130 FERC ¶ 61,105
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

ISO New England Inc. and New England Power Pool — Docket No. ER10-438-000

ORDER ACCEPTING ISO NEW ENGLAND'S PROPOSED INSTALLED CAPACITY REQUIREMENT, HYDRO QUEBEC INTERCONNECTION CAPABILITY CREDITS, RELATED VALUES, AND TARIFF CHANGES, SUBJECT TO CONDITION

(Issued February 12, 2010)

1. On December 15, 2009,[1] ISO New England Inc. (ISO-NE) and New England Power Pool (NEPOOL) jointly filed, pursuant to section 205 of the Federal Power Act (FPA), proposed values for the Installed Capacity Requirement and related values for use in the final Forward Capacity Market (FCM) reconfiguration auction for the 2010/2011 Capability Year to be held in March 2010. ISO-NE and NEPOOL also individually filed proposed amendments to Market Rule 1, section III.12.9 of ISO-NE's Transmission, Markets and Services Tariff (Tariff), pursuant to FPA section 205 and section 11.1.5 of the Participants Agreement, which permits submission of an alternative proposal in limited circumstances.[2] As discussed below, after reviewing ISO-NE's proposed Installed Capacity Requirement and related values and both proposed amendments, we will accept the submitted Installed Capacity Requirement and related values and ISO-NE's proposed tariff changes, subject to condition, effective February 15, 2010, as requested.

[1] On January 5, 2010, ISO-NE filed an erratum to its December 15, 2009 filing, correcting minor grammatical and citation errors.

[2] Section 11.1.5 of the Participants Agreement provides for Commission review under section 205 of the FPA of an alternative Market Rule proposal that is approved by the Participants Committee by a vote equal to or greater than 60 percent.

I. Background and Summary of Joint Filing

2. As part of the FCM, ISO-NE is preparing to conduct the third and final annual reconfiguration auction for the 2010/2011 Capability Year.[3] ISO-NE conducts these annual reconfiguration auctions in the run-up to the delivery period for capacity to provide a more accurate depiction of the Installed Capacity Requirement needed for the ISO-NE control area during the Capability Year. In this proceeding, ISO-NE and NEPOOL jointly submitted the 2010/2011 Capability Year values for the Installed Capacity Requirement, Local Sourcing Requirements, and Maximum Capacity Limit, all of which are key inputs in the Forward Capacity Auction (FCA). ISO-NE and NEPOOL also submitted the proposed value for Hydro Québec (HQ) Interconnection Capability Credits, which is a key input in the calculation of the Installed Capacity Requirement.

3. Further, ISO-NE and NEPOOL each proffered a limited proposed change to the existing Market Rules for calculating tie benefits that have a direct impact on the Installed Capacity Requirement. NEPOOL submitted its alternative proposal pursuant to section 11.1.5 of the Participants Agreement (Alternative Committee Market Rule Proposal), referred to as the "jump ball provision."[4] NEPOOL and ISO-NE disagree as to whether the jump ball provision applies in this case.

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[3] The 2010/2011 Capability Year extends from June 1, 2010, to May 31, 2011.

[4] Section 11.1.5 provides,

> If the Participants Committee vote relating to an ISO Market Rule proposal results in the approval by the Participants Committee by a Participants Vote equal to or greater than 60% of a Market Rule proposal that is different from the one proposed by ISO, including, but not limited to, a Governance Participant proposal, ISO shall, as part of any required Section 205 filing, describe the alternate Market Rule proposal in detail sufficient to permit reasonable review by the Commission, explain ISO-s reasons for not adopting the proposal, and provide an explanation as to why ISO believes its own proposal is superior to the proposal approved by the Participants Committee. The Commission will not be required to consider whether the then-existing filed rate is unlawful, and may adopt any or all of ISO's Market Rule proposal or the alternate Market Rule proposal as it finds, in its discretion, to be just and reasonable and preferable.

(continued…)

A. Installed Capacity Requirement

4. The Installed Capacity Requirement is a measure of the installed resources that are projected to be necessary to meet reliability standards in light of total forecasted load requirements for the New England control area and to maintain sufficient reserve capacity to meet reliability standards. Specifically, the Installed Capacity Requirement is the amount of resources needed to meet the New England control area reliability requirements of disconnecting non-interruptible customers (i.e., the Loss of Load Expectation or LOLE) no more than once every ten years. The methodology for calculating the Installed Capacity Requirement is set forth in section III.12 of Market Rule 1.

5. Consistent with prior years' proposed Installed Capacity Requirement and related values, ISO-NE states that the values for this reconfiguration auction are based on three essential components: load forecast, unit availability, and tie benefits. Further, ISO-NE states that the methodologies for determining projected load and outage rates are consistent with those methodologies set forth in section III.12 of Market Rule 1. ISO-NE states that there was broad agreement among stakeholders regarding a majority of the assumptions, inputs, and calculations made to determine values for the third reconfiguration auction. ISO-NE states that there also was agreement that the tie benefits value was unacceptable under the methodology put forth in section III.12. ISO-NE explains that the limited disagreement between ISO-NE and NEPOOL is with regard to the methodology used for determining an appropriate tie benefit value for the 2010/2011 Capability Year.

1. Load Forecast

6. ISO-NE states that the forecasted peak loads of the entire New England control area for the 2010/2011 Capability Year were used to develop the corresponding annual Installed Capacity Requirement detailed in this filing. ISO-NE used the ten-year load forecast, covering the years 2009 through 2018, which was published in April 2009 in the ISO-NE's "2009-2018 Forecast Report of Capacity, Energy, Loads, and Transmission"

A "jump ball" is a term taken from basketball that describes how play is begun or resumed, in which two opposing players attempt to gain control of the ball that is tossed in the air in between them. *See* Nat'l Collegiate Athletic Ass'n 2009 Men's and Women's Basketball Rules, http://www.ncaapublications.com/Uploads/PDF/Basketball_Rules_2008-09fb2fc956-7592-4877-993e-dae20a6f90ed.pdf. The term is applied to the procedure described in section 11.1.5 to denote that alternate proposals are to be treated as co-equals, unlike the usual rate change application submitted under section 205 of the FPA.

(2009 CELT Forecast).[5] ISO-NE states that it developed the 2009 CELT Forecast using the same methodology used previously to develop Commission-approved Installed Capacity Requirement values,[6] reflecting economic and demographic assumptions as reviewed and supported by the NEPOOL Load Forecast Committee.

7. ISO-NE states that the projected New England control area 50/50 peak load (summer) for the 2010/2011 Capability Year is 28,160 megawatts (MW), which is 2.8 percent lower (795 MW) than forecasted in the April 2008 CELT Report.[7] The corresponding 90/10 peak load for the 2010/2011 Capability Year is 30,110 MW, which is 2.9 percent lower (905 MW) than forecasted in the April 2008 CELT Report.[8] ISO-NE states that the previous year's April 2008 CELT report used an economic forecast that predates the recession, whereas the April 2009 CELT Forecast used an economic forecast that included the current recession.[9]

2. <u>Resource Capacity Ratings</u>

8. ISO-NE states that the 2010/2011 Installed Capacity Requirement is based on ratings of capacity resources that have taken on capacity supply obligations for the 2010/2011 Capability Year and includes any megawatt proration of their obligations required under FCM rules. Additionally, the capacity value of Existing Demand Resources and New York Power Authority (i.e., NYPA) import contracts has been reduced by the amount of the reserve margin gross-up.[10] Similarly, no resource additions or attritions are assumed because there is no certainty that new resource additions or

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[5] ISO-NE Transmittal Letter at 25 (citing CELT Forecasting Details 2009, *at* http://www.iso-ne.com/trans/celt/fsct_detail/index.html and CELT Report 2009, *at* http://www.iso-ne,com/trans/celt/report/index.html).

[6] ISO-NE Transmittal Letter at 25 (citing, e.g., *ISO New England Inc.*, 119 FERC ¶ 61,161 (2007) (accepting ISO-NE-proposed Installed Capacity Requirements for the 2007/2008 Power Year); *ISO New England Inc.,* 115 FERC ¶ 61,149 (2006) (accepting ISO-NE-proposed Installed Capacity Requirements for the 2006-2007 Power Year)).

[7] *See* ISO-NE Filing, Wong Test. at 15 and 23. The 50/50 peak load figure implies that this value has a 50 percent chance of being exceeded; a 90/10 peak load implies that this value has a 10 percent chance of being exceeded.

[8] ISO-NE Filing, Wong Test. at 15.

[9] ISO-NE Transmittal Letter at 25.

[10] ISO-NE Transmittal Letter at 26.

existing resource attritions will clear the auction.[11] ISO-NE states that the fact that it did not model resource additions or attritions will not have a significant effect on the Installed Capacity Requirement, since it is assumed that the availability characteristics and sizes of these resources will be similar to those of the Existing Resources.

3. Unit Availability

9. ISO-NE states that the proposed Installed Capacity Requirement for the 2010/2011 final annual reconfiguration auction uses different assumptions than those used for calculating the Installed Capacity Requirement for the previous annual reconfiguration auction; the numbers used for the final reconfiguration auction reflect updated outage data. ISO-NE maintains that the proposed Installed Capacity Requirement value reflects historical scheduled maintenance and forced outages of the capacity resources. ISO-NE states that the proposed 2010/2011 Installed Capacity Requirement reflects unit availability as measured by the Equivalent Demand Forced Outage Rate (i.e., EFORd) based on performance over the prior five-year period.[12] Individual generating unit maintenance assumptions are based on each unit's historical five-year average of scheduled maintenance or the North American Electric Reliability Corporation's (NERC) average scheduled maintenance data for the same class of unit, if five-year average data are not available. ISO-NE states that individual generating unit forced outage assumptions are based on the unit's historical forced outage data or NERC average data for the same class of unit. Performance assumptions for demand response resources are based on presumed or actual responses during all historical OP-4 (emergency) events and performance audits.[13]

4. Tie Benefits: ISO-NE Proposed Amendment

10. ISO-NE states that New England's Commission-approved method for establishing the Installed Capacity Requirement requires certain assumptions regarding the tie benefits value to be used. Specifically, ISO-NE explains that tie benefits from neighboring control areas reduce the Installed Capacity Requirement and, thus, the need to buy capacity within New England. The tie benefits from neighboring control areas reflect the

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[11] ISO-NE Filing, Wong Test. at 17.

[12] The EFORd is the portion of time a unit is in demand but unavailable due to forced outages. *See* ISO-NE Tariff, § III.1.3.2 (hereinafter, Market Rule 1). Section III of the Tariff is Market Rule 1.

[13] ISO-NE Transmittal Letter at 27.

amount of emergency assistance that New England could rely on, without jeopardizing reliability in New England or its neighboring control areas, in the event of a capacity shortage in New England.

11. ISO-NE explains that tie benefits from neighboring control areas are used as an input assumption in the calculation of the Installed Capacity Requirement for the 2010/2011 Capability Year. ISO-NE states that under section III.12.9 of Market Rule 1, tie benefits for the initial FCA and the prior annual reconfiguration auctions were calculated using the "at criteria" method for purposes of modeling adjacent control areas. For the final reconfiguration auction, however, the market rules require that tie benefits be calculated using the "as is" methodology.

12. ISO-NE explains that the "as is" methodology assumes that neighboring control areas will have resources and demands equal to those that are forecasted for the time of the New England Capacity Commitment Period and that all those resources will be available to meet load within the neighboring control areas. ISO-NE further explains that, by contrast, the "at criteria" methodology assumes that neighboring control areas will have enough resources so that each area meets the reliability standard based on forecasted load for the capacity period. According to ISO-NE, the "at criteria" method lessens the impact of transient shortages and surpluses in the external control area. The reliability requirements for the New England control area are defined as disconnecting non-interruptible customers no more than once every ten years (0.1 LOLE).[14] ISO-NE states that the use of the "as is" methodology in the final reconfiguration auction (as required in the Tariff) makes theoretical and practical sense because of the close proximity of the auction to the relevant FCM Commitment Period. However, after calculating the tie benefits value for the third reconfiguration auction for the 2010/2011 Capability Year under the "as is" methodology, ISO-NE states that the resulting tie benefits and Installed Capacity Requirement values could have "serious, negative implications for reliability."[15]

13. ISO-NE states that using the "as is" methodology as prescribed in Market Rule 1 would result in a tie benefits value of 3,415 MW, resulting in an Installed Capacity Requirement of 30,988 MW for the third reconfiguration auction. Using the 3,415 MW value for tie benefits would reduce the New England reserve margin to 4.3 percent, reducing the resources available to ISO-NE in the case of an emergency.[16] ISO-NE notes

[14] ISO-NE Transmittal Letter at 9 (citing ISO-NE, 118 FERC ¶ 61,157, at P 44 (2007)).

[15] ISO-NE Transmittal Letter at 9-10.

[16] ISO-NE Filing, Brandien Test. at 4-5 and 10-11. The "reserve margin" is the percentage by which available capacity is expected to exceed forecasted peak demand.

that it would be very difficult to operate the New England electric system in accordance with NERC and Northeast Power Coordinating Council, Inc. (NPCC) reliability standards with a reserve margin of 4.3 percent. ISO-NE argues that reliance on this high value of tie benefits would jeopardize the reliable operation of the New England system, since this value is based on the assumption that 3,415 MW of emergency assistance is always available at a moment's notice to meet New England's needs.[17]

14. Since employing the "as is" methodology under the current market rules would result in tie benefits that would threaten the reliability of the ISO-NE system, ISO-NE proposes to use the tie benefit value calculated for the primary FCA for all annual reconfiguration auctions.[18] ISO-NE states that it has not taken the explicit stance that the "as is" methodology should be abandoned in favor of the "at criteria" methodology, since problems arising from the use of the "as is" methodology may also apply to the "at criteria" methodology.[19] However, ISO-NE believes that use of the "as is" methodology for the final reconfiguration auction would increase the possibility for reliability problems in the New England control area. Accordingly, for the upcoming annual reconfiguration auction, and until ISO-NE and its stakeholders are able to complete a more comprehensive stakeholder process on the use of the "as is" and "at criteria" calculation methodologies, ISO-NE proposes to change the market rules to maintain the use of the tie benefit value calculated for the primary FCA for all annual reconfiguration auctions.

15. ISO-NE proposes a tie benefits value of 1,860 MW, which is the value ISO-NE used in calculating the Installed Capacity Requirement and related values for the primary FCA and the previous annual reconfiguration auction for the 2010/2011 Capability Year. ISO-NE states that it does not believe that system conditions have changed sufficiently in neighboring control areas to warrant a departure from this previously used value.[20] ISO-NE further argues that using the 1,860 MW value will provide stability to the marketplace, ISO operators and operators in adjacent control areas.[21] ISO-NE states that providing a stable tie benefits value provides a degree of certainty when planning for performance during Capacity Commitment Periods. Additionally, it would allow ISO-NE to more efficiently use its resources since it would not be required to conduct

[17] ISO-NE Transmittal Letter at 13 (citing Karl Test. at 13).

[18] ISO-NE Transmittal Letter at 10.

[19] ISO-NE Transmittal Letter at 11.

[20] ISO-NE Transmittal Letter at 14-15 (citing Wong Test. at 29-30).

[21] ISO-NE Transmittal Letter at 15 (citing Karl Test. at 17).

multiple studies in the same year that provide similar results. Finally, the use of the 1,860 MW tie benefits figure would result in an Installed Capacity Requirement of 32,510 MW and an acceptable reserve margin of 9.7 percent.[22] ISO-NE notes that this reserve margin is still significantly lower than the reserve margins used in neighboring control areas, but it believes that the ISO-NE systems can reliably operate with a reserve margin of 9.7 percent for the 2010/2011 Capability Year.

16. ISO-NE also proposes to revise section III.12.9 of Market Rule 1 to require the use of the tie benefits value used for the primary FCA and previous annual reconfiguration auctions for the final annual reconfiguration auction.[23] ISO-NE asserts that its proposal is just and reasonable because (1) it would use a tie benefits value that has already been approved by the Commission, (2) it will provide stability to interested parties both inside the New England control area and neighboring control areas, and (3) it will allow for continued discussions between ISO-NE and New England stakeholders to determine any revised methodology for tie benefits in the future. Specifically, ISO-NE states that there are on-going discussions about the tie benefits methodology in related proceedings. ISO-NE notes that some of these issues (the Reserved Issues) have compliance obligations requiring a filing in February 2010. ISO-NE states that while progress has been made on them in isolation, given the remaining issues in play, the degree to which they are inter-related, and the probability that each is likely to be a contentious issue, it is proposing that all the remaining tie benefits issues be dealt with in a single process. ISO-NE plans to file the results of that process, including any revised tie benefits methodology, with the Commission by the end of 2010.

5. <u>HQ Capability Credits</u>

17. HQ Interconnection Capability Credits, also known as HQICCs, are capacity credits that are allocated to the Interconnection Rights Holders, which are entities that hold certain rights over the HQ Interconnection. Because the new Commission-approved methodology for calculating HQICCs is not effective until the 2011/2012 Capability Year, ISO-NE states that it used the same HQICC assumptions as it had used to determine the Installed Capacity Requirement for the 2010/2011 primary FCA and second reconfiguration auction.[24] ISO-NE proposes to utilize HQICC values of

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[22] ISO-NE Transmittal Letter at 15; 31,110 MW net of HQICCs.

[23] ISO-NE Transmittal Letter at 15; *see also id.* at 8-9.

[24] ISO-NE Transmittal Letter at 24. The Commission approved a new methodology for calculating HQICCs, but that change became effective with the primary FCA for the 2011/2012 Capability Year and, thus, will not be applied to calculations for the 2010/2011 Capability Year. *ISO New England Inc.*, 124 FERC ¶ 61,298 (2008).

1,400 MW for each month—July through November of 2010 and March through June of 2011—and zero (0) MW for the months of December 2010, and January and February 2011.

B. Local Sourcing Requirement and Maximum Capacity Limit

18. ISO-NE notes that, under the FCM, ISO-NE must calculate Local Sourcing Requirements and Maximum Capacity Limits to be used, if necessary, in each FCA. A Local Sourcing Requirement is "the minimum amount of capacity that must be electrically located within an import-constrained Load Zone"; a Maximum Capacity Limit is "the maximum amount of capacity that can be procured in an export-constrained Load Zone [to meet the Installed Capacity Requirement]."[25] ISO-NE notes that the general purpose of Local Sourcing Requirements and Maximum Capacity Limits is to ensure that capacity resources are geographically distributed within the New England control area in a manner that helps to ensure that capacity is located where it is needed. ISO-NE states that for the 2010/2011 final reconfiguration auction, ISO-NE calculated the Local Sourcing Requirements for Connecticut and NEMA/Boston Load Zones as 6,496 MW and 1,838 MW, respectively;[26] and, the Maximum Capacity Limit for the Maine export-constrained Load Zone was calculated at 3,697 MW.[27] ISO-NE states that the Local Sourcing Requirements and the Maximum Capacity Limits were calculated using the same assumptions of forecasted load and resources as those used in the calculation of the Installed Capacity Requirement for the 2010/2011 final reconfiguration auction.

C. Proposed Values

19. ISO-NE and NEPOOL disagree on the value proposed for the Installed Capacity Requirement for the 2010/2011 Capability Year because of their different proposed tie benefits values. Using a tie benefits value of 1,860 MW (as calculated in previous reconfiguration auctions under the "at criteria" methodology) and deducting the HQICC value of 1,400 MW per month, ISO-NE states that the Installed Capacity Requirement

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[25] Market Rule 1 § III.13.

[26] ISO-NE Transmittal Letter at 23 (citing Wong Test. at 31-32). ISO-NE notes that these values are 241 MW and 152 MW less, respectively, than the values used in the second annual reconfiguration auction and 521 MW and 408 MW less, respectively, than the values used in the primary FCA.

[27] ISO-NE Transmittal Letter at 23 (citing ISO-NE Filing, Wong Test. at 32). ISO-NE notes that this value is 28 MW less than the value used in the second annual reconfiguration auction and 158 MW less than the value used in the primary FCA.

value should be 31,110 MW. These values would result in a reserve margin of 9.7 percent, which, ISO-NE notes, is significantly less than the reserve margin required in neighboring control areas.[28] ISO-NE states that the Installed Capacity Requirement proposed for the final annual reconfiguration auction is 1,027 MW less than the Installed Capacity Requirement approved by the Commission for the previous annual reconfiguration auction, which, in turn was 168 MW less than the Installed Capacity requirement approved for the 2010/2011 FCA. Both ISO-NE and NEPOOL acknowledge that a tie benefits value of 3,415 MW (resulting from the "as-is" analysis) is too high.

20. Alternatively, NEPOOL proposes an Installed Capacity Requirement of 30,684 MW, using a capped tie benefits value of 2,286 MW. NEPOOL argues that the use of the 2,286 MW value still results in an Installed Capacity Requirement that meets the New England resource adequacy criterion of 0.1 LOLE.

D. Stakeholder Process

21. ISO-NE states that there were two meetings in which the stakeholder committees voted on the Installed Capacity Requirement-related values for the 2010/2011 Capability Year and the proposed revisions to the Market Rules.

22. At its November 19, 2009 meeting, the Participants Committee failed to approve ISO-NE's proposed Installed Capacity Requirement-related values and HQICC values, with a vote of 18.5 percent in favor. In both the Reliability and Participants Committees, various proposals regarding Installed Capacity Requirement-related values were presented. Ultimately, the Participants Committee voted to approve the proposal put forth by the Massachusetts Attorney General (Mass AG) to cap tie benefits, with a vote of 66.612 percent in favor. Finally, the Participants Committee also failed to support ISO-NE's proposed revisions to Market Rule 1, section 12.9, with a vote of 11.658 percent in favor.

23. At the November 19, 2009 Participants Committee Meeting, a vote was taken on the Mass AG's proposal (which was adopted as the NEPOOL Amendment) to cap the tie benefits value at 2,286 MW for the 2010/2011 and 2011/2012 Commitment Periods. Implicit in the proposal is a required change to the existing section 12.9 of Market Rule 1, as recognized in the resolution voted on, in the minutes, and in the notice of actions for that meeting. The NEPOOL Amendment was supported by the NEPOOL Participants Committee with a vote of 66.61 percent in favor, with opposition from the generation and supplier sectors of ISO-NE, who continued to voice concern that the Installed Capacity

[28] ISO-NE Transmittal Letter at 15.

Requirement values were too low and failed to recognize the capacity needs of New England.[29]

E. The Alternative Proposed NEPOOL Amendment

24. NEPOOL objects to ISO-NE's calculation of tie benefits on the ground that ISO-NE's method adds unnecessary cost for consumers to bear (because a lower tie benefits value necessitates a higher Installed Capacity Requirement). NEPOOL states that ISO-NE "considered the 3,415 MW tie benefit value too high, and stated that it could result in over-reliance on tie benefits, even though use of the value in calculating [the Installed Capacity Requirement] would still result in an [Installed Capacity Requirement] that met the New England resource adequacy criterion."[30] NEPOOL recognizes the need to meet reliability standards but questions the cost to consumers to meet these standards. NEPOOL proffers an alternative proposed tie benefits value related amendment to section III.12.9 of Market Rule 1. Therefore, NEPOOL proposes to resolve the issue of tie benefits for the final annual reconfiguration auction by capping the tie benefits value at 2,286 MW for the 2010/2011 and 2011/2012 Capability Years. NEPOOL states that this proposal is more consistent with existing section 12.9 of Market Rule 1 as compared to ISO-NE's proposal.[31]

25. NEPOOL states that its proposal preserves the "as is" methodology in its calculation and simply implements a cap on the tie benefits value that can be used in the Installed Capacity Requirement calculation for the final reconfiguration auction. The NEPOOL Amendment also includes a sunset period to allow time for NEPOOL, ISO-NE, and ISO-NE's stakeholders to agree upon a permanent methodology regarding the

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[29] NEPOOL Transmittal Letter at 8.

[30] NEPOOL Transmittal Letter at 6.

[31] NEPOOL Transmittal Letter at 10. NEPOOL quotes *ISO New England Inc.*, 118 FERC ¶ 61,157, at P 49 (2007):

> We [the Commission] agree with ISO-NE that it is appropriate to use "as is" for the Annual Reconfiguration Auction two months before the Capacity Commitment period. This allows the reconfiguration auction to more accurately reflect the [Installed Capacity Requirement] needed to ensure that there is enough generation to reliably meet load in New England without over-relying on neighboring capacity and without overcharging New England customers for unnecessary capacity.

calculation of tie benefits for the last reconfiguration auction. NEPOOL contends that its proposed Amendment "recognizes the trade-off between reliability and cost, and accepts that it may be reasonable to establish an [Installed Capacity Requirement] that ensures even greater reliability than the LOLE criterion by capping the reliance that New England can place on its ties."[32] NEPOOL further argues that its proposed Amendment represents a reasonable compromise between reliability concerns and consumer cost. NEPOOL states that Mass AG's proposal (adopted here by NEPOOL) was far more acceptable to load and consumer stakeholders than what was suggested by ISO-NE. Additionally, NEPOOL argues that the inclusion of a two-year sunset provision allows ISO-NE and its stakeholders to establish a tie benefits methodology acceptable to all parties for the long term.

26. NEPOOL states that the LIPA methodology, which underlies the NEPOOL Amendment, used an "at criteria" approach and resulted in a tie benefits value of 2,540 MW. NEPOOL submits that this tie benefits value falls within the amount necessary to meet the LOLE reliability criteria, but Mass AG proposed an additional reduction of 10 percent "to be conservative."[33] NEPOOL states that the resulting value of 2,286 MW also meets the LOLE reliability criteria for the New England area while producing an Installed Capacity Requirement value 761 MW less than ISO-NE's 2010/2011 proposal.

27. NEPOOL clarifies that the Participants Committee vote in favor of the 2,286 MW tie benefits value should not be construed as endorsement of the LIPA methodology. Instead, the results of the methodology were found to be reasonable by the Participants Committee in light of the circumstances.[34] NEPOOL states that the determination of the precise value for the Installed Capacity Requirement is not an exact science, and, as such, many assumptions must be used in order to determine an appropriate value, including assumptions associated with load forecasts, capacity resource availability, and tie benefits. NEPOOL contends that the Market Rules act as a guide in developing and using such assumptions. NEPOOL states that the fact that the stakeholders used the Market Rules while actively engaging in negotiations and discussions regarding the tie benefits value, and ultimately agreed to the 2,286 MW value, confirms NEPOOL's assertion that its Amendment is both just and reasonable and an adequate compromise for the next two years until ISO-NE and NEPOOL resolve the dispute over a proper tie benefits methodology.

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[32] NEPOOL Transmittal Letter at 10.

[33] NEPOOL Transmittal Letter at 11 n.20.

[34] NEPOOL Transmittal Letter at 11 n.20.

28. Thus, NEPOOL proposes to amend section III.12.9 of Market Rule 1 to preserve the existing, Commission-approved provision regarding the use of an “as is” calculation of tie benefits for the final annual reconfiguration auction, but places a cap on the amount of tie benefits that can be assumed in the Installed Capacity Requirement calculation for the third annual reconfiguration for both the 2010/2011 and 2011/2012 Capacity Commitment Periods. Additionally, NEPOOL’s proposal requires ISO-NE to file proposed market rule amendments by December 31, 2010, that would reflect a permanent methodology to calculate a tie benefits value for the third annual reconfiguration auctions beginning with the auction for the 2012/2013 Commitment Period.

F. Jump Ball Provision

29. NEPOOL contends that the “jump ball” provision of section 11.1.5 of the Participants Agreement, which allows NEPOOL to submit an alternative proposal, applies to this filing because ISO-NE is recommending changes to Market Rule 1 in the Tariff.[35] NEPOOL states that section 11.1.5 specifically governs circumstances in which ISO-NE and NEPOOL propose different amendments to the Market Rules of ISO-NE’s Tariff. NEPOOL states that the amendment it is proposing is a Market Rule proposal that is different from the one proposed by ISO-NE and is subject to the broad definition of “Market Rules” as set forth in the Participants Agreement.[36] NEPOOL concludes that ISO-NE has interpreted section 11.4 too narrowly, which ultimately limits NEPOOL’s rights and the Commission’s authority to consider alternative amendments to ISO-NE’s Market Rule proposal.

30. ISO-NE, in turn, maintains that the jump ball provision does not apply to this filing because ISO-NE’s proposed amendment in its filing falls under the provisions of section 11.4 of the Participants Agreement, which is a special provision that governs and establishes “unique treatment” with respect to Installed Capacity Requirements.[37]

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[35] *See supra* notes 2 and 4.

[36] NEPOOL Transmittal Letter at 5. NEPOOL avers that the Participants Agreement defines Market Rules broadly to include all of the market rules and does not carve out any market rules that relate specifically to the Installed Capacity Requirement, which the language could have done if that were the intent of the parties: “‘Market Rules’ shall mean the rules for the administration of the New England Market filed with the Commission in accordance with this Agreement and accepted by the Commission.” NEPOOL Transmittal Letter at 5 n.10 (citing Participants Agreement § I (Definitions)).

[37] ISO-NE Transmittal Letter at 6. ISO-NE quotes section 11.4 of the Participants Agreement, explaining that it requires ISO-NE to determine and file with the Commission, pursuant to section 205 of the FPA, Installed Capacity Requirements.

ISO-NE argues that the process outlined in section 11.4 does not require that alternative proposals be examined by the Commission. ISO-NE explains that it is proposing to revise section 12 of Market Rule 1 to revise the methodology used for calculating the tie benefits value—an integral part of the calculation for Installed Capacity Requirement-related values. Further, ISO-NE believes that, since the tie benefits *value* is not subject to the jump ball provision, it follows that the *methodology* for determining the tie benefits value is not subject to the jump ball provision. ISO-NE also maintains that, because the Installed Capacity Requirement is a reliability function, the Installed Capacity Requirement and the related rules in section 12 of Market Rule 1 "are not treated in exactly the same manner as the other sections of the market rules."[38] Therefore, ISO-NE states that this filing should be considered a section 205 filing and NEPOOL's amendment should not be considered by the Commission. Although ISO-NE does not believe that the jump ball provision applies to this filing, ISO-NE presented NEPOOL's alternative proposal, pursuant to section 11.1.5.

G. Requested Effective Date

31. ISO-NE requests that, in order to accommodate the implementation of the third annual reconfiguration auction being held in March 2010, the Commission grant an effective date of 60 days after the date of submission.

II. Notice of Filing and Responsive Pleadings

32. Notice of the filing was published in the *Federal Register*, 74 FR 68818 (2009), with interventions and protests due on or before January 8, 2010.[39] Timely motions to intervene were filed by NRG Companies;[40] Long Island Power Authority and the Long Island Lighting Company (collectively, LIPA); Bridgeport Energy, LLC; the Boston Generating Companies;[41] the New England States Committee on Electricity (NESCOE); Exelon Corporation; Northeast Utilities Service Company; Dynegy Power Marketing Inc. and Casco Bay Energy Company, LLC (collectively, Dynegy); Consolidated Edison

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[38] ISO-NE Transmittal Letter at 6-7.

[39] On December 20, 2009, the Mass AG's motion for a three-day extension of the deadline for comments was granted.

[40] The NRG Companies consist of NRG Power Marketing LLC, Connecticut Jet Power LLC, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, and Somerset Power LLC.

[41] The Boston Generating Companies consist of Boston Generating, LLC; Mystic Development, LLC; Mystic I, LLC; and Fore River Development, LLC.

Energy, Inc.; GDF SUEZ Energy Marketing NA, Inc.; and North American Energy Alliance, LLC. The Vermont Department of Public Service timely filed a motion to intervene, and the Vermont Public Service Board joined with a notice of intervention; they submitted a joint motion for partial rejection. The Maine Public Utilities Commission filed a notice of intervention.

33. On December 22, 2009, the Mass AG submitted a motion to intervene and a motion for a three day extension of time for all parties to submit comments in this proceeding.

34. On January 11, 2010, NSTAR Electric Company filed a motion to intervene out-of-time.

35. Timely motions to intervene and comments were filed by the Mirant Parties;[42] PSEG Companies;[43] NSTAR Electric Company; LIPA; National Grid USA, The United Illuminating Company, Associated Industries of Massachusetts, and The Energy Consortium (collectively, the Joint Commenters); Massachusetts Department of Public Utilities (Mass DPU); New England Conference of Public Utilities Commissioners, Inc. (NECPUC); and the Connecticut Office of Consumer Counsel. The Connecticut Department of Public Utility Control (Connecticut DPUC) submitted a notice of intervention and comments.

36. NESCOE and the Vermont Department of Public Service (on behalf of itself and the Vermont Public Service Board, collectively, Vermont) timely filed comments. NEPOOL filed supplemental comments on January 8, 2010. On January 13, 2010, Connecticut DPUC filed a motion to submit clarifying comments.

37. Public Systems[44] and Mass AG filed motions to intervene and limited protests. Mass AG was a proponent of the Market Rule revision that the Participants Committee ultimately approved as the NEPOOL Amendment.[45]

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[42] The Mirant Parties consist of Mirant Energy Trading, LLC; Mirant Canal, LLC; and Mirant Kendall, LLC.

[43] The PSEG Companies consist of PSEG Energy Resources & Trade LLC and PSEG Power Connecticut LLC.

[44] Public Systems consist of Connecticut Municipal Electric Energy Cooperative, Massachusetts Municipal Wholesale Electric Company, and New Hampshire Electric Cooperative, Inc.

[45] Mass AG Protest at 2.

38. On January 25, 2010, ISO-NE submitted an answer.

III. **Discussion**

A. **Procedural Matters**

39. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

40. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2009), the Commission will grant NSTAR Electric Company's late-filed motion to intervene given their interest in the proceeding and the absence of any undue prejudice or delay.

41. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept ISO-NE's answer because it has provided information that assisted us in our decision-making process.

B. **Jump Ball Provision**

1. **Comments**

42. Mass AG adopts NEPOOL's arguments by reference and submits further comments in support of the NEPOOL Amendment. Mass AG states that ISO-NE's and NEPOOL's proposals are before the Commission pursuant to section 11.1.5 of the Participants Agreement and are subject to the jump ball provision because the proposed Market Rule revision that was the outcome of the stakeholder process differs from ISO-NE's Market Rule proposal.[46] Mass AG argues that ISO-NE is attempting to expand the scope of section 11.4 beyond Installed Capacity Requirement *values* to include Installed Capacity Requirement-related *market rules*.[47] Mass AG concurs with NEPOOL that section 11.4 does not address amendments to Market Rules and that the section only requires ISO-NE to present Installed Capacity Requirement values to the stakeholder process for advisory votes. Thus, Mass AG argues that any Market Rule revision is subject to the stakeholder processes as delineated in preceding sections 11.1.2 and 11.1.3.[48] Mass AG claims that, as a policy and legal matter, the Commission should

[46] Mass AG Protest at 2.

[47] Mass AG Protest at 3.

[48] Mass AG Protest at 3.

uphold the jump ball provision to prevent ISO-NE from ignoring the input of stakeholders now and in the future.[49]

43. According to Joint Commenters, ISO-NE has overstepped its authority in determining a tie benefits value and ISO-NE's actions have left many stakeholders feeling that their rights and interests have been ignored. Joint Commenters support the NEPOOL Amendment because it maintains the "as is" methodology, preserves reliability, implements an interim change to allow for further study and analysis, and provides a target date for submission of a permanent tie benefits rule.[50] Joint Commenters agree with NEPOOL that proposals to amend the methodology for determining tie benefits, and thereby affecting the Installed Capacity Requirement, are subject to the jump ball provision. They state that the only way ISO-NE could avoid the requirements of section 11.1.5 would be to establish that ISO-NE's proposal to change the wording of section 12.9 of Market Rule 1 is not a "Market Rule proposal." However, because ISO-NE's proposal would amend the words, meaning, and effect of section 12.9, Joint Commenters maintain that it is clear ISO-NE's proposal is a "Market Rule proposal," falling under the jump ball provision.[51] Joint Commenters dispute ISO-NE's claim that the provisions of section 11.4 outweigh the provisions of section 11.1.5 and maintain that ISO-NE's interpretation of its authority under section 11.4 is too expansive.[52] Joint Commenters state that section 11.4 entitles ISO-NE to calculate and file the Installed Capacity Requirement based on "unmolested" Market Rules.[53] They also state that section 11.4 is silent on the subject of the jump ball provision because section 11.4 focuses on Installed Capacity Requirement values, not Market Rules.[54] Joint Commenters state that the Commission should reject ISO-NE's filing; if the Commission finds that the jump ball provision applies, it should reject ISO-NE's proposal in favor of the (temporary) NEPOOL Amendment, since such a determination would be consistent with the inability of the parties to make a permanent rule change at this time.[55]

[49] Mass AG Protest at 4.

[50] Joint Commenters Comments at 11-12.

[51] Joint Commenters Comments at 15.

[52] Joint Commenters Comments at 15-16.

[53] Joint Commenters Comments at 16.

[54] Joint Commenters Comments at 17.

[55] Joint Commenters Comments at 19-20.

44. Public Systems state that ISO-NE's proposal should be rejected and argues that section 11.1.5 of the Participants Agreement preserves certain section 205 rights to the NEPOOL Participants acting collectively.[56] Public Systems maintain that, because the NEPOOL Amendment garnered more support than the rival ISO-NE proposal, the NEPOOL Amendment falls under the requirements of section 11.1.5 and the jump ball provision.[57] Public Systems state that the jump ball provision does not provide exceptions for particular kinds of market rule proposals.[58] They also state that section 11.4 does not create a *sub silentio* exception for all Installed Capacity Requirement-related market rule changes. According to Public Systems, even if there were ambiguity about whether the instant situation fits within section 11.1.5, the Commission should resolve the issue by applying the jump ball provision.[59] Public Systems state that applying the jump ball provision in this instance minimizes the risk that NEPOOL Participants will be deprived of their section 205 rights and promotes good governance and sound decision-making.[60] Public Systems point out that NEPOOL's proposal establishes a numerical cap and provides that the existing "as is" methodology will remain effective until a new methodology has been adopted.[61] Finally, Public Systems note that, in cases where ISO-NE has filed Installed Capacity Requirement values supported by the stakeholders, ISO-NE has been quick to point out the stakeholder consensus and to urge the Commission to defer to it.[62]

45. Vermont agrees with the argument advanced by Joint Commenters that both of the proposals submitted by NEPOOL and ISO-NE are Market Rule changes and, therefore, NEPOOL's proposed amendment is governed by the jump ball provision of section 11.1.5 of the Participants Agreement. As a result, Vermont argues, "the Commission is authorized to approve the proposal that it finds just and reasonable and preferable, notwithstanding the otherwise applicable provisions of Section 205 of the [FPA]."[63]

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[56] Public Systems Comments at 6.

[57] Public Systems Comments at 6.

[58] Public Systems Comments at 7.

[59] Public Systems Comments at 8.

[60] Public Systems Comments at 8.

[61] Public Systems Comments at 6 (citing ISO-NE Transmittal Letter at 6-7 & n.21).

[62] Public Systems Comments at 10.

[63] Vermont Comments at 4.

46. NESCOE urges the Commission to recognize the jump ball provision as applicable to NEPOOL's Amendment for the reasons set forth by NEPOOL.[64] NESCOE states that the jump ball provision offers an important check and balance in New England's process.[65]

47. The Connecticut DPUC urges the Commission "to give substance to NEPOOL's carefully negotiated governance mechanisms" and to heed the objections to ISO-NE's proposal for determining tie benefits in the FCM's third reconfiguration auction.[66]

48. In its answer, ISO-NE reiterates that the jump ball provision is inapplicable to market rule revisions that address the calculation of the Installed Capacity Requirement and, in particular, to a rule change that simply establishes a value.[67] ISO-NE again states that, because the Installed Capacity Requirement value is not subject to the jump ball provision, it follows that the calculation methodology is not subject to the provision.

49. In its supplemental comments, NEPOOL states that its amendment meets the two threshold requirements for application of the jump ball provision. First, it is "a Market Rule proposal that is different from the one proposed by ISO," and second, the NEPOOL Amendment received a Participants Committee vote equal to or greater than 60 percent. Thus, NEPOOL argues that it has the right to have its amendment submitted on equal footing with ISO-NE's Market Rule change as a filing under section 205 of the Federal Power Act.

50. Further, NEPOOL avers that ISO-NE's argument against the applicability of section 11.1.5 is wrong for at least four reasons. First, NEPOOL states that the "plain meaning" of section 11.1.5 requires its application in this situation; the Participants Agreement defines the term "Market Rules" as used in section 11.1.5 broadly to include all of the Market Rules and does not carve out any that relate to the Installed Capacity Requirement. Second, NEPOOL states that ISO-NE is incorrect in its argument that NEPOOL's interpretation of section 11.1.5, as being applicable to the Installed Capacity Requirement related Market Rule amendments, would render section 11.4 meaningless. According to NEPOOL, section 11.4 addresses the periodic determinations and filings of the Installed Capacity Requirement that ISO-NE must do under the Market Rules in effect, and ISO-NE would still have discretion regarding such determinations and filings,

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[64] NESCOE Comments at 3.

[65] NESCOE Comments at 3.

[66] Connecticut DPUC Supplemental Comments at 2.

[67] ISO-NE Answer at 18.

subject to existing Market Rules. Third, NEPOOL argues that ISO-NE is incorrect in its argument that references to the Participant Processes and to the Market Rules in section 11.4 mean that ISO-NE has sole discretion to file Installed Capacity Requirement-related Market Rule changes. Instead, NEPOOL contends that these references refer to the fact that ISO-NE must take its Installed Capacity Requirement determinations through the NEPOOL stakeholder process for advisory votes just as it would for proposed changes to the Market Rules, but it has discretion regarding what to file for those ICR determinations under the existing rules. Lastly, NEPOOL finds incorrect ISO-NE's argument that, because the subject Market Rule change was reviewed by the NEPOOL Reliability Committee rather than the NEPOOL Markets Committee, the jump ball provision does not apply. NEPOOL argues that the fact that one technical committee versus another committee reviews a Market Rule has no relevance to whether the Market Rule amendment is subject to the jump ball provision.

2. **Commission Determination**

51. This is the first time the Commission has been asked to determine the applicability and operation of section 11.1.5 of the Participants Agreement. In pertinent part, the jump ball provision states that, if an ISO Market Rule proposal that differs from that proposed by ISO-NE is approved by a Participants Committee vote of 60 percent or more, ISO-NE "shall, as part of any required Section 205 filing," describe the alternate Market Rule proposal in sufficient detail to permit reasonable review by the Commission and also explain its reasons for not adopting the alternate proposal and why it believes its own proposal is superior. Section 11.1.5 provides that the Commission need not consider whether the then-existing filed rate is not just and reasonable and may "adopt all or any of ISO[-NE]'s Market Rule proposal or the alternate Market Rule proposal as it finds … to be just and reasonable and preferable." As we discuss below, we find that section 11.1.5 applies by its terms to a proposed change in the calculation method for the Installed Capacity Requirement.

52. ISO-NE contends that it is carrying forward the tie benefits methodology used in support of previous auctions, which does not constitute a "new" proposal or "change."[68] ISO-NE explains that its proposed change is a clarification of the methodology used for calculating the tie benefits value, which methodology is an integral part of the calculation for Installed Capacity Requirement-related values. ISO-NE relates the tie benefits *value* and the tie benefits *methodology*, averring that, if the *value* is not subject to the jump ball provision, it follows that the *methodology* for determining the tie benefits value is not subject to it. Finally, ISO-NE states that the Installed Capacity Requirement is a reliability function, and the Installed Capacity Requirement and the related rules in

[68] ISO-NE Answer at 11, 12.

section 12 of Market Rule 1 "are not treated in exactly the same manner as the other sections of the market rules."[69]

53. By its terms, section 11.1.5 applies only to Market Rule proposals. Thus, we must first determine whether a proposed change in the calculation method for the Installed Capacity Requirement is, in fact, a change to a Market Rule. If not, then section 11.4 would apply. ISO-NE and NEPOOL dispute over whether section 11.4 or 11.1.5 of the Participants Agreement is applicable to a proposed change to the calculation methodology for the Installed Capacity Requirement in Market Rule 1, which is found in section III.12.9 of ISO-NE's Tariff. ISO-NE maintains that such a proposal falls under section 11.4 (entitled Installed Capacity Requirements), because section 11.4 is a special provision that governs and establishes "unique treatment" for Installed Capacity Requirements.[70] ISO-NE maintains that the process outlined in section 11.4 does not require that alternative proposals be examined by the Commission. It explains that section 11.4 provides that the Installed Capacity Requirements are subject to the market rule voting provisions in sections 11.1.2 and 11.1.3 of the Participants Agreement but makes no mention of section 11.1.5. According to ISO-NE, section 11.4's explicit reference to certain subsections of section 11.1 (specifically, 11.2 and 11.3) means that other subsections are thereby excluded;[71] therefore, the jump ball provision of section 11.1.5 does not apply.

54. Alternatively, NEPOOL contends that the jump ball provision of section 11.1.5 applies to this filing because ISO-NE is recommending changes to Market Rule 1 in the Tariff, and section 11.1.5 specifically governs circumstances in which ISO-NE and NEPOOL propose different amendments to the Market Rules of ISO-NE's Tariff, which is the situation at hand. NEPOOL's argument rests on its contention that its proposal is "a Market Rule proposal that is different from the one proposed by ISO," and the NEPOOL Amendment received a Participants Committee vote that was more than 60 percent in favor.

55. We find that the proposed change in the calculation methodology in the Installed Capacity Requirements involves a change to a Market Rule, and, thus, section 11.1.5 (along with the rest of section 11.1) applies, not section 11.4.[72] Section 11.1 of the

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[69] ISO-NE Transmittal Letter at 6-7; ISO-NE Answer at 18-19.

[70] ISO-NE Transmittal Letter at 6.

[71] ISO-NE Transmittal Letter at 6 (citing the legal doctrine, *expressio unius est exclusio alterius*).

[72] In light of this finding, we need not reach the question of whether section 11.1.5 applies to a filing made under section 11.4.

Participants Agreement (titled, General Provisions) requires ISO-NE "to present proposals for changes to Market Rules," etc., for Governance Participant consideration and NEPOOL Participant vote, in accordance with the subsequent provisions in section 11.[73] The term, "Market Rules," is defined as "the rules for the administration of the New England Markets [filed with and accepted by the Commission]."[74] ISO-NE states that it is proposing "a change to Section 12.9 of Market Rule 1, which governs the methodology for calculating the Installed Capacity Requirement."[75]

56. Specifically, section III.12.9 of Market Rule 1 in ISO-NE's Tariff provides, in relevant part:

> The ISO shall calculate tie benefits using "at-criteria" assumptions for purposes of modeling the adjacent Control Areas, except that when calculating the Installed Capacity Requirement, the Local Sourcing Requirements and Maximum Capacity Limits for use in the annual reconfiguration auction closest to the relevant Capacity Commitment Period, the ISO shall calculate tie benefits using "as-is" data for the purposes of modeling the adjacent Control Areas.[[76]]

ISO-NE proposes to use the "at criteria" in place of the "as is" methodology to generate values for the final reconfiguration auction. Rather than merely "determin[ing] and fil[ing] … the Installed Capacity Requirements for [the 2010/2011] Power Year,"[77] ISO-NE "recommends changing the market rules to use the value calculated for the primary Forward Capacity Auction for all three annual reconfiguration auctions."[78] ISO-NE explains that the use of the "as is" methodology, currently provided in Market Rule 1, results in a tie benefits value of 3,415 MW, which ISO-NE characterizes as "extremely high."[79] Thus, ISO-NE proposes to correct the status quo with "market rule

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[73] Participants Agreement § 11.1.

[74] Participants Agreement § 1 (Definitions).

[75] Joint Transmittal Letter at 2; ISO-NE Transmittal Letter at 2.

[76] Market Rule 1, § III.12.9.

[77] Participants Agreement § 11.4 (Installed Capacity Requirements).

[78] ISO-NE Transmittal Letter at 3.

[79] ISO-NE Transmittal Letter at 3.

revisions that address the calculation of the Installed Capacity Requirement."[80] Therefore, section 11.1 of the Participants Agreement is applicable to ISO-NE's filing because ISO-NE is proposing a change to the Market Rules. Accordingly, ISO-NE's proposal implicates the procedures in sections 11.1.2 and 11.1.3 (Technical Committee and Participants Committee Review, respectively), as well as the jump ball provision in section 11.1.5 (Alternative Committee Market Rule Proposal). Section 11.1.5 requires that ISO-NE present to the Commission any alternative Market Rule proposal that is approved by a Participant vote of at least 60 percent, which would include NEPOOL's proposal.

57. ISO-NE proposes that the tie benefits calculation methodology that was used previously should apply to this final reconfiguration auction. We find that ISO-NE's proposed calculation methodology is a tariff change. ISO-NE's proposed methodology (i.e., using "at criteria") is different from the methodology currently provided in the Tariff (i.e., the "as is" methodology). Further, while the tie benefits *value* and the tie benefits *methodology* are clearly related as ISO-NE argues, we are not persuaded that it follows that, if the *value* is not subject to the jump ball provision, the *methodology* for determining the tie benefits value likewise is not subject to it. ISO-NE determines and files Installed Capacity Requirements—the *values*—under section 11.4 . The *methodology* for calculating those values, however, is part of the Market Rules and, as such, any proposed amendment to the methodology comes under the provisions of section 11.1. Read within the full context of section 11 and its individual subparts, we find that the proposals at issue here involve changes to the *methodology* for calculating the Installed Capacity Requirements, not the *values*, and thus fall within the scope of section 11.1, which includes the jump ball provision, rather than section 11.4.[81]

C. Tie Benefits Proposals, Installed Capacity Requirements, and Related Values

1. Comments

58. Joint Commenters note that both ISO-NE and NEPOOL agree that substantial additional technical and analytical work is needed before a final, permanent change to section III.12.9 can properly be proposed.[82] Joint Commenters state that ISO-NE previously has stated that "as is" assumptions are more likely to be accurate than "at-

[80] ISO-NE Transmittal Letter at 3.

[81] *See supra* note 75.

[82] Joint Commenters Comments at 9 (citing ISO-NE Transmittal Letter at p. 4; Karl Testimony at 16-17).

criterion" assumptions.[83] Joint Commenters state that sufficient study, analysis, and consultation is needed to identify the specific weaknesses in the earlier position and put in place a robust and effective modification that the parties can support as just and reasonable.[84] NESCOE agrees that, contrary to the stakeholder process and despite requests, ISO-NE did not provide any real analysis of alternative proposals; a detailed explanation of reliability needs, estimated emergency events, and cost implications of the various options; or a rationale for reaching its preferred decision or proposal.[85]

59. Vermont states that, if the Commission determines that section 11.1.5 of the Participants Agreement is not applicable to this filing, the Commission should reject ISO-NE's filing because it "does not pass muster" under the section 205 requirements of being just and unreasonable and not unduly discriminatory.[86] Vermont agrees with the argument put forth by Joint Commenters and adds that, while NEPOOL has proposed an interim tariff change that would establish a temporary tie benefit cap of 2,286 MW, ISO-NE has proposed tariff language that would replace, without time limit, the current "as is" methodology enumerated in section III.12.9 of Market Rule 1 with the previously-used "at criteria" approach to determine tie benefits.

60. Several commenting parties state that they disagree with ISO-NE's proposal to permanently change the Market Rules and disregard the on-going stakeholder process related to tie benefits issues.[87] NSTAR states that ISO-NE's proposal is inconsistent with the FCM settlement and the Commission's directive that the "as-is" criterion be used for the third annual reconfiguration auction.[88] NESCOE states that ISO-NE does not argue

[83] Joint Commenters Comments at 12-13 (citing Motion for Leave to Answer and Answer of ISO New England, Inc., Docket No. ER07-365-000, at 28 (filed Feb. 1, 2007).

[84] Joint Commenters Comments at 13-14.

[85] NESCOE Comments at 5-6.

[86] Vermont Comments at 4.

[87] NESCOE Comments at 2; Mass DPU Comments at 3; NECPUC Comments at 1; Mass AG Protest at 8; Joint Commenters Comments at 6.

[88] NSTAR Comments at 5 (citing *ISO New England, Inc.*, 118 FERC ¶ 61,157 (2007)).

that its proposed Market Rule modification is the proper long-term regional solution.[89] Further, NESCOE points out that ISO-NE does not have NEPOOL support.[90]

61. Joint Commenters assert that they would not object to a Commission order adopting ISO-NE's 1,860 MW tie benefit value, if this were explicitly adopted as an interim Market Rule just as NEPOOL proposes for its 2,286 MW tie benefit cap.[91] Joint Commenters maintain that such a "hybrid" order would be possible under the jump ball provision, though not under ISO-NE's more limiting section 205 filing approach.[92] Those who oppose ISO-NE's proposal support the NEPOOL Amendment, stating that NEPOOL's proposal is an interim compromise that envelops the stakeholder process and does not permanently dispose of the Commission-approved "as-is" methodology.[93] In addition, Joint Commenters supports NEPOOL's amendment because it provides a target date for the submission of a permanent tie benefits rule.[94]

62. A number of commenting parties rooted their support for the NEPOOL Amendment on the premises that it does not violate New England's accepted reliability criteria and effectively balances ISO-NE's reliability needs and cost considerations.[95] Mass DPU noted that even ISO-NE seems to agree that NEPOOL's tie benefit value is within a "zone of reasonableness" and would not threaten reliability.[96]

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[89] NESCOE Comments at 4 (citing ISO-NE Filing, Karl Test. at 18, lines 1-9).

[90] NESCOE Comments at 2 (citing ISO-NE Filing, Karl Test. at 25-26).

[91] Joint Commenters Comments at 20.

[92] Joint Commenters Comments at 20.

[93] NSTAR Comments at 4; Mass AG Limited Protest at 7; Connecticut DPUC Comments at 5-6; NESCOE Comment at 2; and Joint Commenters Comments at 11-12.

[94] Joint Commenters Comments at 11-12.

[95] NSTAR Comments at 4; NEPOOL Supplemental Comments at 7; Mass DPU Comments at 3; Mass AG Protest at 4; 8 (citing NEPOOL Filing, Plett Test. at 11); NESCOE Comments at 1; Joint Commenters Comments at 21 (citing NEPOOL Transmittal Letter at 10; Plett Test. at 11-12).

[96] Mass DPU Comments at 3 (citing ISO-NE Filing, Karl Test. at 21).

63. NECPUC[97] and Mass DPU[98] assert that the Commission, as an economic regulator, must balance reliability and costs to consumers. Mass DPU[99] and NESCOE[100] state that ISO-NE's proposal is heavily weighted toward reliability without sufficient consideration for costs; since the Commission's role as an economic regulator is to balance reliability and cost, NESCOE states that substantive consideration of both NEPOOL's and ISO-NE's proposals is essential.[101] Mass AG states that the additional capacity required under ISO-NE's proposal represents an unnecessary cost and that it is unjust and unreasonable to charge consumers for capacity that does not contribute to reliability.[102]

64. NESCOE asserts that ISO-NE's conclusion that its proposed value is superior to alternatives because it is grounded in the Commission's prior approval of these values is flawed.[103] NESCOE asserts that ISO-NE provides no assessment that assumptions developed during 2007 form a reliable basis for calculating tie benefits for the upcoming 2010/11 commitment period, particularly in comparison to other assumptions that might be relied upon as a basis for alternative tie benefits values.[104] NESCOE argues that, basing conclusions about the reasonableness of a value on the fact that this value was approved in a prior time is not a "sound analytical basis."[105] Addressing the fact that the capped NEPOOL tie benefits value of 2,286 MW was based on the wrong commitment period, Mass AG asserts that the difference in data between 2011/2012 and 2010/2011, if

[97] NECPUC Comments at 1.

[98] Mass DPU Comments at 3.

[99] Mass DPU Comment at 3.

[100] NESCOE Comments at 2.

[101] NESCOE Comments at 1-2; Mass DPU Comments at 3.

[102] Mass AG Protest at 9.

[103] NESCOE Comments at 7 (citing ISO-NE Filing, Karl Test. at 16).

[104] NESCOE Comments at 8.

[105] NESCOE Comments at 8 (citing ISO-NE Transmittal at 3).

any, is likely to be small and would be subsumed by the 10 percent discount of the 2,540 MW tie benefit value calculated under the LIPA method.[106]

65. NESCOE claims that ISO-NE provides no specific allegations that the methodology used in the LIPA approach provides an unreasonable approach for determining tie benefits.[107] Mass AG references Mr. Plett's rebuttal testimony, which states that the comparison of reserve margin percentages has no relevance to the New England calculation of Installed Capacity Requirements.[108] According to Mass AG, Mr. Plett further testifies that, prior to Mr. Karl's testimony, ISO-NE also had repeatedly rejected references to reserve margin as a means for setting Installed Capacity Requirements.[109]

66. Addressing ISO-NE's discussion of alternative stakeholder processes involving tie benefits, LIPA states that the treatment of an individual tie benefits calculation methodology is unrelated to the 2010/2011 reconfiguration auction, which is the subject of a separate Commission proceeding and should remain so.[110] LIPA further states that, given ISO-NE's own work on calculating tie benefits for individual transmission lines, it would be premature to assume that this issue cannot be concluded by the February 2010 compliance deadline—and certainly in sufficient time for integration into the August 2010 FCA for the 2013/2014 Capability Year.[111] LIPA also states that, even if such a conclusion is reached, it is incumbent upon ISO-NE to separately file a request for extension with the Commission and justify the need to further delay its compliance obligation.[112] Mirant notes that none of the related tie benefits issues have been voted on by stakeholders, and thus it is too early for ISO-NE to advise the Commission on their status in the stakeholder process.

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[106] Mass AG Protest at 6 (citing NEPOOL Filing, Plett Test. at 5 and ISO-NE Filing, Attachment I-1g (Mass AG Presentation Before the NEPOOL Participants Committee)).

[107] NESCOE Comments at 8.

[108] Mass AG Protest at 13 (citing NEPOOL Filing, Plett Test. at 2).

[109] Mass AG Protest at 13.

[110] LIPA Comments at 6.

[111] LIPA Comments at 7.

[112] LIPA Comments at 7.

67. NESCOE states that the concerns raised by Mr. Brandien with respect to the operational factors of the New England system should not affect tie benefit determinations.[113] Moreover, NESCOE states that Mr. Brandien's suggestion that his concerns could diminish tie benefits by 1,260 MW, resulting in a net 2,155 MW tie benefit level (3,415 MW less 1,260 MW), actually confirms the reasonableness of the NEPOOL Amendment, which proposes roughly 2,155 MW.[114] NESCOE maintains that, contrary to ISO-NE's assertion that the majority of stakeholders wanted to retain the "as is" tie benefits assumption,[115] a vote on the "as is" 3,415 MW value did not occur in the Reliability and/or the Participants Committee.[116] NESCOE also states that the Commission's detailed review of these issues could provide helpful guidance to the ongoing stakeholder process concerning Installed Capacity Requirement and tie benefit value questions currently under consideration.[117]

68. In its answer, ISO-NE states that, when the "as is" methodology was first applied to this reconfiguration auction, ISO-NE discovered that the resulting ties benefits value and Installed Capacity Requirement could have serious, negative implications for reliability. ISO-NE further states that its proposed change is temporary for use in the upcoming annual reconfiguration auction.[118] ISO-NE maintains that ISO-NE and NEPOOL conducted an open and fair stakeholder process; there was broad agreement among stakeholders regarding many of the assumptions, inputs, and projections. ISO-NE states that it is not proposing a "new" methodology for calculating tie benefits; rather, its proposal preserves the status quo. Moreover, ISO-NE contends that, as a general matter, when tie benefits are calculated on an "at criteria" basis, the potential for year-to-year changes and the magnitude of change in the level of tie benefits is significantly reduced.[119] ISO-NE states that it believes that the 1,860 MW level of tie benefits remains available from neighboring control areas. According to ISO-NE, because it has shown that the 3,415 MW value yields an unreliable result, the best choice is to use the

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[113] NESCOE Comments at 10.

[114] NESCOE Comments at 11 (citing ISO-NE Filing, Brandien Test. at 8).

[115] NESCOE Comments at 4 (citing ISO-NE Filing, Karl Test. at 18).

[116] NESCOE Comments at 4.

[117] NESCOE Comments at 3.

[118] ISO-NE Answer at 8.

[119] ISO-NE Answer at 12.

previously filed and Commission-approved 1,860 MW value.[120] ISO-NE notes that, to date, the "at criteria" has produced relatively stable tie benefits values. It states that Commission precedent requires Installed Capacity Requirement values to be based on reasoned and supported analyses of relevant data and assumptions and not on consensus. ISO-NE points out that the NEPOOL Amendment was not supported by any study applicable for the 2010/2011 Capability Year, nor was it grounded in a fully developed or vetted calculation methodology.[121]

69. In its supplemental comments, NEPOOL notes that ISO-NE's main argument against the NEPOOL Amendment is that the proposal has no sound basis and, instead, it reflects a majority of stakeholder votes. NEPOOL responds that ISO-NE ignores the fact that its own proposed value diverges from an analytically pure number, since the updated "at criteria" analysis actually results in tie benefits equal to 1,525 MW, rather than 1,860 MW, which was picked for "stability." As such, NEPOOL argues that the Commission is left with two proposals for tie benefits that could be acceptable from a reliability perspective, but only one of which is preferable from a stakeholder support and cost consideration perspective.

2. <u>Commission Determination</u>

70. As this filing establishes the Installed Capacity Requirement for the last reconfiguration auction of the first FCM commitment period, it represents the first application of the "as is" methodology. This joint filing also represents the first time a market rule revision has been proposed under the jump ball provision of section 11.1.5 of the Participants Agreement. After evaluating both proposed amendments under section 205 of the FPA, we find that ISO-NE's proposal is just and reasonable and preferable. For the reasons below, we find that there are significant deficiencies in NEPOOL's proposal. Therefore, we will accept ISO-NE's proposed Installed Capacity Requirement and related values for use in the final FCM reconfiguration auction for the 2010/2011 Capability Year, as well as the related proposed market rule change, subject to a condition.

a. <u>"As Is" and "At Criteria" Methodologies</u>

71. Tie benefits reflect the amount of emergency assistance that is assumed to be available to New England from neighboring control areas without jeopardizing reliability

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[120] ISO-NE Answer at 13 (referring to ISO-NE Filing, Karl Test. at 16, which provides that developing a new tie benefits methodology is "unfeasible and inappropriate at this time since doing so would undercut the process already underway").

[121] ISO-NE Answer at 15-16.

in New England or its neighboring control areas. They are an important part of the Installed Capacity Requirement calculation, and their value is often controversial since tie benefits reduce the Installed Capacity Requirement and, thus, the amount of capacity purchased in the FCM for the commitment period. Under the terms of the current tariff, tie benefits from neighboring control areas are calculated under an "as is" methodology for the final reconfiguration auction prior to the relevant commitment year.[122] This methodology assumes that the neighboring control areas have resources and demands equivalent to those that were forecast for the commitment period and that these resources will be available to meet load within their respective areas. ISO-NE notes in its transmittal letter, however, that such forecasted resources and demands may be more or less than what is needed to meet the reliability requirements of the New England control area,[123] i.e., to prevent non-interruptible customers from being disconnected no more than once every ten years (0.1 LOLE).

72. The "as is" methodology is different from the "at criteria" methodology, which, under the current tariff, is used to calculate the tie benefits for all of the auctions prior to the last one for a given commitment period. The "at criteria" methodology assumes only that neighboring control areas have enough resources such that each area meets the reliability standard of 0.1 LOLE. The availability of external capacity may be unknown under this methodology. As ISO-NE explains, the basis for the switch to the "as is" methodology for the last reconfiguration auction was the belief that this methodology made theoretical sense due to the proximity of the last auction to the commitment period.[124] Since the last reconfiguration auction takes place approximately two months before the commitment period, it was assumed that the "as is" methodology would more accurately reflect the resources that will be available during the commitment period.[125] Further, as noted in the Karl testimony, during the FCM Settlement discussions, load representatives supported this methodology.[126] The basis for that support was that if the first two annual reconfiguration auctions failed to procure the Installed Capacity Requirement, rather than having ISO-NE purchase additional capacity in the last

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[122] *See* Market Rule 1, § III.12.9.

[123] ISO-NE Transmittal Letter at 9.

[124] *Id.*

[125] *ISO New England Inc.*, 118 FERC ¶ 61,157, at P 49 (2007).

[126] ISO-NE Filing, Karl Test. at 24.

reconfiguration auction, ISO-NE could assess external capacity on an "as is" basis. The Commission approved this overall methodology in February 2007.[127]

73. While the "as is" methodology was approved by the Commission, it is clear that its application for the 2010/2011 commitment period would trigger operational concerns as highlighted by the testimonies of Mr. Brandien and Mr. Karl.[128] ISO-NE states that it has never been in a position of requiring 3,415 MW of emergency assistance and does not find the value to be realistic or achievable.[129] Commenters even note that while the current methodology theoretically satisfies the LOLE standard, it would be more likely that ISO-NE would need to take OP 4 (ISO New England Operating Procedure No. 4, Action During a Capacity Deficiency) actions, including voltage reductions, and requests for emergency assistance from neighboring control areas. Though our specific consideration of the current methodology is not necessary under the terms of the jump ball provision, we nonetheless agree with both ISO-NE and NEPOOL that the use of the current "as is" methodology for the 2010/2011 commitment period would not be practical.

74. Our analysis of the tie benefits issue will need to determine both what is just and reasonable in the short term (for the 2010/2011 commitment period), as well as the long term (for future commitment periods). First, addressing the 2010/2011 commitment period, we note that it is possible that both proposed values are valid representations of tie benefits for the 2010/2011 commitment year; we recognize that there are a number of assumptions built into the Installed Capacity Requirement analysis and that the correct tie benefits value likely encompasses a range of values. We also agree with commenters that it is important to establish the proper Installed Capacity Requirement (and inherently, tie benefits value) "without overcharging New England customers for unnecessary capacity."[130] In fact, if we were presented with two equally defendable tie benefits values, all other things being equal, we may find the higher tie benefits number to be

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[127] *ISO New England Inc.*, 118 FERC ¶ 61,157 (2007).

[128] ISO-NE indicates that this "as is" tie benefits value reduces the Installed Capacity Requirement (from 33,705 MW for the primary auction and 33,537 MW for the first reconfiguration auction to 30,988 MW), resulting in a reserve margin over the peak load forecast of 4.3% (relative to a reserve margin of 9.7% with tie benefits equal to 1,860 MW). Although the filing does not explain why the "as is" tie benefits value is so relatively high (and whether ISO-NE previously had ever examined an "as is" tie benefits value for 2010/2011), due to reliability concerns, no parties support its use here.

[129] Transmittal letter at 13.

[130] *ISO New England Inc.*, 118 FERC ¶ 61,157 at P 49.

"more" just and reasonable, as it would reduce the Installed Capacity Requirement, minimizing the purchase of "unnecessary capacity." It is the absence of such a scenario before us, however, that defines our decision to adopt ISO-NE's tie benefits value of 1,860 MW, as opposed to NEPOOL's proposed value of 2,286 MW, for the 2010/2011 commitment period.

b. Tie Benefits Value: ISO-NE Proposal

75. Noting that several related areas of the Installed Capacity Requirement calculation are under stakeholder review, ISO-NE recommends revising section III.12.9 of Market Rule I to require the use of the tie benefits value calculated for the primary FCA (under the "at criteria" methodology) for all three annual reconfiguration auctions. In support, ISO-NE contends that such an approach would reduce significant year-to-year changes in tie benefits, provide stability to the marketplace and surrounding control areas, and result in a reserve margin for the 2010-2011 commitment period that is "acceptable" though still "significantly below" the reserve margin of neighboring control areas like New York. This approach would retain the 1,860 MW value of tie benefits for the 2010/2011 commitment period. However, ISO-NE notes that it does not advocate that the "as is" methodology should be eliminated in favor of the "at criteria" methodology, since some of the same problems may apply to both methodologies. Rather, ISO-NE acknowledges that due to the ongoing stakeholder discussions on tie benefits, any significant methodology changes at this time are premature. Instead, ISO-NE indicates that it is committed to a full review of all of the tie benefits issues and plans to file a comprehensive approach to all of the tie benefits issues by the end of 2010.[131] In separate votes, the Participants Committee failed to support ISO-NE's proposed Installed Capacity Requirement-related values for the 2010/2011 commitment period and ISO-NE's proposed revisions to section III.12.9 of Market Rule 1.

76. Based on ISO-NE's conclusion that "the resulting tie benefits value [of 3,415 MW] and Installed Capacity Requirement could have serious, negative implications for reliability,"[132] ISO-NE proposes to change the market rules to maintain the use of the tie benefits value of 1,860 MW calculated for the primary FCA and the two subsequent reconfiguration auctions.[133] We agree with ISO-NE that, while this issue remains to be

[131] On January 14, 2010, ISO-NE filed an update on the status of the "Reserved Issues" from Docket ER08-41-004, which required a February 2010 filing with the Commission. ISO-NE's update reiterates its position here that all tie benefits issues should be addressed in a comprehensive stakeholder process during 2010.

[132] ISO-NE Transmittal Letter at 9-10.

[133] ISO-NE Transmittal Letter at 10, 14.

settled going forward in the stakeholder process, a tie benefits value of 1,860 MW is just and reasonable for this final reconfiguration auction. There is no dispute that, as ISO-NE avers, the level of tie benefits ISO-NE proposes remains available from neighboring control areas. While the "as is" methodology was approved by the Commission for this reconfiguration auction, it is now clear that its application for the 2010/2011 commitment period would trigger operational concerns as highlighted by the testimonies of Mr. Brandien and Mr. Karl. Moreover, ISO-NE states that it has never been in a position to require 3,415 MW of emergency assistance and does not find that value to be realistic or achievable.[134]

77. Addressing ISO-NE's proposed tie benefits value, all parties are aware that the Commission previously approved this 1,860 MW value (offered under the "at criteria" methodology) for the primary and first reconfiguration auctions of the 2010/2011 commitment period.[135] While the allocation of these tie benefits among the Hydro Québec and New Brunswick and New York interfaces was a significant issue in the order establishing the Installed Capacity Requirement and related parameters for 2010/2011,[136] only NSTAR raised concerns over the actual total tie benefits value.[137] No other party raised concerns over ISO-NE's proposed tie benefits value in that proceeding and no

[134] ISO-NE Transmittal letter at 13; *see also* ISO-NE Answer at 16-17 (explaining cost savings to consumers, with a higher tie benefits value, is "extremely unlikely" because, with emergency transactions from New York priced at $999/MW-hour, "a single hour of shortage has the potential of offsetting the total potential capacity cost differential) .

[135] *ISO New England Inc.*, 121 FERC ¶ 61,250 (2007), *reh'g denied*, 123 FERC ¶ 61,129 (2008).

[136] *ISO New England Inc.*, 121 FERC ¶ 61,250 (2007).

[137] In that proceeding, NSTAR argued that the probabilistic methodology for calculating tie benefits should only apply to the New Brunswick and New York interfaces, while tie benefits over the Hydro Québec interconnection should be calculated using a deterministic methodology. The net effect of NSTAR's proposed methodology would have been to increase the total tie benefits value, and we countered that it would be "unreasonable to assume 2,250 MW of the total tie benefits are available to New England over its interconnections with neighboring control areas, because NSTAR's proposal double counts a portion of the tie benefits by failing to deduct the 1,400 MW of tie benefits attributed to HQ Capability Credits." NSTAR also raised concerns over the use of the "at criteria" rather than "as is" methodology in the primary auction proceeding.

comments were filed in the recent reconfiguration auction proceeding where ISO-NE found there was no need to update the tie benefits study.[138]

78. We agree with ISO-NE that it is unlikely that system conditions have changed significantly from the prior reconfiguration auction such that this value, which the Commission has recently accepted (and which no party challenged for the prior reconfiguration auction), is no longer valid. Commenters highlight the fact that ISO-NE states that any significant methodology changes at this time are premature, yet advocates adoption of the "at criteria" methodology for the last reconfiguration auction. However, since the "as is" methodology results in a tie benefits value that is not supported by any of the parties, it is not clear how any other value other than one calculated under an "at criteria" methodology (especially a value that the Commission previously has approved) would be valid pending additional stakeholder proceedings to address the tie benefit methodology.[139] We are not persuaded that this is an unjust and unreasonable approach. We also agree that the resulting 9.7 percent reserve margin with 1,860 MW of tie benefits is consistent with the historical level of reserves that have been required in New England.[140]

79. In addition to protesting ISO-NE's proposed tie benefits value, many of the commenters oppose to ISO-NE's proposed revision to section III.12.9 of Market Rule 1.

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[138] Docket No. ER09-640.

[139] ISO-NE did not support the "updated at criteria" analysis that ISO-NE states results in 1,525 MW of tie benefits for the 2010/2011 commitment period. NEPOOL contends that, by choosing not to present this value, ISO-NE made a policy decision consistent with NEPOOL's proposal. Because ISO-NE chose not to present this tie benefits value and all parties agree that the current methodology is inappropriate, we will not address this situation here.

[140] However, while ISO-NE points out that a 9.7% reserve margin is well below that of other control areas (e.g., the 18% margin required by NYSRC), we note that such a comparison is not truly relevant since the Installed Capacity Requirement for New England is calculated based on a probabilistic analysis employing a 0.1 LOLE. This probabilistic analysis considers expected loads, resource availability, and tie benefits. In New England, the Installed Capacity Requirement is not calculated as a function of reserve margin. As ISO-NE noted in the reserve margin gross-up proceeding, "The reserve margin is not a determinant of the [Installed Capacity Requirement]. That is, the [Installed Capacity Requirement] is not calculated by multiplying the peak load by one plus the reserve margin. Rather, the reserve margin is a product of the [Installed Capacity Requirement] calculation." ISO-NE, Transmittal Letter, Docket No. ER09-209, Attachment 3 at 7, 9 (Ethier testimony) (filed Oct. 31, 2008).

Specifically, many commenters oppose ISO-NE's proposal to use the "at criteria" methodology for all of the annual reconfiguration auctions because it is a permanent change. By comparison, the stakeholder-supported NEPOOL proposal revised the same section of the tariff but included language establishing a two-year sunset provision requiring ISO-NE to file market rule amendments, as necessary, applicable to the third reconfiguration auction for the 2012/2013 commitment period. NEPOOL's proposed revised language reads:

> [B]y December 31, 2010, the ISO shall review with Market Participants and, as necessary, file proposed market rule amendments reflecting a methodology for tie benefit calculations to apply to future third annual reconfiguration auctions beginning with the third annual reconfiguration auction for the 2012/2013 Capacity Commitment Period.[[141]]

Joint Commenters prefer the NEPOOL proposal but indicate that they would not object to a Commission order adopting the 1,860 MW value of tie benefits if it were explicitly adopted as an interim Market Rule, as NEPOOL proposed for its capped value.

80. While such language was not included in ISO-NE's proposed revisions to section III.12.9 of Market Rule 1, it is clear that ISO-NE plans to employ a stakeholder process during 2010 to address revising the tie benefit methodology for the last reconfiguration auction preceding a commitment period. In order to formalize this commitment, we will require ISO-NE to revise section III.12.9 of Market Rule 1, consistent with the language and timeline proffered by NEPOOL. We will not rule here on the deadline for compliance on the "Reserved Issues," however, since we agree with LIPA that they are outside the scope of the current proceeding.

81. Accordingly, we accept ISO-NE's proposed use of a 1,860 MW tie benefits value and consequent Installed Capacity Requirement and related values; however, we will require ISO-NE to revise section III.12.9 of Market Rule 1 concerning future potential market rule amendments to be consistent with NEPOOL's proposed language on this issue. The stakeholder process in this regard also should address the contention raised by NESCOE and other commenters that ISO-NE failed to provide the analysis requested by some stakeholders in connection with alternative proposals, with detailed explanations of reliability needs, estimated emergency events, and cost implications of options.[142]

[141] NEPOOL Transmittal Letter at 8-9.

[142] NESCOE Comments at 5-6.

c. Tie Benefits Value: NEPOOL Proposal

82. NEPOOL's proposal also would revise section III.12.9 of Market Rule 1. NEPOOL proposes a cap on the allowed tie benefits value for the 2010/2011 and 2011/2012 commitment periods, resulting in a proposed tie benefits value of 2,286 MW. NEPOOL states that its proposal would retain the use of the "as is" methodology subject to this cap value. NEPOOL's revised tariff language would also require ISO-NE to review and file as necessary any revised tie benefit methodology to apply for all future final annual reconfiguration auctions commencing with the 2012/2013 commitment period. In support of this approach, NEPOOL notes that its approach is "more consistent" with the existing market rule that was approved by the Commission, ensures that tie benefits continue to meet the LOLE criterion, and represents a reasonable trade-off between "extra" reliability and extra cost to consumers. NEPOOL also argues that the Commission should consider that a broadly supported proposal as offered by NEPOOL is preferable to ISO-NE's proposal which drew little support.[143] In its supplemental comments, NEPOOL contends that because both proposals satisfy the relevant reliability criterion, the Commission must consider the inherent policy issues, including the stakeholder support and cost considerations of the NEPOOL proposal in making its decision.

83. It is significant that none of the commenters support the approach outlined by ISO-NE and that commenters argue that the "at criteria" assumption is too conservative, especially with the available capacity from the winter peaking Hydro Québec and Maritimes systems.[144] It is also noteworthy that none of the commenters critique the NEPOOL proposal, supporting it for reasons indicated previously, including its interim nature, its consideration of consumer impact, the fact that it represents a broad stakeholder consensus, the limited potential increase in OP 4 actions from adopting it, and the fact that it provides a target date for a revised permanent tie benefits rule. And NEPOOL makes the point that, because both proposals satisfy the relevant reliability criterion, the Commission must consider the inherent policy issues, including the stakeholder support and cost considerations of the NEPOOL proposal, in making its decision.[145] However, for the following reasons we find that the proposed NEPOOL Amendment has the following deficiencies.

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[143] NEPOOL's proposal was supported by a vote of 66.61% at the Participants Committee.

[144] *See, e.g.*, NSTAR Comments at 2; NESCOE Comments at 9.

[145] NEPOOL Supplemental Comments at 7, 9-10.

84. As noted previously, while NEPOOL's proposed tie benefits value may be valid, we find that NEPOOL has failed to demonstrate that fact in this proceeding. In addition to its concerns that the NEPOOL value represents a compromise proposal intended solely to receive stakeholder support, ISO-NE has raised several valid concerns over the origin of this value. For example, ISO-NE contends that the basis for this value was the result of a simulation case of the "LIPA Method" as reflected in a presentation made to the Power Supply Planning Committee. Specifically, ISO-NE states that these cases were developed by ISO-NE in order for LIPA to examine methodologies for allocating tie benefits to individual tie lines. ISO-NE states that NEPOOL provided no basis for selecting the "Case 1" methodology of the five cases presented, each of which reflect an "at criteria" methodology rather than "as is." Further, ISO-NE notes that none of the five cases represented a full calculation methodology and the "Case 1" that NEPOOL supports here was calculated using load forecast and resource availability data for the 2011/2012 rather than the appropriate 2010/2011 Capability Year. As such, ISO-NE contends that the value offered by NEPOOL bears "no relation" to study results that would be applicable to the 2010/2011 Capability Year. Lastly, ISO-NE contends that NEPOOL's application of a 10 percent discount on the tie benefits value to "assuage any ISO-NE concerns"[146] further demonstrates that the resulting figure is arbitrary.

85. NEPOOL contends that its proposal is superior to that offered by ISO-NE since it "is more consistent with the existing section III.12.9 of Market Rule 1" and "preserves the 'as is' method for calculating tie benefits."[147] However, since all of the parties here (and this Commission) agree that this "as is" methodology fails to provide an acceptable tie benefits value (in terms of reliability) for 2010/2011, such a position is not persuasive. Further, it appears that the NEPOOL value is actually derived from the results of a LIPA methodology that employs an "*at criteria*" rather than an "*as is*" assumption.[148] Potentially addressing this issue, Mass AG witness Plett states in his rebuttal testimony that "the proposal is to implement this 2286 MW cap, not use the LIPA methodology."[149] That statement is akin to saying that the value is correct regardless of the supporting methodology. Mr. Plett's statement also appears to directly conflict with NEPOOL's previously stated position to preserve the existing "as is" methodology and leads some credence to ISO-NE's position that the NEPOOL proposal seeks simply to lock in a broadly supported but poorly supported tie benefits cap for the next two capability years.

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[146] ISO-NE Transmittal Letter at 19 (citing Attachment I-1g at 3 (Mass AG, Powerpoint Presentation at Slide 3)).

[147] NEPOOL Transmittal Letter at 9.

[148] ISO-NE Transmittal Letter at 17 and ISO-NE Filing, Wong Test. at 34, 32-38).

[149] NEPOOL Filing, Plett Test. at 5.

86. We also note that ISO-NE raises legitimate concerns over NEPOOL's inherent adoption in the LIPA model of load forecast and resource availability data for the 2011/2012 rather than 2010/2011 capability year. Addressing this point, commenters state that "ISO-NE has not demonstrated that the difference in data between 2011/2012 and 2010/2011 is significant."[150] Further, Mass AG notes that if ISO-NE had concerns over this issue, "it could have assisted in refining the calculation."[151] However, we find that ISO-NE has committed to a remedy to the current situation that is just and reasonable until a revised methodology is developed through the current stakeholder process. While NEPOOL contends that the 10% discount included in their proposal addresses this capability year issue, we find that NEPOOL fails to offer a rigorous analysis to support the discount value or this related assertion.

87. The application of section 11.1.5 of the Participants Agreement, the jump ball provision, demonstrates that the stakeholder process did not ultimately support the ISO-sponsored proposal. In fact, the joint filing provides that the majority of the Participants Committee (66.61 percent) voted in favor of NEPOOL's alternative proposal, adopted from Mass AG's proposal. NEPOOL's proposal may strike a "reasonable balance" between reliability and costs to consumers.[152] However, a proposed tie benefits value, and consequently, the Installed Capacity Requirement and related values, cannot be based on such support alone. We find no merit in Mass AG's argument that "it is telling that the entire End User Sector, the interested parties that ultimately pay more for the cost of additional capacity" voted unanimously to support the NEPOOL proposal.[153] The NEPOOL Amendment supports a relatively higher tie benefits value, reducing the Installed Capacity Requirement and therefore the amount of capacity that is ultimately purchased for the commitment year. Given their obligation to purchase any additional capacity, end-users would not have an incentive to vote against the lower Installed Capacity Requirement established by the NEPOOL proposal. Similarly, we find no support for NEPOOL's proposal in NSTAR's assertion that "the determination of the tie benefits is as much art as it is science."[154]

88. In summary, ISO-NE states, and no party disputes, that application of the "as is" methodology could trigger operational concerns that would have serious, negative

[150] Mass AG Protest at 6.

[151] Mass AG Protest at 7.

[152] Mass AG Protest at 5.

[153] Mass AG Protest at 7.

[154] NSTAR Comments at 5.

implications for reliability. While the NEPOOL proposal may be an improvement on the results from the "as is" methodology, NEPOOL has not adequately justified its proposal. For example, NEPOOL has not demonstrated how its proposal will avoid triggering the operational concerns identified in the testimonies of Mr. Brandien and Mr. Karl as to the "as is" methodology. For periods going forward, we are directing ISO-NE to consider a process to enable analysis of alternative proposals in a future market rule amendment. Further, as discussed above, we are directing ISO-NE to implement NEPOOL's proposed two-year sunset provision such that ISO-NE must employ a stakeholder process to address revising the tie benefit methodology applicable to the third reconfiguration auction for the 2012/2013 commitment period.

89. Accordingly, we will accept ISO-NE's proposed Installed Capacity Requirement and related values for use in the final FCM reconfiguration auction and the related proposed market rule change, subject to a condition, as just and reasonable and preferable.

D. Proration Issue

90. Consistent with their position in other proceedings, the PSEG Companies contend that, despite the reduction in the Local Sourcing Requirement in Connecticut for the 2010/2011 commitment period, PSEG and other companies supplying capacity in the Connecticut Zone have been prevented from prorating any megawatts associated with their resources. The PSEG Companies state that they have extensively discussed their concerns about this issue in comments in Docket ER10-186 addressing the results of ISO-NE's FCA for the third capacity auction, currently pending before the Commission. We note that this issue is pending in the current FCM Working Group stakeholder discussions (subject to a February 2010 filing with the Commission). In addition, the inability to prorate megawatts due to reliability concerns previously has been addressed by the Commission[155] and will be addressed for the third FCM commitment period should ISO-NE determine that resources in the NEMA/Boston Capacity Zone will be unable to prorate their megawatts.

The Commission orders:

(A) ISO-NE's proposed Installed Capacity Requirement, HQICCs, related values, and related tariff changes are hereby accepted, subject to condition, as discussed in the body of this order, effective on the sixty-first day after the date of submission, as requested.

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[155] *ISO New England Inc.*, 123 FERC ¶ 61,290 (2008).

(B) ISO-NE is hereby directed to submit a compliance filing within 30 days of the date of the issuance of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.