UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England, Inc.	)))	Docket No. ER18-619-000

PARTIAL PROTEST AND COMMENTS OF THE MASSACHUSETTS ATTORNEY GENERAL

Pursuant to Rules 211 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. §§ 385.211, and 385.214, and the Commission's Combined Notice of Filings #1, issued on January 8, 2018, Maura Healey, the Attorney General of the Commonwealth of Massachusetts ("Massachusetts Attorney General") protests in part and comments on the filing by ISO-New England ("ISO-NE") seeking to modify various subsections of Section III.13 of the ISO-New England Transmission, Markets and Services Tariff ("Tariff") to implement the "Competitive Auctions with Sponsored Policy Resources" ("CASPR") proposal. According to ISO-NE, CASPR will "modify the Forward Capacity Market ("FCM") to better accommodate states' out-of-market procurements."[1] However, as addressed below, the current design of CASPR is inadequate to accomplish any significant integration of state mandated clean and renewable energy procurements into the New England wholesale electric market. Instead, as currently configured, CASPR will allow only uncertain and sporadic integration of a small portion of such procurements into the

[1] ISO-NE Transmittal letter at 1.

FCM. Specifically, the Massachusetts Attorney General protests ISO-NE's proposal to implement CASPR without incorporation of a NESCOE authored provision (the "Backstop Provision") or some similar mechanism that would allow up to 200 MW per year of sponsored policy resources to participate in the FCM regardless of whether there were corresponding retirements in that year to offset such entry. Without such a Backstop Provision, the Massachusetts Attorney General also protests the CASPR proposal's phase out of the Renewable Technology Resources ("RTR") exemption to the Minimum Offer Price Rule ("MOPR") after FCA 15 to be held in 2021.

The practical effect of ISO-NE's elimination of the RTR exemption and failure to incorporate NESCOE's Backstop provision into the CASPR design is that sponsored policy resources have a strong likelihood of not clearing in the FCM and have no reliable way to otherwise participate in the wholesale market. The sole means for sponsored policy resources to enter the market under CASPR is for an equivalent amount of MWs to retire so that the sponsored policy MWs can enter through the Substitution Auction ("SA"). As CASPR is currently designed, unless such a retirement occurs, and unless it is large enough to accommodate the sponsored MWs, the state procured energy will be unable to participate in the FCM. Therefore, the capacity from sponsored policy resources will not count against ISO-NE's Installed Capacity Requirement ("ICR")[2] despite the undisputable capacity value that resources under such state-mandated contracts contribute to system reliability. Consequently, ISO-NE's proposal will lead to unjust and unreasonable rates, because New England ratepayers will pay for a large amount of unneeded capacity. The CASPR design's failure to integrate any significant

[2] The ICR represents the minimum total system capacity level needed in New England to meet resource adequacy planning criteria.

quantity of sponsored resources into the market could also contribute to overbuild of the system.

I. PLEADINGS AND OTHER COMMUNICATIONS

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II. BACKGROUND

At least three New England states have enacted legislation to develop, through long term out-of-market contracts, "preferred" new resources for the generation of electricity. ISO-NE refers to these resources as "sponsored policy resources", although the definition of which types of generating resources are included has varied during the CASPR process.[3] In Massachusetts the resources in question include clean and renewable energy resources such as off-shore and on-shore wind, storage, solar, and imported large scale hydro. The procurements will be for terms of 15-20 years.[4] In

[3] Another of ISO-NE's last-minute changes to the CASPR proposal was to adopt a more restrictive definition of Sponsored Policy Resource that excludes municipal gas fired resources and any procurements of renewable or clean energy resources receiving out-of-market revenue under state rules enacted after Jan. 1, 2018. Transmittal letter at 13-14.

[4] 83D REQUEST FOR PROPOSALS FOR LONG-TERM CONTRACTS FOR CLEAN ENERGY PROJECTS Issuance Date: March 31, 2017, at https://macleanenergy.files.wordpress.com/2017/03/83d-rfp-and-appendices-final.pdf; 83C REQUEST FOR PROPOSALS FOR LONG-TERM CONTRACTS

addition, there may be multiple contracts awarded with different delivery dates for procurements subject to the 2016 Massachusetts Energy Diversity Act.

States	State Procurement	Resources	MW	Earliest Delivery Year
MA, CT, RI	2016 Multi-State Clean Energy RFP	Solar, Wind	460	2020
MA	2016 Energy Diversity Act	Hydro Import	Approx. 1200	2021
MA	2016 Energy Diversity Act	Off-Shore Wind	Up to 1600	By 2025-

Substantial additional procurements of electricity generated by clean and renewable technologies may also be needed in the future to meet New England states' long-term GHG reduction targets (75-80% by 2050).

These large out of market procurements have raised concerns among various market stakeholders.[5] A "problem statement" released in May 2016 by the New England States Committee on Electricity (NESCOE), which represents the New England Governors, summarized the competing issues that gave rise to the CASPR proposal as follows:

> Competitive wholesale electricity markets are designed to meet New England's need to maintain reliability by selecting the lowest-cost resources. They do not include states' legal obligation to execute state energy and environmental laws. However, as the markets move the region to increasing reliance on one fuel source for power generation, questions about reliability become more acute. The challenge is finding a means to execute states' policy-related requirements at the lowest reasonable cost without unduly diminishing the benefits of competitive organized markets or amplifying the cost to consumers of implementing those state policies in order to maintain markets.[6]

FOR OFFSHORE WIND ENERGY PROJECTS Issuance Date: June 29, 2017, at https://macleanenergy.files.wordpress.com/2017/02/section-83c-request-for-proposals-for-long-term-contracts-for-offshore-wind-energy-projects-june-29-2017.pdf

[5] The Commission held a widely attended Technical Conference on the issue of the interplay between state energy policy goals and the wholesale markets operated by the Eastern Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs) on May 1-2, 2017 in Docket No. AD17-11-000.

[6] NESCOE Policies and Markets Problem Statement dated May 17, 2016 at http://www.nepool.com/uploads/IMAP_20160517_Problem_Statement.pdf

CASPR grew out of earlier, inconclusive talks among New England states and NEPOOL stakeholders under the IMAPP (Integrating Markets and Public Policy) initiative. The ISO-NE sponsored CASPR process begun in June, 2017. At the outset ISO-NE identified its design objectives/goals as:

1. Competitive Capacity Pricing
2. Accommodation of the entry of new sponsored policy resources into the FCM over time
3. Avoidance of Cost shifts
4. A transparent market-based approach [7]

As ISO-NE notes, objectives 1 and 2 are in tension with one another.[8] The Massachusetts Attorney General submits that ISO-NE's attempt at balancing the two competing priorities got it wrong when it unapologetically "elected to prioritize the preservation of competitive process in the FCM."[9] Rather than being second, accommodation of new sponsored resources ranks fourth out of four due to the absence of a Backstop-type mechanism and the phase out of the RTR exemption. As will be demonstrated below, the result is a design that preserves competitive pricing at the expense of any certainty that the sponsored policy procurements will be able to participate in New England's FCM. CASPR therefore significantly increases the risk that New England ratepayers will pay for the same capacity twice.

CASPR was the subject of seven NEPOOL Markets Committee meetings and extensive discussion among the participants. During the Markets Committee Process NESCOE introduced a package of diverse amendments to remedy certain deficiencies

[7] ISO-NE Transmittal letter at 4.
[8] Id. at 1,5.
[9] Id.

that it perceived in the CASPR design.[10] One of the deficiencies that the NESCOE amendments addressed was the certainty under ISO's design that CASPR would not allow entry (via the SA) of any sponsored policy resources if there were no retirements in a given year. The Backstop provision proposed a modest solution to this problem by guaranteeing entry of up to a total of 200 MW per year of sponsored policy resources into the FCM. NESCOE explained the primary purpose of its Backstop amendment as follows:

> - To ensure that there is a mechanism through which sponsored policy resources that made a genuine attempt to clear in the SA can obtain a capacity supply obligation, especially when the SA lacks or has inadequate (lumpy) demand
> - Said differently, given the eventual termination of the RTR, this mechanism will provide a way to accommodate public policy resources if CASPR fails for reasons other than price.[11]

At the final vote of the NEPOOL Markets Committee, the NESCOE package of amendments, including the Backstop, was the only proposal to achieve a passing vote.[12] The stand-alone CASPR proposal failed with only 27.59% of the vote.[13] After the Markets Committee vote, CASPR was submitted to a final vote by the NEPOOL Participants Committee. In the time between the Markets Committee vote and the Participants Committee vote, ISO-NE made substantive changes to its proposal, presumably to better its chances of receiving a passing vote from the generation sector. The interests of end users and municipally owned utilities were sacrificed in pursuit of

[10] *New England States Package of Amendments* dated October 25, 2017 at https://www.iso-ne.com/static-assets/documents/2017/10/a3b_ne_states_package_caspr_amendments.pdf
[11] Id. at 14.
[12] ISO-NE Transmittal letter at 27.
[13] Id.

this goal[14] and participants had only a few days to consider the changes. NESCOE did not offer its package of proposed amendments for a vote of the Participants Committee, presumably because there was insufficient agreement among the member states. Thus, the Backstop provision was not incorporated into the final CASPR design by ISO-NE and was not available as an amendment to CASPR at the final vote. At the Participants Committee, CASPR once again failed to achieve a passing vote.[15] The ratepayer advocates of Massachusetts, Connecticut, New Hampshire and Maine all voted against CASPR at the Participants Committee.

Despite insufficient NEPOOL stakeholder support to achieve a passing vote, ISO-NE has now filed the CASPR proposal for the Commission's approval. For the reasons set out herein, the Massachusetts Attorney General respectfully requests that the Commission reject the CASPR proposal as currently designed and remand it to ISO-NE with an order to devise a mechanism similar to the Backstop Provision and/or to reinstate the RTR exemption to ensure that, at a minimum, at least some capacity from sponsored policy resources will be able to enter the FCM on an annual basis.

III. PROTEST

A. The CASPR Proposal Without the NESCOE Backstop Amendment Guaranties that Ratepayers Will Pay for Unneeded Capacity

The Massachusetts Attorney General, as the state's ratepayer advocate, voted against the final version of CASPR because it does not provide a reliable mechanism for integration into the New England wholesale electric market of renewable energy

[14] In addition to ISO-NE's failure to adopt NESCOE's Backstop provision, at the last minute, ISO-NE also adopted a much narrower, EDF/CLF proposed definition of sponsored policy resource, excluding municipally sponsored gas fired resources used for self supply.
[15] ISO-NE Transmittal letter at 27.

procured pursuant to various state legislative mandates. Last minute changes by ISO-NE to adopt some, but not all, of the proposed amendments authored by NESCOE resulted in a flawed plan that relies exclusively on retirements of existing generation resources to allow sponsored policy resources to enter the market. As ISO-NE itself concedes, "the CASPR rules do not provide a guarantee that these resources will acquire a CSO at their first opportunity"[16] or, it must also be conceded, a guarantee that these resources will *ever* acquire a CSO, if there are no corresponding retirements. CASPR has failed to strike a fair balance between ISO-NE's pricing concerns and the opportunity for steady integration of sponsored policy resources into the market so that consumers are not paying twice for a significant amount of capacity and the system is not at risk of being overbuilt. In CASPR's final incarnation, which lacks a Backstop-type mechanism, if there are no retirements in a particular year, then no renewables can enter the market via the SA.

As designed, the NESCOE Backstop provision was a limited and reasonable compromise between the competing interests of price protection and market integration. First, it was designed to take effect only after the phase-out of the RTR exemption in 2021 and capped the amount of sponsored policy resources entering the market at 200 MW if there were no corresponding retirements in that year.[17] The 200 MW capacity limit under the Backstop would be determined by first subtracting any sponsored policy MWs that cleared the SA on their own merit.[18] There would have been no year to year

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[16] Id. at 2.
[17] *New England States Package of Amendments* dated October 25, 2017, p. 15 at https://www.iso-ne.com/static-assets/documents/2017/10/a3b_ne_states_package_caspr_amendments.pdf.
[18] Id. at pp. 15-16.

cumulative carryover.[19] Further, by virtue of a "proxy supply offer" mechanism, MWs that entered through the Backstop provision could, over the course of 5 years, be matched with eventual retirements.[20] Finally, the Backstop presented no danger of ISO-NE's primary concern of price suppression in the FCA because sponsored resources would enter the SA at lower prices not subject to the MOPR only after the primary FCA was run.

The absence of a Backstop-type mechanism, coupled with CASPR's phase out of the 200 MW annual Renewable Technology Resources (RTR) exemption, will result in an uncertain and sporadic integration of state-mandated renewables into the New England wholesale electric market. Preventing the state sponsored resources from participating in the FCM unless they can be matched with corresponding retirements will result in unjust and unreasonable rates for consumers in New England. Ratepayers will pay for a large amount of additional capacity procured by ISO-NE because the sponsored policy resources are not clearing in the FCM and are not counted towards the ICR. ISO-NE has previously recognized this costly risk to consumers in the context of the creation of the RTR exemption, explaining:

> To ensure accurate capacity pricing, the ISO has developed capacity market rules that prevent resources from bidding below their actual costs. As a reasonable balance between these rules and state actions, the capacity market allows a limited amount of state-subsidized renewable resources to enter the market and be counted toward meeting the region's capacity needs.
>
> Consumers may end up "paying twice"
>
> However, as more state-subsidized renewables come on line, that limit will begin to exclude more and more such resources from the capacity market. This means they won't be counted toward the region's capacity

[19] Id.
[20] Id. at 16-20.

> needs; other types of resources will be developed and counted instead. This is an inefficient and potentially costly outcome for electricity consumers who ultimately will fund both the resources that clear the wholesale market and count as capacity resources, as well as the excluded renewables that are subsidized through state-mandated charges on retail electricity bills. [21]

Instead of a balanced compromise between integration of renewables and competitive price protection, CASPR assures FCA price protection, but provides no assurance of any sponsored resource entry into the market. Instead, entry is a gamble that depends on retirements of unknown resources of unknown capacity before some unknown amount of sponsored policy resources can have any hope of participating in the FCM.

It is telling that nowhere in its filing does ISO-NE address the issue of projected retirements to give an idea of when or how many MWs of sponsored policy resources it expects to be able to enter the market through CASPR. However, that information is available elsewhere. A review of ISO-NE retirement projections reveals just how ineffectual CASPR may be at achieving market integration of sponsored policy resources. In Docket No. ER17-795, ISO -NE filed with the Commission a report of its consultant, Concentric Energy Advisors, forecasting retirements in New England through 2040 as part of its Cone and ORTP analysis to be used in determining the entry cost parameters for FCA 12 in February 2018. When compared to the Massachusetts procurements outlined at page 3 above, one can immediately see that the lack of forecast retirements in many years, particularly after 2030, as well as the size of the projected retirements compared to expected market based capacity additions before 2030, will be wholly

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[21] https://www.iso-ne.com/about/regional-electricity-outlook/grid-in-transition-opportunities-and-challenges/public-policies-and-markets
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insufficient to accommodate the thousands of MWs per year of the Massachusetts sponsored policy resource procurements, much less those of any other New England state.

Table A.53: Total Plant Additions and Retirements by Year (MW)

Year	Addition	Retirements
2021	772	560
2022	0	556
2023	386	547
2024	0	827
2025	386	354
2026	436	0
2027	326	0
2028	0	0
2029	50	330
2030	386	1,247
2031	386	0
2032	0	0
2033	772	0
2034	0	0
2035	0	876
2036	386	0
2037	436	0
2038	0	0
2039	0	0
2040	0	0

[22]

Except for the 326 MW addition in 2027, which is supposed to represent the likely size of Massachusetts' procurement of up to 1600 MW of offshore wind under the Massachusetts Energy Diversity Act, but has been significantly underestimated,[23] none of

[22] ISO New England Inc., Docket No.ER17-795; Filing of Net CONE and ORTP Updates (January 13, 2017), Attachment 1-Concentric Energy Advisors Report at p. A-4.
[23] Id. at 55, fn. omitted. ("Based on previous experience in Massachusetts and experience in other states, we have determined that a successful solicitation of the full amount authorized is unlikely. Instead, we have

these projected additions involve sponsored policy resources that will be subject to the CASPR program. Instead, the forecast additions are competitive gas-fired generation, PV and onshore wind.[24] Accordingly, these projected additions must be subtracted from the retirements to arrive at a net of available retirement capacity that might be available to be matched with CASPR resources in the SA. As can be seen above, for 12 out of 20 years from 2021 to 2040 no retirements are forecast. Further, if New England's Seabrook (1244 MW) and Millstone 2 (870 MW) nuclear generating facilities do not retire at the end of their current licensing periods in 2030 and 2035 respectively, as forecast by Concentric[25], there will be even drastically less retired capacity than forecast to facilitate market entry of sponsored resources via the SA. ISO-NE may hope that the severance payment mechanism from the substitution auction incents additional retirements, but that is not a basis for a sound design to integrate sponsored policy resources into the market.

Another glimpse at what ISO-NE believes the landscape of retirements versus additions will look like is in its 2017 Regional System Plan ("RSP"). While the Plan shows 5,700 MW of retirements in less than 5 years[26], the retirements will be offset by additions, so from 2022/2023 to 2026/2027 there will be expected capacity surpluses ranging from 2169 MW to 1,717 MW over the ICR.[27] The forecast additions and capacity surpluses do not include any procurements under the Massachusetts Energy

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added an offshore wind facility to the generation mix based on an existing project currently in development whose size is approximately 25% of the total offshore capacity authorized in Massachusetts legislation. The offshore facility was added at the beginning of the 2027/28 delivery period, the date mandated by the legislation.")

[24] Id. at 54-56,58

[25] Id. at 56.

[26] ISO-NE *2017 Regional System Plan*, p.49 at https://www.iso-ne.com/static-assets/documents/2017/11/rsp17_final.docx.

[27] Id. at Table 4-5, p.51.

Diversity Act. Accordingly, sponsored policy resources will face an increasingly crowded field as they attempt to enter the capacity market via the SA.

It is clear from the above that there is substantial doubt that retirements could be sufficient to afford any significant entry of sponsored policy resources into the FCM via the CASPR substitution auction. ISO-NE's assurance that it will "assess the performance of CASPR" and "commit to working with stakeholders" should CASPR not facilitate state entry of sponsored resources over time[28], while welcome, is not binding. It is of small comfort to Massachusetts and New England ratepayers who face the prospect of paying twice for capacity every year that the sponsored policy resources are not integrated into wholesale markets. It is unknown how many millions of dollars in additional capacity payments consumers will pay before ISO-NE decides there may be a problem. Instead, a just and reasonable solution is for ISO-NE to revise the CASPR design at the outset to provide a Backstop-type mechanism.

B. The CASPR Design's Failure to Reliably Integrate Out of Market Procurements of Sponsored Resources Presents the Risk of Overbuild.

ISO-NE's filing notes in passing, but does not substantively address, how CASPR's design mitigates the future risk of overbuild in a market that does not have any certain mechanism for integration of significant amounts of sponsored policy resources. In fact, the CASPR design fails to meaningfully mitigate the risk of overbuilding because large amounts of capacity will be built in New England and will exist in a parallel bilateral construct outside the ISO-NE market. The Commission initially recognized this same risk in its prior analysis of the RTR exemption as follows:

[28] ISO-NE Transmittal letter at 12.

> One purpose of capacity markets is to send appropriate price signals regarding where and when new resources are needed. If renewable resources are being built, but are not reflected in the FCM, then the FCM may send an incorrect signal to construct new capacity that is not needed. Not only would the capacity market send an incorrect signal, but customers would have to pay for capacity twice – first, for renewable resources via out-of-market mechanisms and second, for additional capacity that is procured because the capacity market has sent the incorrect signal that additional capacity is needed.[29]

Here, the risk previously recognized by the Commission is compounded with the combination of the CASPR design and the termination of the RTR exemption. A parallel process outside of the ISO-NE market will acquire significant capacity that will not be recognized in ISO-NE's reliability planning and will have little chance of integration into the FCM under the current CASPR design. It is not difficult to envision price signals becoming unreliable over time in such a context.

C. The RTR Exemption Should be Reinstated in the Absence of a Backstop-Type Provision

In the absence of a Backstop mechanism, CASPR's phase out of the RTR exemption as of 2021 for FCA 15 adds insult to injury by removing the last certainty that at least some sponsored policy resources can participate in the FCM on an annual basis.[30]

The RTR exemption currently allows up to 200 MW/year of certain types of sponsored renewable resources, not including large scale hydro, to offer into the FCM without application of the MOPR.[31] Amounts not used in a given year may be rolled

[29] *ISO New England Inc.*, *Order on Rehearing*, 158 FERC ¶ 61,138 at P 9 (2017) (citations omitted).
[30] As noted previously, the definition of RTR is narrower than the definition of a sponsored policy resource in that the former does not include large-scale hydro.
[31] The RTR exemption may be found at Section III.13.1.1.1.7 of the Tariff.

over until a cumulative total of 600 MW is reached, less the amount of Capacity Supply Obligations received by RTRs in prior forward capacity auctions.[32]

In its filing, ISO-NE argues that it has "improved" on the existing RTR exemption with the new CASPR design. The cited improvements are that a broader range of resources can participate in the SA than under the RTR exemption and that CASPR will preserve competitive pricing.[33] This reasoning is not persuasive considering that there is no certainty that *any* amount of sponsored resources, whether a broader range or not, will be able to enter through CASPR. Doing away with the RTR exemption has not improved upon it. Instead, in the name of capacity price protection, it has simply removed the only avenue by which small amounts of certain types of renewables were guaranteed the opportunity to participate in the FCM.

IV. CONCLUSION

The current incarnation of CASPR does not allow for any regular or reliable integration of sponsored policy resources into the FCM. The Commission should therefore reject the CASPR filing because it will lead to unjust and unreasonable rates for New England consumers, who will pay twice for the same capacity.

For the reasons stated above, the Massachusetts Attorney General respectfully requests that the Commission:

1) Reject ISO-NE's CASPR proposal as unjust and unreasonable, without prejudice, and remand it with an order for remedial action to incorporate a mechanism like the NESCOE Backstop proposal by which a minimum of 200 MW of sponsored policy resources is guaranteed entry into the FCM every year;

[32] Id. at III.13.1.1.2.10 ("The cap for each Capacity Commitment Period beginning on or after June 1, 2020 is 600 MW minus the amount of Capacity Supply Obligations acquired by Renewable Technology Resources that are New Generating Capacity Resources pursuant to Section III.13.2 in the prior two Capacity Commitment Periods.").
[33] ISO-NE Transmittal letter at 11.

2) In the alternative, reject ISO-NE's CASPR proposal as unjust and unreasonable, without prejudice and remand it with an order to reinstate the RTR exemption;

3) Order such other and further relief as the Commission finds appropriate.

Respectfully submitted,

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Dated: January 29, 2018

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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 at Boston, Massachusetts this 29th day of January, 2018.

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