UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

NextEra Energy, Inc.	)	
	)	**Docket No. EC26-131-000**
Dominion Energy, Inc.	)	

PROTEST AND REQUEST FOR HEARING BY THE UNDERSIGNED ATTORNEYS GENERAL, STATE ENERGY AND ENVIRONMENTAL PROTECTION AGENCIES, AND STATE RATEPAYER ADVOCATES

Pursuant to Rule 211 of the Federal Energy Regulatory Commission's ("FERC" or the "Commission") Rules of Practice and Procedure and the Combined Notice of Filings dated July 17, 2026,[1] the undersigned attorneys general, state energy and environmental protection agencies, and state ratepayer advocates (the "State Parties"), submit this protest and request for a hearing in response to the above-captioned application filed by NextEra Energy, Inc. ("NextEra") and Dominion Energy, Inc. ("Dominion") (together, "Applicants").[2] The Applicants seek authorization, pursuant to sections 203(a)(1) and 203(a)(2) of the Federal Power Act, 16 U.S.C. § 824b(a)(1) and (2), and Part 33 of the Commission's regulations, 18 C.F.R. pt. 33 (2025), of a transaction through which NextEra would merge with Dominion.

The combined company produced by this transaction would be unprecedented in size, scope, and market penetration. The merged company would operate the largest natural gas generation fleet in the country, be the second-largest nuclear operator nationally, and be the largest owner of renewable and battery storage assets. According to NextEra, the proposed merger would

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1 18 C.F.R. § 385.211.

2 Application for Authorization Under Section 203 of the Federal Power Act and Requests for Confidential Treatment and Limited Waivers of Certain Filing Requirements, Docket No. EC26-131-000 (filed Jul. 15, 2026) ("Application").

create the world's largest regulated electric utility by market capitalization, with approximately 10 million customer accounts and 110 gigawatts ("GW") of generation across a broad mix of energy resources.[3] The combined entity would hold a dominant position in regions of the country experiencing the greatest data center development, which is projected to increase the amount of load served in the future. Within the New England region, the merger would consolidate almost 4.5 GW of capacity and 5.5 GW of energy within the control of a single company, including 100 percent of the region's nuclear power generation.[4]

The State Parties submit the following protest, along with the attached Affidavit containing analysis by National Economic Research Associates, Inc. ("NERA Affidavit"), in opposition to the proposed transaction. The State Parties urge the Commission to deny the Application, or at minimum conduct an evidentiary hearing after an opportunity for discovery, because the Application is deficient[5] and reflects that the proposed merger is not in the public interest and poses significant threats to energy affordability, reliability, and competition.

I. Interests of the Parties

The State Parties include attorneys general, state energy and environmental protection agencies, and state ratepayer advocates, all of whom have statutory or constitutional authority to

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[3] NextEra Energy, *NextEra Energy and Dominion Energy to Combine, Creating the World's Largest Regulated Electric Utility Business and North America's Premier Energy Infrastructure Platform Benefiting Customers* (May 18, 2026), https://perma.cc/D98S-TZ7W.

[4] *See* ISO-NE 2026 CELT Report, Tab 2.1 Generator List, https://www.iso-ne.com/static-assets/documents/100035/2026_celt.xlsx (last accessed Sep. 2, 2026).

[5] In addition to the deficiencies identified in this Protest, on September 23, 2026, the Commission issued a seven-page advisory finding that the Application is deficient for failure to produce information related to eleven substantive categories of the Commission's evaluation. The Commission directed the Applicants to file the requested information within 30 days and stated that "[t]he Application will not be a completed application for purposes of section 33.11(a) of the Commission's regulations, 18 C.F.R. § 33.11(a) (2025), until the information requested in this letter is submitted." Deficiency Letter, Docket No. EC26-131 (Sept. 23, 2026).

represent the interests of state residents, businesses, and other utility customers in having access to reliable and affordable energy.[6] Moreover, many of the State Parties are responsible for ensuring the timely transition to cleaner energy in a manner that also ensures reliability and affordability.[7] NextEra and Dominion own generation assets in many of the undersigned states,[8] and the combined company will participate in the ISO New England ("ISO-NE") wholesale market from which load-serving entities in many of our states purchase energy. Furthermore, as discussed in greater detail below, both companies have a history of anti-competitive business practices which raise serious concerns for the State Parties about permitting the merged company to wield such enormous power over energy supply, both nationally and in New England.

Under the terms of the proposed merger, the combined company would own Seabrook Station ("Seabrook") in New Hampshire and Millstone Power Station ("Millstone") in Connecticut, thus controlling 100 percent of New England's nuclear generating capability. Nuclear power occupies a unique and essential position in New England. Nuclear power is the second-largest source of wholesale electricity generation in New England, after natural gas, totaling approximately 25 percent of power generation in 2025.[9] As a carbon-free source of energy, nuclear power is also central to many of the New England states' clean energy portfolio

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6 *See, e.g.*, Conn. Gen. Stat. § 16-2a(a); Mass. Gen. Laws ch. 12, § 11E; R.I. Gen. Laws §§ 39-1-1(c), 39-1-19(b), 39-1-29; N.H. Rev. Stat. § 363:28.

7 *See, e.g.*, Conn. Gen. Stat. §§ 16-243q, 16-245a(a)(25), 22a-200a(a); Mass. Gen. Laws ch. 25A, § 11F(a); Mass. Gen. Laws ch. 21N, §§ 3–4; 39 R.I. Gen. Laws § 39-26-4(a); 42 R.I. Gen. Laws § 42-6.2-9.

8 NextEra currently owns Seabrook Station, a 1,247 MW-rated nuclear plant located in New Hampshire, along with a large oil-fired power plant in Maine, several natural gas and cogeneration plants in Massachusetts and New Hampshire, and various solar, wind, and battery resources throughout the region. Dominion currently owns the majority of Millstone Power Station, a combined 2,298 MW-rated nuclear plant in Connecticut. Application Exs. B-1 & B-2.

9 ISO-NE, "Resource Mix" (last updated Jan. 28, 2026), https://perma.cc/DZN3-YKX9.

standards,[10] comprising a majority of non-fossil fuel energy in the region. Additionally, the fuel used for nuclear generation is not subject to the same physical constraints and price volatility as other resources in New England, and thus helps keep energy affordable.

The three Seabrook and Millstone units also play a critical role in the reliability of the New England grid. Although the New England grid is heavily dependent on natural gas generation, the regional gas distribution system is constrained, in part because it was built to serve heating customers, and there is limited excess gas supply for electric generation during winter cold snaps.[11] The Seabrook and Millstone nuclear generating units meet substantial demand—including during winter peaks—which displaces some portion of the region's need for unavailable (or cost prohibitive) natural gas and stored fuels. Without these units, the New England grid would be vulnerable to rolling blackouts, with very few resources that could even theoretically fill the void.[12] Placing these units in the control of a single company would therefore grant the combined company significant control over grid reliability and resulting leverage in the New England market.

Accordingly, the State Parties have a direct and substantial interest in the proposed merger that will not be represented by another party, and that will be affected by the outcome of this

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[10] For example, Massachusetts has a Renewable Energy Portfolio Standard requiring electric utilities to procure 40 percent renewable energy by 2030, Mass. Gen. Laws ch. 25A, § 11F(a), as well as a statutory target of reducing greenhouse gas emissions to 50 percent below 1990 levels by 2030 and achieving net-zero greenhouse gas emissions by 2050, *id.* ch. 21N, §§ 3–4.

Similarly, Connecticut has a Renewable Portfolio Standard requiring electric utilities to procure 37 percent renewable energy by 2030, Conn. Gen. Stat. § 16-245a(a)(25) and 16-243q, and statutory goals of reducing greenhouse gas emissions to at least 45 percent below 2001 levels by 2030; and to at least 65 percent below 2001 levels by 2040, including to a level of 0 percent from electricity supplied to electric customers in the state; and achieving economy-wide net-zero greenhouse gas emissions by 2050, *id.* § 22a-200a(a).

[11] *See* ISO New England, 2025 Regional System Plan 70 (2025), https://perma.cc/ZJT9-SVUY.

[12] *See* ISO New England, Operational Fuel-Security Analysis (2018), https://perma.cc/RP6R-NY75.

proceeding.

II. **Protest**

Under Section 203 of the Federal Power Act, the Commission must determine whether the proposed transaction is consistent with the public interest.[13] The Commission's review is governed by its Merger Policy Statement,[14] which directs the Commission to evaluate a transaction's effect on competition, rates, and regulation.[15] Additionally, the Commission must find that the proposed merger "will not result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company," unless that cross-subsidization, pledge, or encumbrance will be consistent with the public interest.[16] The applicant bears the burden to affirmatively demonstrate that the proposed merger satisfies this standard.[17] As part of that showing, to promote robust competition, the Commission "encourages applicants to identify market power problems and to propose remedies for such problems in their [transaction] proposals."[18]

Furthermore, under Section 203 of the FPA, the Commission has a statutory duty to conduct an inquiry into transaction-specific factors and consider industry conditions, including,

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13 16 U.S.C. § 824b(a)(4).

14 *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, 77 FERC ¶ 61,263 (1996) ("1996 Merger Policy Statement").

15 18 C.F.R. § 2.26(b).

16 *Energy Policy Act of 2005*, Pub. L. No. 109-58, § 1289, 119 Stat. 594, 982–83 (2005) (codified at 16 U.S.C. § 824b(a)(4)).

17 *See, e.g.*, *Pac. Power & Light Co. v. Fed. Power Comm'n*, 111 F.2d 1014, 1017 (9th Cir. 1940).

18 1996 Merger Policy Statement, Order No. 592, at p. 25.

inter alia, resource mix and supply and demand conditions.[19] Given the scale of this transaction and the asset concentration at issue in this case, the Applicants have failed to demonstrate that the proposed merger will not have adverse effects on competition and rates. As such, the Commission should conclude that the transaction, as currently proposed, is not in the public interest. Because the Applicants have not met their burden of proof, the Commission should deny the Application, or, in the alternative, order further process with the ability to propound data requests to examine the deficiencies identified in this Protest and the impact of the transaction on the public interest.

A. <u>The Proposed Merger Is Likely to Have Adverse Effects on Competition</u>

Applicants' Horizontal Analysis Screen is flawed because it fails to properly allocate resources subject to long-term contracts and fails to consider effects on relevant submarkets. The Applicants have therefore failed to demonstrate that the proposed transaction will not have adverse impacts on competition.

1. The HHI is Neither a Definitive Test of Market Concentration nor an Infallible Measure of Potential Market Power Problems

Under FERC's Merger Policy Statement, the Commission uses a horizontal and vertical competitive analysis screen to identify transactions that would "significantly increase concentration in relevant markets."[20] Applicants must complete a Horizontal Analysis Screen if "a single corporate entity obtains ownership or control over the generating facilities of previously unaffiliated merging entities."[21] The screen, also called a Delivered Price Test, involves

[19] *Id.* at 15 ("[I]f the Commission is to fulfill its statutory responsibilities, it must determine what is consistent with the public interest in light of conditions in the electric industry in general as well as the specific circumstances presented by a proposed merger.").

[20] Order Reaffirming Commission Policy and Terminating Proceeding, *Analysis of Horizontal Market Power Under the Federal Power Act*, 138 FERC ¶ 61,109, at P 4 (Feb. 16, 2012).

[21] 18 C.F.R. § 33.3(a)(1).

calculating the Herfindahl-Hirschman Index ("HHI") for both pre- and post-transaction markets.[22] If the increase in HHI is greater than 100 in a moderately concentrated market (HHI between 1,000 and 1,800), or greater than 50 in a highly concentrated market (HHI above 1,800), then the applicant fails the screen and additional analysis is required.[23]

In this case, although the results of the Applicants' analysis do not violate the HHI screen for the ISO-NE market, the results do establish that the post-transaction market is moderately concentrated in several load periods examined, increasing the risk that the combined company could drive up prices or block entry of new market participants.[24] This outcome, along with the flaws in the Applicants' analyses discussed below, raises concerns about market impacts that warrant further examination.

Additionally, the HHI is not a definitive measure of either market concentration or the likelihood of anti-competitive behavior. FERC itself has acknowledged that the Competitive Analysis Screen is "not infallible," and has encouraged intervenors to raise "claims that the screen has failed to detect certain market power problems or disputes."[25] For example, the ISO-NE Internal Market Monitor (IMM) recently explained how, under the HHI, the existence of numerous smaller resources may "mask" the concentration of resources with large market shares, even if those smaller resources are not direct competitors or able to counter uncompetitive conduct by the

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22 *Id.* § 33.3(c)(5). The HHI is a function of the number of firms in a market and their market shares. It is calculated by summing the squares of the market share for each firm competing in the market.

23 1996 Merger Policy Statement, Order No. 592, at p. 29 n.33.

24 Application, Docket No. EC26-131, Exh. J at 53 ("Macan Aff.") (showing results for both Economic Capacity and Available Economic Capacity).

25 Order Reaffirming Commission Policy and Terminating Proceeding, *Analysis of Horizontal Market Power under the Federal Power Act*, 138 FERC ¶ 61,109, at P 5 (Feb. 16, 2012).

larger entities.[26] This potential distortion underscores that neither the HHI nor its results should be the sole relevant consideration for FERC.

2. The Applicants' Competitive Analyses Are Flawed

The Applicants' selected inputs to the competitive analysis are flawed, undermining the reliability of the horizontal competition analysis. In particular, the Applicants' treatment of capacity subject to Power Purchase Agreements ("PPAs") in its competitive analyses understates the proposed merger's likely effects on market concentration. The Applicants' Delivered Price Test in ISO-NE assigns the capacity currently subject to long-term PPAs to the purchaser, therefore omitting that capacity from NextEra and Dominion's assets.[27] The omitted capacity includes the capacity subject to Connecticut's nuclear PPAs with Millstone, which are set to expire in 2029. Omitting contracted-for capacity from NextEra and Dominion's resources reduces the apparent market concentration of the combined company, even though the contracts are of limited duration. The Applicants' competitive analyses, based on that inaccurate assumption, are thereby flawed.[28]

Furthermore, the Applicants have not adequately justified their decision to allocate the nuclear capacity subject to PPAs to the purchaser. FERC has acknowledged that generating capacity subject to a long-term firm contract "must be attributed to the party that has authority to decide when generating resources are available for operation."[29] In describing what constitutes

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[26] Comments and Limited Protest of the Internal Market Monitor for ISO-New England, *Bridgeport Energy LLC*, Docket No. EC26-63, at 6 (Apr. 7, 2026).

[27] Macan Aff. at 37–38 & n.57.

[28] *See also* Comment of the U.S. Department of Justice and the Federal Trade Commission, *Modifications to Commission Requirements for Review of Transactions Under Section 203*, Docket No. RM16-21, at 16–18 (Nov. 28, 2016) (noting how "treating a temporary PPA as if it were a permanent asset acquisition can yield misleading conclusions about a merger's competitive effects").

[29] 18 C.F.R. § 33.3(c)(4)(i)(A).

control for purposes of a horizontal market power analysis, FERC has stated that its "guiding principle is that an entity controls the facilities when it controls the decision-making over sales of electric energy, including discretion as to how and when power generated by these facilities will be sold."[30] NextEra and Dominion retain control over dispatch decisions for the Seabrook and Millstone plants, and act as the Lead Market Participants responsible for bidding into the wholesale energy market.[31] Given their control over the operation and sale of nuclear power, the contracted-for energy is more appropriately assigned to the Applicants. As shown in the NERA Affidavit, adjusting the Applicants' Economic Capacity analysis for ISO-NE to assign contracted-for nuclear capacity to NextEra and Dominion results in a change in HHI of over 100 to all seasonal load periods, including a moderately concentrated market for several load periods examined, thus failing FERC's competitive analysis screen.[32]

The Applicants' failure to properly account for long-term contracts understates the amount of market concentration likely to result from the proposed merger, renders the Application deficient, and warrants denial of the Application.

3. The Applicants' Oversimplified Definition of Relevant Product Markets Distorts the Proposed Merger's Impact on the New England Region

Applicants' myopic and oversimplified definition of relevant markets is inadequate for this transaction. Indeed, FERC merger policy contemplates the notion that unique transactions, such as this one, should identify with particularity all product markets in which applicants may

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[30] Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities, Order No. 697, 119 FERC ¶ 61,295, at P 176 (June 21, 2007); *see also* Macan Aff. at 37–38 n.57 (acknowledging that Order No. 697 provides guidance on what constitutes control).

[31] Affidavit of Julie Carey and Timothy Watts of NERA, dated Sep. 29, 2026 and attached hereto ("NERA Aff.") at 6–8.

[32] *Id.* at 9–10.

participate. Here, however, the Application defines the relevant market for purposes of the Competitive Analysis screens simply as the ISO-NE energy and capacity markets.[33] In its merger policy decisions, the Commission has indicated that the product markets that were analyzed by Applicants in this case are just the "minimum" potential product markets.[34] In reality, market concentration resulting from this proposed merger may be significantly greater when considering submarkets for specific non-firm energy products, including zero-carbon wholesale power. This limited "relevant product" definition (and corresponding scope of analysis) is woefully insufficient for the unprecedented transaction proposed here.

Indeed, the submarket for zero-carbon wholesale power is critical in New England, as several New England states have statutory goals and mandates and procurement procedures in place for zero-carbon resources. For example, the Connecticut Legislature has given the Connecticut Department of Energy and Environmental Protection ("CT DEEP") authority, in coordination with the load serving entities and other states in the region, to conduct periodic renewable and zero carbon power procurements on behalf of ratepayers to support fuel diversity and electric reliability, and to meet other state energy and climate policies.[35] CT DEEP is authorized by statute to procure more than 100% of the load associated with the state's two electric distribution companies from renewable or zero carbon energy resources. Massachusetts also has various statutory provisions authorizing the procurement of clean energy.[36]

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33 Macan Aff. at 52–53, 59–60.

34 FERC Order No. 642, at pp. 27–29 (Nov. 15, 2000) (codifying the 1996 Merger Policy Statement at 18 C.F.R. § 33).

35 Conn. Gen. Stat. §§ 16a-3f, 16a-3g, 16a-3h, 16a-3j, 16a-3m, 16a-3n, and 16a-3p.

36 An Act Relative to Green Communities, St. 2008, c. 169, § 83; An Act to Promote Energy Diversity, St. 2016, c. 188, § 12 (requiring procurement of up to 1,600 MW offshore wind and 9,450,000 MW hours of clean energy generation).

NextEra and Dominion compete head-to-head as the primary bidders and competitors for clean energy procurements, including a primary regional grid scale clean energy procurement using specialized zero carbon nuclear power plants. From a buyer's perspective, zero-carbon supply from Applicants' nuclear power plants are close substitutes.[37] Adjusting the Applicants' Economic Capacity analysis to include only zero-carbon wholesale generation shows that the proposed transaction would result in much higher market shares (as quantified by the post-transaction HHI) as well as much larger changes in HHI across the load periods studied.[38]

Furthermore, the transaction is presumptively anticompetitive according to the updated 2023 Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission.[39] To define a relevant antitrust market, the 2023 Guidelines rely on the Hypothetical Monopolist Test, which asks whether it would be profitable for a monopolist to carry out a "small but significant" increase in prices.[40] As explained in the NERA Affidavit, applying this test confirms that the supply of grid-scale clean energy in ISO-NE is a relevant market for antitrust purposes.[41] For example, when examining clean electricity output and capacity procured through CT DEEP's Request for Proposal process, the post-acquisition HHI and change in HHI exceeds the threshold established in the 2023 Merger Guidelines.[42]

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37 *See* 1996 Merger Policy Statement, Order No. 592, at p. 62; Order No. 642, at p. 27.

38 NERA Aff. at 18–19.

39 U.S. Dep't of Justice & Fed. Trade Comm'n, Merger Guidelines (2023), https://perma.cc/U9B9-US4B ("2023 Merger Guidelines").

40 *Id.* at 41. FERC has noted that its application of the Delivered Price Test to merger cases "does not preclude applicants or other parties from filing alternative analyses, including those using the price increase (i.e., hypothetical monopolist) test for defining relevant markets." Order No. 642, at p. 37.

41 *See* NERA Aff. at 21–33.

42 *Id.* at 33–36.

The proposed transaction would eliminate head-to-head competition between the Applicants in the grid-scale supply of energy in the ISO-NE region, and consequently would likely result in higher energy prices for CT DEEP and other similarly-situated purchasers. Applicants have not demonstrated that other factors, such as efficiencies arising from the proposed transaction or entry of new suppliers, would mitigate these likely anticompetitive effects. By failing to consider this alternative submarket, the Applicants have failed to meet their burden of demonstrating that the transaction will not have an adverse effect on competition, again warranting denial of the Application.

B. The Proposed Merger Raises the Potential for Manipulation of Wholesale Rates

In assessing the effects of a transaction on rates, the Commission's "main objective . . . is to protect captive customers who are served under cost-based rates that could be adversely affected by a section 203 transaction."[43] To address that objective, the Applicants have committed to a five-year hold harmless period, during which they will not seek to include any transaction-related costs in transmission revenue requirements or wholesale power cost-based rates, unless they can demonstrate that the transaction-related savings are equal to or in excess of the transaction-related costs.[44] The hold-harmless commitment, however, is insufficient to mitigate the potential effects on rates, especially when considering the incentives the merger creates for strategic manipulation of the wholesale market.

The proposed merger may create incentives for the combined company to strategically withhold resources from the market. The combined company would own nearly 4.5 GW of capacity in New England, including the only two nuclear power plants, several oil-peaking units,

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[43] *Transactions Subject to FPA Section 203*, Order No. 669, 113 FERC ¶ 61,315, at P166 (Dec. 23, 2005).

[44] Application at 30–31.

a natural gas plant, and numerous renewable generation resources.[45] This amount of capacity creates a significant incentive to strategically withhold or retire (or threaten to withhold or retire) resources to benefit the rest of the combined company's portfolio. The creation of this incentive in turn creates risk for ratepayers from both a cost and reliability perspective.

In terms of cost, under current market rules, the IMM has the ability to review a deactivation notice to determine if it is economically justified.[46] Where the resource's estimate of its break-even price is 10% above the IMM's estimate, indicating that the resource has overstated its cost to continue operating, the IMM further examines whether the retirement will create a price impact on the capacity market that produces a net benefit to the combined company's remaining portfolio. If the retirement does financially benefit the remaining resources, the IMM has the ability to include a proxy bid in the next capacity auction to mitigate.[47]

Unfortunately, the harmful effects of uneconomic retirements may be mitigated only for one year,[48] while the harm to the region's ratepayers and benefits to the portfolio can continue for many years. New England, along with much of the rest of the nation, is experiencing significant supply chain constraints, making it very difficult to replace retiring and uneconomically withheld resources.[49] Thus, the region's ratepayers could be exposed to significantly higher prices in the

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45 *See* ISO-NE 2026 CELT Report, Tab 2.1 Generator List, https://www.iso-ne.com/static-assets/documents/100035/2026_celt.xlsx (last accessed Sept. 2, 2026).

46 *See* Market Rule 1 Appendix A Market Monitoring, Reporting and Market Power Mitigation, Section III.A.24.5 ("Conduct Test"), https://perma.cc/2F5G-6DNY.

47 *Id.* at Section III.A.24.7 ("Proxy Capacity Offer").

48 *See id.* at Section III.A.24.9 ("Deactivation Determinations Filing").

49 If the combined company followed the economic incentives discussed above and retired one or more resources, this merger could also impact the region's reliability. While ISO-NE is fundamentally redesigning the capacity market in an effort to ensure it sends price signals to existing resources to remain in the market for as long as possible, the region cannot afford to lose valuable capacity and energy from existing resources.

capacity market for many years beyond the one year that the IMM can mitigate the impact of a resource's uneconomic withholding (by including the proxy bid in the capacity auction). New generation will not be available in a timely manner to address these costs, and the combined company would enjoy increased profit margins at all its remaining plants with capacity supply obligations for as long as it takes new generation resources to come online, if ever. The existing IMM mitigation mechanisms, and the hold harmless commitment proposed by the Applicants, are simply insufficient to fully insulate consumers from this potential harm. Indeed, Applicants' discussion of rate impacts does not even address this risk.

C. The Application Fails to Account for the Applicants' History of Anti-Competitive Behavior and Past Disregard for Consumers

The Applicants' prior, documented attempts to interfere with the entry of new market participants into the New England wholesale market and to drive up rates provide additional, essential context for assessing the risks posed by the transaction. The Applicants fail to admit, let alone analyze or address, this context. The State Parties' concerns about potential bad faith, anti-competitive behavior by the merged company go beyond speculation.[50]

NextEra previously used its already-considerable resources to obstruct the New England Clean Energy Connect ("NECEC") project, a 1,200-MW transmission line located in Maine that delivers Canadian hydropower to New England ratepayers. After NextEra's bids were not selected

[50] NextEra is the single largest utility contributor to Section 527 political organizations from 2002 through 2026, contributing approximately $19.2 million from 2002 through 2026. Dominion Energy is the second largest utility contributor, contributing approximately $12.4 million over the same period. *See* Matt Kasper, *NextEra Energy and Dominion Energy to Combine, Creating the World's Largest Regulated Electric Utility Business and North America's Premier Energy Infrastructure Platform Benefiting Customers*, Energy & Pol'y Inst. (May 15, 2026), https://perma.cc/9V8R-HL2P.

in Massachusetts' competitive procurement process,[51] it opposed the NECEC in multiple state permitting processes.[52]

In addition, NextEra contributed more than $20 million to the 2021 Maine referendum campaign in opposition to NECEC,[53] which was ultimately ruled unconstitutional by the Maine Supreme Judicial Court.[54] NextEra also covertly funded two additional opposition groups, who were later fined a combined $210,000 by the Maine Ethics Commission for concealing NextEra's role.[55]

Finally, NextEra refused to make necessary upgrades to a circuit breaker at Seabrook, as directed by ISO-NE to facilitate NECEC's interconnection to the grid. Instead, NextEra delayed the project by initiating a proceeding at FERC concerning financial responsibility for the breaker upgrade.[56] In upholding FERC's decision ordering the upgrade, the U.S. Court of Appeals for the District of Columbia Circuit found that the governing tariff and generator interconnection agreement sought "to foster competition in electricity markets," and thus did not permit NextEra "to frustrate new entrants by refusing to upgrade the breaker."[57]

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51 *Avangrid Inc. et al. v. NextEra Energy, Inc. et al.*, Case No. Case No. 3:24-cv-30141, Complaint, at ¶¶ 22–23 (Nov. 12, 2024), https://perma.cc/UH2U-CG4L.

52 *Id.* at ¶ 28.

53 Alissa Jean Schafer & Dave Anderson, *NextEra Spent $20 Million to "Ban" Clean Energy Transmission Project in Maine*, Energy & Pol'y Inst. (Nov. 3, 2021), https://perma.cc/6HWK-WWCG.

54 *NECEC Transmission LLC v. Bureau of Parks & Lands*, 2022 ME 48, 281 A.3d 618, 622, as revised (Sep. 8, 2022).

55 Steve Mistler, *Documents reveal NextEra's hidden attempts to derail CMP's transmission line corridor*, Maine Public (Nov. 30, 2023), https://perma.cc/Y8WF-853N.

56 *See NextEra Energy Seabrook, LLC*, 182 FERC ¶ 61,044 (2023), *order on reh'g,* 183 FERC ¶ 61,196 (2023); *see also* Ethan Howland, *NextEra's failure to upgrade Seabrook plant jeopardizes planned $1B transmission line, Avangrid warns*, Utility Dive (Oct. 25, 2021), https://perma.cc/W2D7-S8GU.

57 *NextEra Energy Res., LLC v. FERC*, 118 F.4th 361, 371 (D.C. Cir. 2024).

NextEra's past anti-competitive behavior raises *bona fide* concerns that the combined company's ability to obstruct entry into the market will only grow as it consolidates more assets in the region, further supporting denial of the application.

The Applicants have also taken actions that threatened to raise energy costs and harm ratepayers. For example, in 2016, NextEra's subsidiary, New Hampshire Transmission, sought to charge New England customers approximately $9.9 million in development costs for the Sealink Project, an unsolicited transmission project that New Hampshire Transmission proposed to address a reliability need outside its service territory.[58] New Hampshire Transmission ultimately entered into a settlement for refunds and foregone costs that together totaled approximately $6.8 million.[59] Such actions indicate a willingness to pursue projects without prior approval and that do not provide benefits to consumers justifying their costs.

Similarly, Dominion has wielded its leverage in state procurement markets to attempt to secure above-market contracts. Following a wave of retirements of New England's nuclear power fleet in the 2010s,[60] Dominion threatened to retire Millstone, despite it being very profitable.[61] This point of leverage increased substantially when ISO-NE released the Operational Fuel Security Analysis (OFSA) in January 2018 that found that an extended outage or retirement of Millstone "would result in frequent energy shortages that would require frequent and long periods of rolling

58 *See New Hampshire Transmission to Refund New England Ratepayers $6.8 Million*, Mass.gov (May 26, 2016), https://perma.cc/2JZY-FEQG.

59 *Id.*

60 This followed an earlier period of nuclear power plant retirements in the region, in part due to economic concerns. Between 1992 and 1997, the region lost three other nuclear power plants to retirement.

61 *See* Conn. Dep't of Energy & Env't Prot. & Conn. Pub. Utils. Reg. Auth., Resource Assessment on the Economic Viability of the Millstone Nuclear Generating Facilities ES-1 (2017), https://perma.cc/45YH-6HSV.

blackouts."[62]

In the face of Dominion's threatened retirement of Millstone, the Connecticut General Assembly passed legislation that provided CT DEEP with the discretion to conduct a competitive procurement to solicit bids from at-risk existing nuclear resources as well as other eligible generation resources. In the subsequent 2017 procurement, Dominion bid well above market-rate on behalf of Millstone. Because there was more than one nuclear power owner in the market, the electric distribution companies were able to use a competing bid from NextEra on behalf of Seabrook to drive the eventual price down. If this merger is approved, Connecticut and the other states with whom it collaborates in nuclear procurements may be unable to benefit from this competitive process to enter into long-term contracts with the region's two nuclear facilities at rates that are affordable to ratepayers.

These past actions raise serious concerns that the Applicants will continue to act in ways adverse to consumers' and other market participants' interests. The Commission should consider these past actions when assessing whether this proposed transaction is in the public interest, as well as the likelihood that the proposed transaction will have adverse effects on competition, rates, and reliability.[63]

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[62] *See* ISO New England, Operational Fuel-Security Analysis, at 50.

[63] Additionally, the potential diversion of power from one or more of the nuclear units to a data center presents further affordability and reliability risks of approving this merger as proposed. Nuclear power plants, capable of providing a consistent, steady supply of energy without needing to shut down, are particularly attractive to data center operators. *See* Data Center Owners Turn to Nuclear as Potential Electricity Source, U.S. Energy Info. Admin. (Oct. 1, 2024), https://perma.cc/J9AU-4KRM (last visited Sep. 16, 2026). The State Parties acknowledge that ISO-NE recently proposed a "bring your own (new) generation" requirement for new data centers and other large loads in the region, but that proposal has not yet been filed with the Commission or codified in the tariff and the ultimate large load interconnection rules are yet to be determined. *See* Letter from ISO New England, Inc. to FERC, Informational Report, Docket No. EL26-72-000 (July 20, 2026), https://perma.cc/BMG8-BW2U.

D. Areas for Further Commission Inquiry in Light of this Protest

The Commission should find the Application deficient and reject it or, at a minimum, set the proceeding for further evidentiary process, including a hearing after an opportunity for discovery, to address the full range of evidentiary deficiencies raised in this Protest and consider possible mitigation measures. Specifically, as part of this further evaluation, the Commission should conduct its own market analysis that includes the following additional metrics necessary to consider whether the proposed merger would present an unacceptable market concentration likely to harm the public interest.

First, as more fully described in the NERA affidavit, the Applicants inappropriately assigned their nuclear capacity to counterparties in power purchase agreements, removing that capacity from their assets in the HHI analysis. Second, the Applicants have insufficiently defined their relevant product markets. That is, the Applicants have failed to include any reference to or analysis of the zero-carbon wholesale generation supply market – a market where the two Applicants are currently direct competitors as the primary bidders for regional grid-scale clean energy wholesale power purchase procurements. An analysis of this relevant market clearly shows much higher levels of market concentration than that presented by the Applicants' economic capacity analysis. Finally, the Applicants' analysis fails to address the combined company's ability and incentive to leverage their control over their assets to affect wholesale prices, and their relevant past anti-competitive behavior.

III. Conclusion

The proposed merger exposes New England's ratepayers to substantial risks, without any discernible benefits. The proposed merger would also create an unprecedentedly large energy company with a documented history of problematic, anti-competitive behavior. For the reasons articulated above and in the NERA affidavit submitted in support of this protest, the Applicants' analysis of their combined market power is deficient. As such, the Applicants have failed to demonstrate that the proposed merger is in the public interest or consistent with the Commission's standards and mission in evaluating it, and the Commission should reject the Application, or in the alternative, set the proceeding for further evidentiary process, including a hearing after an opportunity for discovery.

Respectfully submitted on September 29, 2016.

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CERTIFICATE OF SERVICE

I certify that I have served the preceding document upon each person designated on the official service list prepared by the Secretary for this proceeding in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.2010.

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