UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

New England States Committee on Electricity	)	
v.	)	**Docket No. EL 13-34-000**
ISO New England Inc.	)	

MOTION TO INTERVENE AND PROTEST OF THE NEW ENGLAND POWER GENERATORS ASSOCIATION, INC. TO THE COMPLAINT AND MOTION TO CONSOLIDATE PROCEEDINGS OF THE NEW ENGLAND STATES COMMITTEE ON ELECTRICITY

Pursuant to Rules 211, 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. §§ 385.211, 212 and 213, and the Commission's January 3, 2013 Notice of Complaint, the New England Power Generators Association, Inc. ("NEPGA")[1] hereby files this Motion to Intervene and Protest in response to the Complaint and Motion to Consolidate Proceedings of the New England States Committee on Electricity ("NESCOE"), filed by NESCOE on December 28, 2012 ("NESCOE Complaint").

I. Motion to Intervene and Communications

NEPGA is a private, non-profit trade association advocating for the business interests of competitive electric power generators in New England. NEPGA's member companies represent approximately 27,000 megawatts of installed capacity throughout the New England region. NEPGA's mission is to promote sound energy policies which will further economic development, jobs, and balanced environmental policy. NEPGA's member companies are

[1] The comments expressed herein represent those of NEPGA as an organization, but not necessarily those of any particular member.

responsible for generating and supplying electric power for sale within the New England bulk power system. As active participants in the ISO-NE capacity and wholesale electricity markets, NEPGA's member companies have substantial and direct interests in the outcome of these proceedings, and those interests cannot be adequately represented by any other party in the proceeding.

All correspondence and communications related to this proceeding should be addressed to the following individuals:

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II. Background

In its April 13, 2011 Order[2] the Commission directed ISO-NE and NEPOOL stakeholders to develop buyer-side mitigation rules in the Forward Capacity Market ("FCM") to include, *inter alia*, benchmark prices by resource type at a level approximating net cost of entry for a new resource ("CONE"), a process for updating the threshold prices over time and a process by which a resource can demonstrate that its actual costs should allow the resource to offer at a lower price than the resource type-specific offer floor.[3] On December 3, 2012, ISO-NE made its compliance filing pursuant to the April 2011 Order ("ISO-NE Compliance Filing"), including market rule enhancements that, for the first time in the New England Forward Capacity Market ("FCM"), mitigate buyer-side behavior through the minimum offer price rule ("MOPR") ordered by the

[2] *ISO New England Inc. and New England Power Pool Participants Committee*, 135 FERC ¶ 61,029 (2011) ("April 2011 Order").
[3] *Id.* at P 169.

Commission.[4] On December 28, 2012, NESCOE filed both a Protest of the ISO-NE Compliance Filing and a Complaint. Pursuant to its Complaint, NESCOE asks the Commission to find that the MOPR, as filed by ISO-NE, is unjust and unreasonable,[5] and order ISO-NE to amend its tariff to allow for an annual 225 MW renewable resource exemption from the MOPR.[6]

III. Protest

A. NESCOE's Motion to Consolidate If Granted Would Cause Undue Delay in the Approval of FCA 8 Market Rule Changes Ordered by the Commission and Should Therefore be Denied

Consolidation of ISO-NE's Compliance Filing proceeding with NESCOE's Complaint will unnecessarily delay the effective date of several necessary changes to the FCM as ordered by the Commission. The ISO is seeking a February 12, 2013, effective date for its proposed changes, in large part to allow the changes to take effect prior to the FCA 8 New Capacity Show of Interest Submission Window, which begins on February 14, 2013.[7] The Commission has already resisted attempts to complicate the ISO's Compliance Filing proceeding with a proceeding under Section 206 of the Federal Power Act ("FPA"). Specifically, the Commission has previously determined that it would not entertain arguments similar to NESCOE's as part of the Compliance Filing proceeding and made clear that a Section 206 proceeding is "the statutory vehicle available to state parties seeking an exemption" for resource specific exemptions.[8] The Commission should uphold its prior ruling that complainants should proceed separately under Section 206 and again resist this attempt to delay the Compliance Filing proceeding. In addition, the Commission has already issued its rulings in the Compliance Filing proceeding and the sole remaining issue is whether ISO-NE has complied with the Commission's orders. The

[4] ISO-NE Compliance Filing, Transmittal Letter at 8-12.
[5] NESCOE Complaint at 8.
[6] *Id.*, Attachment A at 21.
[7] ISO-NE Compliance Filing, Transmittal Letter at 2.
[8] *ISO New England, Inc., and New England Power Pool Participants Committee*, 138 FERC ¶ 61,027 at PP 89 (2012) ("January 2012 Order").

Commission should not allow NESCOE to reopen issues already settled in that proceeding as would effectively occur if the Compliance Filing Proceeding is consolidated with NESCOE's Complaint.[9]

Further, there is no need to consolidate the proceedings and delay the effective date of the ISO's proposed changes to the FCM when not consolidating the proceedings will allow for future changes to the MOPR should the Commission grant any of NESCOE's requests in its Complaint. NESCOE's Complaint is limited to only one aspect of the several conforming changes proposed by the ISO in its Compliance Filing.[10] To delay all of the ISO's proposed changes to the FCM, all of which the Commission ordered be in effect for FCA 8, when the Complaint concerns only one of the ISO's proposed changes is illogical and administratively inefficient. To grant NESCOE's request to consolidate its Complaint and the ISO Compliance Filing proceeding would unnecessarily delay the effective date of important and Commission-mandated FCM changes. In the interest of administrative efficiency the Commission should deny NESCOE's Motion to Consolidate.

B. NESCOE's Complaint is a Collateral Attack on Prior Commission Orders Finding That the Minimum Offer Price Rule as Filed by the ISO is Just and Reasonable

The moving party in a Section 206 complaint must first demonstrate that a rate, charge or practice is unjust and unreasonable.[11] NESCOE asserts that the ISO's proposed MOPR is unjust and unreasonable because it does not include a categorical exemption for state-sponsored

[9] The Commission has, in similar circumstances, declined to consolidate proceedings where consolidation would cause administrative inefficiencies. *See, e.g., Southern Cal. Edison Co. and California ISO,* 134 FERC ¶ 61,108 at P 54 (2011); *Southern Cal. Edison Co.,* 133 FERC ¶ 61,019 at P 31 (2010).
[10] In addition to the ISO's proposed MOPR, the ISO seeks approval of its proposed Offer Review Trigger Prices ("ORTPs"), a process by which a party may seek to offer below the resource's relevant OTRP, application of the ORTPs to new import capacity resources, elimination of the price floor, and zone modeling.
[11] 16 U.S.C. § 824c(b) (2006).

renewable resources.[12] The Commission, however, not only held in its April 2011 and January 2012 Orders that a MOPR without such a categorical exemption is just and reasonable, but ordered the ISO to amend its tariff accordingly.[13] For NESCOE to ask the Commission to find that the very tariff provisions the Commission ordered the ISO to file are unjust and unreasonable is a collateral attack on the Commission's orders. NESCOE is simply seeking to re-litigate the same arguments the Commission rejected in its prior orders. The Commission, therefore, should summarily deny NESCOE's Complaint.[14]

Despite the Commission's finding that a MOPR with no categorical exemptions is just and reasonable, as the ISO currently proposes, NESCOE asserts that the Commission "affirmed" that NESCOE may file a complaint under Section 206 to seek a categorical exemption to the MOPR for state-sponsored renewable resources.[15] Specifically, NESCOE interprets the Commission's directive that a party may seek an exemption for "a particular project or projects" to mean that a party may seek a categorical exemption.[16] NESCOE's interpretation of the Commission's directive, however, is fundamentally flawed. The plain meaning of "a particular project or projects" is one or more known projects seeking to qualify for a specific FCA, not a category of unknown projects. Further, the Commission has defined the means available to a party seeking to offer below an Offer Review Trigger Price ("ORTP") to include a Section 206 complaint for "any particular state project" or justifying a below-ORTP offer based on actual

[12] NESCOE Complaint at 1.
[13] April 2011 Order at PP 165-171; January 2012 Order at P 91.
[14] *New England Conf. of Pub. Utils Commrs. V. Bangor Hydro-Electric Co.*, 135 FERC ¶ 61,140, at P 27 (2011) (citing *Wall v. Kholi*, 131 S. Ct. 1278, 179 L. Ed. 2d 252, 2011 U.S. LEXIS 1906 at *12 (2011)); *see also Fla. Gas Transmission Co. LLC*, 132 FERC ¶ 61,222, at P 201 (2010) (finding that a protest is a collateral attack on a prior Commission order where the protest repeats arguments previously rejected by the Commission in the same proceeding).
[15] NESCOE Complaint at 7-8.
[16] *Id*., citing January 2012 Order at P 89.

costs for an individual project.[17] According to the Commission, "[w]hether to grant an exemption is based on each case's unique facts"[18] with the decision of whether to grant an exemption to be determined on a "case-by-case basis."[19] With respect to categorical exemptions, the Commission provided that "[p]arties are free to introduce and develop categorical exemptions or other measures in the stakeholder process."[20] The Commission has not found that a party may seek a categorical exemption to the ISO-NE MOPR pursuant to a Section 206 complaint, perhaps most obviously because the Commission has found that a MOPR without a categorical exemption is just and reasonable.

Indeed, the Commission confirmed that the NEPOOL stakeholder process, not a Section 206 filing, is the appropriate vehicle for pursuing a categorical exemption, in response to the States' May 2011 request for clarification.[21] The Commission noted that PJM stakeholders, unlike NESCOE in the present filing, sought a finding that categorical exemptions are just and reasonable pursuant to a Section 205 filing.[22] In contrast to PJM, where stakeholders broadly agreed to and supported a Section 205 filing creating an exemption for renewable resources in PJM's Reliability Pricing Model, ISO-NE and the NEPOOL stakeholders did not support any such exemptions and did not make a Section 205 filing seeking categorical exemptions.[23] Simply put, the Commission did not order the ISO to include a categorical exemption to the ORTPs and there was insufficient stakeholder support for such an action.

Contrary to NESCOE's assertions otherwise, the Commission did not "affirm" that NESCOE may file its Complaint challenging whether the MOPR as filed by the ISO is just and

[17] January 2012 Order at P 89.
[18] April 2011 Order at P 171.
[19] *Id*. at P 90 (emphasis added).
[20] *Id*. at P 90.
[21] *Limited Request for Clarification, Or in the Alternative For Rehearing by the New England Conference of Public Utilities Commissioners, Inc, et al.*, Docket Nos. ER10-787-005, EL10-50-003, EL10-57-003 (May 13, 2011).
[22] January 2012 Order at P 91.
[23] *Id*.

reasonable. Instead, the Complaint represents a collateral attack on prior Commission orders and should be denied.

C. NESCOE Fails to Meet Its Burden Under Section 206 of the Federal Power Act to Show That the MOPR is Unjust and Unreasonable

NESCOE requests that the Commission find that the MOPR proposed by the ISO is unjust and unreasonable if it does not include a categorical exemption for state-sponsored renewable resources.[24] The Commission should reject NESCOE's request as NESCOE has failed to meet its burden under Section 206 of the FPA to show that the MOPR proposed by the ISO is unjust and unreasonable.[25] As discussed above, the Commission has found that a MOPR without a categorical exemption is just and reasonable.[26] The ISO has complied with that direction in their recent Compliance Filing. To assert that the MOPR as filed by the ISO is unjust and unreasonable because it does not include a categorical exemption is, therefore, to argue that the Commission itself has ordered an unjust and unreasonable outcome.

Even were the Commission to ignore its recent finding that a MOPR without a categorical exemption is just and reasonable, NESCOE fails to demonstrate that the MOPR as filed by the ISO is unjust and unreasonable. According to NESCOE, the ISO's proposed MOPR is unjust and unreasonable because the MOPR will: 1) cause the over-procurement of capacity, and 2) "unreasonably undermine" state laws requiring the purchase of energy produced from renewable resources.[27] The MOPR will not cause the over-procurement of capacity as a Forward Capacity Auction ("FCA") that includes the MOPR proposed by the ISO will procure only enough capacity to meet the Installed Capacity Requirement ("ICR"). Further, the MOPR will not "unreasonably undermine" state laws requiring the purchase of renewable resource energy

[24] NESCOE Complaint at 1.
[25] 16 U.S.C. § 824e (2006).
[26] April 2011 Order at PP 165-171; January 2012 Order at P 91.
[27] NESCOE Complaint at 9.

because the states will continue to require such purchases regardless of whether certain renewable resources clear in the FCA.

1. *The MOPR Does Not Cause States to Procure Renewable Resources in Excess of the Installed Capacity Requirement*

According to NESCOE, the MOPR will cause the over-procurement of capacity resources.[28] The ISO's proposed FCA rules, however, neither require nor cause the purchase of capacity in excess of the ICR. Indeed, the Commission rejected the Alternative Price Rule and ordered the MOPR, in part, because the former allowed for the procurement of capacity in excess of the ICR while the latter will procure "just the ICR and no more."[29] As NESCOE admits, the states have chosen to require the purchase of renewable resource energy "without regard to the FCM clearing price and corresponding revenue … at a higher price to customers without this revenue."[30] The Commission as well recognizes that the states may procure renewable resources "even at times when the market-clearing price indicates entry of new capacity is not needed" in order to promote specific state policy goals.[31] That there may be capacity beyond that which is procured in the FCM is nothing new. Resources with costs that exceed the FCA clearing price (*i.e.*, uneconomic units) simply do not clear in the FCA. Adopting a construct that would allow all such units into the FCA would distort competitive FCA prices, the very harm the Commission sought to protect against by requiring the implementation of a MOPR.

In addition, NESCOE asserts that because state laws require load-serving entities ("LSEs") to procure a certain amount of renewable generation, the failure of renewable resources supported by state Renewable Portfolio Standards ("RPS") to clear in the FCM will "require" ratepayers to pay twice for capacity – once through the FCM and a second time through their

[28] NESCOE Complaint at 10.
[29] April 2011 Order at P 168.
[30] NESCOE Complaint at 10.
[31] April 2011 Order at P 171.

Renewable Energy Credit ("REC") purchases.[32] As NEPGA explained in its Answer to NESCOE's Protest, in so doing NESCOE ignores Commission precedent regarding the Commission's obligation to ensure just and reasonable rates in its jurisdictional markets regardless of state policies.

> The Commission noted in *WSPP Inc.*, 139 FERC ¶ 61,061, PP 21, 24 (2012):
>
> RECs are state-created and state-issued instruments certifying that electric energy was generated pursuant to certain requirements and standards. Thus, a REC does not constitute the transmission of electric energy in interstate commerce or the sale of electric energy at wholesale in interstate commerce. Therefore, RECs and contracts for the sale of RECs are not themselves jurisdictional facilities subject to the Commission's jurisdiction under FPA section 201.
>
> * * *
>
> [W]hen an unbundled REC transaction is independent of a wholesale electric energy transaction, we conclude, based on available information, that the unbundled REC transaction does not affect wholesale electricity rates, and the charge for the unbundled RECs is not a charge in connection with a wholesale sale of electricity. Thus, an unbundled REC transaction that is independent of a wholesale electric energy transaction does not fall within the Commission's jurisdiction under sections 201, 205 and 206 of the FPA. In a bundled REC transaction, however, where a wholesale energy sale and a REC sale take place as part of the same transaction, RECs are charges in connection with a jurisdictional service that affect the rates for wholesale energy. Thus, the Commission has jurisdiction over the wholesale energy portion of the transaction as well as the RECs portion of a bundled REC transaction under FPA sections 205 and 206 (regardless of whether the contract price is allocated separately between the energy and RECs).

NESCOE's claim that states must purchase capacity twice fails to recognize that RECs are products created by the states and, as such, are not capacity products being sold in the FCM. NESCOE's assertions, in this regard, appear to rest on the belief that state RPS laws require the purchase of renewable resource capacity and that REC payments represent, at least in part, capacity payments. Neither belief is true. New England RPS requirements mandate that a

[32] NESCOE Complaint at 2.

certain percentage of an LSE's energy requirements are met from qualifying resources, and the associated RECs are based on the energy production of those renewable resources.[33] For NESCOE to assert that the purchase of RECs and the separate purchase of capacity through the FCM represent two payments for capacity, therefore, does not recognize that the REC market is not a capacity market, and that states are not obligated to purchase capacity through, or to satisfy the requirements of, the RPS programs.

The Commission further reiterated its position in acknowledging the states' interests in promoting renewable resources. Even in those cases, the Commission has upheld its obligation to ensure just and reasonable rates by protecting against capacity market price suppression, including from renewable resources.[34] According to the Commission, the "focus of [its] actions" in directing the development of the MOPR was to guard against uneconomic entry and the suppression of capacity prices because they result in "unjust and unreasonable outcomes in a Commission-jurisdiction market."[35] The MOPR proposed by ISO-NE that includes no exemptions protects against such outcomes and is entirely in compliance with the Commission's underlying orders.

Moreover, a state-mandated purchase of a state-created product provides no basis for undermining the rates charged in the FCM. Regardless of whether a REC is bundled, and FERC jurisdictional, or not, such a rationale is contrary to FERC's mandate under the FPA to ensure just and reasonable rates. As the Commission has consistently noted, state policy decisions made

[33] State-sponsored renewable resources are primarily paid for through REC purchases. Though some renewable projects may receive additional revenues through long-term bilateral contracts, which may or may not include provisions for the purchase of capacity, in addition to the energy, these contracts are "a relatively new addition to the panoply of State statutory provisions." The primary vehicle for RPS compliance continues to be energy-based REC purchases. *See* NESCOE Complaint at 6-7, Attachment A at 9.
[34] April 2011 Order at P 170.
[35] *Id*.

irrespective of capacity market outcomes cannot and should not harm numerous other resources appropriately competing in the marketplace.[36]

2. *Renewable State Policies Are Not Undermined By the MOPR Because Such Policies Are Not Conditioned on Capacity Market Revenues*

NESCOE asserts that the MOPR is unjust and unreasonable because it will "unreasonably undermine" state renewable policies.[37] According to NESCOE, because the states do not intend to suppress capacity market prices the Commission should allow NESCOE's proposed renewable resource exemption to do so. NESCOE also argues that the Commission should order the ISO to adopt the exemptions agreed to by PJM's stakeholders.

As an initial matter, NESCOE incorrectly asserts that the absence of intent to suppress capacity market prices is relevant to the Commission's deterrence of price suppression.[38] While the MOPR precludes buyer market power, it does so by ensuring that out of market ("OOM") resources cannot suppress market prices regardless of intent. It is price suppression itself, not the intent to suppress price that is the overriding harm the Commission seeks to protect against in ordering the ISO to file the MOPR.

As the Commission explained in its April 13, 2011, Order, at P 170:

> Our concern, however, is where pursuit of these policy interests allows uneconomic entry of OOM capacity into the capacity market that is subject to our jurisdiction, with the effect of suppressing capacity prices in those markets. We note that our primary concern stems not from the state policies themselves, but from the accompanying price constructs that result in offers into the capacity market from these resources that are not reflective of their actual costs. We agree with arguments contending that OOM capacity suppresses prices *regardless of intent* and that the Commission has exclusive jurisdiction on assessing whether wholesale rates are just and reasonable. In fact, the Commission has previously found that uneconomic entry can produce unjust and unreasonable prices by artificially depressing capacity prices, and therefore, the deterrence of uneconomic entry falls within the Commission's jurisdiction. *It is these unjust*

[36] April 2011 Order at PP 170-171; January 2012 Order at 91.
[37] NESCOE Complaint at 15.
[38] *Id.*

> *and unreasonable outcomes in a Commission jurisdiction market that is the focus of our actions here* (emphasis added).

The Commission, therefore, clearly dismissed intent to suppress prices, or the lack thereof, as relevant to the question of whether OOM resources should be permitted to suppress capacity market prices. The Commission should reaffirm its finding that the FCM Market Rules should protect against capacity market price suppression regardless of intent.[39]

NESCOE offers no support for its assertion that the MOPR undermines state policies, nor does it explain how the MOPR may deter states from continuing their renewable resource policies. To the contrary, NESCOE concedes that state energy policies "promote the development of new renewable resources irrespective of FCM rules and related price signals."[40] Yet NESCOE asserts that the FCM rules will undermine state policies that NESCOE says are immune to the FCM rules. NESCOE's contradictory statements are irreconcilable, and can only lead to the conclusion that the MOPR will not "unreasonably undermine" state energy policies because the states will continue with their policies regardless of whether the MOPR includes a categorical exemption for renewable resources.

Rather than offer support for its assertion that the MOPR will undermine state policies, NESCOE argues that PJM's Reliability Pricing Model ("RPM") exemptions should serve as a model for ISO-NE.[41] What NESCOE fails to recognize is that the categorical exemptions adopted by PJM were agreed to by PJM stakeholders and filed with the Commission pursuant to a Section 205 filing. In previously denying requests for categorical exemptions in ISO-NE, the

[39] April 2011 Order at PP 170-1; *see also PJM Interconnection, L.L.C., et al.*, 137 FERC ¶ 61,145, at P 89 (2011), *appeal pending* (in considering an argument similar to NESCOE's in a 2011 PJM MOPR proceeding, the Commission stated "the MOPR does not interfere with states or localities that, for policy reasons provide assistance for new capacity entry if they believe such expenditures are appropriate for their state. We seek only to ensure the reasonableness of the wholesale, inter-state prices determined in the markets PJM administers").
[40] NESCOE Complaint at 7.
[41] *Id.* at 16-17.

Commission reasoned that, in contrast to PJM, ISO-NE and the NEPOOL stakeholders did not support any such exemptions and did not make a Section 205 filing seeking categorical exemptions.[42] ISO-NE did not include any categorical exemptions to the MOPR in its Compliance Filing, in part, because there was insufficient stakeholder support for such an action.[43] A stakeholder-agreed to set of categorical exemptions, as was the case in PJM, materially differs from a Section 206 Complaint, and therefore does not serve as a relevant model for the FCM. Further, there are numerous differences between the PJM RPM and the ISO-NE FCM including with respect to size, generator diversity, state renewable requirements and renewable penetration. In addition, the PJM capacity market uses a sloped demand curve that extends beyond ICR, as opposed to the vertical demand curve used in ISO-NE.[44] These and other differences between the markets render NESCOE's argument an "apples to oranges" comparison.[45]

D. *NESCOE's Proposed Categorical Exemption Violates the Commission's Primary Concern of Market Price Suppression*

Permitting a new resource to bid below its true cost of new entry would allow one market participant, whether it be a state or on behalf of a state, to suppress prices to all other capacity sellers. Such an outcome is incompatible with the FERC's directives in the ISO's Compliance Filing proceeding. The Commission's "primary concern" is "price constructs that result in offers into the capacity market from…resources that are not reflective of their actual costs."[46] According to the Commission, price suppression caused by OOM resources offering into the capacity markets at uneconomic prices results in an "unjust and unreasonable outcome" and is

[42] January 19, 2012 Order at P 91.
[43] ISO-NE Compliance Filing, Transmittal Letter at 2.
[44] *See ISO-NE Motion for Leave to Answer and Answer*, Docket No. ER12-953-001, at 14 (January 14, 2013) ("ISO-NE Answer").
[45] *Id.* ("PJM's exemption for renewable resources is part of a broad and balanced capacity market design that varies from that in New England in several ways.").
[46] April 2011 Order at P 170.

therefore "the focus of [the Commission's] actions here."[47] The Commission "shares the view of ISO-NE and other commenters that just and reasonable market rules must" prevent OOM resources from distorting the market clearing price.[48] The Commission has found that it may be just and reasonable for an individual resource to be exempt from the MOPR on a case-by-case basis "based on each case's unique facts."[49] Likewise, the Commission has found that it is just and reasonable for a resource to offer below its ORTP if it can demonstrate that its actual costs are below its asset type-specific benchmark.[50] But the Commission has made no such allowance for an annual 225 MW categorical exemption as proposed by NESCOE. Instead, the Commission has found that any OOM capacity can suppress capacity market prices, and that a just and reasonable FCM must effectively protect against such price suppression.

NESCOE fails to demonstrate why its proposed categorical exemption, and at such a level, is just and reasonable and why the Commission should depart from its prior rulings in this proceeding. NESCOE's proposal will suppress capacity prices with no countervailing market benefit. That remains true regardless of the size of such exemption.[51] Approval of such proposal would thwart the Commission's goals to ensure that over the long-term the FCM price should average the cost of new entry. NESCOE's proposal would categorically remove one end of the spectrum of capacity prices, while continuing to permit the other end of the spectrum to be comprised of low-cost resources to set FCA clearing prices, therefore artificially skewing downward the long-term capacity clearing price.

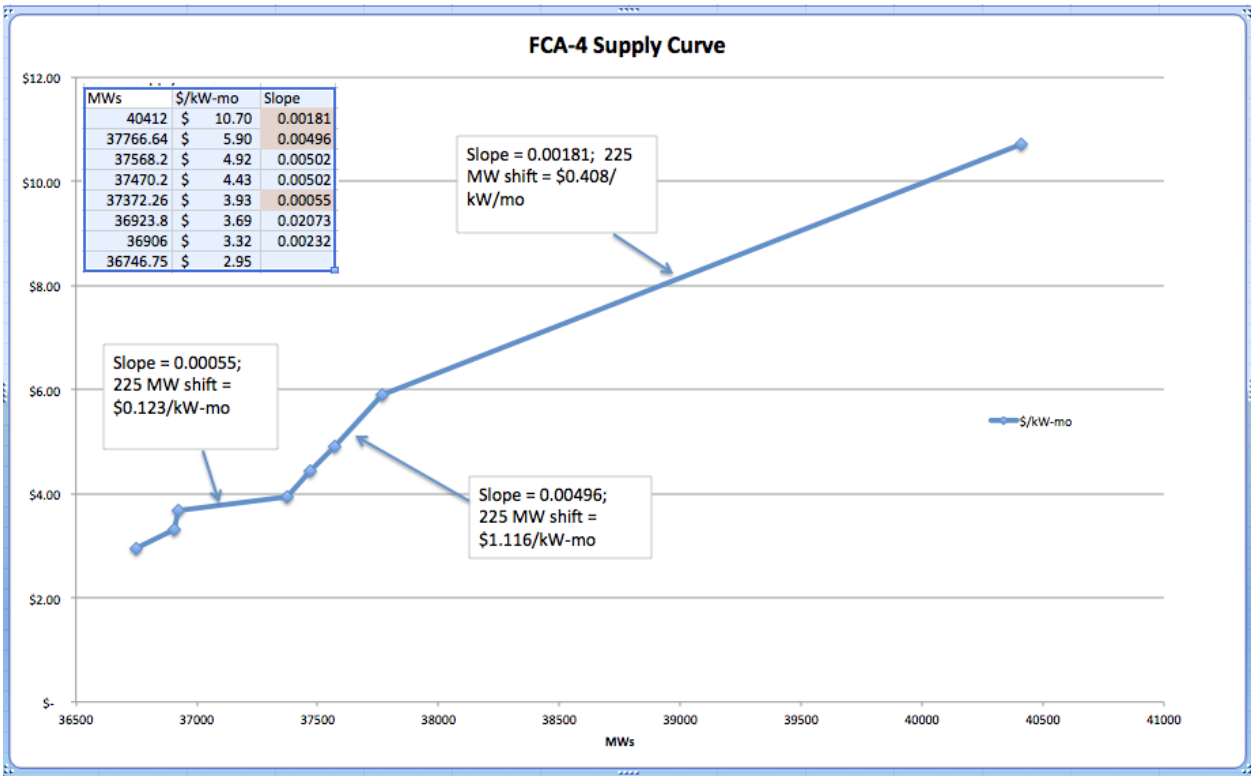
[47] *Id.*
[48] January 2012 Order at P 75.
[49] April 2011 Order at P 170.
[50] January 2012 Order at P 70.
[51] Further and as a point of clarification, a 225 MW exemption would necessarily require a much larger amount of nameplate capacity due to relatively low wind-based resource capacity factors and corresponding capacity value.

According to NESCOE, its proposed 225 MW categorical exemption is "appropriately narrow" because it "correspond[s] to state law and requirements associated with renewable resources" and, therefore, "properly balances between competing interests."[52] NESCOE's "balancing" of interests, however, fails to balance the interests of resources competing in the capacity markets, but instead only considers what is necessary to satisfy state RPS requirements. NESCOE arrived at the 225 MW categorical exemption amount simply by calculating the aggregate incremental annual demand for renewable resources under New England state RPS requirements.[53] NESCOE fails to consider the significant capacity market price suppression that its proposed exemption will cause. When the price-suppressing effects are taken into account, it is clear that the detrimental effects of NESCOE's proposal significantly outweigh the competing, and non Commission-jurisdictional interest of state renewable resource policies.

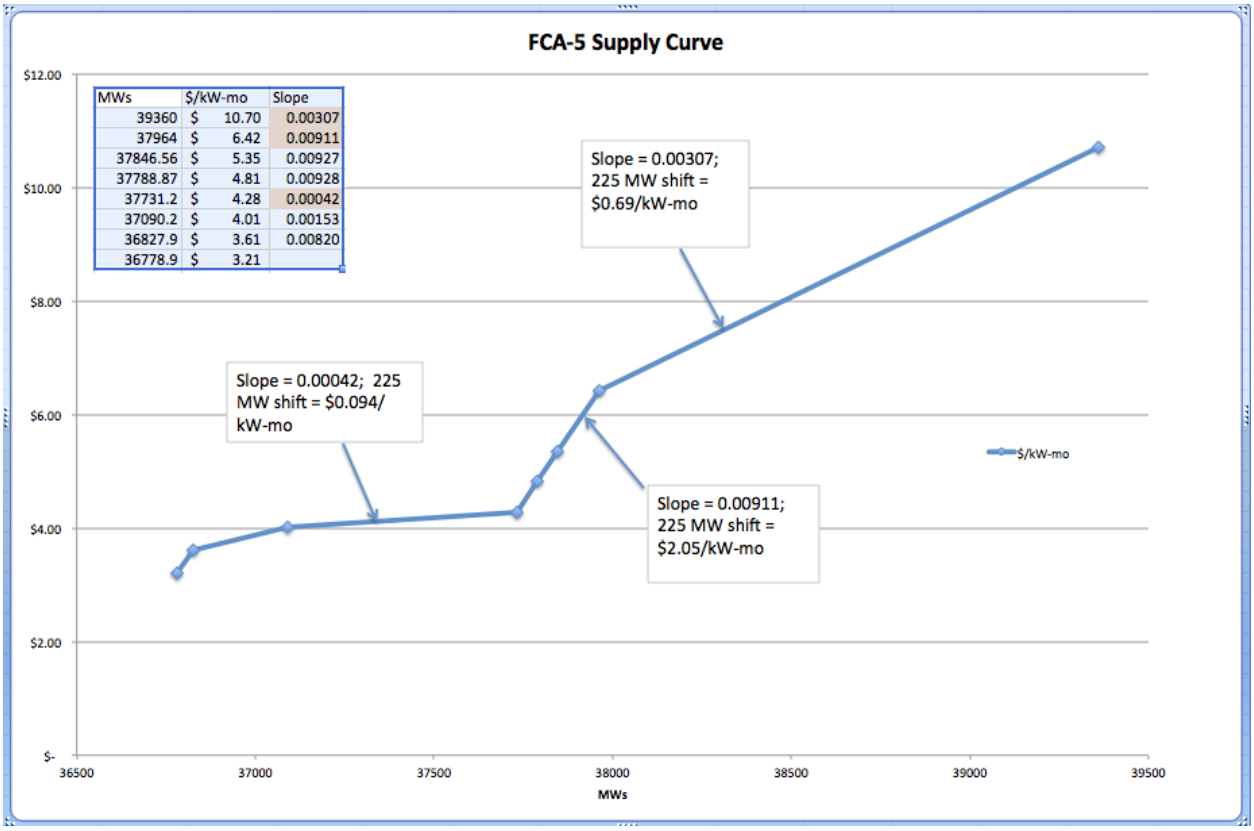
The price suppressing impact of NESCOE's proposed OOM exemption can be quantified by applying the exemption to historical data. The supply offer curves from FCA 4 through FCA 6, as shown below, are based on data published by the Internal Market Monitor at the end of each auction round.[54] The curves show how additional MWs of $0/kw-month offered supply would suppress price. While the exact price impact would depend on where on the supply curve the ICR crosses (the intersection being the Clearing Price), the curves suggest the potential price suppression impacts. In each of the below supply curves, the price suppressing impact of OOM is calculated by multiplying 225 MW times the line slope within each segment. For FCA 4, the

[52] NESCOE Complaint, Attachment A at 25.
[53] *Id.* at 24.
[54] See FCA Results Reports available at http://www.iso-ne.com/markets/othrmkts_data/fcm/cal_results/ccp14/fca14/fca_2013_2014_results_report.pdf; http://www.iso-ne.com/markets/othrmkts_data/fcm/cal_results/ccp15/fca15/fca_5_results_report.pdf; and http://www.iso-ne.com/markets/othrmkts_data/fcm/cal_results/ccp16/fca16/fca_6_result_report.pdf. The supply curve is created by adding the required ICR to the system-wide excess at the start of each round, and matching that with the corresponding price point.

price impact of 225 MW of OOM capacity would have been as high as $1.12/kW-month, depending on the actual ICR. Price suppression impacts for FCA 5 would have been as high as $2.05/kW-mo, and for FCA 6 up to $2.77/kW-mo. Notably, these are only single year impacts. OOM resources that clear in the FCA will cause on-going price suppression effects because the exempted resources will continue to displace resources that would otherwise clear in subsequent FCAs. Further, the cumulative MWs of OOM resources suppressing prices would substantially increase each year under NESCOE's proposal because an additional 225 MW of OOM capacity will clear in the FCA every year. NESCOE's proposed exemption, therefore, "is actually a relatively large quantity that would impose substantial market distortions."[55] It is irresponsible and inaccurate to consider these price impacts as "incidental."[56]



[55] ISO-NE Answer at 14.
[56] NESCOE Complaint at 18.


FCA-5 Supply Curve
MWs $/kW-mo Slope
39360 $ 10.70 0.00307
37964 $ 6.42 0.00911
37846.56 $ 5.35 0.00927
37788.87 $ 4.81 0.00928
37731.2 $ 4.28 0.00042
37090.2 $ 4.01 0.00153
36827.9 $ 3.61 0.00820
36778.9 $ 3.21
Slope = 0.00307; 225 MW shift = $0.69/kW-mo
Slope = 0.00042; 225 MW shift = $0.094/ kW-mo
Slope = 0.00911; 225 MW shift = $2.05/kW-mo
$/kW-mo
$12.00
$10.00
$8.00
$6.00
$4.00
$2.00
$-
36500
37000
37500
38000
38500
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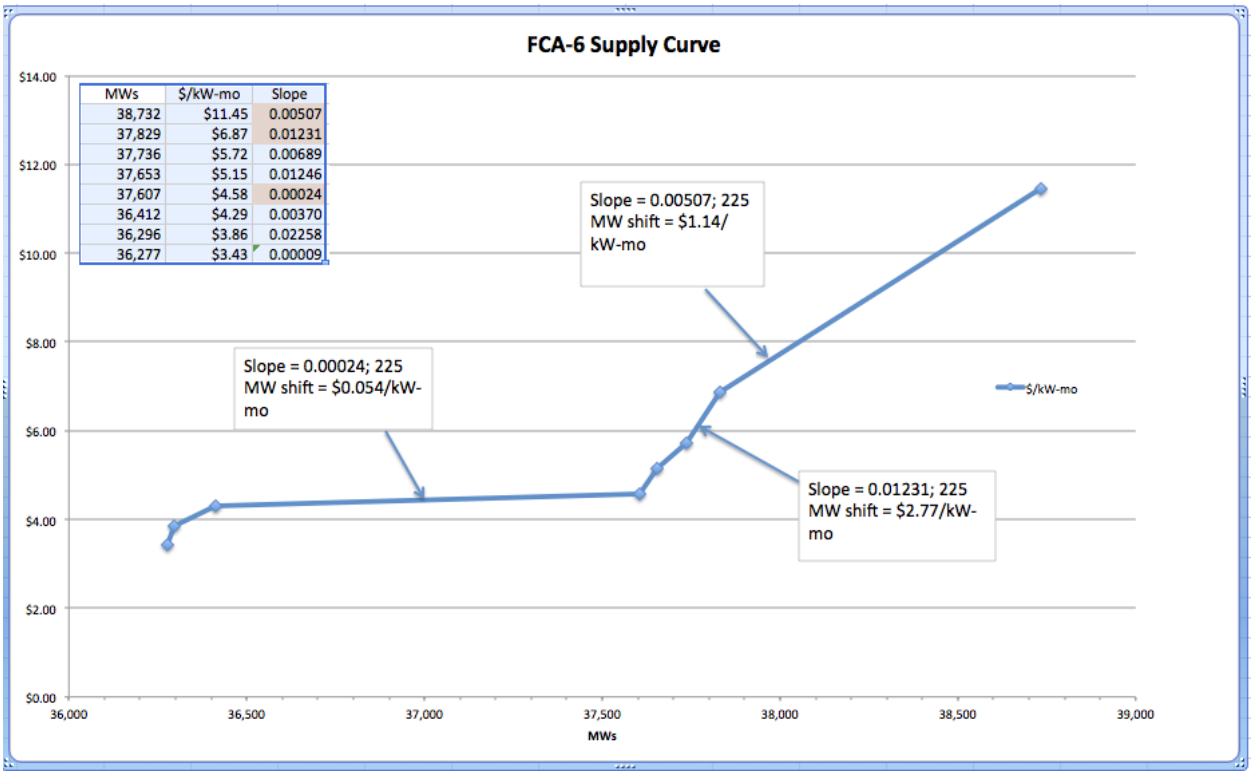
FCA-6 Supply Curve
MWs $/kW-mo Slope
38,732 $11.45 0.00507
37,829 $6.87 0.01231
37,736 $5.72 0.00689
37,653 $5.15 0.01246
37,607 $4.58 0.00024
36,412 $4.29 0.00370
36,296 $3.86 0.02258
36,277 $3.43 0.00009
Slope = 0.00507; 225 MW shift = $1.14/ kW-mo
Slope = 0.00024; 225 MW shift = $0.054/kW-mo
Slope = 0.01231; 225 MW shift = $2.77/kW-mo
$/kW-mo
$14.00
$12.00
$10.00
$8.00
$6.00
$4.00
$2.00
$0.00
36,000
36,500
37,000
37,500
38,000
38,500
39,000
MWs

IV. Conclusion

Wherefore, NEPGA respectfully requests that the Commission grant its Motion to Intervene and Protest in this proceeding and adopt NEPGA's requests herein.

Respectfully Submitted,

*/s/ Bruce Anderson*_____

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the comments by via email upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Boston, Massachusetts, January 17, 2013.

/s/ Bruce Anderson

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