

126 FERC ¶ 61,080  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

ISO New England Inc.  
New England Power Pool

Docket Nos. ER04-432-006  
ER04-433-006  
ER07-546-013  
ER07-547-003  
ER09-237-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued January 30, 2009)

1. On October 31, 2008, pursuant to section 205 of the Federal Power Act,<sup>1</sup> ISO New England Inc. (ISO-NE), the Participating Transmission Owners Administrative Committee, on behalf of the Participating Transmission Owners, and the New England Power Pool (NEPOOL) Participants Committee (collectively, the “Filing Parties”) submitted proposed revisions to schedules 22 and 23 of the ISO-NE Open Access Transmission Tariff (OATT). The Filing Parties propose to revise the ISO-NE OATT to resolve issues related to the relationship between the Forward Capacity Market and the generator interconnection procedures set forth in schedules 22 and 23 of the ISO-NE OATT. In this order, we accept the Filing Parties’ proposed revisions to the ISO-NE OATT, effective February 1, 2009, as requested.

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<sup>1</sup> 16 U.S.C. § 824d (2006).

## I. Background

### Order No. 2003

2. In Order No. 2003,<sup>2</sup> pursuant to its responsibility under sections 205 and 206 of the Federal Power Act<sup>3</sup> to remedy undue discrimination, the Commission required all public utilities that own, control or operate facilities for transmitting electric energy in interstate commerce to append to their OATTs *pro forma* Large Generator Interconnection Procedures and a *pro forma* Large Generator Interconnection Agreement. Among their terms, the *pro forma* Large Generator Interconnection Procedures and *pro forma* Large Generator Interconnection Agreement require transmission providers to offer interconnection customers two levels of interconnection service: Energy Resource Interconnection Service and Network Resource Interconnection Service.<sup>4</sup> Energy Resource Interconnection Service is a basic level of interconnection services that allows the interconnection customer to connect its generating facility to the transmission system and be eligible to deliver its output using the existing firm or non-firm capacity of the transmission system on an “as available” basis. If an interconnection customer chooses this level of service, its output may not be deliverable to the purchasing load because of capacity constraints on the transmission grid. By contrast, Network Resource Interconnection Service requires the transmission provider to undertake the interconnection studies and network upgrades needed to integrate the generating facility into the transmission system in a manner comparable to that in which the transmission provider integrates its own generators to serve native load customers.

3. Order No. 2003 also established a first-come, first-served queuing practice for interconnection requests. Under this practice, material modifications to an interconnection request will result in loss of interconnection queue position. A customer can also make multiple interconnection requests for the same basic project if, for each request, it meets the requirements for submitting and maintaining a valid interconnection request. These requests are then processed and allocated costs on a first-come,

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<sup>2</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh’g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh’g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh’g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *affirmed sub nom. Nat’l Ass’n of Regulatory Util. Comm’rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

<sup>3</sup> 16 U.S.C. §§ 824d, 824e (2006).

<sup>4</sup> Capitalized terms not otherwise defined have the meanings ascribed to them in the *pro forma* interconnection procedures and agreement.

first-served basis. The Commission allows for some flexibility in the first-come, first-served approach when a Transmission Provider performs a single system impact study for a group or cluster of interconnection requests.

4. The Commission also determined, in Order No. 2003, that it would be appropriate to grant RTOs and ISOs greater flexibility than other transmission providers to propose variations to the *pro forma* interconnection provisions thereby allowing RTOs and ISOs to customize their interconnection procedures and agreements to meet regional needs. If an RTO or ISO wishes to implement a variation from the *pro forma* procedures and agreements established in Order No. 2003, it must satisfy the “independent entity variation” standard. To do so, the RTO or ISO must demonstrate that the proposed variations do not provide an unwarranted opportunity for undue discrimination or produce an interconnection process that is unjust and unreasonable.<sup>5</sup>

5. On November 8, 2004, the Commission accepted in part, NEPOOL’s compliance filing to Order No. 2003, including its *pro forma* interconnection procedures and agreement.<sup>6</sup> NEPOOL’s proposal included variations from the Commission’s standard *pro forma* interconnection procedures and agreement. Accordingly, the Commission evaluated NEPOOL’s filing under the independent entity variation standard.<sup>7</sup> Unlike the standard *pro forma* interconnection procedures and agreement, NEPOOL’s proposal included a single interconnection service subject to the Minimum Interconnection Standard that had already been in place in New England. The Minimum Interconnection Standard offers interconnection customers market benefits that are equivalent to the Network Resource Interconnection Service while requiring minimal upgrade obligations more similar to those required by the Energy Resource Interconnection Service. Thus, the single level of service allows all generator interconnection customers to participate in the market with full market rights, including eligibility for installed capacity credits, without requiring them to demonstrate that their output was deliverable to the purchasing load.

6. The Commission expressed concern that it may not be just and reasonable for a generator in one location to sell its capacity as an installed capacity resource to, and receive installed capacity payments from, a load in another location if the generator’s output is not deliverable to the purchasing load.<sup>8</sup> Accordingly, the Commission directed

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<sup>5</sup> *PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,025, at P 7 (2004).

<sup>6</sup> *New England Power Pool*, 109 FERC ¶ 61,155 (2004) (*November 2004 Order*).

<sup>7</sup> *Id.* P 4.

<sup>8</sup> *Id.* P 43.

ISO-NE to implement a mechanism by January 1, 2006, that would ensure generators meet an intra-zonal deliverability test in order to qualify as an installed capacity resource.<sup>9</sup> The Commission intended that this mechanism would complement the locational installed capacity mechanism proposed by ISO-NE to address resource adequacy including deliverability. The Commission granted several extensions of time as the development of locational installed capacity mechanism evolved into a forward capacity market design.

### **The Forward Capacity Market and the Interconnection Queue**

7. On June 16, 2006, the Commission approved a contested settlement accepting a proposal by ISO-NE to create the Forward Capacity Market.<sup>10</sup> To implement the Forward Capacity Market, ISO-NE conducts an annual auction to procure capacity equal to the Installed Capacity Requirements for New England.<sup>11</sup> ISO-NE conducts this annual auction (the Forward Capacity Auction) three-plus years in advance of the period during which capacity will actually be supplied, i.e., the capacity commitment period. Capacity providers compete in the Forward Capacity Auction to supply capacity to the market, and, if they are chosen in the auction, are compensated by a clearing price set by the highest accepted offer.<sup>12</sup>

8. Under the current Forward Capacity Market rules, new resources seeking to qualify to provide capacity are subject to an interconnection analysis, administered by ISO-NE, to determine the impact of the proposed project on the transmission system and assure that the proposed project will not result in transmission violations, either on a stand-alone basis or in combination with other proposed projects. New generation capacity that qualifies for participation in the Forward Capacity Market enters the interconnection queue and is interconnected on a first-come, first-served basis, i.e., priority is given to resources that entered the queue earlier.

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<sup>9</sup> *Id.*

<sup>10</sup> *Devon Power LLC*, 115 FERC ¶ 61,340, *order on reh'g*, 117 FERC ¶ 61,133 (2006).

<sup>11</sup> 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) no more than one day every ten years.

<sup>12</sup> *ISO New England Inc.*, 119 FERC ¶ 61,045, at P 5-10 (*April 2007 Order*), *order on reh'g*, 120 FERC ¶ 61,087 (2007).

9. In its order conditionally accepting the market rules implementing the Forward Capacity Market, the Commission acknowledged that reliance on queue position is not an ideal solution.<sup>13</sup> The Commission found that, among the issues left to be resolved by stakeholders, the interconnection queue issue is of sufficient importance to merit, at the very least, a position near the top of any list of priority.<sup>14</sup> The Commission later held a technical conference on interconnection queuing practices in the industry. In its order that followed the technical conference, the Commission expressed concern about delays in processing the interconnection queue.<sup>15</sup> The Commission found that the delays created backlogs that not only deprive generation developers of needed business certainty, but also undermine other important public goals.<sup>16</sup> The Commission concluded that there may be approaches to prioritizing queue processing that provide protection against discrimination comparable to the first-come, first-served approach, whereby customers who demonstrate the greatest ability to move forward with project development are processed first.<sup>17</sup>

10. On October 31, 2008, the Filing Parties submitted the instant proposed revisions to the ISO-NE OATT to address issues related to the Forward Capacity Market and queuing procedures. In this order, we accept the proposed revisions to ISO-NE's OATT, effective February 1, 2009, as discussed below.

## **II. Notice of Filing and Responsive Pleadings**

11. Notice of the Filing Parties' proposed tariff revisions was published in the *Federal Register*, 73 Fed. Reg. 69,627 (2008), with interventions, comments and protests due on or before November 24, 2008. Bridgeport Energy II, LLC, the NRG Companies,<sup>18</sup> the Mirant Parties,<sup>19</sup> and Northeast Utilities Service Company filed motions to intervene.

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<sup>13</sup> *April 2007 Order*, 119 FERC ¶ 61,045 at P 70.

<sup>14</sup> *Id.* P 69.

<sup>15</sup> *Interconnection Queuing Practices*, 122 FERC ¶ 61,252, at P 4 (2008) (*Order on Queuing Practices*).

<sup>16</sup> *Id.* P 5.

<sup>17</sup> *Id.* P 18.

<sup>18</sup> The NRG Companies include: Connecticut Jet Power LLC, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, and Somerset Power LLC.

<sup>19</sup> The Mirant Parties include: Mirant Energy Trading, LLC, Mirant Canal, LLC, and Mirant Kendall, LLC.

The Massachusetts Department of Public Utilities (Massachusetts DPU) and the Connecticut Department of Public Utility Control (Connecticut DPUC) filed notices of intervention and comments. Dominion Resources Services, Inc. (Dominion), Exelon Corporation (Exelon), and the New England Power Generators Association, Inc. filed timely motions to intervene and comments. The PSEG Power Companies (PSEG)<sup>20</sup> and, jointly, Energy Management Inc. and Cape Wind Associates (Cape Wind) filed timely motions to intervene and protests. Answers to the protests were filed on December 9, 2008 by ISO-NE, NEPOOL and the Connecticut DPUC. On December 23, 2008, PSEG filed an answer to the answer of ISO-NE. On January 5, 2009, ISO-NE filed an answer to PSEG's answer.

### **III. Discussion**

#### **A. Procedural Matters**

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. 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 unless otherwise ordered by the decisional authority. We will accept the answers filed by ISO-NE, NEPOOL, Connecticut DPUC, and PSEG as they provide information that assisted us in our decision-making process.

#### **B. Proposed Tariff Revisions**

##### **1. Coordination of the Forward Capacity Market and the Interconnection Queue Process**

13. The Filing Parties state that the proposed revisions to the ISO-NE OATT are meant to integrate the Forward Capacity Market and the generator interconnection process. The revised OATT incorporates the Forward Capacity Market's deliverability standard as the intra-zonal deliverability standard in the interconnection procedures. The Filing Parties explain that this standard, known as the overlapping interconnection impacts test, assures that the proposed resource, whether alone or in combination, can provide incremental capacity to the system. Consistent with the *November 2004 Order*, the Filing Parties continue, the addition of the intra-zonal deliverability standard required the creation of different levels of interconnection service. Accordingly, the revised OATT creates two levels of interconnection service – a capacity service available to interconnection customers that satisfy a deliverability standard, and an energy-only

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<sup>20</sup> The PSEG Power Companies include: PSEG Power LLC and PSEG Energy Resources & Trade LLC.

service available to all interconnection customers that satisfy the Minimum Interconnection Standard. The revised OATT also allocates interconnection rights and obligations based on the results of the Forward Capacity Market by combining the traditional “first-come, first-served” approach for handling the interconnection queue with a “first-cleared, first-served” approach.

14. As revised, the interconnection procedures offer two new levels of service: Capacity Network Resource Interconnection Service and Network Resource Interconnection Service. The Capacity Network Resource Interconnection Service will allow an interconnection customer seeking capacity resource treatment for its generating resource to interconnect under a new Capacity Capability Interconnection Standard. The Capacity Capability Interconnection Standard incorporates elements of both the existing Minimum Interconnection Standard and the overlapping interconnection impacts test in a manner that ensures that intra-zonal deliverability is possible when other Generating Capacity Resources are producing their full qualified capacity output.<sup>21</sup> By contrast, Network Resource Interconnection Service provides an interconnection customer that does not seek capacity resource treatment for a generating resource the option to interconnect under a Network Capability Interconnection Standard, which embodies the existing Minimum Interconnection Standard. The Filing Parties state that, under this framework, a generator's choice of interconnection service will reflect its desired participation in the markets.

15. The Filing Parties state that the proposed tariff revisions maintain the existing Commission-approved steps that must be followed and deadlines that must be met for processing interconnection service requests. In addition to these requirements, to achieve Capacity Network Resource Interconnection Service, interconnection customers must also comply with additional milestones in coordination with the requirements of the Forward Capacity Market rules. Accordingly, interconnection customers must (a) submit the necessary requests for participation in the Forward Capacity Auction for the capacity commitment period that corresponds with its proposed commercial operation date; (b) participate in the Capacity Network Resource Group Study for that Forward Capacity Auction; (c) comply with Forward Capacity Market rule requirements, including qualifying, posting financial assurance, participating in the auction, and receiving a Capacity Supply Obligation through the Forward Capacity Market; and (d) participate in a re-study of the last interconnection study performed to determine cost responsibility for upgrades based on the results of the Forward Capacity Market. The Filing Parties further state that prior to submitting a show of interest form in the Forward Capacity Market qualification process, a generating resource must have filed an interconnection request

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<sup>21</sup> The Filing Parties note that this is a planning study standard and a capacity resource may not be deliverable at all times in actual system operations.

with ISO-NE.<sup>22</sup> The Filing Parties state that the tariff revisions expand the scope of the feasibility study and, if the feasibility study is waived, the system impact study, to include a preliminary, non-binding analysis of potential overlapping interconnection impact based on assumptions specified by the Interconnection Customer.

16. With respect to the interconnection queuing process, the Filing Parties state that requests for Capacity Network Resource Interconnection Service will be assigned a queue position and will proceed through the interconnection process based on the traditional first-come, first-served approach. However, under the revised OATT, the interconnection customer's cost and upgrade responsibilities and ultimate receipt of Capacity Network Resource Interconnection Service will be based on a new "first-cleared, first served" approach. Under this approach, the Filing Parties state, the interconnection customer will receive Capacity Network Resource Interconnection Service upon becoming an Existing Generating Capacity Resource, in accordance with the Forward Capacity Market rules, for an amount equal to its Capacity Supply Obligation. The Filing Parties state that while this represents a variation from Order No. 2003's first-come, first-served approach, it is consistent with the guidance provided by the Commission in its *Order Queuing Practices*.<sup>23</sup> The Filing Parties state that the tariff revisions allocate interconnection rights to the interconnection customers that have an obligation to provide capacity to the New England region and have achieved Existing Generating Capacity Resource status. The Filing Parties state that the goals of Order No. 2003 are advanced, as articulated in the *Order on Queuing Practices*, because the only portion of a proposed capacity resource that is ready to serve New England is that which has been awarded a Capacity Supply Obligation.

### **Commission Determination**

17. The Commission finds that the proposed tariff revisions are just and reasonable and satisfy the independent entity variation standard. We therefore accept the Filing Parties' proposed revisions to the ISO-NE OATT. Offering two levels of interconnection service, one with a deliverability requirement, is a crucial component of Order No. 2003.<sup>24</sup> Deliverability of energy resources has been a particularly critical issue in the transmission constrained New England market. These revisions advance the goals of Order No. 2003 by creating a second level of interconnection service and should promote deliverability of resources throughout the New England market. Moreover, the proposed

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<sup>22</sup> Currently, a resource is not required to have an interconnection request in place to submit a show of interest form.

<sup>23</sup> The Filing Parties cite *Order on Queuing Practices*, 122 FERC ¶ 61,252 at P 18.

<sup>24</sup> *See, e.g.*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 767-69.

tariff revisions are the result of a comprehensive stakeholder process. They balance the competing interests of, and share broad support from market participants.<sup>25</sup> Two parties, PSEG and Cape Wind, protested certain aspects of the tariff revisions. We address their concerns below.

## **2. Forward Capacity Market and Participation of Conditional Qualified New Generating Capacity Resources**

18. The process for resource qualification in the Forward Capacity Market rules has relied upon the interconnection queue's first-come, first-served approach to determine the qualification priority of competing resources that share overlapping interconnection impacts. The Filing Parties state that during the stakeholder process the New England Conference of Public Utility Commissioners and the Connecticut DPUC, in particular, raised concerns that the Forward Capacity Market rules' sole reliance on the interconnection queue order for qualifying resources with overlapping impacts could lead to sub-optimal results in the Forward Capacity Market. The Filing Parties state that these parties were further concerned that resources in the queue would use their queue position to block new resources with lower queue position from participating in the Forward Capacity Market. The Filing Parties contend that sole reliance on the interconnection queue for Forward Capacity Market qualification priority was not ideal, as ISO-NE recognized in the February 15, 2007 Filing. The Filing Parties state that the proposed tariff revisions address this issue by creating a Conditional New Qualified Generating Capacity Resource option for resources seeking to qualify for participation in a Forward Capacity Auction.

19. The proposed tariff revisions amend the overlapping interconnection impacts analysis provision to provide that a New Generating Capacity Resource that meets the requirements for qualification in the Forward Capacity Auction, but would not currently be accepted for participation as a result of overlapping interconnection impacts with another resource having a higher priority in the interconnection queue, may be accepted for participation in the Forward Capacity Auction as a Conditional Qualified New Generating Capacity Resource. The Filing Parties state that this option allows a resource with a lower queue position (i.e., a Conditional Qualified New Generating Capacity Resource) with the same overlapping interconnection impacts as a resource with a higher queue position (which, for purposes of this discussion, will be referred to as the primary resource) to conditionally qualify for the Forward Capacity Auction along with the primary resource, instead of being disqualified solely on the basis of its queue position. In addition, the Filing Parties state that the option allows the Conditional Qualified New

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<sup>25</sup> The Filing Parties state that the proposed revisions were supported by a 95 percent vote from ISO-NE's Participants Committee and a 98 percent vote from the Participating Transmission Owners Administrative Committee.

Generating Capacity Resource to offer its capacity in the Forward Capacity Auction along with the primary resource, upon satisfying the same pre-auction requirements applicable to the primary resource, including posting financial assurance.

20. The Filing Parties contend that the Conditional Qualified New Generating Capacity construct offers several advantages. First, they state that the option resolves the pending issues regarding qualification priority. Second, the Filing Parties contend that the option increases competition within the Forward Capacity Auction by allowing more resources to qualify for the Forward Capacity Auction where overlapping impacts exist. Third, the Filing Parties state that the construct is consistent with the basic premise of the Forward Capacity Market that the clearing price be set by competitive new entry. Finally, the Filing Parties contend that the construct reduces the barriers to entry and prevents a primary resource from blocking a lower queued resource by simply qualifying for the Forward Capacity Auction and thereafter failing to post financial assurance or withdrawing at the Start Price.

21. The Filing Parties state, however, that the Conditional Qualified New Generating Capacity framework creates additional uncertainties for long lead time generating facilities that would not be able to qualify for participation in an earlier Forward Capacity Auction due to the facilities' development cycle or the long development period of transmission upgrades associated with the facility. To address these uncertainties, the Filing Parties propose to revise the *pro forma* Large Generator Interconnection Procedures to incorporate a Long Lead Time Generating Facility (Long Lead Facility) option.

22. The Filing Parties define a Long Lead Facility as a generating facility that an interconnection customer expects will have a development cycle that would not be completed until after the start of the capacity commitment period associated with the upcoming Forward Capacity Auction that follows the interconnection customer's election or request for Long Lead Facility treatment. If the ISO approves a customer's request for Long Lead Facility treatment, that facility, after the completion of the interconnection system impact study, will be modeled in the base case for the next Capacity Network Resource group study to determine whether the Long Lead Facility would have qualified to participate in the Forward Capacity Market associated with that group study, but for its development cycle or the development of significant transmission upgrades. Upon completion of the group study, the facility will be subject to a re-study to determine the upgrades necessary to accommodate its interconnection request. Under the revised tariff, if the interconnection customer commits to complete such upgrades in time to allow the Long Lead Facility to achieve commercial operation by the start of the associated capacity commitment period, the Long Lead Facility will be modeled in the base case for the Capacity Network Resource group studies that precede the Forward Capacity Auction for the capacity commitment period by which the Long Lead Facility is expected to be commercial.

23. The Filing Parties state that this option provides Long Lead Facilities an opportunity to study and secure their costs and upgrade responsibilities for participation in the Forward Capacity Market, so that they are not disadvantaged by lower-queued resources that are able to clear in earlier auctions due to their short-term development cycles. The Filing Parties contend that this treatment offers Long Lead Facilities more certainty with regard to their costs and upgrades, subject to certain significant and potentially non-refundable interconnection deposits and a critical path schedule. The Filing Parties state that, in exchange for this level of certainty, an interconnection customer's election or request for Long Lead Facility treatment must be accompanied by a critical path schedule that meets the requirements under Market Rule 1. In addition to the critical path schedules, at the time of the election or request, and until the Long Lead Facility clears in an FCA, the Filing Parties state that the interconnection customer must provide an annual Long Lead Facility deposit.<sup>26</sup>

### **Protest**

24. PSEG protests the proposed implementation of the Capacity Network Resource interconnection service. PSEG states that, under the proposed tariff revisions, the capacity resource product that a generator is eligible to receive will not accrue until the facility also clears the Forward Capacity Auction and becomes an Existing Generating Capacity Resource. PSEG contends that this result is not just and reasonable because it undermines the property rights accorded to generators that are part of the interconnection queue and makes participation in the Forward Capacity Market mandatory to obtain this level of interconnection service. PSEG contends that there is no law of physics that requires a unit to clear in a Forward Capacity Auction to ensure full deliverability to the transmission system.

25. PSEG contends that Order No. 2003 created property rights for interconnection customers with respect to their interconnection queue position. PSEG explains that Order No. 2003 made clear that, if an interconnection queue is administered by an independent Transmission Provider, such a Transmission Provider may decide to adopt a “but for” pricing policy that differs from the transmission crediting policy applicable to non-independent Transmission Providers, and such alternative pricing will not constitute impermissible “and” pricing, so long as the interconnection customer is permitted the opportunity to receive “well-defined capacity rights that are created by the upgrades.”<sup>27</sup>

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<sup>26</sup> Deposit amounts will be  $0.25 * \text{CONE} * [\text{Requested Summer Capacity}]$ . CONE stands for Cost of New Entry, which is determined pursuant to Market Rule 1, Section III.13.2.4, and changes based on the Capacity Clearing Price of previous FCAs.

<sup>27</sup> *Citing* Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 700.

For example, PSEG states, a transmission provider could give an interconnection customer firm transmission rights or capacity interconnection rights in exchange for a “but for” cost payment for network upgrades.

26. PSEG contends that the “first-cleared, first served” interconnection queue process undermines interconnection customers’ capacity rights by allowing a generating resource with a lower queue priority that clears in a Forward Capacity Auction prior to a resource with a higher queue position to jump the higher-queued resource by becoming an Existing Generating Capacity Resource. Thus, PSEG states, a generator in the queue that has elected Capacity Resource Network Interconnection Service, paid all of its fees and met all of its milestones to remain in the queue, completed its studies, executed an interconnection service agreement and perhaps completed construction and interconnection to the grid, could be passed over in favor of a later-queued project that clears the Forward Capacity Auction first. PSEG contends that such a result degrades the interconnection queue property rights accorded to the higher-queued project and undermines the Commission’s goal of obtaining improved upgrade cost certainty for generators as part of the queue reform. PSEG further contends that the proposed revisions inject a significant degree of uncertainty into the interconnection process as cleared projects jump over projects that have not yet cleared, thereby creating the same chaos as chain reaction restudies referred to by the Commission in its order approving the Midwest Independent System Operator’s (MISO) queue reform package. PSEG contends that, at a minimum, the projects that are “jumped” by projects that have already cleared the Forward Capacity Market will face changed costs for required system upgrades and may also face new obstacles (e.g. increased time required to perform those upgrades) that could further disadvantage them and disqualify them from participation in future Forward Capacity Auctions.

27. PSEG asks the Commission to reject the proposed “first-cleared, first-served” approach and adopt a single queue approach, such as in place in PJM Interconnection, L.L.C. (PJM) and MISO. PSEG states that PJM and its stakeholders have been working to improve its single queue process with measures that promote the goal of obtaining better cost estimates sooner. PSEG states that weeding out speculative projects helps to advance this objective, as do measures such as: limiting the number of points of interconnection a project can select, limiting the circumstances under which a project can be suspended, clustering studies, requiring a project to finalize study data provided to the ISO sooner and implementing study tools to better refine cost estimates. In MISO, PSEG states, stakeholders have adopted several queue reform measures while remaining within the single queue construct. PSEG explains that MISO uses a “first-ready, first-served” approach, permitting queue jumping based on whether and when projects satisfy the milestones required by the interconnection queue. PSEG contends that this approach is reasonable because it preserves an interconnection customer’s property rights as long as it satisfies its milestones.

28. PSEG contends that proposed tariff revisions are unduly discriminatory, in that they have the effect of favoring facilities that can be developed and readied for a Forward Capacity Auction more quickly than other types of generation that require longer lead times or more extensive siting processes. PSEG contends that the proposed interconnection process creates perverse queue incentives for both the jumping resource and the jumped resource. PSEG states that companies that believe they can clear in a Forward Capacity Auction can delay queue activities with the knowledge that, once they clear, they will be afforded rights that would otherwise not have been available to them absent this construct. PSEG notes that clearing a Forward Capacity Auction is not necessarily an indication that the clearing resource is the most economic resource. PSEG states that many resources participating in the Forward Capacity Auction are subject to long-term contracts, such as state-sponsored requests for proposals, that require that they become capacity resources.<sup>28</sup> Thus, PSEG contends, the proposed queuing process gives undue preference to units whose output is sold under long-term bilateral contracts. PSEG also contends that the Long Lead Facility option is an imperfect solution to the queue-jumping dilemma because it requires such facilities to justify the retention of their queue position, and pay additional monies to retain the position, in order to avoid being jumped by an earlier-clearing generating resource.

### **Answers**

29. ISO-NE contends that PSEG's assertion that an interconnection customer has a property right in a queue position or a prior tariff approach to queue position is unsupported in Order No. 2003 and applicable judicial precedent, and is contradicted by the *Order on Queuing Practices*. ISO-NE states that PSEG provides no citation to any provision of Order No. 2003, or its rehearing orders, that establishes a property right in a queue position or in existing tariff provisions and that analogous judicial precedent confirms that project proponents have no protectable "property right" to a particular queue position or processing approach specified in a tariff.<sup>29</sup> Moreover, ISO-NE states that the *Order on Queuing Practices* suggested that ISOs/RTOs replace the first-come, first-served policy promulgated in Order No. 2003 with other approaches that provide

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<sup>28</sup> As an example, PSEG points out two requests for proposals in Connecticut that have procured capacity that must be bid into the Forward Capacity Auction and that, under the terms of the requests for proposals, will clear irrespective of market prices.

<sup>29</sup> *Citing Board of Regents of State College v. Roth*, 408 U.S. 546, 577 (1972) ("To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it."); *Sellers v. Iowa Power and Light Company*, 372 F. Supp. 1169, 1172 (S.D. Iowa 1974) (finding that plaintiffs challenging an Iowa electric utility's change to tariffs did not have a property right to fixed utility rates).

comparable protection against discrimination. Connecticut DPUC agrees, stating that PSEG's claim that the revised tariff will seriously undermine the rights of generation projects already in the queue rests on a mistaken interpretation of Order No. 2003. Connecticut DPUC states that, in Order No. 2003, the Commission clarified that it would permit independent transmission providers to adopt more innovative payment mechanisms such as granting an interconnection customer capacity rights that are well-defined, long-term and tradable in exchange for a payment to complete required network transmission upgrades. Connecticut DPUC states that in no respect did the Commission suggest that payments for investment study fees in exchange for an interconnection position create any property rights.

30. In response to PSEG's concern of queue jumping, ISO-NE states that the Commission should view queue blocking as a far more significant concern in light of the competitive benefits of the Conditional New Resource Option, with its first-cleared, first-served queue process. ISO-NE states that the Conditional New Resource Option not only resolves the pending issues regarding qualification priority, it increases competition within the Forward Capacity Auction by allowing more resources to qualify for the Forward Capacity Auction where overlapping impacts exist. ISO-NE contends that it is consistent with the basic premise of the Forward Capacity Market that the clearing price be set by competitive new entry, and that the barriers to entry should be reduced. ISO-NE states that, under existing procedures, a primary resource – by simply qualifying for the Forward Capacity Auction and thereafter failing to post financial assurance or withdrawing at the start price for an auction – can effectively block out resources that could provide capacity at a lower price than the primary resource. ISO-NE states that the Conditional New Resource option prevents a primary resource from blocking a lower-queued resource, thereby promoting market efficiencies.

31. ISO-NE also contends that, contrary to PSEG's claims, the Conditional New Resource Option does not create a re-study chain reaction. Under the revised tariff, ISO-NE explains, interconnection customers seeking to interconnect their generating facilities as a Capacity Network Resource will be subject to a re-study after obtaining a Capacity Supply Obligation through the Forward Capacity Market. ISO-NE states that this re-study will determine the interconnection customer's cost and upgrade responsibility based on its position in the interconnection queue relative to the other facilities that obtained a Capacity Supply Obligation through the same mechanism. Thus, ISO-NE states, this approach avoids a chain reaction, and unnecessary restudies, by only re-studying those generating facilities that are committed to provide capacity to the region by a date certain.

32. ISO-NE contends that the Conditional New Resource Option approach does not unduly discriminate among types of generating facilities by allowing Forward Capacity Auction-cleared units to delay queue activities after obtaining an obligation through the Forward Capacity Market. ISO-NE states that, similar to the "first-ready, first-served"

approach recently adopted in other regions,<sup>30</sup> this approach would allocate Capacity Network Resource Interconnection Service to those generating facilities that achieve the Capacity Network Resource Interconnection Service Milestones, thereby demonstrating their readiness to serve the New England region's capacity needs.

33. Finally, ISO-NE contends that the availability of the Long Lead Facility Option, under the revised tariff, appropriately addresses any concern that the Conditional New Resource Option may favor units that can be built quickly, and obviates PSEG's concerns about cost uncertainty for units that cannot be built quickly. ISO-NE explains that the long lead facility option provides interconnection customers an opportunity to study and secure their upgrade cost responsibilities for participation in the Forward Capacity market, so that they are not disadvantaged by lower-queued resources that are able to clear in earlier auctions due to their short-term development cycles.

34. In response to PSEG's concern that units whose output is sold under long-term bilateral contract have a significant preference in the market place, the Connecticut DPUC states that these investors' private decisions to enter into a long-term contract do not provide any unfair competitive advantage in the market to provide new capacity necessary for resource adequacy in New England. Connecticut DPUC states that investors may secure financing for a new generation plant in a variety of ways, and potential new investors are free to develop their own business models. Thus, Connecticut DPUC states, all investors have an equal opportunity to pursue long-term bilateral contracts that they perceive to be in their economic interests. Connecticut DPUC contends that the proposed tariff revisions do not interfere – and should not be modified in any way that will interfere – with a project investor's decision of whether to pursue a bilateral contract.

35. In its December 23, 2008 answer, PSEG repeats many of its previous arguments in addressing ISO-NE's answer. PSEG states that ISO-NE mischaracterizes PSEG's protest and that PSEG strongly supports the concept of a Conditional Resource Option. PSEG contends, however, that ISO-NE proposes, in its answer, to implement a system that essentially ignores the interconnection queue, and the significance thereof, by allowing a generation resource that clears in a Forward Capacity Market auction to queue jump for purposes of determining network upgrade cost responsibility. PSEG states that by tying clearing in a Forward Capacity Market auction to interconnection cost responsibility, ISO-NE is completely undermining the Commission's goal of obtaining improved upgrade cost certainty for generators as part of its ongoing queue reform efforts, as the prospect of a cleared resource jumping a project that has not yet cleared (even if that project's interconnection facilities are actually built and paid for) is not a knowable risk

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<sup>30</sup> *Citing Midwest Independent Transmission System Operator, Inc.*, 124 FERC ¶ 61,183 (2008).

that can legitimately be factored into a generation developer's business risk equation. Also, PSEG claims there will in fact be chain reaction re-studies caused by the fact that a clearing generating resource will be permitted to jump earlier-queued projects that do not clear the auction, and thus completely alter the cost responsibility of those earlier queued projects by requiring a re-study of their interconnection, notwithstanding the stage of completion of these projects.

36. In its January 5, 2008 answer, ISO-NE states that the PSEG answer reflects at least two significant misunderstandings of a key element of the tariff revisions. First, ISO-NE states that PSEG incorrectly asserts that the Conditional Qualified New Generating Capacity Resource option preserves the significance of the interconnection queue since the cleared (i.e., lower-queued) resource retains the same cost for responsibility for upgrade cost purposes. Contrary to PSEG's understanding, ISO-NE contends that the execution of the Conditional New Generating Capacity Resource Option based on Forward Capacity Auction results would effectively advance the lower-queued resource to the higher queue position, rather than accord significance to the interconnection queue. Second, ISO-NE contends that PSEG incorrectly asserts the Capacity Network Resource Option allows resources that clear a Forward Capacity Market Auction to queue jump. ISO-NE states that the milestones a new resource must satisfy to become a Conditional New Resource in New England incorporate the pertinent substance of the Forward Capacity Market rules. Under those rules, ISO-NE states that a resource must receive a Capacity Supply Obligation in order to be considered an Existing Generating Capacity Resource. ISO-NE states that an interconnection customer receives Capacity Network Resource Interconnection Service upon satisfying all of the milestones. ISO-NE contends that the receipt of such service is, therefore, not queue jumping. Further, ISO-NE states the amendments to the interconnection procedures proposed here are formulated to incorporate the system that is already in place under the current Forward Capacity Market rules.

### **Commission Determination**

37. The Commission finds that the proposed tariff revisions are just and reasonable and consistent with the *Order on Queuing Practices*. In the *Order on Queuing Practices*, the Commission urged stakeholders to consider alternative interconnection queuing processes comparable to the first-come, first-served approach, that are more efficient.<sup>31</sup> One of the concerns with the current first-come, first-served queuing practice is that a higher-queued resource – by simply qualifying for the Forward Capacity Auction and thereafter failing to post financial assurance or withdrawing at the start price for an auction – can effectively block out resources that could provide capacity at a lower price

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<sup>31</sup> 122 FERC ¶ 61,252 at P 18.

than the primary resource. The Conditional New Resource option prevents a higher-queued resource from blocking a lower-queued resource, thereby promoting market efficiencies.

38. We agree with PSEG that the proposed tariff revisions will allow a generation resource that clears in a Forward Capacity Market auction to jump the queue for purposes of determining network upgrade cost responsibility, but we do not believe that this produces an unjust and unreasonable or unduly discriminatory result. Instead, we find that the proposed revisions promote competition by allowing generation resources that are able to clear the market first to take a higher queue position. We agree that it is consistent with the basic tenets of the Forward Capacity Market that the clearing price is set by competitive new entry, and that barriers to entry are reduced. We conclude that the Filing Parties have met the Independent Entity Variation Standard.<sup>32</sup> With respect to PSEG's concern that resources subject to long-term bilateral contracts are required to be price-takers in the Forward Capacity Auction (and thus may drive down the capacity price), we find that argument to be misplaced in this proceeding which addresses the interconnection queue. The Commission has accepted the use of long-term bilateral contracts, such as the Connecticut state-sponsored requests for proposals cited by PSEG, to meet installed capacity and local sourcing requirements.<sup>33</sup> The revisions proposed here

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<sup>32</sup> To clarify, Order No. 2003 did not confer onto interconnection customers a property right interest in their interconnection queue position. As support for its argument PSEG cites paragraph 700 of Order No. 2003. Paragraph 700 addresses the crediting policy for Network Upgrades and PJM's use of Firm Transmission Rights to compensate interconnection customers for expenses that would not arise but for their interconnection. It did not address queue position. In fact, the Commission has clarified this passage stating that "not every system upgrade required simply to interconnect a generating facility safely to the grid entitles the generator to capacity rights; however, a generation interconnection customer would be 'allowed to receive' capacity rights if a network upgrade creates additional transmission capability." *Old Dominion Electric Cooperative v. PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,052, at P 16 (2007).

<sup>33</sup> *ISO New England Inc.*, 123 FERC ¶ 61,290, at P 27 (2008). The installed capacity requirement is the level of capacity required to meet the reliability requirements in the New England control area, i.e., that the probability of disconnecting non-interruptible customers due to resource deficiency will be no more than once in ten years, on average. See ISO-NE tariff § III.12. The local sourcing requirement is a related standard: it is the minimum amount of capacity that must be electrically located within an import-constrained Load Zone to satisfy reliability requirements. See ISO-NE tariff § III.12.2 and III.12.2.1.

simply coordinate ISO-NE's interconnection procedures with the Forward Capacity Market rules, and PSEG has not provided sufficient basis for us to revisit that conclusion. We therefore dismiss PSEG's argument on this point.

39. The Commission believes that the Long Lead Time Generating Facility option sufficiently addresses PSEG's concern about queue jumping and re-study chain reactions. The Long Lead Time Generating Facility option provides facilities an opportunity to study and secure their costs and upgrade responsibilities for participation in the Forward Capacity market, so that they are not disadvantaged by lower-queued resources that are able to clear in earlier auctions due to their short-term development cycles. This treatment offers Long Lead Facilities more certainty with regard to their costs and upgrades and prevents such facilities from incurring additional costs if a lower-queued facility clears the market first.

### C. Applicability

40. The proposed tariff revisions grandfather interconnection customers with outstanding interconnection requests to retain the queue position assigned to them prior to the proposed effective date of the proposed tariff revisions (i.e., February 1, 2009). The Filing Parties state that if an interconnection customer with an outstanding interconnection request has already executed an interconnection study agreement, that study will be performed in accordance with the terms of the agreement and the current interconnection procedures. If, however, an interconnection customer with an outstanding interconnection request has not executed an interconnection study agreement prior to February 1, 2009, that study and any subsequent studies, will be performed in accordance with the new rules. The Filing Parties state that all outstanding interconnection requests will be eligible to make a one-time election to be considered for Capacity Network Resource Interconnection Service at the queue position assigned prior to the effective date of the proposed revisions.

41. The proposed tariff revisions amend the interconnection procedures to include a new section 5.2.1 that recognizes an interconnection customer's generating facility, interconnected pursuant to an interconnection agreement that was either executed or filed with the Commission prior to February 1, 2009, as a network resource with network interconnection service. The Filing Parties state that pursuant to its interconnection agreement, an interconnection customer may be eligible to participate in all New England Markets, in accordance with the requirements of Market Rule 1, up to the megawatt amount specified in the agreement. The Filing Parties state that the proposed revisions also recognize that some of the generating facilities governed by these agreements may already have become Existing Generating Capacity Resources pursuant to the Forward Capacity Market Settlement or the Forward Capacity Market rules. Accordingly, the proposed revisions provide for those generating facilities that qualify as Existing Generating Capacity Resources in the fourth Forward Capacity Auction, in accordance

with Market Rule 1, to be considered Capacity Network Resources, and obtain Capacity Network Resource Interconnection Service up to the generating facility's documented megawatt output (i.e., the amount specified in the interconnection agreement).

42. The Filing Parties state that the proposed revisions recognize that not all of the generating facilities governed by agreements executed or filed prior to February 1, 2009, have achieved Existing Generating Capacity Resource status. As such, the Filing Parties state that the proposed revisions extend the one-time election option discussed above to these customers to allow them an opportunity to be considered for Capacity Network Resource Interconnection Service and become Capacity Network Resources. The Filing Parties state that section 5.2.2 of the proposed interconnection procedures recognizes as network resources eligible to participate in the New England markets those generating facilities interconnected pursuant to an interconnection agreement executed or filed with the Commission prior to August 1, 2008. The Filing Parties state that these grandfathering provisions are in no way intended to excuse compliance with, or circumvent, the eligibility criteria in the Forward Capacity Market rules for becoming a capacity resource eligible to receive capacity payments in the Forward Capacity Market, as provided under Market Rule 1, and none of these grandfathering provisions are intended to create or take away any rights afforded under existing Interconnection Agreements.

### **Protest**

43. Cape Wind protests and objects to the characterization by ISO-NE of the proposed revisions to section III.13.1.1.2.3 of Market Rule No. 1 (“Initial Interconnection Analysis”) as a mere “clarification,” rather than a substantive amendment. Cape Wind states that the proposed amendment would remove the clause that now limits, in relevant part, the requirement for additional interconnection analysis to those new resources “whose total output would exceed the amount of its previously executed interconnection agreement.” Cape Wind contends that this amendment would substantially expand the applicability of the requirement for new generators to undergo the Initial Interconnection Analysis. Cape Wind believes the elimination of a clear and express limitation clause is a material alteration of the current market rules, and not a mere clarification, and should thus be applied only prospectively and in accordance with the grandfathering provisions of the section 5.2.2 of the proposed Large Generator Interconnection Procedures. Cape Wind states that its executed interconnection agreement stipulates that, once it has satisfied the requirements for obtaining the current Network Interconnection Service, it is not required to perform any additional studies or undertake any additional upgrades for any future transmission service request on the New England transmission system for any amount of capacity and/or energy. For these reasons, Cape Wind objects to the requirement to undergo an overlapping interconnection impacts analysis to participate in the Forward Capacity Market.

### **Answers**

44. NEPOOL urges the Commission to ensure that it does not grant or otherwise confer on Cape Wind any new or additional rights not contained in the ISO-NE OATT. NEPOOL states that the Commission has a long-standing policy that limits the use of grandfathering rights to protect only those rights that are already held, and rejects grandfathering as a basis for creating new or expanded rights or avoiding existing obligations. NEPOOL contends that the simple issue here is whether the amended language of section III.13.1.1.2.3(a) somehow conflicts directly and irreconcilably with the amended language of section 5.2.2 of the Large Generator Interconnection Procedures. NEPOOL opposes a reading of that language that precludes an initial interconnection analysis altogether or that requires substantive modification to the language that achieved the compromises in the proposed tariff revisions.

45. ISO-NE states that Cape Wind incorrectly asserts that the tariff revisions impose the overlapping interconnection impacts analysis for Forward Capacity Market qualification as a new requirement that would otherwise be inapplicable to their project under currently-effective Forward Capacity Market rules. ISO-NE states that the Commission should reject the Cape Wind protest, because it seeks to gain a special preference: the avoidance of the overlapping interconnection impacts analysis that is a prerequisite to participation by a New Generation Capacity Resource in a Forward Capacity Auction and the grandfathering changes could not and do not waive this prerequisite. ISO-NE contends that the effect of the grandfathering provision, however, is to exempt a project with an interconnection agreement executed before August 1, 2008, such as the Cape Wind project, from having to undergo the initial interconnection analysis (i.e., Minimum Interconnection Standard analysis) that all resources otherwise must undergo under the Forward Capacity Market qualification rules. ISO-NE states that Cape Wind has not begun the Forward Capacity Auction qualification process and so has never undergone the overlapping interconnection impacts analysis. ISO-NE contends that the proposed grandfathering provisions could not and do not waive this Forward Capacity Auction prerequisite. ISO-NE states that, contrary to Cape Wind's arguments, the Forward Capacity Market rules require ISO-NE to perform an overlapping impacts analysis to determine the incremental capacity that a New Generating Capacity Resource will provide to the system without the redispatch of another resource.

### **Commission Determination**

46. The Commission rejects the Cape Wind protest, because it seeks to gain a special preference in order to avoid the overlapping interconnection impacts analysis that is a prerequisite to participation by a New Generation Capacity Resource in a Forward

Capacity Auction.<sup>34</sup> Although projects like Cape Wind are exempt from the initial interconnection analysis, they are still required to undergo the overlapping impact analysis to qualify for participation in the Forward Capacity Auction. This requirement has existed under the Forward Capacity Market rules. The revisions proposed by the Filing Parties merely incorporate the requirement into the *pro forma* interconnection procedures and agreement. Moreover, these revisions garnered the support of a vast majority of stakeholders. Cape Wind has not demonstrated that these provisions are not just and reasonable. We therefore reject the Cape Wind protest.

The Commission orders:

ISO-NE's proposed tariff revisions are hereby accepted to become effective February 1, 2009, as discussed in the body of this order.

By the Commission. Commissioner Kelliher not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>34</sup> See *ISO New England Inc.*, 122 FERC ¶ 61,018, at P 48 (2008) (affirming ISO-NE's use of the overlapping impacts analysis).