



## **FERC Invites Comments on State Energy Policy Technical Conference**

Jun 1, 2017

Reading Time : **2 min**

The Notice specifically invites comments on five possible paths forward that were identified by FERC staff during the technical conference:

Path 1 – Limited or No Minimum Offer Price Rule: an approach that would either not apply the minimum offer price rule to state-supported resources or limit application of the minimum offer price rule to only state-supported resources where federal law pre-empts the state action providing that support

Path 2 – Accommodation of State Actions: an approach that would accommodate state policies that provide out-of-market support with the operation of the wholesale markets by allowing state-supported resources to participate in those markets and, when relevant, obtain capacity supply obligations, 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

Path 3 – Status Quo (i.e., Litigation): an approach that would rely on existing tariff provisions applying the minimum offer price rule to some state-supported resources, and continuing case-by-case litigation over the specific line to be drawn between categories of state actions that may or may not result in a state-supported resource being subject to the minimum offer price rule

Path 4 – Pricing State Policy Choices: an approach in which 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; for those state policies that cannot be readily valued and integrated

into the wholesale markets, Path 4 would also require consideration of what, if anything, the Commission should do to address the market impacts of these state policies; for instance, other approaches for these state policies may include accommodation, application of the minimum offer price rule or an exemption from the minimum offer price rule

Path 5 – Expanded Minimum Offer Price Rule: an approach that would minimize the impact of state-supported resources on wholesale market prices by expanding the existing scope of the minimum offer price rule to apply to both new and existing capacity resources that participate in the capacity market and receive state support.<sup>3</sup>

FERC staff also invites comments on (i) how a path forward should be selected, (ii) the urgency of developing a solution, (iii) long-term expectations regarding the interaction between wholesale markets and state policies, and (iv) how competitive market frameworks can be reconciled with state preferences for certain resources. In drafting comments, FERC staff indicates that commenters may reference materials from the technical conference's record,<sup>4</sup> including the day-one and day-two transcripts, "but are encouraged to avoid repetition or replication of previous material."<sup>5</sup>

Initial comments are due on June 22, 2017, and should not exceed 15 pages. Reply comments are due July 7, 2017, and should not exceed 10 pages.

---

<sup>1</sup> Notice Inviting Post-Technical Conference Comments, Docket No. AD17-11-000 (May 23, 2017) (available [here](#)).

<sup>2</sup> PJM Interconnection, L.L.C.; the New York Independent System Operator, Inc.; and ISO New England, Inc.

<sup>3</sup> Notice at 1-2.

<sup>4</sup> Docket No. AD17-11-000.

<sup>5</sup> Notice at 3.

## Categories

Energy Regulation, Markets & Enforcement

North America

© 2025 Akin Gump Strauss Hauer & Feld LLP. All rights reserved. Attorney advertising. This document is distributed for informational use only; it does not constitute legal advice and should not be used as such. Prior results do not guarantee a similar outcome. Akin is the practicing name of Akin Gump LLP, a New York limited liability partnership authorized and regulated by the Solicitors Regulation Authority under number 267321. A list of the partners is available for inspection at Eighth Floor, Ten Bishops Square, London E1 6EG. For more information about Akin Gump LLP, Akin Gump Strauss Hauer & Feld LLP and other associated entities under which the Akin Gump network operates worldwide, please see our Legal Notices page.