146 FERC ¶ 61,039
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

New England Power Generators Association, Inc. Docket No. EL14-7-000

v.

ISO New England Inc.

ORDER ON COMPLAINT

(Issued January 24, 2014)

1. On October 31, 2013, New England Power Generators Association, Inc. (NEPGA) filed a complaint against ISO New England Inc. (ISO-NE) pursuant to section 206 of the Federal Power Act (FPA),[1] alleging that certain provisions of ISO-NE's Transmission, Markets and Services Tariff (Tariff) relevant to the Forward Capacity Market (FCM) are unjust, unreasonable, and unduly discriminatory. Specifically, NEPGA challenges the Tariff provisions governing the administrative prices paid to existing capacity resources when there is Inadequate Supply or Insufficient Competition[2] in a Forward Capacity Auction (FCA) or when capacity that clears in one FCA is carried-forward into a subsequent FCA. In this order, we grant in part and deny in part NEPGA's complaint. While we find that the Tariff's current administrative pricing for existing resources in situations of Inadequate Supply and Insufficient Competition is unjust and unreasonable, we do not adopt NEPGA's proposed revisions for the reasons discussed below. The relevant just and reasonable rates for FCA 8 that replace the existing Tariff provisions are established by a companion order in Docket No. ER14-463-000, issued concurrently with this one, in which the Commission accepts subject to condition ISO-NE's proposed Tariff

[1] 16 U.S.C. § 824(e) (2012).

[2] Capitalized terms used but not defined herein are intended to have the meaning given to such terms in the Tariff.

revisions submitted pursuant to section 205 of the FPA,[3] including administrative pricing for existing resources in situations of Inadequate Supply and Insufficient Competition, to become effective January 24, 2014.[4] We further find that NEPGA has not shown that the existing Capacity Carry Forward Rule is unjust and unreasonable, so we deny NEPGA's complaint on that issue.

I. Background

2. ISO-NE administers a Forward Capacity Market, in which resources compete in annual FCAs, to provide capacity three years in advance of the relevant capacity commitment period. To determine the amount of capacity that ISO-NE needs to procure in an FCA, the New England region is modeled both as a whole, i.e., as the system-wide New England Control Area, and as a collection of four distinct zones, known as Capacity Zones. The four Capacity Zones are Northeast Massachusetts/Boston (NEMA/Boston), Connecticut, Maine, and Rest-of-Pool.[5] The amount of capacity needed system-wide in an FCA is termed the net Installed Capacity Requirement (net ICR),[6] and the amount of capacity needed within a given Capacity Zone is termed the Local Sourcing Requirement for that zone.[7]

3. Although the FCA is intended to produce a single Capacity Clearing Price for all cleared resources, under certain conditions the prices paid to cleared resources may be administratively determined by ISO-NE and differ based on whether a resource is new or existing. Three such conditions and their associated Tariff provisions are at issue in this

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[3] 16 U.S.C. § 824d (2012).

[4] *See ISO New England Inc.*, 146 FERC ¶ 61,038 (2014) (*ISO-NE*).

[5] ISO-NE Tariff section III.12.4.

[6] The ICR is the "level of capacity required to meet the reliability requirements defined for the New England Control Area[.]" *Id.* section I.2.2. The net ICR is the ICR minus the Hydro-Quebec Interconnection Capability Credit (HQICC). *See, e.g., id.* section III.13.2.2. The HQICC is "a monthly value reflective of the annual installed capacity benefits" of the Hydro-Quebec Phase I/II HVDC Transmission Facility. *Id.* section I.2.2; *see also* section II at Schedule 20A (the Open Access Transmission Tariff for the Hydro-Quebec Phase I/II HVDC Transmission Facility).

[7] The Local Sourcing Requirement is the "minimum amount of capacity that must be located within an import-constrained Load Zone[.]" *Id.* section I.2.2.

proceeding: (1) when low supply triggers the Inadequate Supply provisions;[8] (2) when low competition triggers the Insufficient Competition provisions;[9] and (3) when some but not all of a new resource's offered capacity is needed in an FCA and that resource elects not to prorate its offered capacity down to the level needed, so the resource's excess capacity is carried forward into the subsequent FCA, thereby triggering the Capacity Carry Forward Rule.[10]

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[8] *Id.* section III.13.2.8.1, et seq. The New England Control Area will be considered to have system-wide Inadequate Supply if at the FCA Starting Prices, the total amount of capacity offered in the FCA is less than the region's net ICR. An import-constrained Capacity Zone will be considered to have Inadequate Supply if at the FCA Starting Price the amount of new resources offered in that Capacity Zone is less than the amount of New Capacity Required in that Capacity Zone.

[9] *Id.* section III.13.2.8.2. The FCA will be considered to have Insufficient Competition system-wide or in any import-constrained Capacity Zone if, at the FCA Starting Price, the amount of capacity offered from existing resources is less than the net ICR or, for an import constrained Capacity Zone, the Local Sourcing Requirement; *and* less than 300 MW of capacity is offered from New Generating Capacity Resources and New Demand Resources; *or* the amount of capacity offered from New Generating Capacity Resources and New Demand Resources is more than the amount of New Capacity Required but less than twice the amount of New Capacity Required; *or* any Market Participant's total capacity from New Generating Capacity Resources, New Import Capacity Resources, and New Demand Resources is pivotal. A Market Participant shall be considered pivotal if, at the FCA Starting Price, some capacity from that Market Participant's potential New Generating Capacity Resources, New Import Capacity Resources, or New Demand Resources is required to satisfy the net ICR or the Local Sourcing Requirement, as applicable.

[10] *Id.* section III.13.2.7.9. The Tariff requires ISO-NE to "procure one hundred percent of the [net ICR] approved by the Commission for the associated Capacity Commitment Period, except as a result of the Capacity Rationing Rule[.]" *Id.* section III.13.2.2. Under the Capacity Rationing Rule, most FCA offers and bids "must clear or not clear in whole, unless the offer or bid specifically indicates that it may be rationed." *Id.* section III.13.2.6 (Capacity Rationing Rule). When some but not all of a new resource's bid capacity is needed to satisfy a Capacity Zone's Local Sourcing Requirement, the Capacity Carry Forward Rule allows the amount of excess new capacity to be carried forward into future FCAs, if the relevant new resource elects not to prorate the amount of capacity it is offering down to the level needed in the current FCA. *Id.* section III.13.2.7.9.1; *see also id.* section III.13.2.6.

4. Relevant here, the Tariff provides for administratively-set prices in the above-mentioned circumstances as follows. If the Inadequate Supply rule is triggered, existing resources receive 1.1 times the Capacity Clearing Price for the most recent FCA not having Inadequate Supply, and new resources receive the FCA Starting Price. If the Insufficient Competition rule is triggered, existing resources receive the lower of (1) the Capacity Clearing Price, or (2) 1.1 times the Capacity Clearing Price for the most recent FCA not having Insufficient Competition; and new resources receive the Capacity Clearing Price.

5. Under the Capacity Carry Forward Rule, the Capacity Clearing Price for the relevant Capacity Zone is the lesser of the following: (1) $0.01 below the price at which the last New Generating Capacity Resource, New Import Capacity Resource, or New Demand Resource in the Capacity Zone to withdraw withdrew from the FCA; or (2) the Offer Review Trigger Price for a combustion turbine, as set forth in Section III.A.21.1.1. However, if in the Capacity Zone there is Insufficient Competition and no capacity offered from new resources has been withdrawn from the auction, then the Capacity Clearing Price shall equal the Offer Review Trigger Price for a combustion turbine, as set forth in Tariff section III.A.21.1.1.

6. In addition, another Tariff provision, the Capacity Commitment Period Election,[11] can impact the administrative prices paid to existing resources. Under that provision, a new resource offering capacity into the FCM must specify whether, if its new capacity offer clears in the FCA, the associated Capacity Supply Obligation and Capacity Clearing Price (indexed for inflation) shall continue to apply after the Capacity Commitment Period associated with the FCA in which the offer clears, for up to four additional and consecutive Capacity Commitment Periods (this option is referred to here as "New Entrant Pricing").[12] The Tariff allows a new entrant to lock in the first auction clearing price for up to four additional auctions, in order to mitigate the risk that, although the capacity clearing price in the resource's first auction will be sufficient to make entry a rational decision, subsequent auction prices will be suppressed by the resource's entry and thus undermine the economics of the entry decision. If a new resource elects New Entrant Pricing, the resource may not submit any type of de-list or export bid in subsequent FCAs for Capacity Commitment Periods for which the resource owner elected to have the New Entrant Pricing apply.

7. ISO-NE has held seven FCAs to date, beginning with FCA 1 in February 2008, with the most recent FCA 7 in February 2013. In the first six FCAs the Capacity

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[11] *Id.* section III.13.1.1.2.2.4.

[12] *Id.*

Clearing Price for all resources was set by operation of the Tariff-prescribed price floor in each of those auctions.[13] In FCA 7, the Insufficient Competition provision triggered in NEMA/Boston, resulting in administrative prices for resources that cleared in that Capacity Zone: existing resources received $6.66/kW-month and the one new resource received $14.99/kW-month. However, for all resources outside NEMA/Boston, the auction produced a single Capacity Clearing Price, once again set by the price floor, which for FCA 7 was $3.15/kW-month.

8. FCA 8 is scheduled to take place on February 3, 2014.

II. <u>The Complaint</u>

9. On October 31, 2013, NEPGA filed a complaint alleging that the administrative prices applicable to existing resources under the Inadequate Supply provision, Insufficient Competition provision, and the Capacity Carry Forward Rule are unjust, unreasonable, and unduly discriminatory. NEPGA argues that these Tariff provisions produce administrative prices for existing resources that are far below the prices paid to new resources and do not reflect the outcome of a competitive market.[14]

10. NEPGA contends that, following years of excess capacity in New England, new entry is currently "tepid" and 3,135 MW of the region's existing capacity resources have recently submitted Non-Price Retirement Requests,[15] announcing their intent to leave the market prior to FCA 8. NEPGA asserts that the Inadequate Supply provision, Insufficient Competition provision, and Capacity Carry Forward Rule have contributed to this problem by creating the possibility of two-tiered administrative prices (different prices for existing and new resources) that are insufficient to retain existing resources and incent new entry. NEPGA states that if all of the Non-Price Retirement Requests are accepted the amount of existing capacity in FCA 8 will be 1,547 MW short of the net

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[13] The FCM rules originally included a Capacity Clearing Price "collar," effective for the first three successful FCAs, that included a price floor and a price ceiling. While the "collar" was to expire following the third successful FCA, the Commission accepted ISO-NE and NEPOOL's proposal to extend the price floor through FCA 6, *ISO New England Inc.*, 135 FERC ¶ 61,029 (2011), and then again through FCA 7, *ISO New England Inc.*, 138 FERC ¶ 61,238 (2012).

[14] NEPGA Complaint at 17.

[15] A Non-Price Retirement Request is a "binding request to retire the entire capacity of a Generating Capacity Resource as described in Section III.13.1.2.3.1.5." ISO-NE Tariff section I.2.2.

ICR, which would likely trigger the Insufficient Competition provision. NEPGA states that if the Insufficient Competition provision is triggered the price paid to existing resources would be based on the system-wide price of $3.15/kW-month from FCA 7, which was the most recent auction without system-wide Insufficient Competition. Thus, according to NEPGA, in FCA 8, existing resources would receive $3.47/kW-month (1.1 x $3.15/kW-month),[16] while new resources would receive up to $15.82/kW-month (the auction starting price).[17]

11. NEPGA argues that it is unjust and unreasonable to use a price from a prior FCA – "in which there may have been substantial excess capacity and where the eventual clearing price . . . was constrained only by the applicable price floor"[18] – to administratively determine the price in a subsequent FCA in which there is Inadequate Supply or Insufficient Competition. NEPGA argues that this approach is flawed because the prior auction will not reflect the significant change in the capacity supply-demand balance that triggered the Inadequate Supply and Insufficient Competition pricing provisions.

12. Similarly, NEPGA argues that the Capacity Carry Forward Rule is unjust and unreasonable because the prices at which carry-forward capacity is offered into the FCA, and the method used to determine the price paid to existing resources when capacity is carried forward, result in prices for existing resources that are well below competitive levels.

13. NEPGA asserts that the Capacity Carry Forward Rule requires capacity to be carried forward at a price that distorts the market. Specifically, NEPGA states that when a resource elects New Entrant Pricing and some of its capacity is carried forward to future auctions, the New Entrant Pricing election obligates that resource to submit $0

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[16] This calculation is based on the pricing mechanism in the existing Insufficient Competition provision, *supra* P4, which provides existing resources an administrative price equal to "the lower of: (1) the Capacity Clearing Price; or (2) 1.1 times the Capacity Clearing Price for the most recent [FCA] not having Insufficient Competition." *Id.* section III.13.2.8.2.

[17] The calculation is based on the Auction Starting Price for the Capacity Commitment Period beginning on June 1, 2016, which is $15.00/kW-month, adjusted using a three-year rolling average of the Handy-Whitman Index of Public Utility Construction Costs. *Id.* section III.13.2.4. For FCA 8, this calculation produces an Auction Starting Price of $15.82/kW-month.

[18] NEPGA Complaint at 21-22.

bids, and therefore be modeled as a price taker, for its entire capacity in each future auction until its New Entrant Pricing expires. NEPGA contends that this requirement shifts the supply curve in the FCA by the amount of MWs receiving New Entrant Pricing, which lowers the market clearing price and causes some existing resources not to clear.[19] NEPGA asserts that this problem is particularly evident in markets with a vertical demand curve like ISO-NE's FCM.[20]

14. NEPGA also argues that the Capacity Carry Forward Rule's pricing provision results in prices for existing resources that are well below competitive levels. NEPGA contends that the administrative price established by the rule at the lower of (1) $0.01 below the price at which the last new resource withdrew, or (2) the Offer Review Trigger Price for a combustion turbine does not establish a reasonable price floor for a constrained zone. According to NEPGA, the last new capacity offer withdrawn is typically not a reasonable proxy for a competitive market outcome and "lack[s] . . . any nexus between the 'last new' offer and the resources that are paid for their capacity based on that offer price[.]"[21] NEPGA also asserts that the pricing provision does not mitigate the impact of the $0 bids submitted by resources with New Entrant Pricing, but instead furthers the suppressive effects of those bids by lowering the price at which the last new resource withdraws from the auction. NEPGA further argues that the Capacity Carry

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[19] *Id.* at 25.

[20] NEPGA asserts that this problem currently exists in ISO-NE's NEMA/Boston Capacity Zone because in FCA 7 a new resource with New Entrant Pricing cleared more capacity than was necessary to satisfy the Local Sourcing Requirement in that zone. Specifically, ISO-NE needed to obtain 178 MW in FCA 7 to satisfy the NEMA/Boston Local Sourcing Requirement, and Footprint Power offered a new resource of 674 MW in NEMA/Boston but did not agree to prorate its capacity down to the 178 MW needed in that auction. NEPGA explains that, as a result, ISO-NE cleared Footprint Power's full 674 MW and will carry forward the excess 496 MW into FCA 8. *Id.* at 26.

[21] *Id.* at 28. NEPGA also asserts that setting a floor price based on the last new resource to withdraw can lead to arbitrary and counter-intuitive results because the market might clear at a price set by the de-list bid of an existing resource that is lower than the price at which the last new resource withdraws. In such a scenario, NEPGA asserts that ISO-NE would use one price to clear the auction (the de-list bid that set the clearing price) and a different price ($0.01 below the price at which the last new resource withdrew) to pay existing resources that receive a Capacity Supply Obligation. *Id.* at 30.

Forward Rule's pricing provisions are substantially similar to provisions in the PJM tariff that the Commission found to be unjust and unreasonable.[22]

15. In addition to the arguments above, NEPGA argues that the Inadequate Supply provision, Insufficient Competition provision, and Capacity Carry Forward Rule produce unduly discriminatory price disparities between existing and new resources. NEPGA contends that, although rate differentials by themselves are not evidence of undue discrimination,[23] "the factual differences that underlie the rate difference must be reasonably related to the rate differentials."[24] NEPGA argues that there is no basis to justify the price differentials at issue here, and the discrimination will accelerate the retirement of efficient capacity resources while also deterring potential new entrants because capacity revenues will likely drop precipitously at the end of the New Entrant Pricing period.

16. NEPGA proposes specific revisions to the Inadequate Supply provision, Insufficient Competition provision, and Capacity Carry Forward Rule which NEPGA contends are necessary for the Tariff to be just and reasonable. Specifically, NEPGA proposes that the price paid to existing resources under conditions of Inadequate Supply and Insufficient Competition should be "1.1 times the Offer Review Trigger Price for a combustion turbine, as set forth in Section III.A.21.1.1."[25] Based on Tariff section III.A.21.1.1, this Tariff change would produce a price of $11.00/kW-month for existing resources if either of these rules is triggered in FCA 8. NEPGA states that this change "will provide a reasonable nexus between the mitigated prices paid to existing capacity resources and the FCA in which that price is determined." Further, NEPGA asserts that the change is consistent with ISO-NE's prior recommendation in its compliance filing establishing the existing pricing provisions, in which ISO-NE stated that it "believes that the new Offer Review Trigger Price for a combustion turbine would be a far better

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[22] *Id.* at 31 (citing *PJM Interconnection L.L.C.*, 128 FERC ¶ 61,157 (2009)).

[23] NEPGA Complaint at 35 (citing *Cities of Bethany, Illinois v. FERC*, 727 F.2d 1131, 1140 (D.C. Cir. 1984); *St. Michaels Utilities Comm'n v. FPC*, 377 F.2d 912, 915 (4th Cir. 1967)).

[24] NEPGA Complaint at 35 (citing *Sacramento Municipal Utility District v. FERC*, 474 F.3d 797, 802-4 (D.C. Cir. 2007); *Public Serv. Co. of Indiana v. FERC*, 575 F.2d 1204, 1212 (7th Cir. 1978)).

[25] NEPGA Complaint at Attachment 8, sections III.13.2.8.1, III.13.2.8.2; *see also* NEPGA Complaint at 38. Offer Review Trigger Prices are the estimated costs of new entry for various categories of new resources.

estimate of the revenues that a new peaking resource would need to recover from the capacity market."[26]

17. As to the Capacity Carry Forward Rule, NEPGA proposes changes requiring that, if the rule is triggered by a new resource that elects New Entrant Pricing, then ISO-NE must establish a shadow de-list bid at the lower of either (1) the Offer Review Trigger Price for a combustion turbine, as set forth in section III.A.21.1.1; or (2) the price paid to the new resource with New Entrant Pricing for the FCA in which it initially cleared.[27] NEPGA's proposal also requires ISO-NE to offer this shadow de-list bid for the new resource's entire amount of MWs in subsequent FCAs until that new resource's New Entrant Pricing commitment expires. NEPGA asserts that this is the same approach adopted in PJM and that adopting it in ISO-NE will prevent new resources from collapsing the price for existing generation by offering the full amount of new capacity, including quantities of capacity that exceed the zonal requirements, at a $0 bid.

III. Notice and Responsive Pleadings

18. Notice of the complaint was published in the *Federal Register*, 78 Fed. Reg. 67,357 (2013), with interventions and protests due on or before November 20, 2013. On November 12, 2013, ISO-NE filed a motion to extend the comment date to November 27, 2013. On November 13, 2013, the Commission granted ISO-NE's motion.

19. Numerous parties filed timely motions to intervene and some of those parties also filed comments or protests.[28] The Connecticut Public Utilities Regulatory Authority (Connecticut PURA) and Massachusetts Department of Public Utilities (Massachusetts DPU) filed notices of intervention and protests.

20. On November 27, 2013, ISO-NE filed an answer to the complaint.[29] On December 16, 2013, NEPGA filed an answer to ISO-NE's answer and to the protests of the Connecticut Parties, Massachusetts Attorney General, Massachusetts DPU, NESCOE, Northeast Utilities and United Illuminating, New England Municipals and Cooperatives,

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[26] NEPGA Complaint at 38 (quoting ISO-NE, Compliance Filing, Docket No. ER12-953-001, at 44 (filed Dec. 3, 2012)) (internal quotations omitted).

[27] NEPGA Complaint at Attachment 8, sections III.13.2.7.9.1, III.13.2.7.9.2; *see also* NEPGA Complaint at 38-39.

[28] *See* Appendix A.

[29] ISO-NE November 27, 2013 Answer (November 27 Answer).

NECPUC, and National Grid. On December 16, 2013, NextEra Energy Resources, LLC (NextEra) filed an answer to ISO-NE's November 27 Answer.[30] On December 31, 2013, NESCOE filed an answer to NEPGA's answer.

A. ISO-NE's Answer

21. Regarding the Inadequate Supply and Insufficient Competition provisions, ISO-NE argues that the Commission should reject the elements of the complaint concerning those rules because ISO-NE submitted an "exigent circumstances"[31] filing in Docket No. ER14-463-000, pursuant to section 205 of the FPA,[32] to change the relevant administrative pricing provisions. Accordingly, ISO-NE focuses its answer solely on NEPGA's allegations regarding the Capacity Carry Forward Rule and states that NEPGA has not shown that the existing rule is unjust and unreasonable.

22. ISO-NE contends that there is no reason to believe that the Capacity Carry Forward Rule will not function as intended in FCA 8. ISO-NE also argues that, contrary to NEPGA's assertion, carrying forward the capacity from a resource with New Entrant Pricing does not necessarily suppress prices far below competitive levels because there is not necessarily a link between the capacity carried forward in a Capacity Zone and the amount of excess capacity remaining in that zone during the term of the resource's New Entrant Pricing. ISO-NE further states that NEPGA's proposal relies on unrealistic assumptions of worst-case scenarios, and is inconsistent with a competitive market and "likely to introduce far more significant and frequent market distortions than those that might exist under the current administrative pricing mechanism."[33]

B. Protests

23. With regard to Inadequate Supply and Insufficient Competition, multiple protesters agree that NEPGA has failed to demonstrate that the relevant administrative

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[30] NextEra states that it supports NEPGA's answer so it is not discussed further here.

[31] *See* section 11.2 of the ISO-NE Participants Agreement.

[32] 16 U.S.C. § 824d (2012).

[33] ISO-NE November 27 Answer at 3.

pricing provisions are unjust and unreasonable, or unduly discriminatory.[34] NESCOE argues that NEPGA has provided no evidence that the recent resource retirement announcements were caused by the relevant pricing provisions.[35] NESCOE asserts that it is impossible to make such a causal connection because the retirements could be motivated by a number of factors, including removal of the price floor in FCA 8, lower marginal energy revenues due to low natural gas prices, and environmental regulations. NESCOE further asserts that NEPGA's complaint ignores the possibility that the existing rules will produce more favorable prices in some years and that "the *average* price over time should approximate the cost of new entry, not the price in any particular auction, and the current rule meets that test."[36]

24. Multiple protesters argue that the Inadequate Supply and Insufficient Competition provisions are not unduly discriminatory because new and existing resources are not similarly situated.[37] Energy New England and Massachusetts Municipals state that new resources are "generally incapable of creating shortage conditions that cause either inadequate supply or insufficient competition[,]" unlike existing resources that have the ability to reduce supply and, thereby, increase prices above competitive levels.[38]

25. Multiple protesters assert that the Commission should dismiss the complaint on procedural grounds as a collateral attack on the Commission's order, issued less than a year ago, accepting the relevant pricing provisions.[39] These protesters argue that the

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[34] Connecticut Parties, Energy New England and Massachusetts Municipals, Massachusetts Attorney General, Massachusetts DPU, NECPUC, NESCOE, and New England Municipals and Cooperatives.

[35] The following protesters state that they support in full, and incorporate by reference, NESCOE's protest: Connecticut Parties, Massachusetts Attorney General, Massachusetts DPU, and NECPUC.

[36] NESCOE Protest at 16 (emphasis in original).

[37] Connecticut Parties, Energy New England and Massachusetts Municipals, Massachusetts Attorney General, Massachusetts DPU, NECPUC, NESCOE, and New England Municipals and Cooperatives.

[38] Energy New England and Massachusetts Municipals Protest at 10.

[39] Connecticut Parties, Massachusetts Attorney General, Massachusetts DPU, NECPUC, NESCOE, and New England Municipals and Cooperatives.

pricing provisions have not yet been triggered and that NEPGA has not shown changed circumstances since the Commission approved the rules.

26. All of the protesters argue that NEPGA has not shown that its proposed pricing mechanism for the Inadequate Supply and Insufficient Competition provisions is just and reasonable.[40] NESCOE asserts that NEPGA's proposal reflects several weaknesses, including a failure to show that the Offer Review Trigger Price for a combustion turbine is an appropriate or consistent proxy for a competitive auction clearing price, particularly considering that Offer Review Trigger Prices have changed substantially over time. Several protesters assert that NEPGA's proposal would overcompensate existing resources, arguing that (i) payments would exceed existing resources' net, risk-adjusted going-forward costs;[41] or (ii) Offer Review Trigger Prices for technologies other than combustion turbines could be more competitive;[42] or (iii) multiplying the Offer Review Trigger Price times 1.1 is unsupported.[43] Energy New England and Massachusetts Municipals assert that Offer Review Trigger Prices are arbitrary due to their year-over-year volatility and "systematic[] discriminat[ion] against entry by municipally-owned utilities, who use a different and significantly lower cost business model than the developer- and project finance-based assumptions embedded in ISO-NE's calculation of the threshold for review."[44]

27. The Connecticut Parties state that NEPGA's proposed administrative pricing is at odds with the fundamental purpose of the Inadequate Supply and Insufficient Competition provisions, which, according to the Connecticut Parties, is to protect consumers from a failed capacity auction and resulting, potentially excessive charges. Similarly, Northeast Utilities and United Illuminating assert that the Commission must weigh the cost impacts of NEPGA's proposal in determining whether it is just and reasonable. Aside from whether NEPGA has shown that the existing Tariff is unjust and unreasonable, United Illuminating argues that adopting NEPGA's proposal would cost

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[40] Connecticut Parties, Energy New England and Massachusetts Municipals, Massachusetts Attorney General, Massachusetts DPU, National Grid, NECPUC, NESCOE, New England Municipals and Cooperatives, and Northeast Utilities and United Illuminating.

[41] Connecticut Parties, New England Municipals and Cooperatives.

[42] Connecticut Parties, National Grid, Northeast Utilities and United Illuminating.

[43] National Grid, New England Municipals and Cooperatives.

[44] Energy New England and Massachusetts Municipals at 11-12.

consumers millions more than other feasible alternatives for addressing situations of Inadequate Supply or Insufficient Competition (such as, for example, using the Offer Review Trigger Price for lower cost resources such as Load Management, Mass Market Demand Response, or, starting in FCA 9, a combined cycle unit; or focusing on expansion of transmission upgrades). Indeed, NESCOE states that if NEPGA's proposed revisions are implemented and the Insufficient Competition rule alone is triggered in FCA 8, customers may bear nearly $3 billion in additional costs, reflecting a large, unanticipated transfer of wealth from consumers to the owners of existing capacity, with no commensurate reliability benefit, connection to resource adequacy, or other consumer value.[45] NESCOE requests that the Commission reject NEPGA's proposed solution and instead direct ISO-NE to conduct a stakeholder process to explore a range of solutions that consider consumer costs.

28. National Grid requests that the Commission reject NEPGA's complaint and allow New England stakeholders to work toward a solution that fully evaluates all possible remedies. In the alternative, National Grid proposes a pricing provision that would pay existing resources the lower of (1) the Capacity Clearing Price; (2) the Offer Review Trigger Price of a combustion turbine; (3) the Offer Review Trigger Price of a combined-cycle resource; or (4) the Capacity Clearing Price for the most recent FCA not having Inadequate Supply or Insufficient Competition and in which new entry was needed.[46]

29. Northeast Utilities and United Illuminating assert that the complaint should be dismissed or held in abeyance to allow a thorough review of the FCM changes ISO-NE proposed in its exigent circumstances filing in Docket No. ER14-463-000. Northeast Utilities and United Illuminating further argue that focusing on expansion of the transmission grid is preferable to any of the administrative pricing proposals in this proceeding, because a transmission solution would increase competition in constrained areas and eliminate or reduce customer costs to below the estimated cost of paying existing resources the Offer Review Trigger Price for a combustion turbine.[47] Northeast Utilities and United Illuminating argue that, if the Commission does direct FCM rule changes, those changes should only be effective for FCA 8.

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[45] NESCOE Protest at 8-9.

[46] National Grid Protest at 8.

[47] Northeast Utilities and United Illuminating Protest at 13, 16.

30. With regard to the Capacity Carry Forward Rule, multiple protesters argue that NEPGA has not shown that the existing rule is unjust and unreasonable.[48] NESCOE disputes NEPGA's premise for asserting that the rule does not set a reasonable price floor, i.e., that the rule erroneously lacks a nexus between the last new resource to withdraw and the resources that will receive the price set by that resource. NESCOE argues that no such nexus is required. Energy New England and Massachusetts Municipals assert that NEPGA has not shown that the Capacity Carry Forward Rule has failed, or will fail, to function as the Commission intended. National Grid contends that recent experience shows that the Capacity Carry Forward Rule does not need to be modified to attract new entry and retain existing resources because, under the existing rules, as demonstrated by FCA 7, the new capacity needed "was supplied right on time and in the form contemplated by the FCM's designers, without out-of-market revenues."[49] National Grid disagrees with NEPGA that the Capacity Carry Forward Rule affects the market in *multiple* subsequent years, asserting instead that the rule can only be triggered in the *one year* immediately following the year in which ISO-NE procured the excess capacity.[50]

31. All of the protesters argue that NEPGA has failed to show that its proposed revisions to the Capacity Carry Forward Rule are just and reasonable.[51] Multiple protesters assert that NEPGA is proposing major changes to the rule's application that could pay existing resources shortage-condition pricing even in non-shortage conditions, in up to four years following the year in which the excess capacity cleared.[52] Some protesters state that NEPGA's proposal may force ISO-NE to procure – and consumers to pay artificially high prices for - more capacity than is needed. Energy New England and

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[48] Connecticut Parties, Energy New England and Massachusetts Municipals, Massachusetts Attorney General, Massachusetts DPU, National Grid, NECPUC, NESCOE, and New England Municipals and Cooperatives.

[49] National Grid Protest at 13.

[50] National Grid Protest at 9 (citing Tariff section III.13.2.7.9.1(e)).

[51] Connecticut Parties, Energy New England and Massachusetts Municipals, Massachusetts Attorney General, Massachusetts DPU, National Grid, NECPUC, NESCOE, New England Municipals and Cooperatives, and Northeast Utilities and United Illuminating.

[52] Connecticut Parties, Massachusetts Attorney General, Massachusetts DPU, National Grid, NECPUC, NESCOE, New England Municipals and Cooperatives, and Northeast Utilities and United Illuminating.

Massachusetts Municipals argue that this would violate the "bedrock principle" of the FCM Settlement Agreement that "New England load not be required to purchase more than the Installed Capacity Requirement."[53] Similarly, the Connecticut Parties assert that NEPGA's proposal is an unwarranted expansion of a rule that already protects existing resources, and that represents a significant concession from load interests in the FCM Settlement Agreement.[54]

C. Comments

32. Multiple commenters support the complaint in whole or in part.[55] EnerNoc supports the complaint only with respect to the Capacity Carry Forward Rule. PSEG requests that the Commission not only grant the complaint but also direct ISO-NE to adopt a downward-sloping demand curve in the FCM. Exelon requests that the Commission direct ISO-NE to make an additional revision to the Capacity Commitment Period Election to "provide that new entrants into the market cannot elect a five-year capacity commitment in any year where the Capacity Carry Forward Rule has been triggered by a new capacity resource that already elected the five-year guarantee."[56] Exelon states that it would be inappropriate to extend the multi-year pricing incentive to additional new entrants until the excess capacity caused by the first new entrant has been offset by load growth and/or retirements and there is again a need for new capacity.

33. Algonquin and Maritimes take no position on NEPGA's specific proposals, but agree with NEPGA that the New England market is in distress and that the market rules are broken. Algonquin and Maritimes state that the market rules should be comprehensively reexamined and modified to be fuel neutral and supportive of long-term contracting.

34. NEPOOL states that it neither supports or opposes the complaint, but that it is troubled by the recently announced resource retirements and is concerned that ISO-NE's

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[53] Energy New England and Massachusetts Municipals Protest at 14-15 (citing *ISO New England Inc.*, 135 FERC ¶ 61,029, at PP 136, 164 (2011), *reh'g denied*, 138 FERC ¶ 61,027, at P 75 (2012)).

[54] Connecticut Parties Protest at 9-10.

[55] Calpine, EnerNOC, EPSA, Exelon, and PSEG.

[56] Exelon Comments at 6.

process for handling the issues raised in this proceeding has denied stakeholders the opportunity for meaningful participation.[57]

35. In its late-filed comments, NEPGA asserts that ISO-NE recently made a statement that "implementation [of a sloped demand curve] most likely would be for FCA #10," which according to NEPGA, raises concerns that the proposed changes to the Insufficient Competition and Inadequate Supply provisions at issue here may remain in effect longer than ISO-NE implied in its exigent circumstances filing in Docket No. ER14-463-000.

D. Answers to Answers

36. NEPGA argues that its complaint is not a collateral attack on previous Commission orders. NEPGA states that the fact that a Tariff provision may have produced just and reasonable rates in the past does not shield it from scrutiny under FPA section 206,[58] and a complainant does not need to demonstrate materially changed circumstances to satisfy its burden under section 206.[59] NEPGA further asserts that protesters' argument that the complaint is a collateral attack ignores the fact that the existing rules were originally proposed as interim measures and that ISO-NE did not fulfill its commitment to improve the rules through a stakeholder process.[60]

37. NEPGA states that ISO-NE admits that the Inadequate Supply and Insufficient Competition provisions are unjust and unreasonable in ISO-NE's exigent circumstances filing in Docket No. ER14-463-000.[61] NEPGA also asserts that, while not all rate differentials amount to undue discrimination, the protesters' justifications for the price

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[57] NEPOOL Comments at 6.

[58] NEPGA Answer at 14 (citing *Ameren Services Co.*, 121 FERC ¶ 61,205, at P 33 (2007), *order on reh'g*, 125 FERC ¶ 61,162 (2008)).

[59] NEPGA Answer at 14 (citing *ISO New England Inc. and New England Power Pool Participants Committee*, 135 FERC ¶ 61,029, at P 44 (2011), *order on reh'g*, 138 FERC ¶ 61,027 (2012)).

[60] NEPGA Answer at 16-17.

[61] NEPGA's filing is styled as both an answer in this proceeding and a protest to ISO-NE's exigent circumstances FPA section 205 filing in Docket No. ER14-463-000. The portion of NEPGA's filing that is styled as a protest is not summarized here because the Commission is concurrently addressing that portion of the filing in the order on ISO-NE's FPA section 205 filing. *See ISO-NE*, 146 FERC ¶ 61,038 (2014).

differentials in this case are unsupported, at odds with established Commission precedent,[62] and contradicted by recent market experience. NEPGA contends that its predicted price differentials are not speculative because there is no indication that the price differentials seen in the most recent auctions will not continue.

38. NEPGA asserts that ISO-NE has not explained why it now considers the Offer Review Trigger Price for a combustion turbine too high, especially considering ISO-NE's statement in December 2012 that Offer Review Trigger Prices are designed to represent prices at the low end of the range of competitive offers for each resource type.[63] NEPGA states that the Commission directed ISO-NE to adopt Offer Review Trigger Prices in the Tariff because they are a more accurate measure of the cost of new entry; therefore, NEPGA contends that NESCOE is wrong to argue that the Offer Review Trigger Price for a combustion turbine is a poor proxy for a competitive price. NEPGA states that because its proposal establishes the Offer Review Trigger Price for a combustion turbine as a price cap, not as a proxy price, protesters' miss the point by arguing that the administrative price should be based on the Offer Review Trigger Prices of technologies other than a combustion turbine.[64] Accordingly, NEPGA asserts that it is not necessary to adopt multiple price caps as suggested by National Grid and NESCOE.[65]

39. NEPGA states that the flaw in the Capacity Carry Forward Rule and the $0 bid requirement of the Capacity Commitment Period Election produce a potentially more significant problem than do the Inadequate Supply and Insufficient Competition provisions, because the Capacity Carry Forward Rule's price discrimination lasts longer and will not be resolved by the adoption of a sloped demand curve.[66] NEPGA asserts that various parties in this proceeding have mischaracterized NEPGA's proposal. NEPGA states that its proposal does not set a price floor, but rather preserves the "lower

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[62] NEPGA Answer at 21 (citing *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61, 275, at PP 149-150 (2009), *order on clarification*, 127 FERC ¶ 61,104 (2009), *order on reh'g*, 128 FERC ¶ 61,157, at PP 101-104, 112-113 (2009)).

[63] NEPGA Answer at 25 (citing ISO-NE, Forward Capacity Market Redesign Compliance Filing and Request for Waiver of Compliance Obligation, Docket No. ER12-953-001, at Joint Testimony of Marc D. Montalvo and David H. Naughton at 4, 11, 14-15 (Dec. 3, 2012)).

[64] NEPGA Answer at 26.

[65] NEPGA Answer at 28.

[66] NEPGA Answer at 36-37.

of" feature in the existing Tariff so that existing resources will be paid the capacity clearing price if it is below the Offer Review Trigger Price for a combustion turbine. NEPGA states that, conversely, its proposal establishes a price cap at the Offer Review Trigger Price for a combustion turbine in auctions that clear above that price. NEPGA contends that it simply proposes to eliminate the requirement that resources with New Entrant Pricing offer into subsequent FCAs at $0.[67]

40. NEPGA argues that instead of supporting the Capacity Carry Forward Rule as just and reasonable, ISO-NE instead objects to NEPGA's proposal due to concerns that NEPGA's proposed shadow de-list bid would apply to all of a resource's capacity that is subject to New Entrant Pricing, not just the portion of the resource's capacity that is carried-forward into a future FCA. NEPGA states that ISO-NE misunderstands the impacts of the $0 bid requirement. NEPGA contends that the price suppression caused by the $0 bid requirement is a function of the quantity of the Capacity Supply Obligation, not the amount of capacity carried forward, because the Tariff requires that "all of the capacity used to satisfy the Capacity Supply Obligation be offered at a zero price without regard to the portion of the capacity that exceeds the ICR or [Local Sourcing Requirement]."[68] Thus, NEPGA asserts that the quantity of carry-forward capacity "is not the cause of the price suppression, but is a factor that compounds the market distortions associated with $0 bids."[69] NEPGA asserts that the "key pricing issue is whether existing resources have an opportunity to realize a five year average capacity price that is equivalent to the price received by [a market entrant with New Entrant Pricing], not the magnitude or duration of 'lumpiness.'"[70] NEPGA argues that its proposal better aligns the payments to new and existing resources, but because a substantial gap can still exist it would be inappropriate to further increase the price discrimination by limiting the $0 bid requirement to the amount of capacity that is carried-forward.

41. NEPGA also rejects ISO-NE's argument that the clearing price in a future FCA can be set by an existing resource with a de-list bid, rather than a new resource, and that a new resource should not be required to submit a de-list bid when it was not the marginal

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[67] NEPGA Answer at 39.

[68] NEPGA Answer at 41.

[69] NEPGA Answer at 41.

[70] NEPGA Answer at 44. Lumpiness in this case refers to the acquisition of capacity from a resource in an amount that exceeds the amount ISO-NE requires from that resource to meet the net ICR or a Local Sourcing Requirement.

resource or the source of the excess capacity. NEPGA states that ISO-NE has not identified any instances of that scenario occurring and it does not appear that such a scenario is ever likely to occur. In response to concerns that NEPGA's proposal will cause ISO-NE to procure capacity in excess of the ICR or a Local Sourcing Requirement if prices clear at a level below the shadow de-list bid, NEPGA reiterates that this is not a significant concern because NEPGA has proposed procedures for pro-rationing capacity, and because the need for pro-rationing would be eliminated if ISO-NE adopts a sloping demand curve.[71]

42. NESCOE asserts that NEPGA mischaracterizes the current Tariff provisions as temporary measures or placeholder changes. NESCOE states that the Commission does not approve rates as temporary or interim measures without explicitly stating that it is doing so, and the Commission did not qualify its acceptance of the provisions at issue here on the basis that they were interim changes.[72] NESCOE further argues that NEPGA misinterprets Commission orders in an attempt to draw a linkage between the Offer Review Trigger Price for a combustion turbine and the Inadequate Supply and Insufficient Competition provisions. NESCOE asserts that Offer Review Trigger Prices are a benchmark price used to trigger review by ISO-NE's Internal Market Monitor and, as such, bear no relationship to the auction clearing price and are inappropriate for use in the administrative pricing provisions at issue here.[73] NESCOE states that NEPGA mischaracterizes multiple of NESCOE's arguments, including NESCOE's contention that there are legitimate reasons for treating new and existing resources differently when there is a lack of competition.[74]

IV. Commission Determination

A. Procedural Matters

43. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

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[71] NEPGA Answer at 48-49.

[72] NESCOE Answer at 3-4.

[73] *Id.* at 6.

[74] *Id.* at 9-10.

44. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2013), the Commission will grant Energy New England and Participating Municipal Systems' late-filed motion to intervene given the parties' interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

45. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to an answer or protest unless otherwise ordered by the decisional authority. We will accept NEPGA's, NESCOE's, and NextEra's answers because they provided information that assisted us in our decision-making process.

B. Substantive Matters

46. We grant in part and deny in part NEPGA's complaint. As discussed below, we find that the Tariff's current administrative pricing for existing resources in situations of Inadequate Supply and Insufficient Competition are unjust and unreasonable; however, we do not adopt NEPGA's pricing proposal for the reasons discussed below. The relevant just and reasonable rates for FCA 8 that replace the existing Tariff provisions found to be unjust and unreasonable here are established by the companion order *ISO-NE*, issued concurrently with this one. In *ISO-NE*, the Commission accepts subject to condition ISO-NE's proposed Tariff revisions submitted pursuant to section 205 of the FPA, including administrative pricing for existing resources in situations of Inadequate Supply and Insufficient Competition, to become effective January 24, 2014.[75] We further find here that NEPGA has not shown that the existing Capacity Carry Forward Rule is unjust and unreasonable, so we deny NEPGA's complaint on that issue.

i. Inadequate Supply and Insufficient Competition

47. The administrative pricing provisions applicable to existing capacity resources under the Inadequate Supply and Insufficient Competition provisions are intended to establish prices adequate to incent new entry and retain existing resources – both of which help ensure reliability; the purpose of the provisions is unchallenged here. We find that the Tariff's current administrative pricing for existing resources in situations of Inadequate Supply and Insufficient Competition is unjust and unreasonable, as the provisions result in prices for FCA 8 that are not reflective of supply conditions.[76]

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[75] *See ISO-NE*, 146 FERC ¶ 61,038 (2014).

[76] Indeed, as noted in *ISO-NE*, 146 FERC ¶ 61,038, ISO-NE agrees that the resultant prices are too low.

48. As explained above, if the Inadequate Supply provision is triggered, new resources that clear receive the FCA Starting Price[77] and existing resources that clear receive "1.1 times the Capacity Clearing Price for the most recent FCA not having Inadequate Supply."[78] Similarly, if the Insufficient Competition provision is triggered, new resources that clear receive the Capacity Clearing Price and existing resources that clear receive "the lower of (1) the Capacity Clearing Price; or (2) 1.1 times the Capacity Clearing Price for the most recent FCA not having Insufficient Competition."[79]

49. The Inadequate Supply and Insufficient Competition provisions erroneously tie administrative prices for existing resources to the most recent auction *without* Inadequate Supply or Insufficient Competition (depending upon the provision at issue). The resultant prices generally would not reflect supply conditions in an FCA where new capacity is needed (i.e., an FCA *with* Inadequate Supply or Insufficient Competition), and competitive prices would generally be higher to reflect the higher costs associated with new entry.

50. Moreover, the potential disparity between the administratively-set prices (under the current Tariff) and those of a competitive auction may be exacerbated by the fact that, as NEPGA correctly explains, the New England region has had a capacity surplus since implementing the FCM, and the Capacity Clearing Prices in the first seven FCAs were set by operation of the price floor in the Tariff.[80] Indeed, in every FCA to date new capacity has *not* been needed, with the exception of one Capacity Zone in one auction. However, as NEPGA explains, nearly 10 percent of the region's existing capacity resources have recently submitted Non-Price Retirement Requests, evincing their intent to leave the market prior to FCA 8. Despite the specter of a significant shift in the region's capacity supply since FCA 7, under the current Inadequate Supply and Insufficient Competition provisions, existing capacity resources will receive a price that is only 10 percent above the price paid to most existing resources in FCA 7, and is only

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[77] The FCA Starting Price for the Capacity Commitment Period starting June 1, 2016 is $15.00/kW-month, and thereafter is updated for each FCA using a three-year rolling average of the Handy-Whitman Index of Public Utility Construction Costs. Tariff section III.13.2.4. In FCA 8, the FCA Starting Price is $15.82/kW-month.

[78] *Id.* section III.13.2.8.1.2(a).

[79] *Id.* section III.13.2.8.2.

[80] In the first seven FCAs, the Capacity Clearing Price, as set by the price floor, ranged from $2.95/kW-month to $4.50/kW-month.

$0.03/kW-month above the average Capacity Clearing Price of the first seven auctions.[81] Further, the prospective $3.47/kW-month under the current Tariff is just a little more than half the $6.66/kW-month that ISO-NE paid to existing resources in NEMA/Boston in FCA 7—the only instance in which ISO-NE has needed new entry since implementing the FCM. Such a prospective price shows that tying prices under the Inadequate Supply and Insufficient Competition rules to prices in a prior auction with adequate supply and sufficient competition sends illogical price signals that undermine the very purpose of those rules, which is to establish prices adequate to incent new entry and retain existing resources and thereby help ensure reliability. For these reasons, we grant NEPGA's complaint to the extent we find that the administrative pricing provisions for existing resources in situations of Inadequate Supply and Insufficient Competition are unjust and unreasonable.

51. While we grant in part NEPGA's complaint, as discussed above, we reject NEPGA's proposed administrative pricing provisions. Although NEPGA's proposal might be sufficient to retain existing resources, we do not find that it appropriately protects consumers and the market from sudden, significant price increases.[82]

52. As noted above, it is undisputed that the administrative pricing provisions applicable to existing capacity resources under the Inadequate Supply and Insufficient Competition provisions are intended to establish prices adequate to incent new entry and retain existing resources – both of which help ensure reliability. At the same time, the

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[81] The average Capacity Clearing Price in FCAs 1 through 7 was $3.40/kW-month. *See ISO New England Inc.*, 123 FERC ¶ 61,290 (2008) (accepting a $4.50/kW-month floor price for FCA 1); *ISO New England Inc.*, 127 FERC ¶ 61,040 (2009) (accepting $3.60/kW-month price for FCA 2); *ISO New England Inc.*, 130 FERC ¶ 61,145 (2010) (accepting $2.951/kW-month price for FCA 3); *ISO New England Inc.*, 133 FERC ¶ 61,230 (2010) (accepting $2.951/kW-month price for FCA 4); *ISO New England Inc.*, 137 FERC ¶ 61,056 (2011) (accepting $3.209/kW-month price for FCA 5); *ISO New England Inc.*, 140 FERC ¶ 61,143 (2012) (accepting $3.434/kW-month price for FCA 6); *ISO New England Inc.*, Docket No. ER13-992-000 (June 11, 2013) (delegated letter order accepting the FCA 7 results, including $3.15/kW-month, the auction floor price, for Maine, Connecticut, and Rest-of-Pool Capacity Zones; $6.661/kW-month for existing resources in NEMA/Boston; and $14.999/kW-month price for new resources in NEMA/Boston).

[82] As stated previously, the relevant just and reasonable rates for FCA 8 that replace the existing Tariff provisions found to be unjust and unreasonable here are established by a companion order in Docket No. ER14-463-000 issued concurrently with this one.

Commission's statutory mandate under the FPA entails protecting consumer interests,[83] which includes protecting consumers and the market from excessive capacity prices, sudden, significant capacity price increases, and the impacts of rate shock. Thus, the Commission must consider these somewhat competing principles in its approach here. Indeed, it has long been established that "the fixing of 'just and reasonable' rates, involves a balancing of the investor and consumer interests."[84] Moreover, while establishing appropriate administrative prices with precision is difficult under ideal conditions, it is particularly challenging when the supply-demand balance is rapidly shifting, as the record reflects is happening in New England. In the context of the administrative prices at issue and the shifting supply-demand realities in New England, the Commission must strike a balance between, on one hand, setting a price that will retain enough existing resources to maintain reliability and, on the other hand, protecting consumers from overpaying for that capacity and minimizing price volatility that could undermine both investor and consumer confidence in the market.

53. Bearing in mind the foregoing principles, we turn to NEPGA's proposed rate. NEPGA seeks to set the administrative price under conditions of Inadequate Supply and Insufficient Competition at 1.1 times the Offer Review Trigger Price for a combustion turbine. Offer Review Trigger Prices are intended to approximate the cost of new entry and, as such, may provide a useful benchmark in certain situations.

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[83] *See FPC v. Sierra Pacific Power Co.*, 350 U.S. 348, 353 (1956) (Commission must consider, among other things, whether disputed contract rates cast excessive burden on certain consumers); *New York Indep. System Operator, Inc.*, 122 FERC ¶ 61,064, at P 54, *order on reh'g*, 125 FERC ¶ 61,299 (2008) (rejecting use of updated demand curve factors that "do not recognize the need to balance the impact on consumers with the need to provide correct price signals for new generation entry"); *see also FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (*Hope)*; *North Carolina v. FERC*, 584 F.2d 1003, 1012 (D.C. Cir. 1978) (evaluation of just and reasonable rates requires findings as to impact plan would have on ultimate consumers); *Algonquin Gas Transmission Co. v. FERC*, 948 F.2d 1305, 1315 (D.C. Cir. 1991) (as part of just and reasonable analysis, Commission must explicitly consider potential cost shifting resulting from mandated rates); *cf. Pub. Serv. Elec. & Gas Co.*, 129 FERC ¶ 61,300, at P 44 (2009); *PPL Elec. Utils. Corp*., 123 FERC ¶ 61,068, at P 56 (2008), *reh'g denied*, 124 FERC ¶ 61,229 at P 15; *Am. Elec. Power Serv. Corp*., 116 FERC ¶ 61,059, at P 59 (2006), *order on reh'g*, 118 FERC ¶ 61,041, at P 27 (2007) (discussing need to protect consumers from "rate shock").

[84] *Hope*, 320 U.S. 591 at 603.

54. However, NEPGA's pricing proposal would more than triple the cost that consumers have typically paid to existing capacity resources—from $3.47/kW-month to $11.00/kW-month—and thereby impose an estimated consumer rate increase of approximately $3 billion for the 2017-2018 Capacity Commitment Period. Indeed, NEPGA's proposal would result in prices exceeding by nearly 70 percent the administrative price paid to existing resources the only time either the Inadequate Supply or Insufficient Competition provisions have been triggered.[85] Absent sufficient evidence that a rate increase of such significant magnitude is necessary to incent new entry and retain existing capacity resources, we cannot find that NEPGA's proposed administrative price, and the resulting estimated rate increase of approximately $3 billion, is just and reasonable.

55. As noted above, in *ISO-NE*, the Commission accepts subject to condition ISO-NE's proposed Tariff revisions submitted pursuant to section 205 of the FPA, including for FCA 8 administrative pricing for existing resources in situations of Inadequate Supply and Insufficient Competition, to become effective January 24, 2014. In doing so, the Commission establishes the just and reasonable rate to replace the rates found to be unjust and unreasonable here. As explained in *ISO-NE*, ISO-NE's proposed Tariff revisions in that proceeding appropriately balance the principles noted above, helping to ensure reliability while protecting consumers and the market from sudden, significant prices increases.

ii. <u>Capacity Carry Forward Rule</u>

56. We find that NEPGA has not shown the Capacity Carry Forward Rule to be unjust and unreasonable, or unduly discriminatory. The intent of the Capacity Carry Forward Rule is to mitigate the price suppressing effects of over-procurement in subsequent years, following the procurement of capacity from a new resource that exceeds the amount of new capacity required in a zone. We agree with ISO-NE and protesters that NEPGA mischaracterizes the Capacity Carry Forward Rule and has failed to show that it will not function as intended.

57. As ISO-NE correctly asserts, it cannot be assumed that carrying forward the capacity from a resource with New Entrant Pricing will suppress prices below competitive levels, because there is not necessarily a link between the capacity carried forward in a Capacity Zone and the amount of excess capacity remaining in that Capacity

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[85] NEPGA's proposal would produce a price of $11.00/kW-month for FCA 8 which is 67 percent higher than the $6.66/kW-month price that existing resources in NEMA/Boston received in FCA 7, as a result of the Insufficient Competition provision being triggered in that Capacity Zone.

Zone (if any) during the term of the resource's New Entrant Pricing. In other words, if capacity is carried forward from an FCA, it does not necessarily follow that the subsequent FCA into which the capacity is carried will have excess capacity. Even if the subsequent FCA does have excess capacity it is not necessarily attributable to the capacity that was carried forward; for example, the surplus could be caused by a shift in demand within that Capacity Zone.

58. Contrary to NEPGA's assertion that the Capacity Carry Forward Rule's pricing provisions are substantially similar to provisions of the PJM tariff that the Commission found unjust and unreasonable, we note that there are substantial differences between the PJM and ISO-NE tariffs that render their treatment of carry-forward capacity dissimilar. Most importantly, unlike ISO-NE, PJM uses a sloped demand curve in its forward capacity market, which eliminates the need for PJM to uneconomically pro-ration capacity. While the Commission in *ISO-NE* directs ISO-NE to implement a sloped demand curve for FCA 9, ISO-NE will use its existing vertical demand curve in FCA 8.

59. Further, we are not persuaded that the Capacity Carry Forward Rule's pricing provision, which potentially sets the clearing price for existing resources to $0.01 below the price at which the last new resource withdrew from the FCA, does not represent a reasonable proxy for a competitive market outcome. As ISO-NE and others correctly explain, the last new resource to withdraw from an auction could do so at much higher prices than NEPGA indicates. Similarly, there does not need to be a "nexus," of resource size or type, between the resource that sets the price for existing resources and the existing resources receiving that price. Under ISO-NE's FCM construct, any resource has the opportunity to set the clearing price.

60. Having found that NEPGA has failed to show that the existing Tariff provisions on this issue are unjust, unreasonable, unduly discriminatory or preferential, we need not address the merits of its relevant proposed Tariff changes.

The Commission orders:

The complaint is hereby granted in part, and denied in part, as discussed in the body of this order.

By the Commission. Commissioner Moeller is concurring with a separate statement attached.
Commissioner Clark is dissenting in part with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

Motions to Intervene	
Algonquin Gas Transmission, LLC and Maritimes & Northeast Pipeline, L.L.C.	Massachusetts Attorney General Martha Coakley
American Public Power Association	National Grid USA
Brookfield Energy Marketing LP	NEPOOL Participants Committee
Calpine Corporation	NEPOOL Industrial Customer Coalition
Connecticut Municipal Electric Energy Cooperative, Massachusetts Municipal Wholesale Electric Company, and New Hampshire Electric Cooperative, Inc.	New England Conference of Public Utility Commissioners
Connecticut Department of Energy and Environmental Protection	New England Local Distribution Companies
Connecticut Office of Consumer Counsel	New England States Committee on Electricity
Consolidated Edison Energy, Inc.	NextEra Energy Resources, LLC
Dominion Resources Services, Inc.	Northeast Utilities Companies
Electric Power Supply Association	NRG Companies
Energy New England, Inc. and Participating Municipal Systems *	PSEG Companies
Exelon Corporation	The United Illuminating Company
Footprint Power Salem Harbor Development LP	Verso Paper Corp.
GDF Suez Energy Marketing NA, Inc.	
George Jepsen, Attorney General for the State of Connecticut	
H.Q. Energy Services (U.S.) Inc.	
Maine Public Advocate Office	* Denotes filing made out-of-time

Comments and Protests	
Algonquin Gas Transmission, LLC and Maritimes & Northeast Pipeline, L.L.C. (collectively, Algonquin and Maritimes)	New England Conference of Public Utility Commissioners (NECPUC)
Calpine Corporation (Calpine)	New England States Committee on Electricity (NESCOE)
Connecticut Municipal Electric Energy Cooperative, Massachusetts Municipal Wholesale Electric Company, and New Hampshire Electric Cooperative, Inc. (collectively, New England Municipals and Cooperatives)	New England Power Generators Association, Inc. (NEPGA) *
Connecticut Department of Energy and Environmental Protection; Connecticut Office of Consumer Counsel; Connecticut Public Utilities Regulatory Authority; George Jepsen, Attorney General for the State of Connecticut (collectively, Connecticut Parties)	Northeast Utilities Companies and the United Illuminating Company (collectively, Northeast Utilities and United Illuminating)
Connecticut Office of Consumer Counsel (Connecticut OCC)	PSEG Companies (PSEG)
Electric Power Supply Association (EPSA)	
Energy New England, Inc. and Participating Municipal Systems (collectively, Energy New England and Massachusetts Municipals) *	
Exelon Corporation (Exelon)	
George Jepsen, Attorney General for the State of Connecticut (Connecticut Attorney General)	
Massachusetts Attorney General Martha Coakley (Massachusetts Attorney General)	
Massachusetts Department of Public Utilities (Massachusetts DPU)	
National Grid USA (National Grid)	
NEPOOL Participants Committee (NEPOOL)	* Denotes filing made out-of-time

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

New England Power Generators Association, Inc. v. ISO New England Inc.	Docket No.	EL14-7-000
ISO New England Inc.	Docket No.	ER14-463-000

(Issued January 24, 2014)

MOELLER, Commissioner, *concurring*:

As a result of flawed tariff provisions that dictate how administrative prices are set in the Forward Capacity Market, we conclude today that the price paid to existing generation resources under these existing tariff provisions are not just and reasonable. While the complainant, ISO-NE, and the Commission can agree that revisions to the Insufficient Competition and Inadequate Supply provisions are needed, the more pressing question is what price should be paid to existing resources in FCA 8.

The Commission was tasked in determining whether a price of $7.025/kW-month or $11.00/kW-month would replace the current administrative price of $3.46/kW-month. The purpose of an administratively-set price, if the provisions worked correctly, is to establish a price that would be sufficient enough to attract new entry and to retain existing resources, in furtherance of reliability. However, New England poses a particular challenge as a result of the identified shifting supply and demand profiles. As such, determining a price that satisfies the financial needs of existing generators, while also protecting consumers and the market from excessive and sudden capacity prices, is challenging.

After reviewing the arguments made in these companion cases, I cannot find that the complainant's pricing proposal is wholly unreasonable. However, I concur with the majority opinion that a balancing of the equities is required and conclude that setting an administrative price of $7.025 (which is more than double the current price) results in a just and reasonable price to be paid to existing resources for FCA 8. I also expect that this pricing issue will not reoccur in light of the conditions that we are imposing in Docket No. ER14-463, notably the requirement that ISO-NE submit a proposal to implement a sloped demand curve prior to FCA 9, thereby removing the need for such problematic administrative pricing mechanisms in the future.

On a broader note, while consumers of any product should be concerned with the rise in prices of any goods or services, there are situations when a legitimate price increase is warranted to ensure the viability of a product manufacturer or a service

provider. Here, we seek to ensure that utilities who generate electricity will receive an adequate price for the service they provide and this, in turn, will help to ensure the long-term viability of our competitive electric markets.

Even though today's price increase may appear significant in relative terms, the reliability benefits funded by this rate increase are real, and the relative cost to ratepayers should be small when viewed as the price paid on a per kilowatt-hour basis. Moreover, when compared to some of the recently announced state initiatives to promote new energy resources, the price increase being approved today should impact ratepayers much less, as the cost will be much smaller on a per kilowatt-hour basis.

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Philip D. Moeller

Commissioner

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

New England Power Generators Association Inc. Docket No. EL14-7-000
v.
ISO New England Inc.

(Issued January 24, 2014)

CLARK, Commissioner, *dissenting in part*:

While I applaud the Commission for moving in the right direction by granting in part NEPGA's complaint, I am writing separately to highlight my disagreement with the Commission's decision to reject NEPGA's proposals and to adopt those offered by ISO-NE in Docket No. ER14-463-000. For the reasons stated in my dissent in that section 205 proceeding, I do not believe ISO-NE has demonstrated that using the fixed price of $7.025/kW-month for all future Forward Capacity Auctions is just and reasonable.

In addition, I disagree with the Commission's determination that NEPGA has not shown the Capacity Carry Forward Rule to be unjust and unreasonable, or unduly discriminatory. The Commission has previously recognized the suppressive and discriminatory effects of allowing capacity suppliers that have elected new entry pricing to offer their capacity into subsequent auctions at a $0 bid in order to guarantee that the capacity will clear. In fact, the Commission has determined in multiple markets that these bidding practices undermine the design and function of the capacity market.[86]

For these reasons, I respectfully dissent in part from this order.

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Tony Clark
Commissioner

[86] *See e.g.*, *PJM Interconnection, L.L.C.*, 128 FERC ¶ 61,157, at P 112 (2009); *California Independent System Operator Corp*., 142 FERC ¶ 61,191, at P 28 (2013) ("the use of zero-price bids could have the unintended effect of depressing the market clearing prices in the CAISO markets, thus adversely affecting other market participants").