

142 FERC ¶ 61,027  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

ISO New England Inc.

Docket No. ER12-1627-000

ORDER ON PROPOSED TARIFF REVISIONS

(Issued January 14, 2013)

1. On April 26, 2012, ISO New England Inc. (ISO-NE) submitted, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> proposed changes to its Transmission, Markets and Services Tariff (Tariff) to revise certain Forward Capacity Market (FCM) rules (FCM Conforming Changes) to be consistent with the price-responsive demand Fully Integrated rules currently scheduled to become effective June 1, 2016.
2. In this order, the Commission accepts in part, and rejects in part, the proposed revisions to Tariff sections I.2.2 (definitions) and III.13 (capacity market rules), with the accepted Tariff revisions to become effective on January 15, 2013, as requested, subject to conditions, as discussed in the body of this order. The Commission also accepts the proposed revisions to Appendix E of Market Rule 1 to become effective June 1, 2017, as requested, as discussed in the body of this order. The Commission further grants ISO-NE's request to delay implementation of the Fully Integrated rules to make the Fully Integrated rules become effective June 1, 2017, instead of June 1, 2016, as requested.

**I. Background**

3. In August 2011, ISO-NE filed two sets of Tariff revisions in compliance with Order No. 745,<sup>2</sup> regarding compensation for demand response resources participating in

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<sup>1</sup> 16 U.S.C. § 824d (2006).

<sup>2</sup> *Demand Response Compensation in Organized Wholesale Energy Markets*, Order No. 745, 76 Fed. Reg. 16,658 (Mar. 24, 2011), FERC Stats. & Regs. ¶ 31,322, *order on reh'g and clarification*, Order No. 745-A, 137 FERC ¶ 61,215 (2011).

wholesale energy markets. ISO-NE proposed to first implement an interim set of demand response compensation rules, effective June 1, 2012 (Transition Period rules), which would be replaced by the Fully Integrated rules that fully integrate demand response resources (price-responsive demand or PRD) into the energy market effective June 1, 2016. On January 19, 2012, the Commission accepted, subject to conditions, both sets of rules.<sup>3</sup> On January 31, 2012, ISO-NE filed proposed changes to the FCM rules to conform those rules to the Transition Period rules, which the Commission approved on April 17, 2012.<sup>4</sup>

4. As detailed in the discussion below, ISO-NE filed the FCM Conforming Changes in order to specify the rights and obligations of demand response resources that take on Capacity Supply Obligations in the FCM upon implementation of the Fully Integrated rules. ISO-NE requests that the FCM Conforming Changes become effective in two stages. Specifically, ISO-NE requests that the proposed changes to Tariff sections I.2.2 (definitions) and III.13 (capacity market rules) become effective on January 15, 2013, so that they are in effect in time for the qualification process for the Forward Capacity Auction for the Capacity Commitment Period commencing in June 2017.<sup>5</sup> ISO-NE further requests that the proposed changes to Appendix E of Market Rule 1 (which contains most of the Fully Integrated rules) become effective on June 1, 2017. Additionally, ISO-NE requests an extension of time for implementing the previously-accepted Fully Integrated rules, so that they become effective June 1, 2017 instead of June 1, 2016. Finally, ISO-NE requests that the Commission waive its notice requirements<sup>6</sup> in order to allow all of these changes to become effective on more than 120 days notice.

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

5. Notice of the FCM Conforming Changes was published in the *Federal Register*, 77 Fed. Reg. 27,042 (2012), with interventions and protests due on or before

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<sup>3</sup> *ISO New England Inc.*, 138 FERC ¶ 61,042 (2012) (January 19 Order). The Commission subsequently accepted ISO-NE's filing in compliance with the January 19 Order. *ISO New England, Inc.*, Docket No. ER11-4336-005 (May 29, 2012) (unpublished letter order).

<sup>4</sup> *ISO New England Inc. and New England Power Pool Participants Committee*, Letter Order Accepting Price-Responsive Demand FCM Conforming Changes, Docket No. ER12-947-000 (Apr. 17, 2012) (delegated letter order) (April 17 Order).

<sup>5</sup> The qualification period begins in February 2013.

<sup>6</sup> 18 C.F.R. § 35.3(a)(1) (2012).

May 17, 2012. The Massachusetts Department of Public Utilities submitted a notice of intervention. Timely-filed motions to intervene were filed by Calpine Corporation, EnerNOC, Inc. (EnerNOC), Exelon Corporation, GDF Suez Energy Marketing NA, Industrial Energy Consumer Group (IECG), the New England Conference of Public Utility Commissioners (NECPUC), the New England Power Generators Association, Inc. (NEPGA), NEPOOL Industrial Customer Coalition, the New England Power Pool (NEPOOL) Participants Committee, Northeast Utilities Service Company, and Verso Paper Corporation (Verso).

6. Timely comments were submitted by NECPUC, NEPGA and the NEPOOL Participants Committee. Timely protests were submitted by, jointly, EnerNOC, Comverge, Inc., Viridity Energy, NEPOOL Industrial Customer Coalition and Wal-Mart Stores, Inc. (collectively, DR Supporters); Verso; and IECG. On June 1, 2012, ISO-NE filed an answer to comments and protests. On June 13, 2012, Verso filed an answer to ISO-NE's answer. On June 15, 2012, IECG filed an answer to ISO-NE's answer. On June 22, 2012, EnerNOC filed an answer to ISO-NE's answer, and ISO-NE filed an answer to the answers of Verso and IECG.

### **III. Discussion**

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

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest or answer to answer unless otherwise ordered by the decisional authority. We will accept ISO-NE's answer and the answers to answers because they have provided information that assisted us in the decision-making process.

#### **B. Discussion**

##### **1. Must-Offer Requirement**

##### **a. ISO-NE's Proposal**

9. ISO-NE proposes to require demand response resources with Capacity Supply Obligations<sup>7</sup> in the FCM to make cost-based energy offers into the Day-Ahead Energy

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<sup>7</sup> Capitalized terms used but not defined herein have the meaning given in ISO-NE's Tariff.

Market and Real-Time Energy Market (must-offer requirement). ISO-NE states that the offer component will enhance the energy market's economic efficiency when demand resources are dispatched.<sup>8</sup> ISO-NE also states that this requirement achieves comparability between dispatchable generation and demand response resources in the FCM, which, ISO-NE asserts is an outcome that is logically required by Order No. 745.

10. ISO-NE explains that, under its current FCM rules, demand response providers with Capacity Supply Obligations must reduce demand within 30 minutes of dispatch in the event of a capacity deficiency on the electric system as a condition of their Capacity Supply Obligation. ISO-NE further explains that these market participants cannot submit offers into the Day-Ahead Energy Market and Real-Time Energy Market at the present time.<sup>9</sup> Furthermore, demand response resources are dispatched without consideration to whether it is economically efficient to do so. ISO-NE states that this has resulted in several adverse consequences: (1) the marketplace is sent the wrong price signal with respect to the cost of energy during times of high demand; (2) overall production costs are increased; and (3) inefficient dispatch erodes the value of demand response as a potential source of profit to the customers providing the demand reduction. Additionally, ISO-NE states that currently its treatment of demand response resources is very different from its treatment of dispatchable generation; currently, a dispatchable generator with a Capacity Supply Obligation is required to submit Supply Offers into the Day-Ahead Energy Market and Real-Time Energy Market, whereas a demand response resource cannot.

11. ISO-NE's proposed Tariff section III.13.6.1.5.1 would require demand response providers to specify, through offers into the Day-Ahead Energy Market and Real-Time Energy Market, the amount of capacity that is physically available, the inter-temporal parameters for the resource, and the price at which the demand response provider is willing to provide that amount of demand reduction. Additionally, demand response providers must re-declare in real-time any changes to the amount of capacity that is physically available for each resource.<sup>10</sup> ISO-NE states that by integrating demand response resources into the energy market clearing process, and requiring them to specify their physical capacity and costs in a manner comparable to generation resources, wholesale energy prices will reflect the actual cost of energy balancing services provided by both generation and demand response resources that have been dispatched in a least-cost fashion, thereby sending the correct price signals.

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<sup>8</sup> Transmittal Letter at 3.

<sup>9</sup> Transmittal Letter at 10.

<sup>10</sup> *Id.* at 13.

12. ISO-NE also proposes to revise the way it determines the capacity value of a demand response resource to remove the adjustment for transmission losses as of June 1, 2017 (the date when the Fully Integrated PRD rules are implemented), while retaining the adjustment for distribution losses. In the January 19 Order, the Commission accepted ISO-NE's proposal to change the Tariff by removing transmission loss adjustment from the energy value for demand response resources while retaining the average avoided peak distribution loss adjustment. ISO-NE proposes to do the same here: remove transmission losses from the capacity value calculation of a demand response resource, but retain the distribution loss adjustment.<sup>11</sup>

**b. Protests and Comments**

13. As an initial matter, DR Supporters, Verso and IECG disagree with ISO-NE's assertion that its proposed revisions to the FCM rules are required by Order No. 745, noting that the scope of Order No. 745 was limited to energy market issues. DR Supporters further note that, in accepting ISO-NE's Order No. 745 compliance filing, the Commission explicitly declined to address capacity market issues raised by ISO-NE.<sup>12</sup>

14. DR Supporters assert that the must-offer requirement is unnecessary, stating that must-offer requirements generally have been imposed to avoid the exercise of market power through economic withholding; however, no concerns about demand response resources' ability to withhold have been, or could be, expressed in this case. According to DR Supporters, this is because a demand response resource's dispatch is out of its control. If the capacity resource decides to "withhold" curtailment, it faces capacity market penalties upwards of 45 percent of its annual revenue from one event. DR Supporters also contend that, because demand response resources typically have high opportunity costs, these resources will rarely be dispatched in merit order under non-scarcity conditions, so a must-offer requirement is pointless.

15. According to DR Supporters, a must-offer requirement also is inconsistent with demand response's role as an emergency resource, which recognizes the uncertain and often very high opportunity costs faced by demand response customers and their overriding concern with maintaining business schedules with manageable levels of disruption. DR Supporters assert that energy market payments usually are not sufficient

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<sup>11</sup> *Id.* at 30.

<sup>12</sup> DR Supporters Protest at 12 (citing *ISO New England*, 138 FERC ¶ 61,042 at P 84 ("we make no finding with respect to ISO-NE's comment that CDRI's alternative proposal would result in under-procurement of capacity resources"); Verso at 7-8; IECG at 5-7, citing 18 C.F.R. § 35.28 (g)(1)(v) and Order No. 745, FERC Stats. & Regs. ¶ 31,322 at PP 47, 85, and n.167).

to incent demand response providers to participate in demand response programs in a large number of hours; rather, they enroll in order to prevent uncontrolled, costly power outages. Thus, DR Supporters contend that the must-offer requirement will inhibit demand response participation, and that such a requirement will provide no additional benefits to ratepayers or the market as a whole.

16. DR Supporters further state that imposing a must-offer requirement is inconsistent with the structure of the measurement and verification process adopted to set baselines. Under existing measures designed to ensure the integrity of baselines, demand response resources must be “out of the market” in at least three out of every 10 days, or risk performance penalties in terms of baseline erosion. According to DR Supporters, this means that in nearly a third of the hours that ISO-NE insists these resources must offer, actual dispatch would both reduce the integrity of baseline measurements and subject the resource to penalties.

17. Additionally, DR Supporters believe that the possibility of enforcement referrals related to demand response resource bidding behavior imposes too much uncertainty and risk on demand response providers.<sup>13</sup> DR Supporters contend that opportunity costs for demand response providers are significantly more complex than for traditional generation resources; the costs of not producing something depend on a host of factors that are different for every business and in each situation. DR Supporters state that the analysis of appropriate opportunity costs for demand response resources will be a partially subjective determination, because, according to DR Supporters, ISO-NE and its Internal Market Monitor have failed to provide guidance regarding what constitutes appropriate offering behavior. In particular, DR Supporters state that ISO-NE has failed to: (1) recognize that the opportunity cost for demand response customers in most hours far exceeds the energy market offer cap of \$1000/MWh; (2) define appropriate offering behavior for demand response resources; and (3) provide guidance on what considerations will be made before referral to the Commission’s Office of Enforcement. DR Supporters state that a must-offer requirement is particularly troublesome because it would prevent a resource from mitigating the potential damage from a referral by ceasing its participation in the energy market until concerns are resolved. DR Supporters further state that both ISO-NE and the Internal Market Monitor acknowledge having little experience with assessing the opportunity costs of demand response resources.<sup>14</sup>

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<sup>13</sup> DR Supporters argue that, for demand response resources, which are usually much smaller than conventional generators, the legal cost of enforcement actions or responding to after-the-fact inquiries, even if the resource is completely innocent, would far outweigh the revenues to be earned from providing demand response.

<sup>14</sup> See Transmittal Letter at 15.

18. DR Supporters suggest that ISO-NE can use a different method to address inefficiencies in the current FCM design. For example, DR Supporters note that PJM Interconnection, L.L.C. (PJM) allows each demand response resource to establish a “strike price” that it is willing to accept in scarcity situations.<sup>15</sup> However, if the Commission accepts the must-offer requirement, DR Supporters request that ISO-NE be required to specify how it will determine whether an offer is consistent with a demand response resource’s opportunity costs, what offering or other practices will be permitted without risk of referral to the Office of Enforcement, and the mechanisms by which a demand response resource will be assured that it can avoid uneconomic dispatch.

19. NECPUC largely supports the proposed revisions, with one exception; specifically, NECPUC states that the proposed rule changes fall short in providing a sufficient definition regarding what constitutes competitive offering behavior by demand resources. NECPUC states that the uncertainty and risk of not incorporating clarifying language in the Tariff will impede new and continued demand response participation in the energy markets. NECPUC requests that the Commission condition its acceptance of the proposed rule changes on ISO-NE initiating a stakeholder process in the near-term to address the need for guidelines on the permissible bounds of competitive offering behavior of demand resources.<sup>16</sup>

20. NEPGA supports the proposed must-offer requirement, which it states will create comparable obligations for all capacity resources that are compensated at the same price, as well as ensure a more economically appropriate outcome for consumers.

**c. Answers**

21. ISO-NE states that DR Supporters misunderstand both the construct and objectives of the FCM. ISO-NE states that currently, demand response providers must be prepared to provide demand response in every hour of every operating day in the event of a reliability need without regard to price.<sup>17</sup> ISO-NE states that this has resulted in demand

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<sup>15</sup> Specifically, DR Supporters state that in PJM, there is no requirement that a demand response capacity resource offer into the day-ahead energy market on a daily basis. However, each demand resource’s strike price reflects the minimum price at which each demand response resource is willing to be dispatched, and that strike price ensures that a demand response resource can set the price if it is dispatched during emergency and scarcity situations. DR Supporters Protest at 25-26.

<sup>16</sup> NECPUC Comments at 6-7.

<sup>17</sup> ISO-NE Answer at 4-5 (citing section III.13.1.4.4.2 of the ISO-NE Tariff, Market Rule 1).

response resources being dispatched during non-peak hours and at prices well below the \$1000/MWh offer cap. ISO-NE states that the FCM Conforming Changes' addition of an offer provision to the existing requirement that demand response resources be available in all hours presents no greater risks for demand response resources and, in fact, reduces economic risks to these resources by considering their economic and physical characteristics.<sup>18</sup>

22. Therefore, ISO-NE argues, the proposed must-offer provision does not represent a “fundamental change” to the way demand response resources are treated; rather, the new provisions provide flexibility to demand response resources. ISO-NE states that the must-offer provision allows market participants to better capture the opportunity costs of providing demand response to the marketplace, including the costs of frequent dispatch, such as the potential impacts on the resource's baseline, in the price component of its offer.<sup>19</sup> Also, regarding DR Supporters' concerns about computation of the baseline, ISO-NE notes that the risk of baseline erosion would occur under any capacity market construct, and that demand resources can enroll in “passive” resource categories to avoid baseline erosion.

23. Further, ISO-NE argues that the capacity market is not a “reliability product” as DR Supporters suggest; rather, it is the market by which the New England region procures sufficient capacity to meet load. Thus, the energy market must-offer requirement is the mechanism by which capacity is provided to the marketplace on an economically efficient basis to meet the actual loads on the New England system at each moment in time. Citing Order No. 745-A, ISO-NE states that it is appropriate, and entirely just and reasonable, to expect a resource to submit offers based upon its opportunity cost and for it to be dispatched on the basis of such costs.<sup>20</sup> ISO-NE further contends that, even if the must-offer requirement leads to the exit of some amount of demand response from the market place, as some commenters argue, that is not in itself any indication that the comparable treatment proposed is unfair. ISO-NE states that not subjecting demand response providers to requirements comparable to those of other capacity market participants would be unduly discriminatory and unjust and unreasonable.<sup>21</sup>

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<sup>18</sup> ISO-NE Answer at 5-6.

<sup>19</sup> *Id.* at 4-9.

<sup>20</sup> *Id.* at 10-11.

<sup>21</sup> *Id.* at 10.

24. ISO-NE states that the DR Supporters' concerns regarding the possibility of enforcement referrals, their request for guidance regarding how future mitigation particular to demand response might apply, and explanation of the circumstances under which ISO-NE would refer demand response offer behavior to the Commission are beyond the scope of this proceeding and should be rejected. ISO-NE emphasizes that it is not proposing to impose mitigation requirements on demand response providers, stating that, in accordance with its existing Tariff, it will monitor the performance of demand response resources to identify behavior that needs further investigation to ensure accurate baselines and genuine demand reductions, and any such behavior will be referred to the Commission if warranted under the appropriate provisions of Appendix A to Market Rule 1. ISO-NE notes that the Commission accepted this as a reasonable approach when it accepted ISO-NE's Order No. 745 compliance filing,<sup>22</sup> and the FCM Conforming Changes do not modify the existing referral provisions in Appendix A of Market Rule 1.<sup>23</sup> Additionally, ISO-NE states that ISO-NE and the Internal Market Monitor do not have the authority to provide the guidance DR Supporters seek, and that there are regulatory mechanisms available for obtaining the requested guidance.<sup>24</sup>

25. In response to ISO-NE's answer, DR Supporters assert that demand response will never be identical to generation in its operational availability, cost structure, or mode of providing service. DR Supporters state that ISO-NE has presented no evidence showing that identical requirements in terms of a must-offer requirement for demand response resources and generation resources will further the true goals of comparability, in terms of reliability, quantity and quality of service to ratepayers from a variety of available resources, that could not be achieved through the adoption of what DR Supporters consider to be less risky rules, such as those in place in PJM and the New York Independent System Operator, Inc. (NYISO), and the implementation of the

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<sup>22</sup> *Id.* at 13 (citing *ISO New England Inc.*, 138 FERC ¶ 61,042 at P 142).

<sup>23</sup> ISO-NE Answer at 12.

<sup>24</sup> *Id.* at 15-16. (ISO-NE refers to the Commission's no-action letter policy, implemented in response to the Energy Policy Act of 2005 (*Informal Staff Advice on Regulatory Requirements*, Interpretive Order Modifying No-Action Letter Process, Docket No. PL06-4-001 (October 19, 2006)); and the referral provisions in Section III.A.19 of Appendix A that were added to the ISO-NE Tariff to comply with the requirements of Order No. 719 (18 C.F.R. § 35.28(g)(3)(iv) (2011)).)

Commission-approved voluntary participation in the energy market.<sup>25</sup> Further, DR Supporters contend that ISO-NE has failed to show how any category of resource would be harmed or unduly discriminated against absent the must-offer requirement.

26. DR Supporters also clarify their concerns that under the proposed must-offer requirement, a demand response resource will have no knowledge of how many hours it could face dispatch, how often it will face scrutiny by the Internal Market Monitor, or what standard will be applied in evaluating its offering behavior.

**d. Commission Determination**

27. The Commission will accept ISO-NE's proposed must-offer requirement, contained in proposed Tariff section III.13.6.1.5.1, to become effective June 1, 2017, as requested, subject to conditions discussed below. The Commission finds that establishing a must-offer requirement for demand response resources with capacity supply obligations helps ensure just and reasonable and not unduly discriminatory or preferential rates by providing for more efficient, economic dispatch of all supply resources. While Order No. 745 applies only to regional transmission organization (RTO) and independent system operator (ISO) organized wholesale energy markets, not capacity markets,<sup>26</sup> the Commission finds that the proposed Tariff revisions to implement a must-offer requirement for demand response resources with a capacity supply obligation in ISO-NE's FCM, similar to the requirements imposed on dispatchable generation, is just and reasonable.

28. The Commission agrees with ISO-NE that the proposal will assist in correcting inefficiencies inherent in the current capacity market design, and will provide substantial benefits to many parties, including demand response resources, by requiring that all resources with capacity supply obligations make energy offers into the energy markets for all hours, unless the resource is unavailable. For example, because ISO-NE utilizes security constrained economic dispatch to select and dispatch available resources, under ISO-NE's proposal, ISO-NE will dispatch demand response resources with lower opportunity costs first, and demand response resources with higher opportunity costs will not be dispatched until it is economic to do so, benefitting both the demand response resource and the market. While, as DR Supporters contend, there may be other ways to

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<sup>25</sup> In contrast, demand response resources with capacity obligations in PJM and NYISO are required to provide a "strike price." While this value is not used for economic dispatch in PJM and NYISO, it may be used to establish real-time energy market prices during shortage events.

<sup>26</sup> Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 1.

achieve such efficiencies, this alone does not render ISO-NE's proposal unjust and unreasonable; there can be more than one just and reasonable rate.<sup>27</sup>

29. We further find that ISO-NE's proposal will be beneficial to both demand response providers and wholesale electricity customers. First, the proposal would allow a demand response resource to specify the minimum energy price at which it is willing to provide service, allowing the resource to recoup its legitimate opportunity costs and sending improved price signals. The existing rules do not allow a demand response resource to submit an energy offer that specifies a price at which the resource would be willing to clear the market; rather, demand response resources currently are dispatched without consideration to whether the resources are economic during emergency events, which tends to artificially lower energy prices below competitive levels. We agree with ISO-NE that such lower prices can send the wrong price signals to market participants. During emergency events, prices should signal that marginal supplies are costly, so as to encourage additional supply offers and discourage additional consumption. By dispatching demand response resources without considering the cost of the resources, the existing rules may fail to provide accurate price signals.

30. Moreover, under the existing rules, demand response resources may not be economic when they are dispatched because energy prices may be lower than the demand response resource's legitimate opportunity costs. By contrast, under ISO-NE's proposal, a demand response resource would be dispatched only when the energy price is at or above the resource's offer price. Importantly, when resources are dispatched under ISO-NE's proposal, energy prices during emergency events will accurately signal to market participants the price of supplying and consuming energy. Thus, this feature would improve price signals during emergencies and ensure that ISO-NE dispatches demand response resources only when doing so is efficient and profitable for the resource.

31. Second, ISO-NE's proposed rules will remove the existing prohibition on demand response capacity resources' ability to offer into the Day-Ahead Energy Market and the Real-Time Energy Market. This change will benefit both demand response resources and customers: demand response resources will have additional opportunities to participate

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<sup>27</sup> See *Oxy USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995) (finding that under the FPA, as long as the Commission finds a methodology to be just and reasonable, that methodology "need not be the only reasonable methodology, or even the most accurate one"); cf. *City of Bethany v. FERC*, 727 F.2d 1131, 1136, 234 U.S. App. D.C. 32 (D.C. Cir. 1984) (when determining whether a proposed rate was just and reasonable, the Commission properly did not consider "whether a proposed rate schedule is more or less reasonable than alternative rate designs").

in the energy market, while customers will benefit when ISO-NE dispatches economic demand response resources.

32. However, we agree with commenters that the lack of guidance provided in the proposed Tariff revisions regarding ISO-NE's approach to evaluating demand response offers, including what ISO-NE would consider appropriate opportunity costs,<sup>28</sup> may create excessive uncertainty for demand response providers.

33. We are concerned that ISO-NE's proposal does not adequately address how ISO-NE's Internal Market Monitor will monitor demand response resources' offers for non-competitive behavior and evaluate the appropriateness of the opportunity costs in demand response resources' offers. ISO-NE recognizes, and we agree, that legitimate and verifiable opportunity costs associated with providing demand response, including foregone profits from shutting down core operations, would legitimately be reflected in an energy market offer from demand response resources.<sup>29</sup> We agree with commenters that because an offer should include a price component reflecting opportunity costs, and how to measure and evaluate opportunity costs may be subject to dispute, the lack of detail regarding how ISO-NE will evaluate demand response resources' price-based offers creates uncertainty. As noted by ISO-NE in its Transmittal Letter, the existing provisions of Appendix A to Market Rule 1 require the Internal Market Monitor to make a referral to the Commission's Office of Enforcement when it has sufficient credible information of any instance where behavior may require investigation, including, but not limited to, suspected market violations.<sup>30</sup> DR Supporters argue that the costs of defending against an investigation are significant, and the risk of such an investigation could discourage demand response resources from participating in the capacity market. We note that this risk exists for all market participants, and note that the Commission will not treat demand response resources any differently than other entities that find themselves subject to an investigation.

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<sup>28</sup> ISO-NE states in its Transmittal Letter at 4, that "the ISO and the Internal Market Monitor also acknowledge that demand response providers acting competitively should reflect the opportunity costs of providing demand response in their energy market offers. If the opportunity costs of deferring or forgoing energy consumption by the retail customers comprising a Demand Response Resource are high, this would legitimately be reflected in a correspondingly high-priced energy market offer." The Commission notes that such guidance is not reflected in the Tariff revisions themselves.

<sup>29</sup> Transmittal Letter at 4.

<sup>30</sup> The Internal Market Monitor's referral obligations also derive from Order No. 719 and 18 C.F.R. § 35.28(g)(3)(ii)(C). *See also* 18 C.F.R. § 35.28(g)(3)(iv)(A).

34. We note that in the January 19 Order, the Commission accepted ISO-NE's proposed market rule changes to Appendix A of Market Rule 1 that adds provisions providing the Internal Market Monitor the ability to obtain market participant data to assist it in monitoring resource performance and demand response provider behavior.<sup>31</sup> In that proceeding, ISO-NE explained that the Internal Market Monitor will monitor the performance of demand response resources to identify behavior that needs further investigation. ISO-NE further stated that if the Internal Market Monitor found, after a thorough review, that a demand response provider's behavior is suspect by, for example, offering to reduce demand at a price that is consistently above or below its opportunity cost, it will refer the market participant to the Commission's Office of Enforcement.<sup>32</sup> We do not agree with DR Supporters that a must-offer requirement alone could substantially increase the risk of such a referral.

35. Finally, we note that ISO-NE's approved measurement and verification protocol includes refreshment of demand response resources' baselines with recent meter data using a "3 of Last 10 Days" method.<sup>33</sup> We are concerned about the interaction between the must-offer requirement and the need for demand response resources to refresh their baselines. For example, it is preferable for a demand response resource to have three non-event, non-holiday weekdays during each ten day interval to allow for accurate baseline calculation; however, with the must-offer requirement in place, demand response resources may be dispatched more frequently, which could degrade the accuracy of a resource's baseline. We are not persuaded by ISO-NE's argument that the risk of baseline erosion would occur under any capacity market construct, and that the only option for demand resources to avoid baseline erosion is the option to enroll in "passive" resource categories. Therefore, we will require ISO-NE to address this concern in the required compliance filing.

36. Based upon the foregoing, and, as noted by DR Supporters, in light of the must-offer requirement, the Commission will require ISO-NE to explain on compliance within 60 days of the date of this order how the Internal Market Monitor will monitor and evaluate offers by demand response capacity resources. The Commission agrees with ISO-NE that if the opportunity costs of deferring or forgoing energy consumption by a demand response resource are high, this would legitimately be reflected in a

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<sup>31</sup>; See January 19 Order, 138 FERC ¶ 61,042 at PP 138, 142.

<sup>32</sup> See ISO New England Inc., Order No. 745 Compliance Filing, Docket Nos. ER11-4336-000 and ER11-4336-001 (filed August 19, 2011), LaPlante Testimony at 4.

<sup>33</sup> Tariff Section III.8.

correspondingly high-priced energy market offer from demand response resources. ISO-NE must also provide on compliance an explanation of whether the “3 of last 10 days” baseline refreshment is still a viable element of its methodology to ensure accurate baselines in light of the requirement that demand resources with a Capacity Supply Obligation offer into the energy market in all hours and thus could be dispatched more frequently than under the current FCM market rules.

## **2. Net Supply/Behind-the-Meter Generation**

### **a. ISO-NE’s Proposal**

37. ISO-NE proposes that net supply (defined as the amount of generation injected into the wholesale power grid from generators located behind an asset’s retail delivery point)<sup>34</sup> will no longer be eligible to participate in the FCM as a demand resource. Instead, net supply would participate as generation, specifically as an Existing Generating Capacity Resource.<sup>35</sup> The new rules would require demand response resources that currently bid a single capacity offer, which includes both demand response (reduced load) and generation, to make separate bids for demand response and generation. ISO-NE states that its net supply proposal builds upon the Fully Integrated rules incorporating demand response resources into the energy markets that the Commission accepted on January 19, 2012.

### **b. Comments**

38. IECG states that it does not, in principle, object to reclassifying behind-the-meter generation as generation resources, but seeks rejection of the proposal here, arguing that ISO-NE fails to provide rules specifying the method for reclassifying behind-the-meter generation resources as generation for purposes of the FCM. IECG seeks Commission assurance that existing capacity resources remain eligible to participate in the market and that reclassification is not used as a pretext to disqualify them from participation. Specifically, IECG argues that there will be no change in the electrical characteristics or delivery of MWs associated with behind-the-meter generation due to their reclassification from demand response to generation, and, as such, these resources should not be subject to additional studies or upgrade requirements. Additionally, IECG seeks reassurance that the Internal Market Monitor will take into account opportunity costs associated with interrupting load as a legitimate part of the costs to be incorporated into the offer of these resources – whether classified as demand response or generation. Thus, IECG requests

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<sup>34</sup> *Id.* at 30.

<sup>35</sup> *Id.* (citing proposed section III.13.7.1.5.2 of the ISO-NE Tariff).

that the Commission clarify that these opportunity costs will be considered a legitimate cost of operation for purposes of review and mitigation of offers.<sup>36</sup>

39. Likewise, Verso requests that the Commission reject ISO-NE's proposal to prevent demand-side resources from receiving capacity payments above the level of purchases from the New England grid after June 1, 2017, because, they state, the filing is unsupported. In particular, Verso contends that ISO-NE did not provide further explanation or Tariff language describing the process by which former demand response capacity (now generation capacity) would qualify and clear as capacity, thus, Verso states, it is unclear how resources that will no longer qualify for capacity payments as demand response will receive capacity payments as generation.

**c. Answers**

40. As to concerns regarding how net supply that currently participates in the capacity market as demand response capacity will qualify in future capacity auctions, ISO-NE states in its answer that section 13.1.2.1 of the Tariff clearly provides that such resources will be considered Existing Generating Capacity Resources, so any additional guidance is unnecessary.<sup>37</sup> However, expounding upon its protest, Verso asserts that ISO-NE's proposal to divide capacity payments for demand response resources with behind-the-meter generation into two parts – demand response capacity payments and generation capacity payments – will not work without the development of detailed Tariff language. Similarly, IECG states that there are significant administrative and operational obstacles to reclassifying net supply as generation, which ISO-NE has not addressed.

41. Specifically, Verso asserts that the division between demand response capacity and generation capacity proposed by ISO-NE involves factors that cannot be projected on the three-year forward basis utilized by the FCM.<sup>38</sup> IECG likewise highlights the operational issues associated with reclassifying net supply as generation, and suggests that it may be more practical to establish a combined resource value reflecting the total change, both load reduction and export, to be available at the node. Additionally, IECG notes that the informational filing requirements for existing demand resources and existing generating capacity resources are different. For example, existing generating capacity resources must provide separate information regarding winter and summer capability, while demand resources do not. IECG states that a transition period is

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<sup>36</sup> IECG Comments at 7-9.

<sup>37</sup> ISO-NE Answer at 16-17.

<sup>38</sup> Under the FCM, resources submit bids three years in advance of the actual capacity commitment period.

necessary to address how resource previously classified as a Demand Resource would “convert” from one resource type to another.<sup>39</sup>

42. In its answer to the answers, ISO-NE counters Verso’s argument that it is “impossible” for a resource to divide in advance its capacity into demand response and Existing Generation Capacity. ISO-NE states that under the FCM structure, all capacity providers, whether demand response resources or generation resources, must project the amount of capacity the resource will be capable of providing during the Capacity Commitment Period. ISO-NE states that Verso points to nothing indicating why behind-the-meter generators should not be required to make the same projections. Moreover, ISO-NE notes that several market participants have registered behind-the-meter generators for participation in the FCM as generation resources using the existing capacity market rules, and these resources have been providing capacity to New England under this construct.<sup>40</sup>

43. ISO-NE states that while the answers could be read as suggesting that ISO-NE define a new class of capacity resource, it is not seeking to define a new class of resources for the FCM and that any proposal to do so is beyond the scope of this proceeding. ISO-NE notes that Verso and IECG have not pointed to anything in the existing rules that limits their ability to provide energy in the form of net supply through the capacity market. ISO-NE argues that the Commission’s January 19 Order recognized the ability to utilize the existing market rules structure for net supply.<sup>41</sup> Further, ISO-NE states that the existing market rules, processes, and procedures are sufficient to address IECG’s concerns regarding any need to provide supplemental materials for resource qualification.

#### **d. Commission Determination**

44. We reject ISO-NE’s proposal regarding net supply, contained in sections III.E.7.3 and III.13.7.1.5.2 of the proposed Tariff revisions, without prejudice to ISO-NE filing revised Tariff language to clarify its rules regarding demand response resources that provide capacity through both demand reductions and behind-the-meter generation.

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<sup>39</sup> IECG Answer at 2.

<sup>40</sup> ISO-NE notes that such resources have been registered as Settlement Only Resources, as Intermittent Power Resources, as Intermittent Settlement Only Resources, and as Generating Capacity Resources.

<sup>41</sup> ISO-NE Answer to Answer at 6 (citing *ISO New England Inc.*, 138 FERC ¶ 61,042 at P 79).

45. We recognize that the Commission accepted ISO-NE's proposal to compensate injections into the grid from behind-the-meter generation as generation in the energy market,<sup>42</sup> however, ISO-NE has not explained why corresponding changes to the FCM rules are appropriate.

46. Therefore, based on the minimal discussion in the record before us, we cannot find that ISO-NE's proposal regarding net supply is just and reasonable. In the one example raised in the record, ISO-NE's proposal would not fully recognize the capacity value of a demand response resource.<sup>43</sup> As a result, in this example, ISO-NE would procure more capacity than needed. Therefore, ISO-NE will need to address in any future filing the issues identified herein in order to ensure that the resource's capacity value is appropriately calculated and to support its proposal as just and reasonable.

### **3. Peak Energy Rent Adjustment**

#### **a. ISO-NE's Proposal**

47. In section III.13.7.2.7.1 of the proposed Tariff revisions, ISO-NE proposes to apply to demand response resources that take on Capacity Supply Obligations the Peak Energy Rent (PER) Adjustment, which currently applies only to dispatchable generation resources and import resources. The PER Adjustment mechanism is intended to curb a capacity supplier's incentive to exercise market power and drive the Real-Time LMP higher in the Real-Time Energy market by reducing a supplier's capacity payment each time the Real-Time LMP rises above the PER strike price.<sup>44</sup> ISO-NE argues that applying the PER Adjustment to demand response resources is important to achieve comparability, avoid placing undue economic disadvantages on other capacity resources and reduce economic incentives to overstate available capacity when participating in the market. ISO-NE notes that demand response resources have the same opportunity to recover the cost of the PER Adjustment through capacity auction offer as other resources.<sup>45</sup>

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<sup>42</sup> *ISO New England Inc.*, 138 FERC ¶ 61,042 at PP 76-86 (addressing ISO-NE's Order No. 745 compliance filing).

<sup>43</sup> *See* Verso Paper Answer to Answer at 5-8.

<sup>44</sup> Transmittal Letter at 3 and 5, fn. 14. *See also* Market Rule 1, Tariff Section III.13.7.2.7.1.

<sup>45</sup> Transmittal Letter at 3.

**b. Comments**

48. DR Supporters do not object in principle to application of a PER Adjustment to demand response resources, but note that EnerNOC and other parties have sought reforms to the current PER Adjustment, as they believe that there are more efficient and effective methods for assessing a PER Adjustment for all resources. Nevertheless, DR Supporters state that this filing is not the appropriate place to litigate additional market design changes.

49. NEPGA supports ISO-NE's proposal to apply the PER Adjustment to demand response resources. NEPGA asserts that, so long as a PER Adjustment is an obligation for any resource sold at the same Forward Capacity Auction clearing price under the FCM rules, it is inappropriate and unfair to apply it to some specific classes of resources but exempt another class of resources that is purportedly selling the same service.

**c. Commission Determination**

50. We accept ISO-NE's proposal to apply the PER Adjustment to demand response resources, as contained in section III.13.7.2.7.1 of the proposed Tariff revisions. We agree with ISO-NE that applying the PER Adjustment to demand response resources is important to achieving comparability between demand response resources and other capacity suppliers, while avoiding placing undue economic disadvantages on other capacity resources and reducing economic incentives to overstate available capacity when participating in the market. Since demand response resources have the same opportunity to recover the cost of the PER Adjustment through capacity auction bidding as other resources, we find that application of the PER Adjustment to demand response resources is just and reasonable.

**4. Additional Revisions**

**a. ISO-NE's Proposal**

51. ISO-NE proposes a number of additional Tariff revisions affecting demand response resource participation in the FCM intended to achieve comparable treatment of demand response resources and other dispatchable resources and to conform the FCM design to the Fully Integrated rules. The changes address modeling of demand response resources, new auditing requirements, outage scheduling requirements, participation rules related to bilateral contracts and reconfiguration auctions, performance measurement and penalties, and modified qualification requirements.<sup>46</sup>

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<sup>46</sup> *Id.* at 3.

52. Most relevant to the discussion below, one of these proposed revisions relates to how ISO-NE will determine demand resource capacity values. ISO-NE states that it will use average avoided peak distribution losses to qualify all demand resource types. ISO-NE states that this is the same loss factor used in the Fully Integrated rules for the energy markets, which the Commission accepted in the January 19 Order.<sup>47</sup>

53. Additionally, ISO-NE proposes that resources with an audited Full Reduction Time or offered Full Reduction Time greater than 30 minutes and less than or equal to 12 hours receive a zero Hourly Available MW value unless the duration of the shortage event exceeds the audited Full Reduction time or offered Full Reduction time. ISO-NE states that this is comparable to generation resources.<sup>48</sup>

**b. Comments**

54. NEPGA supports ISO-NE's proposed revisions; in particular, its proposal to apply shortage event penalties to demand response resources, if such resources are unavailable in whole or in part during a shortage event period. NEPGA notes that this is the same penalty mechanism that currently applies to generation and import capacity resources.

**c. Commission Determination**

55. We will accept the aforementioned additional Tariff revisions, with the exception of ISO-NE's proposal to remove transmission losses from its calculation of demand resource capacity values and its proposed availability calculations for demand response resources, both of which we will accept subject to conditions, as discussed below.

56. On the issue of transmission losses, we note that currently, the capacity value of a demand resource is its Demand Reduction Value, adjusted upwards by the average peak transmission and distribution losses that are avoided by reducing demand.<sup>49</sup> To serve 1 MWh of load, generators must produce more than 1 MWh of energy, because some of the energy production will be lost in moving the energy from the generator to the load. Thus, if a customer commits in the capacity market to reducing its load by 1 MWh at its load site, ISO-NE's need to procure generation capacity is reduced by more than 1 MWh, that is, 1 MWh plus the amount of transmission and distribution losses that are avoided due to the load reduction. ISO-NE proposes to remove the adjustment for transmission

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<sup>47</sup> *Id.* at 30.

<sup>48</sup> Transmittal Letter at 24.

<sup>49</sup> *See* Market Rule 1, Section III.13.7.1.5.1.

losses as of June 1, 2017 (the date when the Fully Integrated rules are implemented), while retaining the adjustment for distribution losses.

57. ISO-NE's rationale for the proposed change, as presented in the Joint Testimony of Henry Y. Yoshimura and Christopher A. Parent, is that the adjusted loss factor will be the same as that used in the Fully Integrated rules for the energy markets, which the Commission accepted in the January 19 Order.<sup>50</sup> We accepted ISO-NE's proposal in the January 19 Order to remove the transmission loss adjustment in the energy market, because in the energy market, the LMP at a load's location reflects the cost of producing energy by the marginal generator plus the marginal cost associated with the losses incurred in moving the energy from the marginal generator to the load.<sup>51</sup> In other words, when a demand response resource reduces its load and is paid the LMP for doing so, the LMP reflects the marginal cost of the full amount of energy production that is avoided, including the avoided cost of losses on the transmission system.<sup>52</sup> There is no need to make a further adjustment for transmission losses in the energy market for demand response resources. However, transmission losses are not reflected in capacity market prices. A commitment by a demand response capacity resource to reduce load by a specified amount will avoid the need for ISO-NE to otherwise acquire from generators both (i) the amount of load provided by the demand response capacity resource; and (ii) the associated distribution *and* transmission losses that are associated with generation but not demand response. Given that ISO-NE has not explained why an adjustment for transmission (as well as distribution) losses is not necessary, we will require ISO-NE to submit, in a compliance filing, further justification for the removal of using transmission losses in its calculation of demand resource capacity values. ISO-NE must also explain whether, and if so how, it will otherwise adjust the total capacity requirement to reflect avoided transmission losses when procuring capacity.

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<sup>50</sup> See Joint Testimony of Henry Y. Yoshimura and Christopher A. Parent, April 26, 2012, at 39-40.

<sup>51</sup> For example, suppose that the marginal cost of energy production by the marginal generator is \$100/MWh, and the marginal transmission loss from moving energy from the generator to the load is 10 percent. Then, if there are no binding transmission constraints, the marginal cost of delivering one more MWh of energy to the load site (and thus, the LMP at that site) is the cost of producing 1.1 MWhs by the marginal generator, i.e., \$110/MWh, or 1.1 x \$100/MWh.

<sup>52</sup> The LMP does not reflect losses on the distribution system that are avoided by load reductions; therefore, it is reasonable for an upward adjustment to be made in the energy market to account for the value avoided distribution losses.

58. Additionally, we will accept subject to condition ISO-NE's proposed availability calculations for demand resources. ISO-NE's proposed revisions to its Tariff regarding availability calculations differ based on whether a demand response resource is reducing or is not reducing demand, as well as the availability time of the demand response resource. ISO-NE states that resources that are not reducing demand, that have an audited Full Reduction Time or offered Full Reduction Time greater than 30 minutes and less than or equal to 12 hours, will receive a zero Hourly Availability MW value unless the duration of the shortage event exceeds the audited Full Reduction Time and Offered Full Reduction Time. In such a case, the Hourly Available MW is the resource's unobserved performance.<sup>53</sup> We believe that this provision seems reasonable, in recognition of the fact that a resource with an availability time of greater than 30 minutes has less flexibility to respond to a shortage event; thus, such a resource may not provide a capacity benefit depending on the duration of the shortage event. However, while ISO-NE states that the availability calculation provides for treatment comparable to generators, ISO-NE's Tariff does not consider the duration of a shortage event in measuring generation resource performance. With respect to a generation resource with a cold notification plus cold start-up time of less than or equal to 12 hours, which was competitively offered into the Energy Market but was not committed by ISO-NE and was consequently unavailable within 30 minutes, the available MW in an hour will be the resource's Economic Maximum Limit.<sup>54</sup> Given this inconsistency between availability calculations for demand response and generating resources, we will accept the availability calculation subject to ISO-NE including in the compliance filing directed herein an explanation as to how considering the duration of a shortage event when evaluating the performance of demand response resources but not generation resources provides for comparable treatment.

## 5. Effective Date and Waiver

### a. ISO-NE's Proposal

59. ISO-NE requests that the FCM Conforming Changes become effective in two stages, and, accordingly, seeks waiver of the Commission's notice requirements to allow the revisions to become effective on more than 120 days' notice.<sup>55</sup> ISO-NE requests that the proposed changes to Tariff sections I.2.2 (definitions) and III.13 (capacity market rules) become effective on January 15, 2013 so that they are in effect in time for the

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<sup>53</sup> Proposed Tariff § III.13.7.1.5.10.1(e)-(g).

<sup>54</sup> Tariff § III.13.7.1.1.3.

<sup>55</sup> See 18 C.F.R. § 35.3(a)(1) (2012).

qualification process for the eighth Forward Capacity Auction.<sup>56</sup> ISO-NE explains that participants in the eighth Forward Capacity Auction will begin the qualification process in February 2013, and it will be helpful if there is certainty regarding the capacity market requirements that will apply to resources participating in that auction. Additionally, some of the FCM Conforming Changes address modifications to the qualification process itself, and thus it is necessary for the revisions to be in place in time for the qualification period. ISO-NE requests that the proposed changes to Appendix E of Market Rule 1 (which contains most of the Fully Integrated rules) become effective on June 1, 2017.

60. Additionally, ISO-NE requests an extension of time to implement the Fully Integrated rules, which the Commission previously accepted to become effective on June 1, 2016, so that the rules instead become effective on June 1, 2017, to coincide with the effective dates sought here. ISO-NE notes that while the Fully Integrated rules technically could be implemented a year prior to use of the FCM Conforming Changes for the eighth Capacity Commitment Period, doing so would, among other things, result in demand response providers that participate in both the capacity and energy markets having conflicting obligation between those markets. Resolving these concerns, according to ISO-NE, would involve developing yet another set of interim market rules for the one-year period. Additionally, aligning the dates would allow demand response providers to modify contracts with their retail demand response customers only once, rather than making two sets of modifications.

**b. Comments**

61. No party specifically protested ISO-NE's requested effective dates and request for waiver. Demand response resources supported delaying the implementation of the Fully Integrated rules, explaining that multiple successive contract revisions with customers would be required as a result of the FCM Conforming Changes and the implementation of the Fully Integrated rules if the June 1, 2016 date remained.

**c. Commission Determination**

62. As noted above, we will accept in part, and reject in part, various aspects of the proposed Tariff revisions with the specific effective dates discussed above, and grant waiver of the Commission's notice requirements accordingly. We will further grant ISO-NE's request for an extension of time to June 1, 2017 to implement the Fully

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<sup>56</sup> The eighth Capacity Commitment Period commences in June 2017.

Integrated rules<sup>57</sup> in an effort to avoid conflict between those rules and the Tariff revisions accepted here.

The Commission orders:

(A) ISO-NE's proposed revisions to Tariff sections I.2.2 and III.13 are hereby accepted in part and rejected in part, with the accepted Tariff revisions to become effective on January 15, 2013, as requested, subject to conditions, as discussed in the body of this order.

(B) ISO-NE's proposed revisions to Appendix E of Market Rule 1 are hereby accepted to become effective June 1, 2017, as requested, as discussed in the body of this order.

(C) ISO-NE's request to make the Fully Integrated rules effective June 1, 2017, as requested, is hereby granted, subject to a compliance filing, as discussed in the body of this order.

(D) ISO-NE is hereby directed to submit a compliance filing within 60 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Moeller is concurring with a separate statement attached.

Kimberly D. Bose,  
Secretary.

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<sup>57</sup> The Commission notes that ISO-NE must make a filing in Docket No. ER11-4336-001 to update the Tariff sections to reflect the revised effective date.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England Inc.

Docket No. ER12-1627-000

(Issued January 14, 2013)

MOELLER, Commissioner, *concurring*:

As I have noted previously, demand response plays a very important role in the organized markets by providing significant economic, reliability, and other market-related benefits when properly deployed. Today's order supports that role by approving a must-offer requirement for demand response resources with capacity supply obligations, thereby allowing ISO-NE to more efficiently and economically dispatch all forms of supply resources. Moreover, demand response resources will now have the ability to offer their services during non-critical periods, thus providing additional opportunities for these resources to participate in the energy market.

While I did not support the level of compensation that demand response resources may receive under Order No. 745,<sup>1</sup> arguing that such compensation would result in rates that are both discriminatory and not just and reasonable, our decision today goes beyond the issue of compensation and addresses the complexities of revising the FCM rules to allow demand response resources to more fully integrate into the ISO-NE market.

For these reasons, I concur.

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Philip D. Moeller  
Commissioner

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<sup>1</sup> *Demand Response Compensation in Organized Wholesale Energy Markets*, Order No. 745, FERC Stats. & Regs. ¶ 31,322 (2011), (Moeller, Comm'r, dissenting), *order on reh'g*, Order No. 745-A, 137 FERC ¶ 61,215 (2011), (Moeller, Comm'r, dissenting), *reh'g denied*, Order No. 745-B, 138 FERC ¶ 61,148 (2012), (Moeller, Comm'r, dissenting in part).