commitment of States and FERC to competitive markets, principles of federalism, and support for legitimate State interests.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated: Albany, New York  
April 25, 2017

***Alan T. Michaels***

Alan T. Michaels  
Manager  
3 Empire State Plaza  
Albany, NY 12223-1350  
(518) 474-1585