

## [First Look: NextEra Energy Resources v. FERC](#)

Upholds FERC Orders approving renewables exemption to the minimum price offer rule in New England wholesale power market.

Updated last **August 2, 2018**

for the 07/31/2018 D.C. Circuit Decision.



### WHAT IT DOES

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On July 31, 2018, the D.C. Circuit Court of Appeals [upheld](#) a group of four [FERC](#) orders approving an exemption to the minimum offer price rule in the [ISO New England forward capacity market](#) for up to 200 megawatts of new renewable energy capacity per year. Competing, traditional, power generators protested the renewable exemption, arguing that it would undermine competitive entry into the forward capacity market and significantly suppress prices.

Before the court, the competing power generators argued that FERC, in approving the price exemption for renewables, failed to comply with the [Federal Power Act](#)'s requirement that FERC ensure that generators provide energy at a "just and reasonable" rate. They further argued that FERC acted arbitrarily and capriciously in violation of the [Administrative Procedure Act](#) ("APA") in approving the renewable exemption. The DC Circuit turned down both arguments. First, it held that FERC met the FPA's "just and reasonable" requirement, when it determined that the limited price suppression created by the exemption would be offset by the competing interest of making sure that the forward capacity market did not send an incorrect signal to construct new capacity that is not needed, since, FERC noted, state renewables mandates meant that renewable capacity would "be constructed with or without a renewables exemption." Second, the court held the FERC passed muster under the APA, by adequately examining the economics of granting the exemption.

Although ISO New England has since phased out the renewable energy exemption, this court decision has lasting significance in that it upholds FERC's and the ISO's powers to provide minimum price exemptions for renewable energy in certain circumstances.

### RELATED POLICIES

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ISO New England Inc., [147 FERC ¶61,173](#) (May 30, 2014), reh'g denied, [150 FERC ¶61,065](#) (Jan. 30, 2015)

ISO-New England Inc., [155 FERC ¶61,023](#) (Apr. 8, 2016), reh'g denied, [158 FERC ¶61,138](#) (Feb. 3, 2017)

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### ENERGY SUBCATEGORY

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[Production, Conversion, Distribution](#)

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**RECOMMENDED CITATION**

Duke SciPol, “First Look: NextEra Energy Resources v. FERC” available at  
<<http://scipol.duke.edu/content/first-look-nextera-energy-resources-v-ferc>> (Aug. 2, 2018).

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