

166 FERC ¶ 61,061
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

ISO New England Inc. and New England Power Pool Docket No. ER19-444-000
Participants Committee

ORDER ACCEPTING FILING

(Issued January 29, 2019)

1. On November 30, 2018, pursuant to section 205 of the Federal Power Act (FPA),¹ ISO New England Inc. and the New England Power Pool Participants Committee (NEPOOL) (collectively, Filing Parties) filed proposed revisions to ISO-NE's Transmission, Markets and Services Tariff (Tariff) to support implementation of the Competitive Auctions with Sponsored Policy Resources (CASPR) rules that the Commission accepted in March 2018.² As discussed below, we accept the proposed Tariff revisions, to become effective January 29, 2019, as requested.

I. Background

2. In a March 9, 2018 order, the Commission accepted an FPA section 205 filing from ISO-NE to modify the Forward Capacity Market rules to establish a secondary auction within the annual Forward Capacity Auction (FCA) process. ISO-NE termed the revisions "CASPR" because it stated that its intent is to accommodate the entry of state-supported resources, known as Sponsored Policy Resources,³ into the Forward Capacity Market over time while maintaining competitive Forward Capacity Market prices. The CASPR revisions became effective March 9, 2018, in part, and June 1, 2018, in part, and will be utilized for the first time in FCA 13, which is scheduled for February 2019.

3. Under CASPR, ISO-NE conducts the secondary auction, referred to as the substitution auction, immediately following the primary auction. The substitution

¹ 16 U.S.C. § 824d (2012).

² *ISO New England Inc.*, 162 FERC ¶ 61,205 (2018) (CASPR Order).

³ Capitalized terms not defined herein are used consistent with the definitions in the Tariff. *See* Tariff, Rules of Construction; Definitions § I.2 (115.0.0).

auction allows Sponsored Policy Resources to acquire Capacity Supply Obligations from Existing Capacity Resources that obtained those obligations in the primary auction but are willing to retire and exit the markets permanently. If the substitution auction produces a clearing price at which both sides are willing to transact, a cleared Sponsored Policy Resource will receive that clearing price to provide capacity in the applicable delivery year. A cleared Existing Capacity Resource, which participates on the demand side of the substitution auction, will (1) receive the primary auction clearing price, (2) pay the substitution auction clearing price, and (3) retire from all ISO-NE markets as of the start of the applicable delivery year. CASPR therefore (1) offers the equivalent of a severance payment⁴ to Existing Capacity Resources as an incentive to retire and make room for Sponsored Policy Resources looking to enter the market and (2) coordinates the entry of Sponsored Policy Resources with the exit of an equivalent amount of Existing Capacity Resources to limit the effect on Forward Capacity Market prices of Sponsored Policy Resources' entry into that market.

II. Summary of Filing

4. Filing Parties propose a suite of Tariff modifications to effectuate implementation of CASPR and supplement the previously-accepted CASPR changes with new design elements. Filing Parties request an effective date of January 29, 2019 for all of the proposed revisions, which they state will make them effective in advance of FCA 13. Filing Parties note, however, that some of the Tariff revisions have been drafted to specify that they will not be utilized until a later date, such as for the qualification process for FCA 14 that begins in March 2019.⁵

5. Filing Parties propose revisions to the ISO-NE Tariff to clarify core CASPR rules to (1) ensure that the FCA qualification and substitution auction clearing rules are consistent with the underlying objective of the CASPR rules, (2) clarify how participants may adjust their substitution auction demand bids following the clearing of the primary auction, and (3) modify the process for performing reliability reviews of resources that may retire via the substitution auction.⁶

⁴ Existing Capacity Resources that exit through the substitution auction receive a one-time payment equal to the difference between the primary auction clearing price and the substitution auction clearing price. Because the substitution auction clearing price can be no higher than the primary auction clearing price, this difference will always be greater than or equal to zero.

⁵ See ISO-NE Transmittal Letter at 3.

⁶ See Testimony of Matthew C. Brewster and Christopher Geissler, Attachment to ISO-NE Transmittal Letter (Brewster-Geissler Testimony) at 11-50.

6. The proposed revisions also modify market settlement rules to account for CASPR capacity transfers under the new Forward Capacity Market cost allocation framework, accepted by the Commission,⁷ and address settlement charges when a Capacity Supply Obligation acquired in a substitution auction at a negative clearing price is terminated. In addition, the financial assurance policy revisions seek to ensure that the financial assurance requirements for participating in the substitution auction are consistent with the requirements that apply to other Forward Capacity Market auctions and transactions.⁸ The changes also address how existing capacity resources submitting demand bids in the substitution auction, as well as resources that have previously shed a Capacity Supply Obligation through a substitution auction, are accounted for when setting resource adequacy parameters for the FCA and conducting various planning studies.⁹

7. The Filing Parties also seek to amend the definition of the Renewable Technology Resource (RTR) exemption. The RTR exemption, which is being phased out over the next three FCAs as a part of the implementation of CASPR, enables certain renewable resources to enter the auction, even though they do not meet ISO-NE's Minimum Offer Price Rule (MOPR). Currently, the RTR qualification criteria require, among other things, that a resource "must qualify as a renewable or alternative energy generating resource in the state in which it is geographically located."¹⁰ The Filing Parties state that this definition excludes certain off-shore wind projects that have been sited off the coast of New England in federal waters and therefore will not be "geographically located" in any particular New England state. ISO-NE states that, in its view, it was not the intent to preclude such resources from utilizing the RTR exemption, so long as they are located off the shore of New England and directly interconnect to the state where they qualify as a renewable or alternative energy generating resource. The Filing Parties propose to add the following clause to the RTR criteria in the Tariff to clarify that such resources may qualify for the exemption:

A resource physically located in United States federal waters directly adjacent to New England state maritime boundaries and directly interconnecting to the

⁷ *ISO New England Inc.*, Docket No. ER18-2125-000 (Sep. 26, 2018) (delegated order).

⁸ *See* Brewster-Geissler Testimony at 74-97.

⁹ *See* Testimony of Alan McBride, Attachment to ISO-NE Transmittal Letter at 5-15.

¹⁰ Tariff, § III.13.1.1.1.7(b) (57.0.0)

New England system is considered to be geographically located in the state where its Point of Interconnection is located.¹¹

8. The Filing Parties also propose a new test price mechanism intended to minimize the incentive for a market participant to offer a resource below its competitive price in the primary auction in order to increase the chance of retiring it in the substitution auction and receiving a severance payment. This proposed revision is discussed in detail in section V below.

III. Notice of Filing and Responsive Pleadings

9. Notice of the filing was published in the *Federal Register*, 83 Fed. Reg. 63,493 (2018), with interventions and protests due on or before December 21, 2018. Calpine Corporation; Dominion Energy Services, Inc.; Energy New England, LLC; Eversource Energy Service Company; Exelon Corporation; LS Power Associates, L.P.; National Grid; New England Power Generators Association, Inc. (NEPGA); New England States Committee on Electricity (NESCOE); NRG Power Marketing LLC; RENEW Northeast, Inc. (RENEW Northeast); and Vineyard Wind LLC (Vineyard Wind) filed timely motions to intervene. Massachusetts Department of Public Utilities filed a timely notice to intervene. NESCOE, RENEW Northeast, and Vineyard Wind filed comments, and NEPGA filed a protest. On January 7, 2019, NEPOOL filed an answer to NEPGA's protest. On January 8, 2019, NEPGA filed a motion to lodge the United States Court of Appeals for the District of Columbia Circuit's (D.C. Circuit) December 28, 2018 opinion in *Exelon Corporation v. FERC*.¹² On January 9, 2019, ISO-NE filed an answer to NEPGA's protest and motion to lodge.

IV. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept NEPOOL's and ISO-NE's answers because they have provided information that assisted us in our decision-making process. We also grant NEPGA's motion to lodge the D.C. Circuit opinion in *Exelon*.

¹¹ Tariff, § III.13.1.1.1.7(b) (59.0.0).

¹² *Exelon Corp. v. FERC*, 911 F.3d 1236 (D.C. Cir. 2018) (*Exelon*).

V. Substantive Matters

12. We accept ISO-NE's proposed Tariff revisions as just and reasonable and not unduly discriminatory or preferential modifications to the Forward Capacity Market design. We address the one contested aspect of ISO-NE's filing in detail below.

A. Proposed Test Price

13. Filing Parties state that they propose a new test price mechanism intended to minimize the incentive for a market participant to offer a resource below its competitive price in the primary auction in order to increase the chance of retiring it in the substitution auction and receiving a severance payment.¹³ Filing Parties refer to this potential behavior as "bid-shading" and argue that it could produce an inefficient outcome in the primary auction.

14. Filing Parties state that the incentive for a market participant to engage in bid-shading arises from the prospect that its Existing Capacity Resource can acquire a Capacity Supply Obligation in the primary auction at a higher price and then shed (i.e., buy out of) that obligation in the substitution auction at a lower price.¹⁴ Filing Parties assert that a market participant with an Existing Capacity Resource nearing retirement may therefore have an incentive to reduce its primary auction offer below its true break-even price to increase the likelihood that the resource acquires the necessary Capacity Supply Obligation in the primary auction to then shed in the substitution auction.

15. Filing Parties state that ISO-NE did not propose a mechanism to address the bid-shading risk in the original CASPR filing largely because of the limited risk that bid-shading poses to the competitiveness of the FCA and the limited time then available to develop comprehensive rules.¹⁵ Filing Parties state that the use of sloped demand curves in the primary auction tends to reduce the price impact associated with bid-shading. Filing Parties note that bid-shading is financially risky for the market participant because the possibility exists that its resource will acquire a Capacity Supply Obligation in the primary auction at a price below its true break-even price and then be unable to shed the obligation in the substitution auction. Filing Parties state that, nevertheless, ISO-NE indicated in the original CASPR filing that it would undertake additional analysis and work with stakeholders to determine if it could

¹³ ISO-NE Transmittal Letter at 20; ISO-NE Brewster-Geissler Testimony at 50-74.

¹⁴ ISO-NE Transmittal Letter at 20-21.

¹⁵ *Id.* at 21-22.

devise an efficient process to remove the incentive to engage in bid-shading. Filing Parties explain that the test price mechanism is the product of that analysis.

16. Filing Parties state that the test price serves as a screen for competitive behavior in the primary auction to determine whether a demand bid for an Existing Capacity Resource can enter the substitution auction. Filing Parties assert that the test price does not dictate the allowed de-list bid price at which a market participant can offer into the primary auction and in this regard is different from the market power mitigation applied to capacity market de-list bids. Instead, Filing Parties note that the resource-specific test price is used to evaluate whether a resource acquired a Capacity Supply Obligation in the primary auction at a price that is below its competitive price and thus determine whether the resource should be permitted to participate in the substitution auction.

17. Filing Parties explain that the test price for any given resource will reflect the Internal Market Monitor's estimate of the competitive price below which a market participant would retire an Existing Capacity Resource from the market rather than acquire a Capacity Supply Obligation, excluding the impact of a potential severance payment from the substitution auction.¹⁶ Filing Parties note that, under current market rules, the break-even cost of supplying capacity rather than retiring is reflected in the Retirement De-List Bid calculation and that test prices will be calculated in largely the same manner as Retirement De-List Bids. The Filing Parties explain that, under proposed Tariff Section III.13.2.8.3.1A(b),¹⁷ the Internal Market Monitor will evaluate the market participant-submitted test price, along with supporting cost information and review assumptions, with the market participant. Filing Parties state that the Internal Market Monitor will adjust the market participant-submitted test price if it is not consistent with (1) the net present value of the resource's expect cash flows, (2) reasonable expectations about the resource's Capacity Performance Payments, and (3) the resource's reasonable opportunity costs. Filing Parties explain that the Internal Market Monitor will notify the participant of the Market Monitor-determined test price in the retirement determination notification, which it typically provides in June.

18. Filing Parties state that ISO-NE will file test price values with the Commission under FPA section 205 in its confidential filing of Retirement and Permanent De-List Bids information.¹⁸ Filing Parties add that the test price values, as accepted or

¹⁶ *Id.* at 23.

¹⁷ Tariff, § III.13.2.8.3.1A(b) (52.0.0).

¹⁸ ISO-NE Transmittal Letter at 23.

modified by the Commission in its order on that filing, will then apply in the associated FCA.

19. Filing Parties state that, once the primary auction is complete, ISO-NE will compare the test price of any Existing Capacity Resource that acquired a Capacity Supply Obligation to the primary auction clearing price.¹⁹ Filing Parties explain that, if a resource is awarded a Capacity Supply Obligation but the primary auction clearing price is less than 90 percent²⁰ of the resource's test price, the resource's demand bid will be excluded from the substitution auction.

B. NEPGA Limited Protest and Motion to Lodge

20. NEPGA protests only the requirement in Filing Parties' filing that ISO-NE file, under FPA section 205, the Internal Market Monitor's test price for acceptance by the Commission rather than the market participant's test price.²¹ NEPGA asserts that the test price is a rate, term, or condition of the market participant's participation in the FCA and therefore that the market participant alone is entitled to file it under FPA section 205. NEPGA argues therefore that Filing Parties' proposal violates the FPA because it requires the market participant to involuntarily forgo its right to file its rates, terms, and conditions of service for Commission acceptance.²² NEPGA requests that, if the Commission finds ISO-NE's test price proposal to otherwise be just and reasonable, it should confirm that ISO-NE will file the market participant-submitted test price for acceptance under FPA section 205 and confirm that, by filing it, ISO-NE does not acquire any rights held by the market participant.²³

21. NEPGA contends that the test price is a condition pursuant to which a market participant may offer into a Commission-jurisdictional market (i.e., the substitution auction) and that it signals the price at which the market participant believes its FCA offer price should be deemed competitive. NEPGA also argues that the test price, as accepted by the Commission, may affect the price at which the market participant is

¹⁹ *Id.* at 26.

²⁰ In its supporting testimony, ISO-NE explains that to account for uncertainty with respect to the estimation of a resource's costs and revenues that comprise its test price, the final test price will be set at 90 percent of the test price value that has been accepted by the Commission. ISO-NE Brewster-Geissler Testimony at 64.

²¹ NEPGA Limited Protest at 4.

²² *Id.* at 1-2.

²³ *Id.* at 2.

willing to assume a Capacity Supply Obligation. NEPGA acknowledges that, in the instant filing, ISO-NE proposes to permit market participants to adjust their de-list bids after the Commission accepts a resource's final test price; however, NEPGA asserts that the market participant's estimate of its test price may affect its FCA offer price and thus is properly considered part of the market participant's "rate design . . . with respect to services provided by its own assets."²⁴

22. For support, NEPGA points to the D.C. Circuit's finding in *Atlantic City I*²⁵ and *Atlantic City II*²⁶ that "FERC lacks the authority to require the utility owners to give up their statutory rights under section 205."²⁷ NEPGA states that, through its holding, the D.C. Circuit confirmed that an asset owner providing services within a Regional Transmission Organization or Independent System Operator is a utility with FPA section 205 rate filing rights, noting that there is no reasonable distinction between transmission owners providing transmission service and generation owners providing capacity.

23. NEPGA argues that the Internal Market Monitor, through ISO-NE, should not be in the business of setting rates. NEPGA contends that the Commission determines the justness and reasonableness of the market participant's rate,²⁸ while the Internal Market Monitor monitors ISO-NE's markets to identify non-competitive outcomes potentially due to the exercise of market power or manipulative conduct. NEPGA adds that, because more than one rate can be found to be within the zone of reasonableness, the fact that the Internal Market Monitor may calculate a test price that is slightly lower than a market participant's test price does not mean that there has been an exercise of market power. NEPGA therefore asserts that ISO-NE's proposal to file the Internal Market Monitor's estimate of a competitive test price as its own rate, term, and condition under FPA section 205 is unlawful and should be rejected by the Commission.

²⁴ *Id.* at 4-5 (citing *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 10 (D.C. Cir. 2002) (*Atlantic City I*)).

²⁵ 295 F.3d 1.

²⁶ *Atlantic City Elec. Co. v. FERC*, 329 F.3d 856 (D.C. Cir. 2003) (*Atlantic City II*).

²⁷ NEPGA Limited Protest at 5 (citing *Atlantic City I*, 295 F.3d at 10)

²⁸ *Id.* at 6.

24. On January 8, 2019, NEPGA filed a motion to lodge the D.C. Circuit's remand of the record in *Exelon*,²⁹ asking the Commission for further explanation as to whether the market participant, rather than ISO-NE or the Internal Market Monitor, has the right to demonstrate to the Commission that its Retirement De-List Bid value is just and reasonable. NEPGA asserts that the same approach that it supported in *Exelon* (i.e., that the market participant has the right to demonstrate that its De-List Bid is just and reasonable) applies to the market participant's test price here.³⁰

C. ISO-NE Answer

25. ISO-NE states that NEPGA repeats arguments that the Commission rejected in the orders at issue in *Exelon* but fails to identify why the proposed test price here should be treated differently than the de-list bid values considered in that prior proceeding. ISO-NE asserts that, in *Exelon*, the D.C. Circuit remanded the record to the Commission for clarification but did not decide anything regarding the issues in contention here around the test price mechanism.³¹ ISO-NE states that, consistent with Commission precedent, market participants' FPA section 205 rights are not at issue with regard to test prices because test prices, like many other inputs into the FCA, are not rates, terms, and conditions. In addition, ISO-NE states that, if the Commission were to reach the issue of FPA section 205 rights, it would have to conclude that NEPGA's members have opted for market-based rates, precluding them from making FPA section 205 filings with respect to the rates established through the ISO-NE-administered markets.³²

26. ISO-NE argues that the test price value submitted by a market participant is not part of the market participant's rate design; rather, it is an input into the auction construct that generates the market clearing price, which is the wholesale rate.³³ ISO-NE disagrees with NEPGA's position that the test price is a rate, term, or condition of the market participant's service because it is a condition pursuant to which the market participant may offer into Commission-jurisdictional market and because it may affect the market participant's FCA offer price. ISO-NE states that there are numerous provisions in the Tariff with which a market participant must comply if it wishes to participate in the Forward Capacity Market, arguing that it would be nonsensical to

²⁹See *supra* note 12.

³⁰ NEPGA Motion to Lodge at 1-2.

³¹ ISO-NE Answer at 13-14.

³² *Id.* at 3.

³³ *Id.* at 5.

hold that each of these conditions are part of each market participant's rate design over which they hold FPA section 205 filing rights.³⁴ ISO-NE further asserts that there are many provisions of the Tariff that may impact a market participant's offer price in an auction; however, granting a market participant FPA section 205 filing rights over each of these inputs would turn on its head the right of a jurisdictional seller to obtain market-based rate authority to participate in the ISO-NE-administered markets in lieu of filing for cost-based rates. ISO-NE states that doing so would also be contrary to Commission precedent finding that "the rates set by the forward capacity auctions represent tariff. . . rates. . ." and "the rates produced by the forward capacity auction are, in fact, determined unilaterally by the ISO-NE tariff."³⁵

27. ISO-NE argues that NEPGA also fails to reconcile its position with capacity suppliers' voluntary election to participate in ISO-NE-administered markets under market-based rate authority.³⁶ ISO-NE states that capacity suppliers selling under market-based rate authority do so in lieu of selling in the same markets at cost-based rates, adding that, for sellers of capacity under market-based rates in New England, the market price—equal to the Forward Capacity Auction clearing price—is the tariff rate. ISO-NE contends that capacity suppliers' participation in the Forward Capacity Market subjects them to all Forward Capacity Market rules, including those related to the Internal Market Monitor's review of their offers to prevent uneconomic outcomes in the auction. ISO-NE argues that NEPGA's claim that the test price proposal compromises suppliers' FPA section 205 right is inconsistent with the regulatory framework under which capacity suppliers have chosen to do business in the wholesale markets that ISO-NE administers. ISO-NE asserts that, by accepting market-based rate authority for sales of capacity in New England and participating in the Forward Capacity Market, capacity suppliers have agreed to accept the FCA clearing price without regard for any price—whether bid or test price—they may submit in the auction.

D. Commission Determination

28. We accept Filing Parties' proposed revisions to ISO-NE's Tariff to support implementation of the CASPR rules that the Commission accepted in March 2018. With respect to the test price mechanism, we find that it is a just and reasonable means

³⁴ *Id.* at 9-12.

³⁵ *Id.* at 12 (citing *Devon Power LLC*, 137 FERC ¶ 61,073, at P 21 (2011), *denying review sub nom. New England Power Generators Ass'n, Inc. v. FERC*, 707 F.3d 364 (D.C. Cir. 2013).

³⁶ *Id.* at 8-9.

to address the potential incentive for bid-shading created by the CASPR modifications to the Forward Capacity Market. We also explain how we interpret certain Tariff provisions that are relevant to the issues presented in this proceeding.

29. The proposed Tariff revisions provide that, “[t]he Internal Market Monitor’s determination regarding a Market Participant-submitted test price shall be included in the . . . filing made to the Commission as described in Section III.13.8.1(a).”³⁷ Tariff Section III.13.8.1(a) is an existing provision that currently requires ISO-NE to file with the Commission all Permanent De-List Bids and Retirement De-List Bids in advance of each FCA.³⁸ That provision also provides that ISO-NE will file certain associated information with the Commission confidentially, including “supporting documentation” for each Internal Market Monitor determination with regard to Permanent De-List Bids and Retirement De-List Bids.³⁹

30. Filing Parties propose to revise Tariff Section III.13.8.1(a) to provide that ISO-NE will now additionally file with the Commission substitution auction test prices and supporting documentation for the Internal Market Monitor’s determinations with regard to those test prices.⁴⁰ ISO-NE’s section 205 filing made pursuant to Tariff Section III.13.8.1(a) must include the relevant information and justification submitted by both the market participant and the Internal Market Monitor. If the market participant contests the Internal Market Monitor’s determination, the Commission will consider the entirety of the record, including the information and justification submitted by the market participant, and accept the market participant’s test price so long as the market participant persuades the Commission that its test price is just and reasonable, despite contrary assertions by the Internal Market Monitor. This interpretation is consistent with the clarification of the same Tariff Section

³⁷ Tariff, § III.13.2.8.3.1A(b) (52.0.0).

³⁸ See Tariff, § III.13.8.1(a) (21.0.0).

³⁹ *Id.*

⁴⁰ See Tariff, § III.13.8.1(a) (23.0.0) (“For each Forward Capacity Auction . . . the ISO shall make a filing with the Commission pursuant to Section 205 of the [FPA] describing the . . . substitution auction test prices established pursuant to Section III.13.2.8.3.1A. The ISO will file the following information confidentially: the determinations made by the Internal Market Monitor with respect to each . . . substitution auction test price, and supporting documentation or each such determination.”)

III.13.8.1(a) that we provide in the Order on Remand and Clarification⁴¹ being issued concurrently with this order.

31. Moreover, the Tariff revisions that we accept here do not oblige the Commission to accept as just and reasonable an Internal Market Monitor-mitigated test price in lieu of a just and reasonable market participant-submitted test price. Instead, they permit the Internal Market Monitor to propose to adjust a market participant-submitted test price if the Internal Market Monitor believes the market participant has failed to support the reasonableness of particular cost and revenue inputs. Any proposed adjustment to the market participant-submitted test price is then subject to review before the Commission.

The Commission orders:

ISO-NE's filing is hereby accepted, to become effective January 29, 2019, as discussed in the body of this order.

By the Commission. Commissioner Glick is dissenting in part with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

⁴¹ *ISO New England Inc.*, 166 FERC ¶ 61,060 at P 8 (2019) (“[C]onsistent with Tariff section III.13.8.1(a), ISO-NE’s section 205 filing must include the relevant information and justification submitted by both the capacity supplier and the Internal Market Monitor. . . . [T]he Commission will consider the entirety of this record and accept the capacity supplier’s bid so long as the capacity supplier persuades the Commission that its bid is just and reasonable, despite contrary assertions by the Internal Market Monitor” (citations omitted)).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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GLICK, Commissioner, dissenting in part:

ISO-NE’s Competitive Auctions with Sponsored Policy Resources (CASPR) construct attempts to strike a tenuous balance between states’ authority over generation facilities and ISO-NE’s preferred market design. At least in theory, CASPR provides a mechanism for facilitating the orderly entry into the capacity construct of the generation resources needed to meet the ambitious environmental goals established by several New England states. The heart of the CASPR construct is its substitution auction, which provides an opportunity for state-sponsored resources that are subject to a minimum offer price rule (MOPR) to, in essence, purchase a capacity supply obligation (CSO)—and the associated revenue stream—from a resource that then retires from the market.¹

Although I dissented from much of the rationale in the order accepting CASPR, I concluded that ISO-NE met its burden under section 205 of the Federal Power Act² (FPA), largely because the proposal “addresse[d] aspects of the [then-]current ISO-NE MOPR that could frustrate state clean energy programs in New England.”³ Nevertheless, I explained that CASPR’s viability would ultimately depend on whether it adequately facilitated the entry of state-sponsored resources.⁴ If, in practice, it became evident that the construct will hamper or impede state policies intended to change the generation mix, CASPR’s tenuous balance would be upset. After all, a construct that forces consumers to pay twice for capacity—because it ignores capacity that will exist regardless whether it secures a CSO—would not be just and reasonable.

¹ See *ISO New England Inc.*, 162 FERC ¶ 61,205, at P 7 (2018) (CASPR Order).

² 16 U.S.C. § 824d (2012).

³ CASPR Order, 162 FERC ¶ 61,205 at 6 (Glick, Comm’r, dissenting).

⁴ *Id.* at 6-7.

Viewed with that perspective, the ten months since the Commission accepted CASPR have not been encouraging. In several instances, the ISO has taken steps that will likely hinder CASPR's ability to incorporate state-sponsored resources. For example, in the various proceedings involving Exelon's Mystic facility,⁵ the ISO (supported by a majority of the Commission) has exhibited what can fairly be described as a preference for retaining traditional generation resources rather than exploring other approaches that might more effectively address the ISO's fuel security concerns.⁶ That preference is at odds with the several New England states that have made clear that their resource mix must evolve toward an increasingly low-carbon portfolio. If ISO-NE's capacity construct, including CASPR, is to play a role in that evolution, the ISO cannot freeze in place sizable components of the current resource mix. Doing so deprives the substitution auction of resources that could be replaced by state-sponsored resources, impairing the auction's ability to incorporate state-sponsored resources effectively.

In addition, in a determination that ISO-NE⁷ proposes to belatedly address in this filing, ISO-NE adopted what can only be described as a confounding interpretation of what qualifies as a state-sponsored resource.⁸ Specifically, the ISO concluded that an offshore wind facility that is procured pursuant to a state-mandated solicitation and that is electrically located in that state does not qualify as a state-sponsored resource for the purpose of the renewable technology resource exemption (RTR) to the MOPR, which CASPR retained as a transition mechanism to the fully fledged substitution auction.⁹ The

⁵ See *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267 (2018); *ISO New England Inc.*, 165 FERC ¶ 61,202 (2018); *Constellation Mystic Power, LLC*, 164 FERC ¶ 61,022 (2018); *ISO New England Inc.*, 164 FERC ¶ 61,003 (2018).

⁶ See, e.g., *ISO New England Inc.*, 164 FERC ¶ 61,003, at 4-5 (2018) (Glick, Comm'r, dissenting) (discussing alternatives that might more effectively address ISO-NE's fuel security concerns than the proposal to provide the Mystic facility with a cost-of-service agreement); see also *Constellation Mystic Power, LLC*, 164 FERC ¶ 61,022, at 3-5 (2018) (Powelson, Comm'r, dissenting) (discussing additional alternatives that might more effectively address potential fuel security concerns than the Mystic cost-of-service agreement).

⁷ Although the filing was made by both ISO-NE and the New England Power Pool Participants Committee, *ISO New England, Inc.*, 166 FERC ¶ 61,061, at P 1 (2019), for brevity, I will refer to the filing as ISO-NE's.

⁸ *ISO New England, Inc.*, 166 FERC ¶ 61,061 at P 7.

⁹ The tariff language in question provided that to be eligible to participate as a buyer in the substitution auction, "[t]he resource must qualify as a renewable or alternative energy generating resource in *the* state in which it is geographically located."

ISO's interpretation of tariff provisions nominally designed to facilitate the integration of state-sponsored resources is discouraging and raises an unnecessary barrier to the type of resources that CASPR was supposed to accommodate.¹⁰

On top of those decisions, the ISO now proposes to bar from the substitution auction resources that “bid shade”—*i.e.*, that elect to offer their capacity below the ISO's assessment of their going forward costs—even if those resources clear the capacity construct and receive a CSO.¹¹ The unambiguous result of this change will be to again tilt the scales in favor of retaining traditional resources and against the incorporation of state-sponsored resources. As a result of this proposal, a resource that might otherwise retire through the substitution auction will instead remain in the market, holding a CSO that it could have sold to a state-sponsored resource. If there is an insufficient number of buyers in the substitution auction (*i.e.*, resources seeking to potentially retire), then this proposal will make consumers pay twice for capacity—exactly the result that would suggest that CASPR is no longer just and reasonable.

ISO-NE, however, makes little effort to justify the proposal's potential to impair the substitution auction and undermine CASPR's ability to incorporate state-sponsored resources. To the contrary, the ISO's filing makes clear that concerns about bid shading are theoretical (since the ISO has not conducted even one auction with CASPR) and, in any case, that the potential impact of bid shading is “limited” due to several aspects of the capacity construct's design.¹² Given the proposal's potential to hinder the substitution

Tariff, § III.13.1.1.1.7(b) (57.0.0) (emphasis added). The implication of the italicized definitive article would appear to be that a resource must be located in *a* state, with the tariff apparently not contemplating what to do about a resource that is located in federal waters rather than a particular state. In the face of that ambiguity—and what appears to have been the uniformly shared opinion that the RTR exemption was intended to cover offshore wind, see, for example, NESCOE Comments at 2 & n.5; *ISO New England, Inc.*, 166 FERC ¶ 61,061 at P 7—the more appropriate application of the tariff to this factual circumstance would have been to look to where the offshore wind resource is electrically connected to the grid, as ISO-NE now proposes to do in this filing.

¹⁰ I note that Vineyard Wind LLC, the offshore wind resource excluded from the RTR exemption as a result of the ISO's interpretation, filed a request for waiver of certain tariff provisions in order to overcome that interpretation. See *Vineyard Wind LLC*, Docket No. ER19-570-000.

¹¹ *ISO New England, Inc.*, 166 FERC ¶ 61,061 at PP 13-19.

¹² *Id.* at P 15 (explaining that “ISO-NE did not propose a mechanism to address the bid-shading risk in the original CASPR filing largely because of the limited risk that bid-shading poses”); *id.* (“the use of sloped demand curves in the primary auction tends to

auction, ISO-NE must do more to show that its proposal is just and reasonable. In particular, the ISO must demonstrate that any adverse impact on the number of resources able to participate in the substitution auction is outweighed by the benefits that its proposal will have on the market. Because there is no such showing in this record, it ought to be rejected.

* * *

Ultimately, CASPR's success requires a good-faith effort to ensure that it adequately facilitates the entry of state-sponsored resources. That means that the ISO must explain and support why changes that could hinder the entry of new resources are, in fact, just and reasonable. Because neither ISO-NE's filing nor the Commission's order meets that standard, I cannot conclude that the bid shading component of the filing has been shown to be just and reasonable. Accordingly, I dissent from those aspects of today's that accept the bid shading proposal.

For these reasons, I respectfully dissent in part.

Richard Glick
Commissioner

reduce the price impact associated with bid-shading"); *id.* (bid-shading is financially risky for the market participant"); *see also* ISO-NE transmittal at 21 (explaining that, even if bid shading occurred, it would affect the clearing price "only if the resource in question would be either marginal or extra-marginal in the primary auction if it offered consistent with its true break-even price," but infra-marginal at the lower price).