

137 FERC ¶ 61,120  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
and Cheryl A. LaFleur.

ISO New England Inc.

Docket No. ER11-4540-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued November 14, 2011)

1. On September 15, 2011, ISO New England, Inc. (ISO-NE) and the New England Power Pool (NEPOOL) Participants Committee (together, the Filing Parties) jointly filed, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> revised tariff sheets that modify Appendix A of Market Rule 1, Market Monitoring, Reporting and Market Power Mitigation (Automated Mitigation Revisions). As discussed below, we accept the proposed tariff changes, effective on or after December 1, 2011, with two weeks prior notice to be provided by ISO-NE for the actual effective date, as requested.

**I. Background**

2. Under ISO-NE's current market power mitigation structure in Appendix A of Market Rule 1, the Internal Market Monitor (IMM) manually evaluates energy market supply offers for a resource using three tests applied serially: (1) structural tests, which evaluate whether sufficient competition exists; (2) conduct tests, which evaluate offers; and (3) for incremental energy offers that fail the first two tests, impact tests, which evaluate the offers' impact on the energy market clearing price.

3. The tests for evaluating supply offers in real-time apply only to the incremental energy portion of the offer, and each type of test considers whether the resource is in a general or constrained area. The structural test for general area mitigation determines whether a market participant's portfolio is pivotal, meaning one or more of its resources is required to meet demand (and is, therefore, a pivotal supplier). The structural test for constrained area mitigation determines whether a resource is required to relieve a binding transmission constraint.

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<sup>1</sup> 16 U.S.C. § 824d (2006).

4. If a resource fails either structural test, it is then evaluated under the conduct tests, which compare a resource's incremental energy offer to certain reference levels, or thresholds, for either general and constrained areas.<sup>2</sup> Incremental energy offers that fail the structural and conduct tests are then evaluated for market impact. An incremental energy offer from a pivotal supplier that also increases the clearing price by a certain threshold amount, for either general or constrained areas, is mitigated.<sup>3</sup>

5. From the time that a market impact is identified, using ISO-NE's current manual mitigation process, it can take up to 45 minutes to implement mitigation, due to the requirement for notification and consultation with the market participant. Once ISO-NE mitigates a supply offer in real-time, the mitigated offer is used for dispatch for the remainder of the dispatch day and is reflected in the real-time energy market prices.

6. The IMM applies a separate mitigation threshold when values for the start-up and no-load parameters of a supply offer do not pass the mitigation threshold and raise net commitment period compensation (NCPC), i.e., make-whole payments for resources committed to address a local reliability need. Currently, if a resource fails the NCPC threshold, mitigation is applied during the settlement process, but ISO-NE represents that, consistent with Commission-approved revisions to the NCPC mitigation structure, ISO-NE is currently working on the required software and business procedure changes that will allow the NCPC mitigation analysis to occur *ex ante*, at the time the decision to commit a unit is made.<sup>4</sup>

## II. Proposed Tariff Revisions

7. The Filing Parties state that the proposed Automated Mitigation Revisions reflect several changes to Appendix A of Market Rule 1, which are intended to shorten, from 45 minutes to five minutes, the lag time associated with the manual real-time energy mitigation process, and expand the application of *ex ante* mitigation to resources committed for reasons other than local reliability needs. ISO-NE further states that the

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<sup>2</sup> The threshold for general areas is \$100 or 300 percent, meaning that a resource fails the conduct test if its energy offer exceeds its reference level by either \$100 or 300 percent; the threshold for constrained areas is \$25 or 50 percent.

<sup>3</sup> The threshold amount for general areas is an increase in the energy market clearing price by either \$100 or 200 percent; for constrained areas, the threshold amount is an increase in the energy market clearing price by either \$25 or 50 percent.

<sup>4</sup> See *ISO New England, Inc. and New England Power Pool*, 129 FERC ¶ 61,008 (2009), *order on compliance*, 130 FERC ¶ 61,188 (2010).

proposed changes will allow a more comprehensive evaluation of economic withholding, and, thereby, improve competitive market outcomes, by enabling the IMM to more precisely identify and mitigate all resource offers that exceed defined mitigation thresholds and impact the real-time energy market clearing price. ISO-NE emphasizes that, while the proposed changes shorten the mitigation process, they do not alter the existing market impact thresholds or length of time for which mitigation will be imposed.

8. With the Automated Mitigation Revisions, the Filing Parties propose two modifications to the pivotal supplier test that is performed for general area mitigation. First, the pivotal supplier test will be applied only to those resources that are actually available for dispatch rather than to all resources, as is currently the case. Second, the proposed revisions will increase the frequency with which the test is performed. The Filing Parties state that, with the automation of mitigation, the pivotal supplier test will be performed each time ISO-NE performs a resource adequacy assessment.<sup>5</sup>

9. The Filing Parties also propose three main changes to the consultation process between the IMM and market participants regarding reference levels for their resources. First, the Filing Parties state that, under the rules approved by the Commission for NCPC mitigation,<sup>6</sup> market participants must complete the consultation process with the IMM and submit offers by 5:00 p.m. two days prior to the operating day. The Filing Parties propose a similar mitigation framework under the Automated Mitigation Revisions, which, as the Filing Parties explain, ensures that the IMM has sufficient time to evaluate the market participant's request for a change to the reference levels before they are utilized in the mitigation analysis. Second, the Automated Mitigation Revisions add a provision permitting market participants to consult about reference levels during the day prior to the operating day if the event necessitating the requested reference level adjustment occurred within the 24-hour period prior to the operating day and all consultation is completed by the hour before the offer deadline. Finally, the Automated Mitigation Revisions include changes to the consultation provisions that address the calculation of reference levels for dual-fuel resources. Market Participants must provide supporting documentation to the IMM demonstrating that the lower-cost fuel was unavailable for that day, allowing the IMM to set the reference level to the higher-cost alternative fuel.

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<sup>5</sup> The Filing Parties state that a resource adequacy assessment is normally performed approximately once every four hours leading up to and throughout the operating day.

<sup>6</sup> See *ISO New England, Inc. and New England Power Pool*, 129 FERC ¶ 61,008, order on compliance, 130 FERC ¶ 61,188.

10. The Filing Parties' Automated Mitigation Revisions also would revise the way in which offer parameters that relate to underlying physical characteristics associated with a supply offer – such as its economic maximum and minimum limits, minimum run-time, and start-up and notification times, will be evaluated for mitigation. The Automated Mitigation Revisions establish upper or lower bounds by setting reference level values for physical characteristics. Under the Automatic Mitigation Revisions, the bidding interface will filter non-compliant physical characteristics from entering supply offers that are outside the parameters of the reference levels.

11. The Filing Parties also propose to incorporate a new procedure to Appendix A to address data entry, system, or software errors that may result from an automated mitigation process. When the IMM determines that such an error has occurred, it will notify the market participant and correct the error through the settlement process by applying the correct values to the supply offer in the settlement.

12. Finally, the Filing Parties propose to move the timing of mitigation start-up and no-load offers to the point in real time when the decision is made to commit the resource. The Filing Parties state that this will prevent any mitigated offer from affecting market pricing, dispatch or commitment and contribute to a more transparent analysis.

13. The Filing Parties seek waiver of the Commission's notice requirements, 18 C.F.R. § 35.3(a)(1) (2011), to allow the Automated Mitigation Revisions to become effective on or after December 1, 2011, with two weeks' prior notice to be provided by ISO-NE to the Commission of the actual effective date. In support of their request, the Filing Parties state that implementing the Automated Mitigation Revisions, if accepted, will require substantial changes to existing software and development of business procedures.

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

#### **A. Notice of Filing**

14. Notice of the filing was published in the *Federal Register*, 76 Fed. Reg. 59,675 (2011), with interventions and protests due on or before October 6, 2011. Timely motions to intervene were filed by GDF Suez Energy North America, Inc.; Exelon

Corporation; PSEG Companies;<sup>7</sup> NRG Companies;<sup>8</sup> Dominion Resources Services, Inc.;<sup>9</sup> GenOn Parties;<sup>10</sup> Equipower Resources Corporation; Constellation Energy Commodities Group, Inc.; and Constellation NewEnergy, Inc. On October 7, 2011, Dynegey<sup>11</sup> filed a motion to intervene out-of-time. NEPOOL timely filed comments. Joint Protesters timely filed a protest.<sup>12</sup> ISO-NE and NEPOOL filed answers to the protest.

## **B. Joint Protest**

15. Joint Protesters dispute the assumption that automating ISO-NE's existing mitigation system does not require a fundamental review of the existing rules. Joint Protesters request that the Commission reject the Filing Parties' proposal to implement automatic five-minute mitigation of offers, unless ISO-NE agrees to make certain changes and clarifications to its mitigation rules. Joint Protesters argue that in order to be just and reasonable, mitigation measures must be narrowly tailored and designed to replace a supplier's offer only when market power is actually being exercised. Joint Protesters state that the Commission has previously rejected broad, indiscriminate mitigation measures in order to strike a proper balance between over- and under-mitigation.<sup>13</sup> Joint Protesters contend that over-mitigation of generation will have a

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<sup>7</sup> The PSEG Companies include PSEG Energy Resources and Trade LLC and PSEG Power Connecticut LLC.

<sup>8</sup> The NRG Companies are NRG Power Marketing LLC, Connecticut Jet Power LLC, Devon Power LLC, Middletown Power LLC, Montville Power LLC, and Norwalk Power LLC.

<sup>9</sup> Dominion Resources Services includes Dominion Energy Brayton Point, LLC; Dominion Energy Manchester Street, Inc.; Dominion Energy Marketing, Inc.; Dominion Energy New England, Inc.; Dominion Energy Salem Harbor, LLC; and, Dominion Nuclear Connecticut, Inc.

<sup>10</sup> The GenOn Parties are GenOn Canal, LLC; GenOn Energy Management, LLC; and GenOn Kendall, LLC.

<sup>11</sup> Dynegey consists of Casco Bay Energy Company, LLC and Dynegey Marketing and Trade, LLC.

<sup>12</sup> The Joint Protesters include the NRG Companies, the GenOn Parties, the Dominion Companies, GDF SUEZ Energy North America, Inc., EquiPower Resources Corporation, and the PSEG Companies.

<sup>13</sup> Citing *New England Power Pool*, 101 FERC ¶ 61,344, at P 28 (2002) (LMP

destabilizing impact on competitive markets by distorting competitive outcomes that determine the price of the marginal resource necessary to reliably operate the power grid, and cause unwarranted price suppression

16. Joint Protesters state that, although generators know their costs for power production, the Filing Parties' proposal would disregard a generator's offer curve if it fails the new market power mitigation screens and replace it with an administratively-determined reference level. Joint Protesters assert that the reference level is a blunt instrument that does not accurately determine a generator's cost.<sup>14</sup> Joint Protesters argue that, in using the designated reference levels, ISO-NE will replace a generator's actual verified cost-based offer with an administrative formulation of those costs, which, in turn, will adversely affect a generator attempting to offer in a competitive manner. Joint Protesters state that the Commission has recognized that mitigation of this type should not be done unless there has been a demonstration that a unit has the ability to, and actually is, exercising market power.

17. Joint Protesters further state that the proposed Automated Mitigation Revisions will result in an unjustified increase in mitigation for generators. The Joint Protesters assert that, in the LMP Settlement Order,<sup>15</sup> the Commission required data or market power analysis from ISO-NE before approving new mitigation measures. Joint Protesters state that the Filing Parties propose new rules that entail new categories of behavior that will be subject to mitigation, while failing to address whether the Automated Mitigation Revisions will affect the requirement that conduct and impact thresholds be exceeded for each offer before it is mitigated. Joint Protesters argue that throwing out a generator's offer curve for transient failures of market power screens results constitutes severe over-mitigation. Joint Protesters believe that the implementation of the automated five-minute market screen process should be able to evaluate units throughout the day on a granular level, and that generators should not be subject to mitigation for an entire day of offers. Joint Protesters state that New York Independent System Operator, Inc. (NYISO),

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Settlement Order); *Midwest Independent Transmission System Operator, Inc.*, 105 FERC ¶ 61,147, at P 43, 46 (2003). Joint Protestors also note that, in *AEP Power Marketing, Inc.*, the Commission allowed "applicants to propose case-specific mitigation tailored to their particular circumstances that eliminates the ability to exercise market power . . . ." *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018, at P 147, *order on reh'g*, 108 FERC ¶ 61,026 (2004).

<sup>14</sup> Specifically, Joint Protesters cite the exclusion of the 10 percent adder or intra-day gas price volatility in the reference level. Joint Protest at 12.

<sup>15</sup> Citing LMP Settlement Order, 101 FERC ¶ 61,344 at P 28.

Midwest Independent Transmission System Operator, Inc. (Midwest ISO), and PJM Interconnection, L.L.C. (PJM) all have automated mitigation which remains in effect for the duration of any hour. Joint Protesters believe that the Commission should direct the Filing Parties to limit the duration of mitigation to no more than the hour in which the structural, conduct and impact screens fail because the Filing Parties' proposal for extended mitigation is excessive and incompatible with the nature of automated mitigation.<sup>16</sup> Joint Protesters state the Filing Parties' proposed changes to the impact test over-mitigate generators without demonstrating the need for this stricter mitigation.

18. Joint Protesters argue that the Filing Parties propose to conduct a new "what if" test, whereby energy prices at a generator's node will change if every generating unit that fails the structural and conduct screens in a given interval were mitigated to ISO-NE's administratively-determined reference level of each unit's costs during each five-minute interval. Joint Protesters assert that converting the process from a serial analysis of generator offers into a single parallel analysis will cause units, which, on their own, would not fail the market impact screen, to be mitigated as a result of one or more other resources that cause a failure of the market impact screen. This situation, in turn, could reduce NCPC payment to that resource even though its energy offers neither failed the separate NCPC offer screens, nor had any market impact.<sup>17</sup>

19. Joint Protesters argue that the proposed changes to the pivotal supplier test – specifically, limiting the units considered to those that are deemed available, will increase the chance that a unit will fail the structural test and be exposed to mitigation without knowledge of its pivotal status. Additionally, Joint Protesters are concerned that generators may be mitigated due to factors beyond a generator's control, e.g. the unanticipated trip of other units or a transmission line. Joint Protesters contend that the changes to the pivotal supplier test will require generators to submit their offers into the day-ahead market prior to knowing which units may or may not be available for real-time dispatch. Joint Protesters further contend that changing the application of the pivotal supplier test will not deter uneconomic offering behavior, but rather will catch those offers that were economic when they were placed and later deemed uneconomic due to changing market conditions.<sup>18</sup>

20. Finally, Joint Protesters request that the Commission require the Filing Parties to clarify its Automated Mitigation Revisions with respect to dual-fuel resources.

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<sup>16</sup> Joint Protest at 16.

<sup>17</sup> Joint Protest at 16-17.

<sup>18</sup> Joint Protest at 18-19.

Specifically, Joint Protesters request clarification on dual-fuel resources that primarily rely on the higher-cost fuel. Joint Protesters interpret the revisions to mean that ISO-NE will only allow the higher cost fuel type when calculating the cost-based Reference Level for a limited duration. Additionally, Joint Protesters worry that any resource that uses a higher-cost fuel as its primary fuel source could be subject to automated mitigation to a reference level which uses the lower-cost fuel, resulting in the resource being mitigated below its costs. Joint Protesters request that the Filing Parties clarify that a resource is able to designate a primary fuel for the purposes of calculation of the resource's cost-based reference level.<sup>19</sup>

### C. ISO-NE Answer

21. ISO-NE reiterates that the Automated Mitigation Revisions do not change the thresholds for the structural, conduct, or impact screens, or the requirement that supply offers must exceed the existing thresholds in order to impose mitigation. ISO-NE also reiterates that the length of time for which mitigation will be imposed remains unchanged. ISO-NE contends that the proposed revisions simply automate the existing process and provide more precision in the application of the screens.

22. ISO-NE states that the duration of mitigation will continue through the end of the operating day or through the end of the resource's minimum run time, whichever is longer – is the same as that specified in its current Tariff.<sup>20</sup> ISO-NE states that it is appropriate to preserve the existing duration rules because, while a supply offer is not mitigated until it fails each element of the market power tests, once the supply offer fails the tests, it has been shown to be non-competitive and to have market impact. In the proposed mitigation rules, the non-competitive supply offer is replaced with an offer based on competitive reference levels. ISO-NE explains that the IMM makes each resource owner aware of its unit's reference level each day, and will adjust the assumptions behind the reference level using updated information from a resource at any time. Therefore, a market participant whose supply offer is replaced with a competitive offer based on a Reference Level keyed to its resource's costs would not be harmed. Responding to Joint Protesters' reliance on the procedures of other regional transmission organizations with respect to hourly market power evaluation, ISO-NE states that, unlike in those regions, where market participants may submit supply offers with different prices for each hour of the day and therefore hourly evaluation is required, the New England market structure provides that supply offers apply to the entire operating day, not hourly; therefore, mitigation that affects the remainder of the day is appropriate.

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<sup>19</sup> Joint Protest at 20-21.

<sup>20</sup> See Sections III.A.5.7.4(d)(i) and (d)(ii), and Section III.A.5.8.2.

23. ISO-NE responds to Joint Protesters' request that the impact test be applied individually and serially to units that have failed the conduct test by stating that such a methodology would ignore one (or more than one) market participant raising the offer prices of two or more units in a manner that individually fails the conduct test. In addition, ISO-NE contends that Joint Protesters' objection to conducting the pivotal supplier test on the basis of availability reflects their false premise that the pivotal supplier test should only be applied when the resources have knowledge of their pivotal supplier status or some sort of "intent to be pivotal."<sup>21</sup> ISO-NE states that most resource owners have sufficient market knowledge to understand whether they are pivotal in a wide variety of market conditions. Nevertheless, if a supplier is pivotal, its offers require evaluation and possible mitigation, whether or not the supplier is aware that it is pivotal.

24. ISO-NE states that it uses only available resources in their calculation for the real-time energy market because some resources become unavailable on short notice. ISO-NE clarifies that its lack of automated mitigation and inability to calculate pivotal supplier status more than once per operating day for both energy markets are the only reasons that the pivotal supplier test has, up to this point, been based on the assumption that all resources are available. ISO-NE maintains that, since changes in supply and demand impact the outcome of the pivotal supplier test, performing the test each time the resource adequacy analysis is performed will produce a more accurate determination of which supply offers need to be evaluated for competitiveness and potential mitigation.

25. In response to Joint Protesters' concerns regarding dual-fuel resources, ISO-NE clarifies that a dual-fuel resource's reference level could be set based on the use of the higher-cost fuel for an extended period, assuming that the market participant has adequately demonstrated that use of the higher-cost fuel is justified and provides sufficient information and notice.<sup>22</sup>

#### **D. NEPOOL Answer**

26. In its Answer, NEPOOL continues to lend its support to the Joint Filing, stating that it is just and reasonable. NEPOOL affirms that the proposed revisions do not amend the length of the duration of mitigation from those rules which are currently effective. Additionally, NEPOOL argues that the revisions will help address economic withholding from the energy market, making the market more competitive and improving dispatch.

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<sup>21</sup> ISO-NE Answer at 7.

<sup>22</sup> ISO-NE Answer at 10.

Finally, NEPOOL states that changes to the pivotal supplier test will produce a more efficient mitigation analysis that will focus only on viable competitors.<sup>23</sup>

#### **IV. Discussion**

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

27. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

28. We will grant Dynegy's motion to intervene out-of-time, given its interest in this proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

29. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept ISO-NE's and NEPOOL's answers because they have provided information that assisted us in our decision-making process.

##### **B. Commission Determination**

30. The Commission finds that the Automated Mitigation Revisions are just and reasonable and not unduly discriminatory or preferential. Accordingly, the Commission accepts the Filing Parties' proposed tariff revisions, effective on or after December 1, 2011, with two weeks prior notice to be provided by ISO-NE for the actual effective date, as discussed below.

31. The proposed tariff revisions implementing automatic mitigation represent an appropriate translation of the existing manual mitigation procedures. Under the revised tariff provisions, supply offers from market participants will continue to be subject to the same thresholds for the structural, conduct, and impact screens currently implemented by the IMM. Moreover, the duration for mitigation of supply offers under the Automated Mitigation Revisions remains unchanged. Thus, in automating its mitigation procedures, ISO-NE has retained the salient features of its existing manual mitigation procedures, which previously have been accepted by the Commission.<sup>24</sup> We find that the proposed tariff revisions are narrowly tailored to simply automate the current manual process.

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<sup>23</sup> NEPOOL Answer at 6.

<sup>24</sup> See *New England Power Pool*, 100 FERC ¶ 61,287, at P 30-46 (2002).

32. The automatic mitigation procedures also offer several advantages over the current manual process. For example, the revisions enhance the ability of ISO-NE to address economic withholding, thereby producing a more competitive dispatch. Additionally, under automated mitigation, the review of the full range of resources that are adversely impacting clearing prices occurs simultaneously, thereby further reducing the delays caused by sequential manual examination of each supply offer that fails a conduct test.

33. Contrary to arguments raised by Joint Protesters, we find that ISO-NE's proposal to replace non-competitive supply offers with an offer based on a competitive reference level to be just and reasonable. As ISO-NE explains, the IMM will offer daily notification to market participants of their applicable reference levels. Moreover, the IMM will adjust the assumptions related to the reference levels based on updates from market participants at any time.

34. We also reject the argument that the tariff revisions will result in an unjustified increase in mitigation of supply offers. Under its current manual procedures, ISO-NE has been unable to identify which resources are available in real-time and, for that reason, ISO-NE did not conduct the pivotal supplier test more than once a day. Under the automatic mitigation revisions accepted herein, ISO-NE will be able to identify which resources are available in real-time and perform the pivotal supplier test each time it performs the resource adequacy analysis. Thus, the automatic mitigation provisions will result in a more accurate determination – which is distinguishable from an unjustified increase – as to which supply offers need to be evaluated for competitiveness and potential mitigation.

35. Given ISO-NE's current market design, we find that retaining the existing duration of mitigation is just and reasonable. Under the Automated Mitigation Revisions, mitigation continues through the end of the operating day or through the end of the resource's minimum run time, whichever is longer. Thus, the tariff revisions maintain the same duration of mitigation as under the existing tariff provisions. ISO-NE notes that it is evaluating energy market design changes that would allow market participants to submit hourly energy offers in the day-ahead market and modify supply offer components during the operating day. When ISO-NE implements such revisions, it may be appropriate for the IMM to evaluate each offer on an hourly basis, as is done in other regions. But on the record before us we find no reason to shorten duration of mitigation under ISO-NE's tariff.

36. Finally, with respect to the Joint Protesters' concerns regarding the ability of dual-fuel resources to bid based on a higher-cost fuel, ISO-NE clarified in its answer that a dual-fuel resource's reference level could be set based on the use of the higher-cost fuel for an extended period, assuming that the market participant has adequately demonstrated that the use of the higher-cost fuel is justified and provides sufficient information and notice. Thus, we find that ISO-NE's tariff revisions appropriately address the needs of dual-fuel resources that rely primarily on higher-cost fuel types.

The Commission orders:

ISO-NE's proposed tariff revisions are hereby accepted for filing, effective on or after December 1, 2011, with two weeks prior notice to be provided by ISO-NE to the Commission as to the actual effective date, as discussed in the body of this order.

By the Commission. Commissioner Spitzer is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.