

125 FERC ¶ 61,355
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

ISO New England Inc. and New England
Power Pool

Docket No. ER09-209-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued December 23, 2008)

1. In this order, the Commission accepts a filing by ISO New England, Inc. (ISO-NE) and the New England Power Pool (NEPOOL) Participants Committee (collectively, the Filing Parties) to eliminate the Reserve Margin Gross-Up for demand resources from ISO-NE's market rules regarding the Forward Capacity Market.

I. Background

A. Installed Capacity Requirement

2. ISO-NE has recently implemented a forward market for capacity, pursuant to which capacity resources (both generators and demand resources) compete to provide capacity to New England, on a three-year-forward basis, by participating in an annual Forward Capacity Auction. The first Forward Capacity Auction was held in February 2008 to procure capacity for the 2010/2011 deliverability year. The second Forward Capacity Auction was recently held to procure capacity for the 2011/2012 deliverability year.

3. To determine the amount of capacity that it must procure in the Forward Capacity Auction for each deliverability year, ISO-NE determines an annual Installed Capacity Requirement (ICR). The ICR is calculated using a statistical model of the New England power system that reflects *inter alia* the capacity value and expected availability of the existing resources in the region. As detailed in section III.12 of Market Rule 1, this statistical model is used to calculate the amount of capacity that is needed to ensure that the probability of disconnecting firm load in the New England bulk power system for a given year will meet the applicable reliability standard (i.e., no more than 0.1 disconnects

per year or a one-day-in-ten-years standard).¹ Thus, in order to meet the reliability requirement for the region, ISO-NE must procure a capacity amount equal to ICR for each year.

B. Reserve Margin Gross-up

4. Each resource that provides capacity to the New England system is given a capacity value by ISO-NE. For the first two deliverability years of the Forward Capacity Market, ISO-NE has increased the capacity value of demand resources (demand reduction value) by a reserve margin factor, the Reserve Margin Gross-up.

5. The purpose of the Reserve Margin Gross-Up is to reflect the amount of extra system capacity (or reserves) that would not be needed if the system peak load could be reduced with certainty by a perfectly available resource. Historically, vertically-integrated utilities employed the reserve-margin factor when making cost-benefit analyses, to determine whether to implement demand-side management programs or to invest in generation resources to meet customer demand. Utilities utilized the principle that the benefit of reducing each megawatt of system peak load would avoid not only the construction of an equivalent amount of generation capacity, but also the generation reserve margin for that megawatt that the system must procure to address the imperfect availability of generation resources.²

¹ See testimony of Dr. Robert Ethier, Vice President of Market Development, ISO-NE, Attachment 3 to Transmittal Letter, October 31 filing (Ethier Testimony) at 10:

The primary inputs to the model are the capacity values (size in MW) of each resource (including generation resources, demand resources, imports, and load and/or capacity relief from [emergency actions]) expected to provide capacity in the year being modeled, the expected availability of each resource, and a forecast weekly load distribution for the year being modeled. Given those inputs, the statistical model calculates the probability of disconnecting firm load in the New England bulk power system in that year.

² As an example, assume that ISO-NE forecasts a need for ten MW of new capacity. If it procures only generating capacity, it will have to procure not only that 10 MW, but also an additional 1.5 MW of reserve capacity. If, however, ISO-NE can depend on a "perfectly available" resource, such as a demand resource that will (in theory) always be able to reduce its consumption by the needed 10 MW, ISO-NE also will not need to procure that additional 1.5 MW of reserve capacity. Thus, that 10 MW of demand reduction is considered to be able to replace 11.5 MW of generating capacity, and is compensated accordingly.

6. As currently provided in section III.13.7.1.5.1 of Market Rule 1 of ISO-NE's tariff, the reserve-margin factor is calculated by dividing the ICR for the New England region by the summer peak load forecast for the region.³ At present, the reserve-margin factor is approximately 1.15, or 15 percent above system peak load. Thus, use of a Reserve Margin Gross-Up of 15 percent results in a demand resource with a Demand Reduction Value (i.e., the amount of generation the demand resource can replace) of 1.00 MW receiving a capacity credit of 1.15 MW. In this way, a demand resource that provides 1.00 MW of demand response is compensated in the Forward Capacity Market as if it were providing 1.15 MW of capacity, in order to reflect the greater benefit that a highly-available resource provides to the system.

C. The Instant Filing

7. On October 31, 2008, the Filing Parties filed tariff changes with the Commission seeking to revise Market Rule 1 to eliminate the Reserve Margin Gross-Up that is applied to determine the capacity value of demand resources under the existing rules of the Forward Capacity Market. The filed changes would eliminate the Reserve Margin Gross-Up starting with the 2012/2013 year, which is associated with the third Forward Capacity Auction, to be held in 2009. The Filing Parties state:

[T]he elimination of the Reserve Margin Gross-Up will ensure that the Installed Capacity Requirement that is purchased in a primary Forward Capacity Auction better reflects the full amount of capacity that is expected to be needed to meet the New England region's reliability requirements. In addition, elimination of the Reserve Margin Gross-Up will result in lower costs to electricity consumers and more comparable treatment of the different types of resources that participate in the Forward Capacity Market (i.e., demand resources and generation resources).⁴

1. Reason to Eliminate the Reserve Margin Gross-Up

8. The Filing Parties state that the central reason for the elimination of the Reserve Margin Gross-Up is that, although each Forward Capacity Auction purchases the established ICR, the use of the Reserve Margin Gross-Up likely results in a failure to procure sufficient capacity through the Forward Capacity Auction to satisfy the requisite reliability standard. This is due to the fact that the assumed greater availability of

³ Ethier Testimony at 6.

⁴ Transmittal Letter at 5.

demand resources (compared to generation) is taken into account in both the ICR determination and in the Forward Capacity Auction – thus, it is "double counted."

9. ISO-NE states that, when it determines the ICR for each deliverability year (which occurs prior to the Reserve Margin Gross-Up determination), it takes into account historical resource availability, and those resource availability determinations affect the amount of ICR (i.e., if New England's resource mix includes a significant amount of resources with assumed high availability, such as demand resources, the ICR will be lower than would be the case if the resource mix included an equivalent amount of low-availability resources). ISO-NE provides the following examples:

To illustrate the impact of resource availability on ICR, the ISO has calculated ICR under a variety of scenarios for illustrative purposes Under the reference scenario, ICR was computed assuming that there were no demand resources providing capacity to the electric system and that the generation resources providing capacity to the system perform at their historic availabilities. Under the reference scenario, ICR was computed to be 33,280 MW. In an alternative scenario, 2,384 MW of generation capacity was replaced with an equal amount of demand resources at an assumed availability of 100% (which exceeds the historic availability factors of generation resources). By substituting one set of resources with another set of higher availability resources, this alternative scenario resulted in an ICR of 33,044 MW, which is 236 MW lower than the ICR value under the reference scenario.⁵

Thus, the calculation of the ICR for each deliverability year already takes into account the greater availability of some demand resources, and factors that quality into the total amount of capacity (the ICR) that ISO-NE must procure for each year.

10. In addition, when the Reserve Margin Gross-Up factor is applied to the demand reduction value of demand resources that participate in the Forward Capacity Market, those demand resources receive additional capacity credits in the Forward Capacity Market to reflect their assumed greater-than-average availability. Thus, a demand resource will be given a higher (grossed-up) capacity rating in the Forward Capacity Market than it was given in the ICR analysis. As a result, the Filing Parties assert ISO-NE will not procure enough capacity through the Forward Capacity Market to satisfy the 0.1 disconnect/year reliability standard. As an example, the Filing Parties note that if 2000 MW of demand resources receive a Reserve Margin Gross-Up of 15 percent (300

⁵ Ethier Testimony at 12-13.

MW), and all of these demand resources clear in the FCA, the New England region will have under-procured capacity by 300 MW, resulting in the New England region's failure to meet the applicable resource adequacy reliability standard.⁶

11. Thus, the Filing Parties state, the current methodology in essence double-counts the value of the avoided reserve margin that demand resources provide; once in the ICR determination and then again in the Forward Capacity Market. The Filing Parties state that they are concerned that if demand resources clear in the Forward Capacity Auction with the Reserve Margin Gross-Up applied, the region will under-procure the ICR, and capacity will need to be recovered in later reconfiguration auctions.

2. Related Issues

12. The Filing Parties state that they have considered and rejected another possible solution, namely, to increase the ICR and the corresponding amount of capacity purchased through the Forward Capacity Auction. The Filing Parties state that "if it were anticipated that 2,300 MW of demand resources would clear the Forward Capacity Auction – representing 2,000 MW of Demand Reduction Value and 300 MW of Reserve Margin Gross-Up at 15 % – the New England region could meet the applicable resource adequacy reliability standard by increasing the Installed Capacity Requirement by 300 MW." They further state, however, that this method would increase the amount of capacity purchased through the Forward Capacity Auction by 300 MW, which ultimately increases the costs charged to electricity consumers, and that they therefore rejected this solution. In addition, they note that since it will not be known at the time that the ICR analysis is performed which Demand Resources will clear in the Forward Capacity Auction, there is no way of accurately forecasting the required ICR increase necessary to account for the gross-up applied to the Demand Resources.

13. The Filing Parties further note that "the blanket application of the Reserve Margin Gross-Up to all demand resources regardless of their actual availability" does not treat other resources on a comparable basis. Since the ability of any resource to decrease the

⁶ *See id.* at 16:

[I]f 2000 MW of demand resources clear, 300 MW of non-demand resources would be required to account for the gross-up, while if 2500 MW of demand resources clear, 375 MW of non-demand resources would be required to account for the gross-up. Because there is no way in advance of the [Forward Capacity Auction] to know how many demand resources will clear, there is no way to ensure that the right amount is purchased in the [Forward Capacity Auction] to account for the gross-up.

ICR is a function of availability rather than resource type, and some individual generation resources and imports also have relatively high availability based on historical performance, the Filing Parties state that if the application of the Reserve Margin Gross-Up were appropriate, it should be applied to all types of resources. They contend that applying the Reserve Margin Gross-Up only to demand resources, as is currently the case, gives demand resources a competitive advantage over other types of highly available resources in the Forward Capacity Market. Further, the Filing Parties state that the application of the Reserve Margin Gross-Up is inappropriate since the Forward Capacity Market already incorporates performance provisions that adjust the capacity payments for all types of resources based on their actual performance, and therefore, it is redundant to provide a separate incentive to demand resources. Last, the Filing Parties state that there is no basis for demand resources to be treated differently for purposes of applying the Reserve Margin Gross-Up simply because demand resources reduce load when dispatched, rather than increasing supply:

As explained by Dr. Ethier, the ISO performed several reliability modeling runs to compare how load reductions and supply increases affect the calculation of the Installed Capacity Requirement. The modeling results showed that two equally sized capacity resources with the same availability characteristics - one that reduces load and another that increases supply – essentially result in the same Installed Capacity Requirement.⁷

14. The Filing Parties state that they are proposing to defer the elimination of the Reserve Margin Gross-Up until the third Forward Capacity Auction, which will procure capacity for the 2012/2013 deliverability year, on the basis that the first Forward Capacity Auction has already been held and the qualification process for the second Forward Capacity Auction is complete. As such, for these two auctions, demand resources would have relied on the existing rules in choosing whether or not to participate in the auction. The Filing Parties state that making the elimination of the Reserve Margin Gross-Up effective for earlier periods would be disruptive to the market by introducing uncertainty as to the finality of those auctions, and also introducing the risk that expected capacity market revenues might change significantly after auction participants incurred capacity supply obligations through the first two Forward Capacity Auctions. The Filing Parties assert that this change in supply obligations and expected revenues, in turn, could lead to costly litigation for the system. Further, the Filing Parties explain that any additional capacity that must be procured for the 2010/2011 and 2011/2012 Capacity

⁷ Transmittal Letter at 7, citing Ethier Testimony at 19-20.

Commitment periods to address the gross-up issue will be procured through one of the annual reconfiguration auctions.⁸

15. The Filing Parties state that NEPOOL's Markets Committee, by a vote of 67.68 percent, recommended that the NEPOOL Participants Committee support the market rule revisions to eliminate the Reserve Margin Gross-Up. The Participants Committee accepted that recommendation by a vote of 71.46 percent at its October 10, 2008 meeting.⁹

3. Effective Date

16. The Filing Parties request an effective date for this tariff change of December 31, 2008.

D. Notice of Filings

17. Notice of the filing was published in the *Federal Register*, with motions to intervene, notices of intervention, comments and protests due on or before November 21, 2008.¹⁰ EnerNOC, NRG Companies, Exelon, Northeast Utilities Service Company, the Mirant Parties and Dynegy filed timely motions to intervene. The Massachusetts Department of Public Utilities filed a notice of intervention.

18. Ameresco CT LLC (Ameresco) filed a timely motion to intervene and protest. EnerNOC filed a motion to intervene out of time and protest.

19. ISO-NE and NEPOOL filed answers to the protests.

⁸ Of note, the Filing Parties explain that preliminary calculations show that the ICR for the 2010/2011 reconfiguration auction will be 333 MW less than the ICR used for the first FCA for the same period. This difference exceeds the gross-up value for Demand Resources in the first FCA, indicating that no incremental purchases may be needed in the upcoming reconfiguration auction.

⁹ Additionally, NEPOOL considered but did not support three amendments introduced by market participants to either: (i) postpone the elimination of the Reserve Margin Gross-Up for another two years and implement, for the interim period, a reduced Reserve Margin Gross-Up; (ii) eliminate the Reserve Margin Gross-Up for the 2011/2012 year; or (iii) increase the ICR for the 2011/2012 year. See Transmittal Letter at 9.

¹⁰ 73 Fed. Reg. 67,497 (2008).

II. Discussion

A. Procedural issues

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2008)), the notice of intervention and the timely-filed unopposed motions to intervene serve to make the entities filing them parties to this proceeding. EnerNoc's motion to intervene out-of-time is granted, given the early stage of the proceeding, the party's interest and the absence of undue prejudice or delay.

21. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers filed by ISO-NE and NEPOOL because they have provided information that has assisted us in our decision-making process.

B. Analysis

1. Issues Raised by Protesters

22. Ameresco states that eliminating the Reserve Margin Gross-Up means that a demand resource will receive less revenue, and demand reduction will be less economically appealing. Ameresco argues that this is a significant policy change for ISO-NE and the Commission, and that the Reserve Margin Gross-Up is simply one of many parts associated with the implementation of both Market Rule 1 and a state demand-response program. According to Ameresco, a "one-off" modification to the result of the Forward Capacity Market settlement process was not contemplated, and disrupts the market mechanisms created by the settlement. Ameresco states that, like other market participants, its business plan relies in part on its expectation that the Reserve Margin Gross-Up would be applied to determine the capacity value of demand resources in ISO-NE's Forward Capacity Market. Ameresco notes that the filing acknowledges that elimination of the Reserve Margin Gross-Up for years in which ISO-NE's auction processes have already commenced would be disruptive and could ultimately lead to higher electricity prices, but that ISO-NE does not explain why, as of 2012-2013, those concerns vanish.

23. Ameresco explains that there are two types of demand resources: (1) demand reductions that result from the operation of controls or from demand resources that are otherwise dispatched; and (2) demand reductions from energy efficiency resources. Ameresco does not take a position at this time as to the elimination of the Reserve Margin Gross-Up for demand resources that are dispatched, although Ameresco states that there are times when a demand resource may fail to function as a dispatched resource. However, Ameresco argues that when an energy efficiency resource provides demand response by installing new equipment (for instance, when a 100-watt fixture is

replaced by a 30-watt fixture), that energy efficiency resource cannot return to the original usage without incurring costs; thus, Ameresco asserts, with the installation of more energy efficient equipment, the customer load, as well as ISO-NE's requirement for reserve margin, are reduced on a permanent basis. Thus, Ameresco argues that the Reserve Margin Gross-Up that is applied to determine the Capacity Value of demand resources for energy efficiency resources that permanently reduce the system load should not be eliminated.

24. Ameresco states that it cannot determine with precision exactly what the economic effect of the filing will be because ISO-NE and NEPOOL have not attempted to satisfy the requirements of 18 C.F.R. § 35.13(c)(1)(2008), which would require the provision of information as to the effects of the rate change; rather, the Filing Parties have indicated that the filing does not propose the modification of a traditional rate and claim that the requirements do not apply. Ameresco argues that without this information, the Commission will not be able to determine whether the filing is just and reasonable.

25. Finally, Ameresco asserts that if the Commission does accept the filing, market participants should be given the option to build more capacity for the 2012/2013 period, to replace the capacity lost by the elimination of the Reserve Margin Gross-Up, without having to go through the process of submitting a show of interest and qualification statement for the third Forward Capacity Auction. Ameresco states that this is a critical issue which may require further filings by ISO-NE and NEPOOL, since the deadline for submitting a show of interest form for the third Forward Capacity Auction has passed, and thus a demand resource could not make up its unexpected shortfall absent this option. Ameresco further states that, if ISO-NE does not permit some market participants to replace the capacity lost by the elimination of the Reserve Margin Gross-Up with new capacity, those participants may potentially fail to deliver already-promised capacity to ISO-NE.

26. In response to Ameresco's arguments, NEPOOL states that Ameresco chose not to participate in the stakeholder process leading to the filing of these tariff revisions. It also states, with regard to the relief requested by Ameresco as to an extension of time to enter more capacity in the third Forward Capacity Auction, that "[t]hese proposed changes might individually or together be adjustments that fall within a zone of reasonable outcomes, . . . [but] because Ameresco failed to participate in the NEPOOL stakeholder process, its request was not considered as a refinement to the [tariff revisions proposed by ISO-NE] and is not before the Commission as part of this filing."¹¹

27. EnerNOC, in its protest, states that, until such time ISO-NE revises or supplements its filing to bring it in line with the Commission's regulations, the Commission should reject the ISO-NE filing as deficient, or, in the alternative, if the

¹¹ NEPOOL answer at 10.

Commission decides to accept the filing, suspend the rate for the maximum allowable period, require ISO-NE to supplement its filing, and convene a technical conference. EnerNOC states that ISO-NE has failed to meet its burden that its filing is just and reasonable because the filing seeks significant changes to the value placed on demand resources in the Forward Capacity Market without providing the Commission with essential information regarding the impact of such changes. Regarding the Commission's regulations for supporting data, EnerNOC argues that ISO-NE seeks the benefit of the standard of review historically allowed by the Commission for rate filings without undertaking the obligations required by the Commission's regulations for such a filing. EnerNOC explains that ISO-NE implicitly concedes that it is subject to such reporting regulations as it affirmatively seeks a waiver of section 35.13 to avoid such filing requirements. EnerNOC also asserts that "if ISO-NE had compiled and submitted the data in the manner required by Commission regulations as set forth herein, such data may reveal unduly discriminatory and/or preferential treatment of other resources as a result of the elimination of the reserve margin gross-up for Demand Resources," noting that ISO-NE proposes to continue to apply a Reserve Margin Gross-Up for some existing import resources after such gross-up is eliminated for Demand Resources.¹² Therefore, EnerNOC argues that, given the need for additional information, the Commission should require ISO-NE to provide such information to the parties and to the Commission.

28. EnerNOC states that ISO-NE's filing is also unjust and unreasonable because it fails to explain how its proposal comports with the provisions of the Forward Capacity Market Settlement Agreement.¹³ EnerNOC asserts that additional information is required because, at its core, ISO-NE's filing represents a fundamental change in the Settlement Agreement and the market design established therein – which includes the Reserve Margin Gross-Up at issue here. EnerNOC states that, given the Settlement Agreement, the Filing Parties should have addressed: (i) the consistency between the elimination of the Reserve Margin Gross-Up and the Settlement Agreement; (ii) the need to ensure adequate compensation for capacity resources including demand resources; and (iii) the effect of the rule change on reliability and market price signals, among other issues.

29. EnerNOC asserts that the Commission is without sufficient data with which to find that the ISO-NE filing is just and reasonable. EnerNOC states that ISO-NE's filing does not provide sufficient details regarding the effect of the proposed elimination of the Reserve Margin Gross-Up on post-implementation system reliability, system wide resource adequacy, and specific system-wide cost impacts. According to EnerNOC,

¹² EnerNOC protest at 10 n.5.

¹³ EnerNOC cites generally to the Explanatory Statement in Support of Settlement Agreement of the Settling Parties and Request for Expedited Consideration and Settlement Agreement Resolving All Issues, *Devon Power, LLC* (2006) (Docket Nos. ER03-563, *et al.*) (Explanatory Statement).

neither ISO-NE's filing nor the supporting testimony of Dr. Ethier, examines how the elimination of the Reserve Margin Gross-Up will impact the benefits of demand resources on the ISO-NE market going forward. EnerNOC argues that ISO-NE should be required to present an analysis and evaluation that will specifically address the effects of the proposed changes on the ISO-NE market and ISO-NE's existing rate, specifically with respect to system-wide reliability, resource adequacy, and cost.

30. In their answers, ISO-NE and NEPOOL state that the filing, including Dr. Ethier's testimony, contains all the information necessary for the Commission to determine that it is just and reasonable. NEPOOL additionally states that the requirements applied to rates like those at issue here should be distinguished from the Commission's requirements for cost-based rates:

Section 35.13 . . . is set up specifically to address cost-of-service rates, not market-based rates like those attendant to FCM. The Commission has implicitly recognized this critical distinguishing factor in its actions on all other changes to New England's wholesale market rules. When presenting to the Commission changes in formulas and rules that transform bids into clearing prices, the ISO-NE and NEPOOL have consistently undertaken to explain the changes in detail and the reasons and rationale for those changes, and the Commission has never required nor requested the detailed tables and statements contemplated by its Regulations for cost-of-service rate filings.¹⁴

31. ISO-NE further notes that, as to certain import contracts from New York still receiving a Reserve Margin Gross-up, to which it believes EnerNOC is referring, ISO-NE intends to eliminate the Reserve Margin Gross-Up for those import contracts as well, also for the 2012-2013 Forward Capacity Auction, and is currently discussing this matter with its stakeholders. With regard to the Filing Parties' request for a waiver of the requirement to provide information related to calculating "sales and services and revenues,"¹⁵ ISO-NE states that "there is no clearly identifiable means to calculating overall 'sales and services and revenues' prior to and after the elimination of the reserve margin gross-up, especially where this calculation depends on the outcome of resource qualification processes and Forward Capacity Auctions that have yet to be conducted."¹⁶ ISO-NE and NEPOOL also state that elimination of the Reserve Margin Gross-Up is not prohibited by the Forward

¹⁴ NEPOOL answer at 6, footnotes omitted.

¹⁵ 18 C.F.R. § 35.13(c)(1)(2008).

¹⁶ ISO-NE answer at 7, footnote omitted.

Capacity Market Settlement Agreement, since nothing in that agreement requires a Reserve Gross-Up Margin.

32. ISO-NE further stresses that neither Ameresco nor EnerNOC have addressed the Filing Parties' reasons for filing these tariff revisions – namely, the need to ensure that the ICR is fully procured during the Forward Capacity Auction and that resources providing comparable levels of availability are compensated comparably.

2. Commission Determination

33. The Commission will accept the Filing Parties' proposed tariff sheets effective December 31, 2008, as requested. The ICR is based in part on the availability ratings of resources expected to provide capacity in the related Capacity Commitment Period (including the assumption that demand resources can always provide firm load reduction), while the Reserve Margin Gross-Up provides that a firm load reduction will reduce the required ICR by more than the load reduction amount.¹⁷ However, as explained by the Filing Parties, the use of the current Reserve Margin Gross-Up has the potential to harm New England because it can lead to under-procurement of resources in the Forward Capacity Auction. Neither Ameresco nor EnerNOC has provided any evidence to suggest otherwise. Importantly, neither Ameresco nor EnerNOC addresses the underlying basis for the Filing Parties' proposal – the fact that allowing the continued use of the gross-up will likely result in a failure to satisfy the 0.1 disconnects/year reliability requirement. Additionally, the existing rules, even without the Reserve Margin Gross-Up, will typically provide more capacity revenues to resources that are highly available than to resources that have lower availabilities.¹⁸ These rules will provide such incentives for high availability on a non-discriminatory basis to all resources, regardless of type. Therefore, we will accept the proposal to eliminate the Reserve Margin Gross-Up.

34. We also find that initiating the elimination of the Reserve Margin Gross-Up with the 2012/2013 Capacity Commitment Period is reasonable. We agree with the Filing Parties that the first and second Forward Capacity Auctions may ultimately under-procure capacity for those periods, but also that there is not adequate time for ISO-NE to eliminate the Reserve Margin Gross-Up for the second Forward Capacity Auction on December 8, 2008. As we have maintained in response to other filings, ISO-NE has the authority to procure any additional required capacity through one of the annual

¹⁷Under ISO-NE's calculation of the ICR, the ability of any resource to decrease the ICR is a function of its availability, not of resource type.

¹⁸ A capacity resource will have its capacity payment reduced to the extent that the resource is unavailable during shortage events or event days.

reconfiguration auctions as necessary.¹⁹ As an added measure, ISO-NE is allowing those Project Sponsors that elected to have the Capacity Supply Obligation and Capacity Clearing Price for demand resources apply for more than one year to maintain the Reserve Margin Gross-Up treatment for those resources until the expiration of the multi-year commitment period. Thus, the phased elimination of the Reserve Margin Gross-Up is reasonable.

35. The Filing Parties note that section 35.13 of the Commission's regulations²⁰ generally requires public utilities to file certain information related to rate changes. The Filing Parties argue that their proposed market rule changes do not modify a traditional "rate" and that they are not traditional investor-owned utilities, and seek a waiver of those requirements on that basis. Ameresco and EnerNOC suggest that by seeking the waiver, the Filing Parties acknowledge that they have failed to provide sufficient data for the Commission to determine whether the proposal is just and reasonable, including whether the benefits associated with demand resources will be maintained. We disagree that the Filing Parties have failed to provide sufficient information to show that the proposal is just and reasonable: procuring the correct amount of capacity in the Forward Capacity Auction to maintain reliability is a critical requirement of ISO-NE's management of the system, and the Filing Parties have convincingly demonstrated that use of the Reserve Margin Gross-Up might cause ISO-NE not to meet that requirement in the Forward Capacity Auction for each commitment period. We find that the Filing Parties have quantified the effect of the elimination of the Reserve Margin Gross-Up on the demand reduction value of demand resources. However, the projected revenue impact associated with the elimination of the Reserve Margin Gross-Up will not be known until the auction results for the 2012-2013 deliverability year are available. Further, addressing the concern of future adequate incentives for demand resources, we have noted above that the Forward Capacity Market rules otherwise provide sufficient incentives by rewarding actual performance.

36. Ameresco contends in its protest that unlike a dispatchable demand resource which may not operate when needed, an energy efficiency resource can only return to its original energy usage by incurring costs. As such, Ameresco contends that because energy efficient resources reduce load and thus the reserve margin, they should retain the Reserve Margin Gross-Up. Anticipating this point in their proposal, the Filing Parties contend that in order to generate sufficient revenue to pay a gross-up to any resource type, the ICR would need to be increased, raising costs to consumers. Further, the Filing Parties argue that increasing the ICR does not address the issue of treating resources with

¹⁹ See *ISO New England Inc.*, 125 FERC ¶ 61,154, at P 41 (2008).

²⁰ 18 C.F.R. § 35.13 (2008).

similar availability characteristics on a comparable basis.²¹ Importantly, Ameresco's request does not address the fact that the assumed high availability of an energy efficiency resource (which reduces the ICR) in concert with a continued Reserve Margin Gross-Up for these resources simply prolongs the issue (albeit on a reduced scale) that the instant filing seeks to address – the double counting of demand resource availability which can lead to a failure to satisfy the 0.1 disconnects/year reliability requirement. Moreover, we note that under Ameresco's proposal, other non-energy efficiency capacity resources (including other types of demand resources) with high availability would not be eligible for equivalent compensation.

37. Ameresco also argues that its business plan relies in part on an expectation that the Reserve Margin Gross-Up would continue, and that a "one-off" modification to the Forward Capacity Market Settlement Agreement was not contemplated. Similarly, EnerNOC contends that the instant proposal is unjust and unreasonable since the Filing Parties fail to explain how the proposal is in accordance with the Forward Capacity Market Settlement Agreement, including adequate compensation for demand resources. Neither Ameresco nor EnerNoc has alleged a violation of the Forward Capacity Market Settlement Agreement or ISO-NE's market rules, nor could they do so: all parties were aware that, after a period during which parties waived their rights to seek changes to the Settlement's provisions or the related market rules, any party (including ISO-NE and NEPOOL) could seek to make such changes.²² Moreover, as noted above, the likely failure to procure the necessary capacity in the Forward Capacity Auction for each commitment period to satisfy reliability requirements under the current gross-up methodology is a significant concern and could result in a failure to satisfy the 0.1 disconnects per year requirement. The Filing Parties (and the Commission) cannot refrain from addressing this problem on the basis that complex negotiations were necessary to arrive at the Forward Capacity Market Settlement Agreement.

38. As we are accepting the filing, we address Ameresco's concerns regarding the possibility of building more capacity for the 2012-2013 deliverability year to replace any lost capacity from the elimination of the Reserve Margin Gross-Up. Because the deadline for submitting a show of interest form for the third Forward Capacity Auction has passed, Ameresco contends that market participants should be allowed to replace the

²¹ Ethier Testimony at 21.

²² Section 4.A of the Settlement Agreement provides that, throughout a "Waiver Period" (ending on the earlier of September 5, 2008 or the date on which the prices from the second Forward Capacity Auction become final) parties waive their rights to seek to modify the terms of the Settlement Agreement or the market rules adopted by FERC to implement the Forward Capacity Market. The settling parties have stated that "[a]fter the Waiver Period, all Settling Parties have their rights provided by law to seek changes" (Explanatory Statement at 20).

lost capacity without having to submit a show of interest form or qualification statement. Ameresco claims that this is a critical issue, since some market participants could fail to deliver already-promised capacity if ISO-NE does not allow for replacement of the lost capacity. We reject Ameresco's request as it fails to establish a basis for the requested treatment. The capacity qualification of demand resources for the Forward Capacity Auction occurs prior to the determination of any Reserve Margin Gross-Up. As such, the qualified capacity from demand resources should not include a Reserve Margin Gross-Up. Rather, it appears that Ameresco is seeking a method to replace lost revenues from the elimination of the Reserve Margin Gross-Up. In addition, we note that Ameresco has failed to demonstrate that ISO-NE prevented the consideration of any additional capacity that market participants originally sought to qualify for the 2012/2013 deliverability year, such that the removal of the Reserve Margin Gross-Up should allow for its automatic inclusion.

39. Last, addressing EnerNOC's request for a maximum suspension and a technical conference, we do not find sufficient reason for either. There are no material issues of fact in dispute – as we discussed previously, neither protesting party even contests the rationale for the filing. In addition, the Commission does not require supplemental information from the Filing Parties, such as EnerNOC contends would be provided in a technical conference, to rule on the filing.

The Commission orders:

The Filing Parties' proposed tariff sheets are hereby accepted and made effective December 31, 2008, as requested.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.