

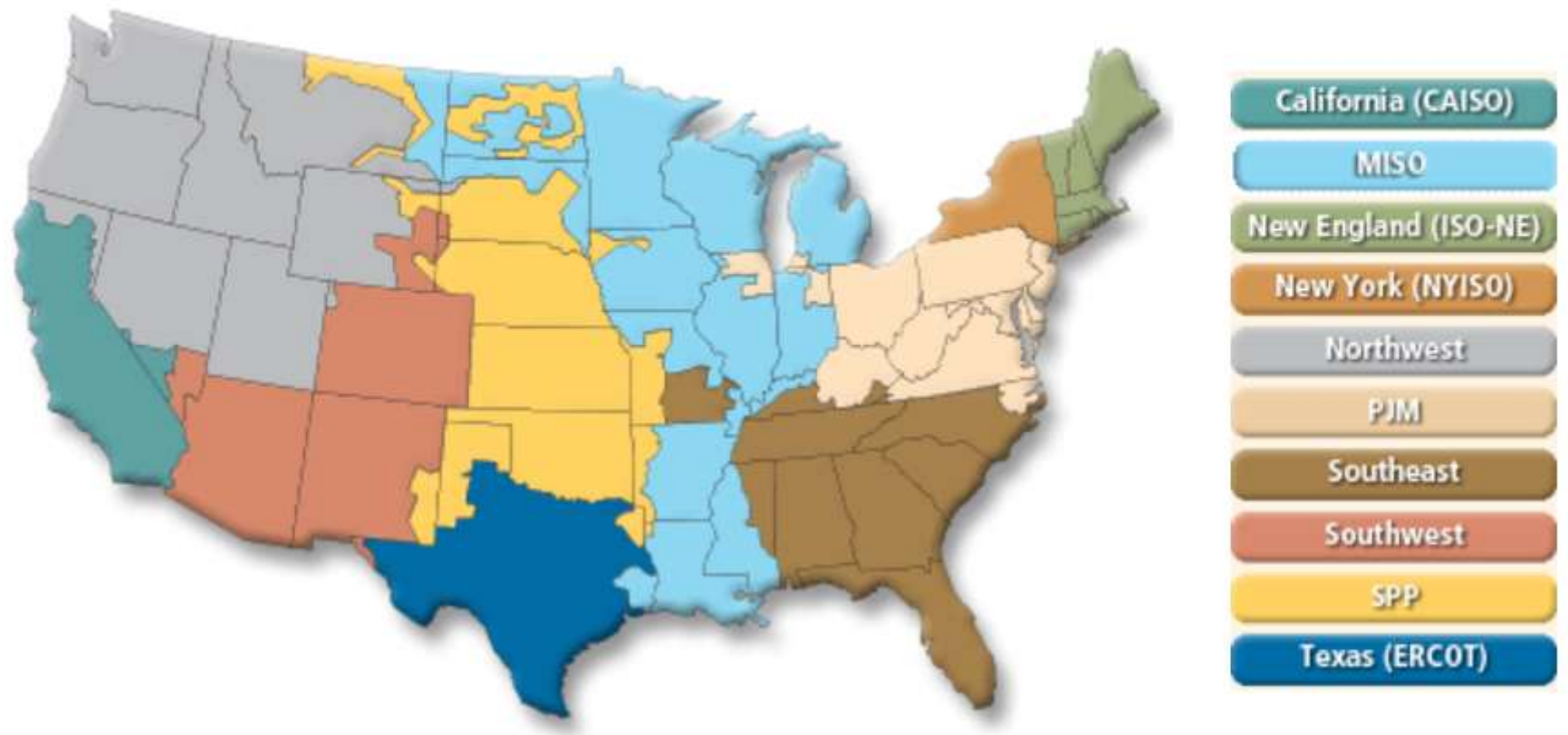
At the Nexus of State & Federal Jurisdiction: Coming to Terms with the Electricity Market Identity Crisis

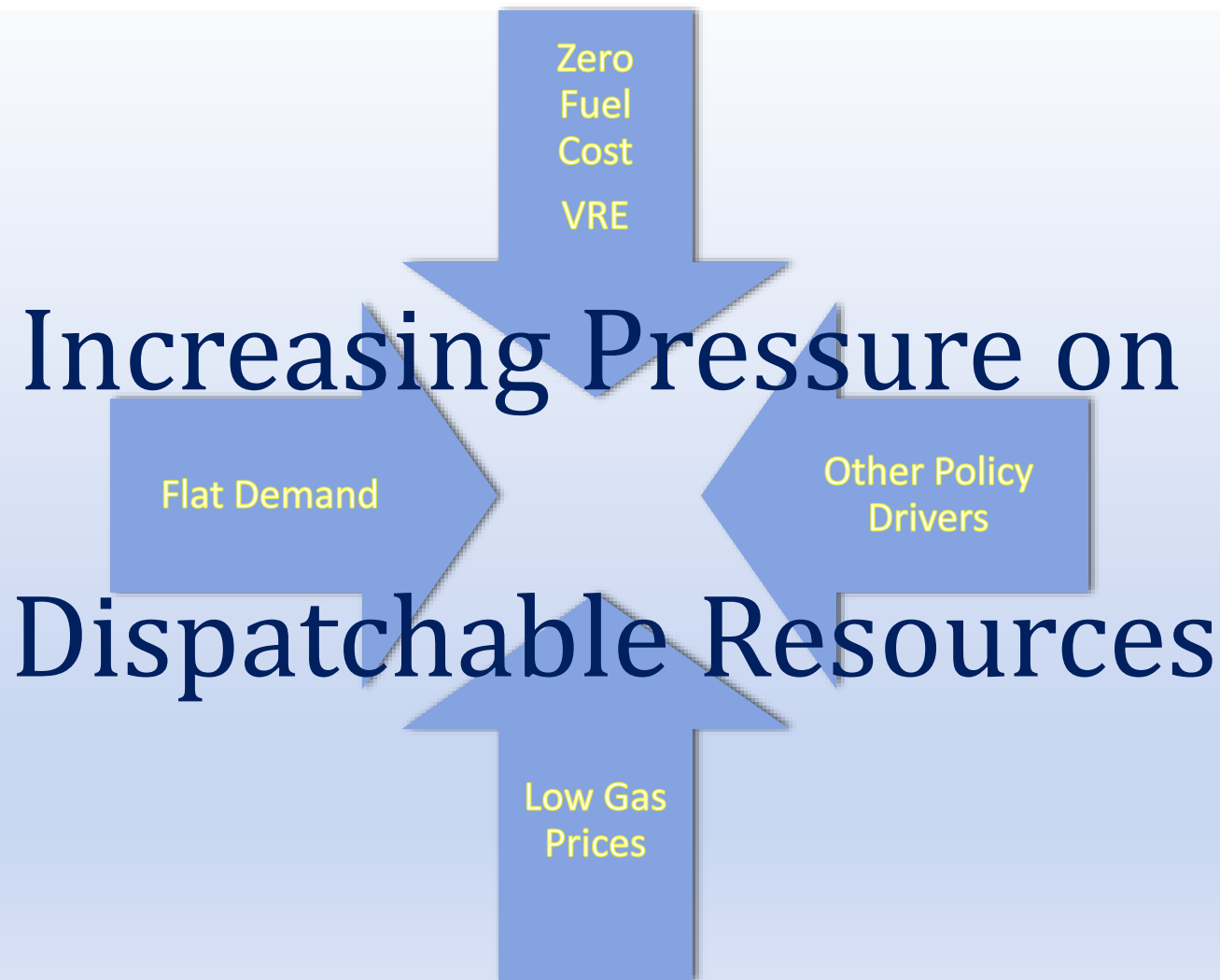
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National Conference of State Legislatures
Electricity Markets and State Challenges Workshop
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Electric Utility Regulation: States Choose Their Path

- Traditional Bi-Lateral Market States
- Joint Dispatch Market Model States
- Restructured Administrative Market (RAM) States

Electric Power Markets: National Overview





Other Policy Drivers

- Renewable Energy Credits
- Renewable Portfolio Mandates
- Carbon Pricing
- Subsidized Demand Response
- Subsidized Rooftop Solar (full retail net metering)
- Production and Investment Tax Credits
- Subsidized energy efficiency
- Public Utility Regulatory Policy Act (PURPA)

Crisis in the RAM States (especially)

- A number of states are saying “the markets are broken” i.e. “they aren’t giving us what we want”
- Key point: these administrative constructs weren’t designed for politically popular generation, green generation, job creation or tax-base preservation
- To the degree states have moved the goalposts away from least-cost it is going to have a big impact on the way markets are constructed

IN THE
United States District Court
for the Southern District of New York

COALITION FOR COMPETITIVE ELECTRICITY;
DYNEGY, INC., EASTERN GENERATION, LLC;
ELECTRIC POWER SUPPLY ASSOCIATION;
NRG ENERGY INC.; ROSETON GENERATING LLC; and
SELKIRK COGEN PARTNERS, L.P.,

Plaintiffs,

v.

AUDREY ZIBEMAN, in her official capacity as
Chair of the New York Public Service Commission;
and PATRICIA L. ACAMPORA, GREGG C. SAYRE,
and DLANE X. BURMAN, in their official capacities as
Commissioners of the New York Public Service Commission,
Defendants.

BRIEF

**FirstEnergy could sell up to 13
plants as it joins AEP in Ohio re-
regulation fight**

Illinois payments to Exelon spur complaint at FERC

**NYPSC Rejects Challenge to Clean Energy
Standard, Nuke Subsidy**

December 26, 2016

California Merchant Gas Generator,
Lamenting Market Forces, Files for
Bankruptcy

**Gov. Bruce Rauner Signs Future Energy Jobs Bill
at Quad Cities Ceremony**

Lawsuit Seeks to Halt New York Subsidies for Upstate Nuclear Plants

**Bill to open energy markets to Millstone a
priority for Formica, other lawmakers**

States Devising Various “Around Market Fixes” for Ailing Baseload Units

- Prescriptive Replacement (e.g., MA, NY)
- Maintenance Fee (e.g., NY, IL) Considered in OH, CT, PA, NJ
- Vertical Re-Integration or Tacit Re-Regulation

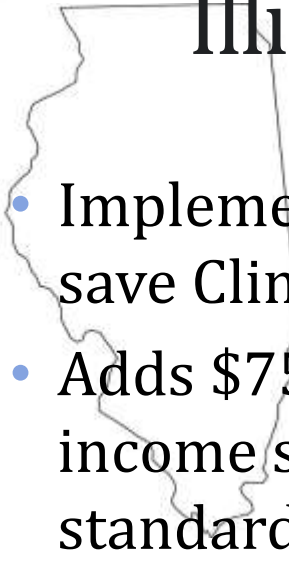


New York Clean Energy Standard

- Clean Energy Standard (CES) requires load serving entities to purchase of Zero Emission Credits (ZECs) under 12 year contracts.
- Nuclear plants “create” ZECs and hence receive payments from LSEs – in essence, ZECs are a capacity payment to three otherwise uneconomic nuclear plants: Fitzpatrick, Ginna and Nine Mile plants.
- ZEC payments to these plants are estimated to be approximately \$965M for first two years, and then set according to social cost of carbon.



Illinois Future Energy Jobs Bill

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- Implements a ZEC system with \$235 M per year to save Clinton and Quad Cities nuclear plants.
 - Adds \$750M in low income programs including low income solar, job training and additions to state RPS standard
 - Capacity payments to downstate at-risk coal plants stripped from the final bill

‘Around Market’ Actions in the Courts

- ‘Around market’ actions undefeated as courts begin to interpret *Hughes*
 - Second Circuit upheld CT renewable procurement program; SDNY upheld NY ZECs; ND IL upheld FEJB
- SDNY broadly interprets *Hughes* to permit any actions “independent of the auction”
- 7th Circuit Court of Appeals, Illinois Future Energy Jobs Bill litigation probably the one to watch – FERC weighs in

The Challenge for RAM States: “Around Market” Contradicts the Model

- Restructuring was designed to shift resource decisions to a “market-like” mechanism, and to shift risk from customers to shareholders
- States picking and choosing resources begins to look a lot like old fashioned Integrated Resources Planning, but it leaves true merchant operators in difficult spot (the only way to “compete” is to get your own subsidy)
- A state trying to be part restructured, part not, is a difficult needle to thread, not that it isn’t being tried

Grid Resilience Pricing Rule

- Proposed by DOE on September 29, 2017 for adoption by FERC
- Proposed a cost-of-service regime within PJM, NE-ISO and NY-ISO for generators with 90-day fuel supply on-site (*read: coal and nuclear*)
 - Eligible generators cannot be “subject to cost-of service rate regulation by any State or local authority”
- FERC effectively rejected it in early 2018, but opened a broader docket on grid resilience

The Next Frontier

- Do court interpretations lead to ‘around market’ renaissance?
 - Diverse Portfolio Standard (DPS) proposals in vertically-integrated and similar (MISO and SPP) states, other state actions to protect baseload resources?
 - Baseload energy credits (BECs) mimicking NY and IL nuclear programs to sustain coal, nuclear and combined cycle gas in state legislatures

The Next Frontier

- Clues beginning to emerge regarding what FERC will do regarding state “around market” actions:
 - ISO-New England – CASPR Decision
 - Approved ISO-NE proposal to accommodate state subsidies, while attempting to limit the damage done to other less-subsidized resources
 - Three separate statements from Commissioners
 - Bottom line: 4 of the 5 Commissioners feel at least somewhat comfortable with the idea of attempting to accommodate state “around market” actions.

The Next Frontier

- What will FERC do with Resilience?
- What does FERC do with pricing reforms?
- What does the Department of Energy do with “resilience” in the name of national security?
- How do FERC natural gas issues impact (continue to impact) the electric industry?

Contact

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