

**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. )**

**INITIAL COMMENTS  
OF THE  
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION**

**I. INTRODUCTION**

Pursuant to the Notice Inviting Post-Technical Conference Comments issued in the above-referenced proceeding on May 23, 2017 (“May 23 Notice”), the National Rural Electric Cooperative Association (“NRECA”) submits these initial comments. NRECA applauds the Commission for initiating this coordinated dialogue to address the interaction of state policies and wholesale markets in ISO New England, Inc. (“ISO-NE”), the New York Independent System Operator, Inc. (“NYISO”) and PJM Interconnection, L.L.C. (“PJM”). As technologies and energy markets continue to evolve, states can be expected to continue to develop policies that affect wholesale electricity markets. Moreover, market participants can be expected to respond to the evolution of markets and state policies. Therefore, it is imperative that the Commission consider the interaction of state policies and wholesale markets, and craft federal policies that will allow states to continue to address matters within their jurisdiction while ensuring that wholesale markets work to provide safe and reliable electric energy at just and reasonable rates to consumers.

The repeated cases that have come before the Commission regarding redesigns of the capacity and energy markets,<sup>1</sup> and the instances in which the courts have been called upon to resolve disputes over jurisdiction between FERC and the states,<sup>2</sup> show the need for a more coordinated and deliberate path forward. The establishment of this proceeding is testament to the need for all interests – states, federal, market operators and market participants – to craft a solution that will accommodate and honor the states’ ultimate authority over retail sales, local distribution facilities, generation facilities, and resource adequacy, while also ensuring that wholesale markets are working to provide consumers reliable service at rates that are just, reasonable, and not unduly discriminatory or preferential.

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<sup>1</sup> See, e.g., *Centralized Capacity Markets in Regional Transmission Organization and Independent System Operators Winter 2013-2014 Operations and Market Performance in Regional Transmission Organizations and Independent System Operators*, 149 FERC ¶ 61,145 (2014) citing FERC Staff Paper, *Centralized Capacity Market Design Elements*, Docket No. AD13-7-000 (Aug. 23, 2013).

*PJM Interconnection, L.L.C.*, 115 FERC ¶ 61,079 (2006) (Order on PJM Reliability Pricing Model ), *order denying reh’g and approving settlement*, 117 FERC ¶ 61,331 (2006), *order on reh’g and clarification*, 119 FERC ¶ 61,318 (2007), *order denying reh’g*, 151 FERC ¶ 61,208 (2015) (Capacity Performance Order), *order on reh’g*, 155 FERC ¶ 61,157 (2016).

*New England Power Pool*, 83 FERC ¶ 61,045 at 61,263 (1998) (Establishing bid-based market for ICAP); *ISO New England, Inc.*, 91 FERC ¶ 61,311 (2000) (Order addressing flaws in the ICAP market); *Devon Power LLC*, 107 FERC ¶ 61,240, at PP 57-59, *order on reh’g*, 109 FERC ¶ 61,154 (2004) (Order concerning ISO-NE basic auction structure), *order on reh’g*, 110 FERC ¶ 61,315 (2005); *ISO New England Inc.*, 138 FERC ¶ 61,238 (2012) (Order on ISO-NE Forward Capacity Auction); *ISO New England Inc. and New England Power Pool*, 147 FERC ¶ 61,172 (2014) (ISO-NE Capacity for Performance Order), *order denying reh’g*, 153 FERC ¶ 61,223 (2015).

*New York Indep. Sys. Operator, Inc.*, 103 FERC ¶ 61,201 (2003) (Order accepting NYISO’s establishment of a the ICAP Demand Curve), *order denying reh’g*, 105 FERC ¶ 61,108 (2003); 122 FERC ¶ 61,064 (2008) (Order accepting updates revisions to NYISO ICAP Demand Curve).

<sup>2</sup> See, e.g., *Hughes v. Talen Energy Marketing, LLC*, 136 S. Ct. 1288 (2016); *FERC v. Elec. Power Supply Assoc.*, 136 S. Ct. 760 (2016); *New York et al. v. FERC*, 122 S. Ct. 1012 (2002).

The May 23 Notice invited comments on other matters, including the “principles and objectives that should guide the selection of a path forward . . .”<sup>3</sup> The principles and objectives used to guide the selection of a path forward should be addressed and established *first*, as a priority.<sup>4</sup>

On April 25, 2017, Mike Cocco, Senior Director of RTO and Regulatory Affairs for NRECA member Old Dominion Electric Cooperative (“ODEC”) submitted a pre-technical conference statement.<sup>5</sup> The ODEC Statement recommends principles for the Commission to use as it acts in response to and in coordination with state policies. As discussed below, the Commission should adopt those principles as the minimum standards for wholesale markets to accommodate state policies. Those principles are as follows:

1. Maintain a focus on reliable service at just and reasonable rates for end-use customers;
2. Ensure that LSEs’ long-term investments in generation are honored and encouraged;
3. Avoid the volatility of repeated, reactionary revisions to market designs;
4. Adopt wholesale market policies which encourage resource diversity and accommodate legitimate state policy objectives; and
5. Allow regional flexibility.

As discussed below, NRECA believes that Path 1 is the optimal path. The Commission should strive for truly competitive wholesale power markets, where the RTO-administered markets are restored to voluntary, residual sources for needed capacity and energy. Path 2 presents a decidedly sub-optimal path forward, but can be made to work if consumers are adequately protected and state policies properly accommodated.

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<sup>3</sup> May 23 Notice at 2.

<sup>4</sup> See Tr. at 18:6-12 (Commissioner Honorable: “I too, am not expecting to have fully vetted solutions but rather I believe our collective purpose here over the next couple of days should be to develop a sound record upon which the Commission can act at some future date when we get our new colleagues here to provide better guidance to stakeholders not only in the three regions, but more broadly across our national footprint.”).

<sup>5</sup> *Pre-Technical Conference Statement of Michael Cocco*, Senior Director RTO & Regulatory Affairs, Old Dominion Electric Cooperative, submitted in this docket on April 25, 2017 (“ODEC Statement”).

Additionally, the Commission should adopt a process for moving toward a policy for each RTO to accommodate state policies in its wholesale market rules. NRECA recommends regional technical conferences as a next step, with ongoing stakeholder processes.

## **II. DESCRIPTION OF NRECA**

America's consumer-owned, not-for-profit electric cooperatives serve 42 million people, in areas comprising 56 percent of the nation, and deliver approximately 11 percent of all electric energy (kilowatt-hours) sold in the United States. NRECA's member cooperatives include 65 generation and transmission ("G&T") cooperatives and 840 distribution cooperatives. The G&Ts are owned by the distribution cooperatives they serve. NRECA members generate approximately half of the electric energy they sell and purchase the remaining half in wholesale markets. Both distribution and G&T cooperatives share an obligation to serve their members by providing safe, reliable, and affordable electric service. NRECA's members participate in all of the nation's organized wholesale electricity markets, including the three eastern Regional Transmission Organizations (RTOs) that are the subject of this proceeding.

## **III. PRINCIPLES**

As an important first step, the Commission should adopt principles against which further efforts to accommodate state policies in wholesale markets will be measured. Several participants and the Commission staff expressed the need for guidance from the Commission, in the form of principles.<sup>6</sup>

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<sup>6</sup> See Tr. at 126:20-22 (Mr. Weiner, NY State Department of Public Service, commented, "I want to endorse enthusiastically and wholeheartedly the point that we have to come up with principles . . ."); Tr. at 117:6-9 (David Patton, Potomac Economics, ". . . we always try to start with the principle which is why I put that in our comments about any solution you come up with should have a set of principles."); see also Tr. at 46:9-12 (Jamie Simler, Director of FERC's Office of Energy Market Regulation, stated, ". . . I'm wondering if instead of as you know locking in policies we instead look to principles of what we want to accomplish, you know, kind of state level narrowing up to the federal level.").

There is precedent for this approach. In other proceedings of general applicability, the Commission has first adopted principles or minimum standards, then directed compliance while allowing for regional or other flexibility.<sup>7</sup> The principles outlined by ODEC are recommended by NRECA as the minimum standards for any RTO/ISO measure to accommodate state policies are discussed below.

**1. Maintain a focus on reliable service at just and reasonable rates for end-use customers.**

The Commission's statutory obligation is to ensure that rates are just, reasonable and not unduly discriminatory or preferential.<sup>8</sup> The Commission's focus should remain on the efficacy of wholesale markets in achieving reliable service at just and reasonable rates, not on ensuring that organized markets ensure profits or revenues to generators that are in excess of competitive outcomes. Accurate pricing should create true price signals for investment in resources, infrastructure, and technology, as opposed to artificial incentives as an inducement to generators or other market participants at an unjustified cost to load. NRECA reiterates the ODEC Statement that the Commission must take care not to be influenced by claims that under recovery of revenues by generators is due to market design. Instead, reduced revenues to generators are largely a product of market forces. Efficient price signals induce market entry *and exit*. NRECA has long advocated that consumers will fare better in competitive wholesale power markets where load-serving entities ("LSEs")<sup>9</sup> can first meet their requirements through voluntary measures such

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<sup>7</sup> See e.g., *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC 61,051, 76 Fed. Reg. 49,842 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC 61,132, 77 Fed. Reg. 32,184 (2012), *order on reh'g*, Order No. 1000-B, 141 FERC 61,044, 77 Fed. Reg. 64,890 (2012).

<sup>8</sup> 16 U.S.C. §§ 824d, e (2016).

<sup>9</sup> LSEs are those entities that have a contractual or legal obligation to serve load, including cooperative utilities. See Section 217 of the Federal Power Act, 16 U.S.C. § 824q.

as long-term, bilateral contracts, and then turn to the RTO-administered capacity and energy markets for residual needs.<sup>10</sup>

Accordingly, one of the outcomes of this proceeding should be that the Commission develops a set of guiding principles or minimum standards for accommodating state policies and protecting the integrity of markets, while ensuring just, reasonable and not unduly discriminatory or preferential rates to consumers. As the Commission has done in other proceedings to address issues of broad applicability and significance, the Commission should adopt minimum standards or principles that must be met by any proposal for wholesale markets to accommodate or address state policies.<sup>11</sup>

## **2. Ensure that LSEs' long-term investments in generation are honored and encouraged.**

Policies must accommodate LSEs' decisions to invest in generation resources that they believe best meet their needs based on their own unique purposes or criteria. This fundamental role of cooperative utilities and other similar LSEs—to invest in generation resources or purchase long-term power supplies in order to meet the long-term needs of their customers in an economically efficient and reliable manner based on a number of cost and non-cost factors—is at the core of their traditional, long-standing business models. Congress has recognized the need for LSEs to make long-term power-supply arrangements.<sup>12</sup> The Commission has acknowledged the value of long-term arrangements, as follows:

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<sup>10</sup> See, e.g., Post-Technical Conference Comments of NRECA in Docket Nos. ER11-2875-000, *et al.* & EL11-20-001 (August 29, 2011); Post-Technical Conference Comments of NRECA in Docket No. AD13-7-000 (January 8, 2014)(errata filing); and NRECA Comments on Phase II of QER, Department of Energy (July 1, 2016) (“[L]ong-term bilateral contracts and self-supply options may better address long-term investment and diversity needs than reforms of short-term energy, ancillary services and capacity prices.”) available at: [http://www.electric.coop/wp-content/uploads/2016/07/NRECA\\_QER\\_1\\_2\\_Comments\\_07012016.pdf](http://www.electric.coop/wp-content/uploads/2016/07/NRECA_QER_1_2_Comments_07012016.pdf).

<sup>11</sup> See, e.g., *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999) (Order No. 2000), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000) (Order No. 2000-A), *aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

<sup>12</sup> In 2005, Congress added section 217(b)(4) to the Federal Power Act, which requires the Commission to exercise its authority “in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable

Long-term power contracts are an important element of a functioning electric power market. Forward power contracting allows buyers and sellers to hedge against the risk that prices may fluctuate in the future. Both buyers and sellers should be able to create portfolios of short-, intermediate-, and long-term power supplies to manage risk and meet customer demand. Long-term contracts can also improve price stability, mitigate the risk of market power abuse, and provide a platform for investment in new generation and transmission.<sup>13</sup>

However, over the years, capacity market design and other forces have undermined the ability of LSEs to secure long-term power supplies and have threatened LSEs' long-standing business models. The tortuous history of capacity constructs and Minimum Offer Price Rules ("MOPRs") in the eastern RTOs demonstrates why the Commission must take extra care to ensure that LSEs' long-term investments in generation are accommodated and encouraged. Initially, the Commission characterized capacity mechanisms like PJM's Reliability Pricing Model ("RPM") as a "last resort." According to the Commission, ". . . after LSE's have had the opportunity to procure capacity on their own, it is reasonable for PJM to procure capacity in an open auction at a time when further delay in procurement could jeopardize reliability. This, however should be a last resort."<sup>14</sup> The Commission also recognized a limited function for MOPRs.<sup>15</sup> However, subsequent market design changes like the elimination of

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needs of load-serving entities to satisfy the service obligations of the load-serving entities, and enables load-serving entities to secure firm transmission rights (or equivalent tradable or financial rights) on a long-term basis for long-term power supply arrangements made, or planned, to meet such needs."

<sup>13</sup> *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 278; *see also* PP 283, 301 (2008) (in order to "facilitate the long-term contracting process by increasing the transparency of the ability of potential sellers and buyers of market participants," the Commission required RTOs and ISOs to develop website bulletin boards for posting long-term buy and sell offers); *order on reh'g*, Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 (2009); *see also*, *Long-Term Firm Transmission Rights in Organized Electricity Markets*, 17 Fed. Reg. 43,564 (2006), FERC Stats. & Regs. ¶ 31,226 at P 100 (2006).

<sup>14</sup> *See PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331 at P 71 (2006).

<sup>15</sup> *See PJM Interconnection, L.L.C.*, 136 FERC ¶ 61,145 at P 208 (2011) (the Commission noted that for LSEs like NRECA's members, the purpose and function of PJM's Minimum Offer Price Rule ". . . is not to unreasonably impede the efforts of resources choosing to procure or build capacity under long-standing business models."); *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,022 at P 86 (2011) ("Only entities purchasing substantially more capacity than they sell are subject to the MOPR because only entities in this position would appear to have the desire to artificially lower capacity prices.")

guaranteed clearing for LSE self-supply have transformed the capacity construct into a mandatory method of procurement.

The unreasonable outcome of this forced capacity construct is a threat to the very types of long-standing business models and long-term investments and contracts which Congress and the Commission have recognized as essential to the health of the industry. As NRECA has explained elsewhere, LSEs invest in resources outside of the centralized RTO capacity auction markets in order to have long-term power supply based on a number of factors.<sup>16</sup> If those resources do not clear the RTO capacity auction and, therefore, do not count toward an LSE's capacity obligation, then the LSE must replace the self-supply with capacity purchased through the capacity auction, thereby paying twice to satisfy the single capacity obligation. Such double payment is unreasonable and the risk of not clearing can have a chilling effect on LSE investment in resources. In this effort to accommodate state policies in wholesale markets, the Commission should require that any proposal include mechanisms to ensure that such unintended adverse consequences to load are prevented.

### **3. Avoid the volatility of repeated, reactionary revisions to market designs.**

NRECA agrees with ODEC's Statement that "the cycle of action by the states or other factors, followed by reaction by market participants and/or RTOs through market design changes, has left market participants 'punch drunk.'"<sup>17</sup> During the conference, there seemed to be universal agreement that litigation is the wrong course of action.<sup>18</sup> In addition to avoiding protracted litigation which works

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<sup>16</sup> See, e.g., *Post-Technical Conference Comments of the National Rural Electric Cooperative Association*, filed in Docket No. AD13-7-000 on January 8, 2014 (Accession No. 20140109-5011).

<sup>17</sup> ODEC Statement at p. 3.

<sup>18</sup> See Tr. at 145:21-23 (Commissioner Honorable commented that she too "would rather that we arrive at a solution collaboratively and not through years of protracted litigation."); Tr. at 241:23-25 (Andrew Ott, President and CEO of PJM, stated "First and foremost this issue of continuing to fight and have litigation is again, 25 as others have said, not a great strategic plan."); Tr. at 227: 23-25, 228:1-5 (Robert Erwin, Jr., General Counsel, Maryland Public Service Commission explained "...I don't think the litigation world is the best way to go. I think that collaborative

against coordinated solutions and prolongs uncertainty in the markets, the Commission should require proposals to make necessary market design or rule changes, but also to avoid repeated, reactionary revisions to market designs.

**4. Adopt wholesale market policies which encourage resource diversity and accommodate legitimate state policy objectives.**

Resource diversity and implementation of state resource policies have become mainstays in the electric industry and can be expected to remain so for the foreseeable future. This proceeding itself is recognition that wholesale markets are not designed to accommodate state policies which prioritize certain types of resources or resource attributes.<sup>19</sup>

During the Technical Conference, there was discussion regarding whether resource diversity is within the purview of the states, or whether RTOs should be responsible for ensuring that their markets encourage resource diversity.<sup>20</sup> There was also discussion over the extent to which resource/fuel diversity is an issue for resiliency of the grid.<sup>21</sup> NRECA submits that resource diversity is the primary responsibility of the states, and wholesale markets should not impede state resource decisions but instead provide for a competitive, non-discriminatory market for all types of resources. NRECA recommends that the Commission consider the extent to which current market rules or designs favor one type of resource over another, and whether those rules should be changed.

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processes at the PJM level are where hopefully these kinds of questions can be addressed and I want to publically thank PJM for its recent work in working with Maryland to find aggregation for our demand response resources for the upcoming May DRA and we look forward to continuing to work with PJM to be able to expand that effort.”).

<sup>19</sup> See *Notice of Technical Conference* issued in this proceeding on March 3, 2017, at p. 1 (“Because the wholesale competitive markets, as currently designed, select resources based on principles of operational and economic efficiency without specific regard to resource type, there is an open question of how the competitive wholesale markets, particularly in states or regions that restructured their retail electricity service, can select resources of interest to state policy makers while preserving the benefits of regional markets and economic resource selection.”).

<sup>20</sup> See Tr. at 516:14-20.

<sup>21</sup> See Tr. at 518:20-519:20.

## **5. Allow regional flexibility.**

The Commission has more often than not embraced regional flexibility in RTO and ISO market design in recognition of the fact that each region is different in terms of resources, existing rules and state policies. The Commission need look no further than the papers submitted in this proceeding for evidence that each RTO and ISO is in different stages in terms of implementing state specific policies and each has taken a different approach to addressing the interaction of those state policies and the wholesale markets. As Commissioner Honorable observed, “FERC has consistently embraced solutions that embrace the uniqueness of each market and so although we are bringing these three regions together today my expectation is that a solution for ISO New England may in fact differ for one for New York ISO or PJM.”<sup>22</sup> A one-size-fits-all market design, particularly at this point in the complex evolution and state of organized markets, would cause far greater disruption and likely result in unintended consequences that are counterproductive to the overall goals the Commission seeks to achieve.

## **IV. PATH FORWARD**

### **A. NRECA Supports Adoption of Path 1 or, in the Alternative, Path 2.**

Path 1 contemplates no MOPR for state-supported resources, or limiting the application of the MOPR to those instances where federal law preempts the state action providing that support. Eliminating a MOPR for state-supported resources is consistent with NRECA’s position that, rather than use administrative constructs that inevitably fail to mimic competitive markets, the Commission should work toward competitive wholesale markets with voluntary, residual organized markets. Moreover, in a market where prices are administratively set by a MOPR, LSEs would not be able to make long-term resource investments or purchases with certainty that this capacity will be used to meet their needs and that their

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<sup>22</sup> See Tr. at 19:17-21.

decisions to build or procure capacity will be honored. Removal of the MOPR altogether or limited application to preempted state policies would also provide transparency so that the market can indicate the need for additional investment in generation or “over-supply.”

NRECA recognizes that there has been concern and debate over whether all state policies should be accommodated as “legitimate.” Neither the Commission, RTOs/ISOs, market monitors, states, nor market participants should be placed in the role of determining the legitimacy of state policies. Instead, the MOPR should be limited to application of state policies which are clearly preempted by existing federal law, as where a state attempts to impose a wholesale price different from that established by this Commission.

NRECA recognizes that Path 1 would be a change in policy for the Commission, which heretofore has preferred narrow, categorical exemptions from the MOPR.<sup>23</sup> Therefore, in the near term and subject to further development of a long-term, permanent solution, NRECA is willing to support Path 2, which contemplates “accommodation” of state actions within the existing organized capacity auction constructs. The Commission states that such accommodation of state actions is “subject to adjustments necessary to maintain certain wholesale market prices consistent with the market results that would have been produced had those resources not been state-supported.”<sup>24</sup> It will be critical how such “adjustments” are made. These adjustments should not result in either (1) the continuation of the current MOPR, where state-supported resources are subject to upward price adjustment unless they meet narrow exemptions; or

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<sup>23</sup> See, e.g., *PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090 (2013); *order on reh’g*, 153 FERC ¶ 61,066 (2015); appeal pending, D.C. Cir. Case Nos. 15-1452 and 15-1454; *ISO New England Inc.*, 147 FERC ¶ 61,173 (2014), *reh’g denied*, 150 FERC ¶ 61,065 (2015); *NextEra Energy Resources, LLC v. FERC*, No. 15-1070 (D.C. Cir. 2015), *order on remand*, *ISO New England Inc.*, 155 FERC ¶ 61,023 (2016), *order on reh’g*, 158 FERC ¶ 61,138 (2017).

<sup>24</sup> May 23 Notice at p. 1.

(2) modifying the supply-demand curve to adjust where the subsidized resources fit on the curve.<sup>25</sup> Either of these results creates uncertainty as to whether the resources will clear the market, which creates the risk of double payment to satisfy capacity obligations, as discussed above.

### **B. Problems with Other Identified Paths**

NRECA opposes Path 3, Path 4 and Path 5 because they will lead to the same threats to self-supply and unreasonable outcomes that have been experienced under the current MOPR and policies, discussed above. First, Path 3 is unworkable as an accommodation of state policies because it does not include guaranteed clearing for self-supply, which could lead to the risk of double payment for capacity and threaten LSEs' long-standing business models. Path 3 is also unreasonable because it makes no improvements to the current provision which fails to accommodate state policies into wholesale markets. Further, there seems to be universal agreement that market design by litigation is an unworkable path forward.<sup>26</sup>

Path 4 contemplates, in the first instance, that "state policies, to the extent possible, would value the attributes (e.g., resilience) or externalities (e.g., carbon emissions) that states are targeting in a manner that can be readily integrated into the wholesale markets in a resource-neutral way."<sup>27</sup> FERC's wholesale market policy should not be dependent on the states adopting the FERC-preferred approach. It is impractical, at best, to expect the Commission to force or even influence states to act in any particular way. State policy makers can and should base their decisions on factors beyond FERC's control, such as economic concerns, politics, and changes in state laws or regulations. The inability to control state policies and pricing will result in reliance on "what, if anything, the Commission should do to address the

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<sup>25</sup> See PJM's May 2, 2017 submission in this docket, titled, "Capacity Market Repricing Proposal." PJM recently published additional working papers to further address these issues.

<sup>26</sup> See Transcript citations at note 20 of these Comments.

<sup>27</sup> May 23 Notice at p. 2.

market impacts of these state policies”<sup>28</sup> – which could well take the markets back to the challenges currently being faced with the application of the MOPR or other market interruptions.

Path 5 is unreasonable, as it is antithetical to the accommodation of state policies which most participants seem to agree is appropriate in at least some circumstances. An expansion of the MOPR to apply to existing capacity resources that participate in the capacity market and achieve state support is unreasonable and would extend the MOPR beyond its purpose of mitigating against buyer-side market power. The MOPR is not a tool to guarantee higher-than-reasonable prices paid by load and Path 5 would allow it to be used for that very purpose.<sup>29</sup>

## **V. DEGREE OF URGENCY**

NRECA does not believe that there is imminent risk of significant or severe market distortions which require broadly applicable action by the Commission. Instead, to the extent there are state actions which warrant immediate reaction (such as the Illinois ZECs), there are proceedings underway to address those actions. The Commission should take caution against acting too soon or too broadly. Instead, as discussed in Section V below, the Commission should look to RTOs and ISOs to signal a need for urgent remedial action by the Commission.

## **VI. PROCEDURAL STEPS**

As discussed in the Technical Conference and papers filed in this proceeding, each of the RTOs/ISOs has initiated a process to address state policies and the impact on markets. As was also made

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<sup>28</sup> *Id.*

<sup>29</sup> Further discussion of the unreasonable impact of expanding the MOPR to apply to existing resources can be found in Docket No. EL16-49-000, which involves a complaint seeking to expand the PJM MOPR to existing resources, as a reaction to the State of Illinois’ Future Energy Jobs Bill, which provides for ten-year contracts to existing nuclear resources for zero emissions credits. *See Protest of Dominion Resources Services, Inc., et al.*, filed on April 11, 2016 in Docket No. EL16-49-000; *see also, Protest of Dominion Resources Services, Inc., et al.*, filed on January 30, 2017 in Docket No. EL16-49-000

clear, the RTOs/ISOs are in various stages of developing market rules and policies to accommodate actions taken by the states. Rather than upset this progress, NRECA recommends that the Commission allow RTOs/ISOs to continue their work, with the following conditions/improvements:

- A. FERC should adopt principles which include, at a minimum, the principles recommended by NRECA. The principles will be the basis for considering any proposals to accommodate state policies in RTO/ISO markets.
- B. Regional stakeholder process: Contrary to some of the comments made during the Technical Conference,<sup>30</sup> NRECA believes there is value in a meaningful stakeholder process where all sectors of market participants are included and solutions are thoroughly vetted. As part of this proceeding, the Commission should direct each RTO/ISO to engage in stakeholder processes for the purpose of identifying any challenges associated with state policies and developing solutions that meet the minimum standards discussed above.
- C. Regional technical conference: The Commission should convene regional technical conferences in each RTO/ISO region in order to address (1) reforms for implementation immediately, within 1-3 years, and longer-term; and (2) transition mechanisms.
- D. Periodic reports: Forced market changes are not necessary at this time. Instead, the Commission could require each of the three RTOs/ISOs to submit periodic status reports on their progress, so that the Commission can determine whether its intervention is warranted.

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<sup>30</sup> Tr. at 470-473.

## VII. CONCLUSION

NRECA appreciates the opportunity to submit these Initial Comments. In summary, NRECA recommends that the Commission (1) adopt the principles recommended herein; (2) direct ISO-NE, NY ISO and PJM to work toward implementation of Path 1 or, in the alternative, Path 2, with the conditions discussed above; and (3) direct further RTO/ISO internal processes, modified as discussed above.

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Dated: June 22, 2017

## CERTIFICATE OF SERVICE

I hereby certify that I have served this day copies of the foregoing on the official service list compiled by the Office of the Secretary in accordance with Rule 2010 of the Commission Rules of Practice and Procedure.

Dated at Washington, D.C. this 22nd day of June, 2017.

/s/ \_\_\_\_\_  
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