

146 FERC ¶ 61,038
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ISO New England Inc.

Docket No. ER14-463-000

ORDER ON TARIFF FILING

(Issued January 24, 2014)

1. On November 25, 2013, pursuant to section 205 of the Federal Power Act (FPA),¹ ISO New England Inc. (ISO-NE) submitted proposed revisions to its Transmission, Markets and Services Tariff (Tariff)² affecting the administrative pricing provisions of the Forward Capacity Market (FCM) rules.³ The Commission accepts the proposed Tariff revisions, subject to condition, effective January 24, 2014, as requested. In taking this action, the Commission herein establishes the just and reasonable rates for FCA 8 to replace existing Tariff provisions that the Commission finds to be unjust and unreasonable in an order issued concurrently with this one in Docket No. EL14-7-000.⁴

I. Background

2. ISO-NE administers the FCM, in which resources compete in annual Forward Capacity Auctions (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

¹ 16 U.S.C. § 824d (2012).

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

³ ISO New England Inc., ISO-NE eTariff, [III.13.2, III.13.2 Annual Forward Capacity Auction, 18.0.0](#).

⁴ *New England Power Generators Ass'n, Inc. v. ISO New England, Inc.*, 146 FERC ¶ 61,039 (2014) (*NEPGA*).

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. Relevant here, these conditions and their associated Tariff provisions include: (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

⁵ 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.

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 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

(continued...)

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

4. 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 the Capacity Clearing Price.

5. 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 Clearing Price for all resources was set by operation of the Tariff-prescribed price floor in each of those auctions.¹¹ 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

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. When some but not all of a new resource's bid capacity is needed to satisfy the Local Sourcing Requirement, the Tariff 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. The Capacity Carry Forward Rule is intended to mitigate the price suppressing effects of this over-procurement in subsequent years.

¹¹ 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).

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.

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

II. Summary of the Filing

7. ISO-NE states that there has been an abrupt change in supply and demand in New England, from a years-long capacity surplus to a potential capacity shortage in the upcoming FCA 8, as well as a general decline in the amount of new resources seeking to participate in the auction. Accordingly, it determined that administrative pricing provisions in the Inadequate Supply and Insufficient Competition rules likely could be invoked in FCA 8, which will start on February 3, 2014. ISO-NE states that, due to changes in the amount of resources expected to participate in FCA 8, it undertook analyses of the potential application of the Inadequate Supply and Insufficient Competition rules. In the course of doing so, ISO-NE states that it also identified a logical flaw in the trigger of the Insufficient Competition rule (referred to here as the IC Gap). ISO-NE states that this flaw and the existing administrative pricing formulas contained in the Inadequate Supply and Insufficient Competition rules could result in unjust and unreasonable prices in FCA 8.

8. In order to remedy these concerns prior to FCA 8, ISO-NE submits several rule changes pursuant to the Exigent Circumstances provision at section 11.2 of the Participants Agreement, which allows ISO-NE to unilaterally make a section 205 filing in certain circumstances without full stakeholder review. ISO-NE requests an effective date of January 24, 2014.

III. Notice of Filings and Responsive Pleadings

9. Notice of the filing was published in the *Federal Register*, 78 Fed. Reg. 73,854 (2013), with interventions and protests due on or before December 16, 2013. Thirty-five entities filed interventions, some of which also filed comments or protests.¹² On January 17, 2014, NEPGA filed additional, out-of-time comments.¹³

¹² See Appendix A.

¹³ Although styled as an answer, NEPGA's filing addresses ISO-NE's proposed Tariff change, not any responsive pleading.

IV. Discussion

A. Procedural Matters

10. 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.

11. 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 the late-filed motions to intervene given the parties' interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

12. Specific aspects of ISO-NE's proposed Tariff revisions and relevant comments and protests are discussed by issue below.

B. Substantive Matters

1. Inadequate Supply and Insufficient Competition Administrative Pricing Provisions

i. ISO-NE's Filing

13. ISO-NE proposes Tariff changes that replace the current administrative price in the Inadequate Supply and Insufficient Competition provisions, which as noted above is "1.1 times the Capacity Clearing Price for the most recent Forward Capacity Auction" that did not have Inadequate Supply or Insufficient Competition; the current Tariff administrative price applicable to FCA 8 would be \$3.46/kW-month. ISO-NE proposes to replace this administrative price with a value of \$7.025/kW-month. ISO-NE explains that this value is derived by applying the rules in place for FCA 7 (i.e., the administrative price is equal to Cost of New Entry (CONE) times 1.1).¹⁴ ISO-NE states that, if the historical CONE were still applicable for FCA 8, it would be \$6.386 (the FCA 7 historical CONE of \$6.055 escalated using the Handy-Whitman Index of 1.0546); multiply this number by 1.1, and the administrative price yields \$7.025/kW-month.

¹⁴ The initial CONE value used for FCA 1 was based on a rate negotiated in the FCM Settlement, and that value was escalated for subsequent auctions based on the Handy-Whitman Index. As this value was derived from a settlement, we refer to it as historical CONE.

14. ISO-NE states that the current administrative price of \$3.46/kW-month is too low and would undermine investor confidence in the long-term stability of FCM revenues, but the proposed solution at issue in Docket No. EL14-7-000 of 1.1 times the Offer Review Trigger Price for a combustion turbine would result in a rate of \$11.00/kW-month and is too high.¹⁵ Therefore, ISO-NE states that, in order to maintain confidence in the market while balancing the various other factors discussed below, ISO-NE is proposing to establish \$7.025/kW-month as the price, if administrative pricing triggers, for only FCA 8.¹⁶

15. ISO-NE states that its proposed rate is appropriate for FCA 8 for several reasons: (1) while ISO-NE continues to recognize that a downward-sloping demand curve centered around a well-supported CONE is the best longer-term solution, it cannot develop such a curve and have it in place before FCA 8; (2) the amount of new generation and new demand response continued a declining pattern due to, ISO-NE hypothesizes, low prices expected to prevail in FCA 8 due to the elimination of the price floor and a significant excess of supply; and (3) because price floors have distorted past auction clearing prices and it is likely that those prices were higher than would have otherwise prevailed, a dramatic increase in the level of the administrative price for existing resources – from \$3.46 to \$11.00 – is not an appropriate administrative outcome. ISO-NE states that the proposed \$7.025/kW-month rate addresses these concerns.¹⁷

16. ISO-NE states that it intends to initiate in January 2014 a stakeholder process to implement a downward-sloping demand curve and submit the filing to the Commission in the summer of 2014. ISO-NE states that replacing the current vertical demand curve with

¹⁵ On October 31, 2013, in Docket No. EL14-7-000, the New England Power Generators Association (NEPGA) submitted a complaint (NEPGA Complaint) asserting that the Tariff's current administrative pricing provisions applicable to existing capacity resources in situations of Inadequate Supply, Insufficient Competition, or the Capacity Carry Forward rule are unjust, unreasonable, or unduly discriminatory. NEPGA proposes an administrative rate of 1.1 times the Offer Review Trigger Price for a combustion turbine unit, resulting in an administrative price of \$11.00/kW-month. Offer Review Trigger Prices are the estimated costs of new entry for various categories of new resources.

¹⁶ ISO-NE Transmittal at 13.

¹⁷ ISO-NE Transmittal at 12.

a more elastic curve will solve significant flaws in the FCM and should alleviate the need for administrative pricing rules.¹⁸

ii. Comments and Protests

17. Parties submitting comments or protests largely focus on ISO-NE's proposal to set the administrative price at \$7.025/kW-month. Generators¹⁹ argue that ISO-NE's proposed rate of \$7.025/kW-month is too low, while state parties,²⁰ municipals,²¹ and retail suppliers²² argue that ISO-NE's proposed price is too high. Most argue that ISO-NE has neither demonstrated that the proposed Tariff revisions are just and reasonable, nor provided sufficient evidence to support its proposal. They assert that ISO-NE provides only characterizations of counsel and no sworn testimony of an economic expert.²³ Therefore, these parties request that the Commission reject ISO-NE's proposed changes to the administrative price.

18. The state parties and municipals assert that ISO-NE's proposal will significantly increase consumer costs without a demonstrated benefit²⁴ and would transfer over \$1 billion in wealth from New England consumers to generators and other resources in FCA 8 without consumers realizing a corresponding value from this transfer of wealth or an effect on market behavior.²⁵ In addition, state parties and municipals state that the

¹⁸ ISO-NE Transmittal at 4.

¹⁹ The generators include EPSA, GDF Suez, NEPGA, NextEra, and PSEG.

²⁰ The state parties include Mass AG, the Connecticut Parties, NECPUC, and NESCOE.

²¹ Municipals include Public Systems.

²² Retail suppliers include NU and UI.

²³ While Public Systems argue that no change is necessary, they urge the Commission not to accept a price above what ISO-NE has proposed, a price they deem the upper range of reasonableness. *See* Public Systems Comments at 6-8.

²⁴ Moreover, state parties assert that, even if all the resources with submitted Non-Price Retirement Requests were to leave the market, there would still be more resources than required to meet the ICR. NESCOE Protest at 11-12.

²⁵ *See, e.g.*, NESCOE Protest at 25; NU and UI Protest at 7; and Mass DPU Protest at 4.

FCM Settlement provided consumer protections against excessive rates, and these protections would apply by setting a competitive price when new entry is needed so as to avoid new entry setting the rate of existing resources and, thus, reaping the windfalls when the auction fails.²⁶

19. Retail suppliers state that there is no reason to believe that the current administrative price of \$3.465/kW-month would be too low to reflect a competitive market outcome, and state parties add that ISO-NE has not shown how paying a higher administrative price would make the market more competitive or address a lack of competitiveness. The state parties assert that certain generator retirements do not signal market inefficiency, as ISO-NE suggests, and, to the extent possible and as reflected in the current pricing provisions, the resulting administratively set price should be based on a competitive market outcome using the last prior competitive auction price. The state parties add that the Commission's acceptance of the prior competitive auction as that proxy indicates that it considered such a value a reasonable approximation for market conditions in the absence of competition.²⁷

20. The state parties also assert that ISO-NE does not contend that the existing rule impairs existing suppliers' opportunities to recover their incremental, going-forward costs of supplying capacity. However, the generators state that the Commission previously explained that "[t]he purpose of the New England FCM is to attract and retain sufficient capacity to maintain ISO-NE's Installed Capacity Requirement, and to do so, FCM capacity prices will need to average out over time to the cost of new entry."²⁸ Addressing ISO-NE's statement that existing resources were compensated in the first seven auctions at a price higher than would have otherwise resulted by virtue of the price floor, the generators argue that whether or not existing resources theoretically over- or under-earned in prior auctions should not influence decisions on how to make the upcoming auction rules provide a competitive, just and reasonable result when Inadequate Supply or Insufficient Competition conditions exist.

21. The state parties assert that ISO-NE is now inappropriately seeking to change rules the Commission approved less than a year ago,²⁹ while both retail suppliers and

²⁶ The Connecticut Parties Protest at 7.

²⁷ NESCOE Protest at 14.

²⁸ NEPGA Protest at 29, citing *ISO New England Inc.*, 125 FERC ¶ 61,102, at P 43 (2008), *reh'g denied*, 130 FERC ¶ 61,089 (2010).

²⁹ *ISO New England Inc.*, 142 FERC ¶ 61,107 (2013).

generators agree that ISO-NE's filing rightfully concludes that the methods used in FCA 7 to calculate CONE are no longer representative of a competitive market outcome.³⁰ While retail suppliers argue that the price proposed by ISO-NE is too high, generators assert that \$7.025/kW-month is simply a particular dollar value that ISO-NE deems appropriate. Generators argue that ISO-NE's objection to using the Offer Review Trigger Price for a combustion turbine does not explain its reversal from its position in a December 2012 compliance filing in which, according to generators, ISO-NE explained that the Offer Review Trigger Prices are "designed to represent prices at the low end of the range of competitive offers for each resource type[,]" which more clearly approximates the results of a competitive market.³¹

22. While the state parties argue that the generators' proposal to use the Offer Review Trigger Price for a combustion turbine at the rate for existing capacity is not before the Commission in this section 205 proceeding, the generators argue that ISO-NE's proposal does not provide a reasonable alternative to the remedy proposed in NEPGA's complaint in Docket No. EL14-7-000, and ISO-NE offers no reasonable legal or policy rationale for its suggestion that the Commission may not also weigh NEPGA's competing proposal when determining the just and reasonable result in this case.

23. The state parties also argue that ISO-NE has not independently demonstrated that the 110 percent multiplier used in its proposal is just and reasonable and that the filing provides no rationale for this multiplier, which, according to state parties, was part of a completely different price formation mechanism – a vestige of the current rate – that cannot be justified by public policy or economic theory.

24. In its late-filed comments, NEPGA asserts that ISO-NE made a recent 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 Inadequate Competition and Inadequate Supply rules at issue here may remain in effect longer than ISO-NE implied in its exigent circumstances filing.

iii. Commission Determination

25. For the reasons discussed below, we find that ISO-NE's proposed Tariff revisions setting forth the administrative pricing for existing resources in situations of Inadequate Supply and Inadequate Competition are just and reasonable for FCA 8, and we will accept them for filing, subject to condition, effective January 24, 2014. In taking this

³⁰ NU and UI Protest at 6-7.

³¹ NEPGA Protest at 25.

action, the Commission herein establishes the just and reasonable rates, should the administrative pricing provisions trigger, for FCA 8 to replace existing Tariff provisions that the Commission finds to be unjust and unreasonable in *NEPGA*.³²

26. 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 just and reasonable prices adequate to incent new entry and retain existing resources – both of which help ensure reliability. At the same time, the Commission’s statutory mandate under the FPA entails protecting consumer interests,³³ 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.”³⁴ 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, largely due to the expiration of the administrative price floor. In the context of the administrative prices at issue and the shifting supply-demand realities in New England, the Commission must strike a

³² *NEPGA*, 146 FERC ¶ 61,039 (2014).

³³ 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”).

³⁴ *Hope*, 320 U.S. 591 at 603.

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.

27. Bearing in mind the foregoing principles, we find that ISO-NE's proposed administrative price, should the administrative pricing provisions trigger, of \$7.025/kW-month is just and reasonable because it appropriately balances the principles noted above, helping to ensure reliability while protecting consumers and the market from sudden, significant price increases. While certain parties cite various economic principles in support of a higher or lower administrative price than ISO-NE's proposal, we find that ISO-NE's proposal, on balance, results in a just and reasonable rate for FCA 8. The administrative price of \$7.025/kW-month accepted here is more than double the \$3.47/kW-month price that the existing Tariff would produce³⁵ and is slightly above the \$6.66/kW-month paid to existing resources in NEMA/Boston in FCA 7, the only instance to date in which ISO-NE has needed new entry since implementing the FCM. At the same time, ISO-NE's proposal seeks to protect consumers from the impacts of rate shock that might result from higher administrative prices, such as NEPGA's proposal in Docket No. EL14-7-000, which the Commission rejects in *NEPGA* because, among other things, it would impose an estimated consumer rate increase of approximately \$3 billion for the 2017-2018 Capacity Commitment Period.³⁶

28. While certain parties argue that no administrative pricing changes are warranted at all, as explained in *NEPGA*, we find that the Tariff's current administrative pricing for existing resources in situations of Inadequate Supply and Insufficient Competition are unjust and unreasonable, as the provisions result in prices that are likely inadequate to incent new entry and retain existing resources.³⁷ Indeed, ISO-NE here agrees that the

³⁵ As discussed in *New England Power Generators Association, Inc. v. ISO New England Inc.*, 146 FERC ¶ 61,039 (2014), the price proposed by NEPGA would be more than triple the current price.

³⁶ See *NEPGA*, 146 FERC ¶ 61,039 (2014) at PP 27, 53.

³⁷ In *NEPGA*, the Commission explains that the existing 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 on 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.

resultant prices are too low. ISO-NE's proposal in this proceeding is more consistent with the provisions' intent because it pays existing resources a price that is more reflective of supply conditions.

29. We disagree with arguments that ISO-NE's proposal is at odds with a prior order addressing ISO-NE and NEPOOL's proposal to decouple the FCA starting price from historical CONE and change the mechanism used to update CONE.³⁸ In that order, the Commission stressed the importance of ensuring that the value of CONE is accurate;³⁹ however, nothing in that order precludes ISO-NE from proposing to use a value for FCA 8 that it believes is the appropriate administrative price under conditions of Inadequate Supply and Insufficient Competition. We find that an administrative price of \$7.025/kW-month is an acceptable proxy for these purposes.

30. In accepting ISO-NE's proposal for FCA 8, we note that while ISO-NE represents that its proposal is intended to address concerns for FCA 8, ISO-NE failed to reflect a

³⁸ *ISO New England Inc. and New England Power Pool Participants Committee; New England Power Generators Association v. ISO New England Inc.; PSEG Energy Resources & Trade LLC, PSEG Power Connecticut LLC, NRG Power Marketing LLC, Connecticut Jet Power LLC, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, and Somerset Power LLC v. ISO New England Inc.*, 131 FERC ¶ 61,065, at PP 136-152 (2010).

³⁹ While recognizing that the specific value of CONE was not part of the filing at issue, which instead concerned an updating mechanism for CONE, the Commission directed a paper hearing as to the proper CONE value, stating that "it is clear that the CONE value in ISO-NE is well below the CONE values in both NYISO and PJM," and the "proper CONE value is important, since it is tied to numerous aspects of the FCM," including the OOM determinations that are part of the Alternative Capacity Price Rule issue. *ISO New England Inc. and New England Power Pool Participants Committee; New England Power Generators Association v. ISO New England Inc. et al.*, 131 FERC ¶ 61,065 at P 151. However, ISO-NE subsequently proposed entirely new mitigation rules that did not rely on CONE and therefore did not address the CONE value. The Commission accepted ISO-NE's new proposal and, therefore, found the issue of the proper CONE value to be moot. *ISO New England Inc. and New England Power Pool Participants Committee; New England Power Generators Association v. ISO New England Inc.; PSEG Energy Resources & Trade LLC, PSEG Power Connecticut LLC, NRG Power Marketing LLC, Connecticut Jet Power LLC, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, and Somerset Power LLC v. ISO New England Inc.*, 135 FERC ¶ 61,029, at P 342 (2011).

termination date in the revised Tariff sheets. Furthermore, ISO-NE states here and in Docket No. EL14-7-000 that as a long-term solution to the issues presented in these proceedings, it intends to submit a sloped demand curve for Commission approval this summer.⁴⁰ ISO-NE posits that such a demand curve will obviate the Inadequate Supply and Insufficient Competition rules and therefore the need for administrative pricing under those provisions.⁴¹ We are concerned that waiting until this summer to make such a filing would not allow sufficient time for implementation by FCA 9. Given ISO-NE's explanation that a sloped demand curve will address the difficult and challenging issues presented here, and based on ISO-NE's statements that its proposal here is intended to be temporary and address concerns for FCA 8, we will direct ISO-NE to submit its proposed demand curve by April 1, 2014, to allow sufficient time for implementation prior to FCA 9.

2. AIC Gap

i. ISO-NE's Filing

31. As ISO-NE explains, under the current Tariff, Insufficient Competition can trigger when less than 300 MW of capacity is offered by new generation and new demand resources (new import resources are excluded from this calculation), or when the amount of capacity offered by such resources is more than the amount of new capacity required (i.e., the difference between the ICR and existing capacity) but less than twice the amount of new capacity required.⁴² ISO-NE states that the IC Gap exists when there are more than 300 MW of new generation and new demand resources, but less than the amount of new capacity required. For example, ISO-NE presents a scenario in which the ICR is 10,000 MW and existing capacity resources total 9,500 MW (thus, new capacity required

⁴⁰ ISO-NE Transmittal Letter at 4, 12-13.

⁴¹ A sloped demand curve will result in a uniform clearing price rather than two separate prices (one for new resources and one for existing resources), which is intended to remove market power concerns associated with potential market power that a new resource would have. In addition, ISO-NE has also stated that a sloped demand curve should reduce price volatility and improve market efficiency. *See, e.g.*, Comments of Robert Ethier, Technical Conference on Centralized Capacity Markets in Regional Transmission Organizations and Independent System Operators, Docket No. AD13-7-000, September 25, 2013, transcript at 19-23, 83-84.

⁴² Although not related to the IC Gap, there is also a third situation in which Insufficient Competition can trigger; specifically, when a market participant's total capacity from new resources is pivotal.

is 500 MW). Also in ISO-NE's scenario, capacity from new generation and new demand response represents 400 MW. Insufficient Competition is not triggered because the sum of new generation and new demand response is greater than 300 MW but less than new capacity required (500 MW).

32. ISO-NE explains that, to trigger Insufficient Competition below 300 MW and above new capacity required, but not in between, is counterintuitive and cannot be supported from a market design perspective. ISO-NE adds that, under the current rules, adding more new resources to the FCA could cause the auction to be deemed less competitive, which according to ISO-NE is clearly a gap in the rule language and not a logical or intended outcome. To eliminate the IC Gap, ISO-NE proposes revising the Tariff language to remove the provision requiring the amount of capacity offered from new generation and new demand response to be greater than new capacity required.⁴³

ii. Comments

33. The state parties, municipals, and generators generally agree with ISO-NE's proposed rule change to close the IC Gap. The state parties add that it is a reasonable fix that retains the intent of the rule and will most likely provide adequate price protections to buyers, as long as the rate compensating existing generators is just and reasonable. However, some argue that the IC Gap may not be the only issue that exists within the Inadequate Supply and Insufficient Competition rules; therefore, the state parties request that stakeholders have a reasonable opportunity to analyze all of the potential issues associated with those rules and to develop additional revisions as appropriate.

34. GDF Suez states that ISO-NE's proposed IC Gap solution addresses a material gap in the trigger but that it is inadequate because it excludes a significant quantity of capacity by not considering New Import Capacity Resources. GDF Suez requests that the Commission require ISO-NE to include these resources as either new or existing capacity in the Insufficient Competition trigger to avoid triggering the rule when there is more than enough capacity to cover the new capacity need plus the additional competing supply required under the trigger.⁴⁴ The generators add that excluding New Import Capacity from consideration as existing capacity results in overstating the need for new capacity, and excluding New Import Capacity as competing new capacity understates competition among New Capacity Resources.

⁴³ See ISO-NE Transmittal at 10 and redline Tariff section III.13.2.8.2(b)(ii).

⁴⁴ GDF Suez Comments at 2-3, 8-9.

iii. Commission Determination

35. We accept ISO-NE's proposed changes to correct the IC Gap. We agree with ISO-NE and commenters that the IC Gap in the rules is counterintuitive, not consistent with the intended outcome of the Tariff provisions, and undermines the effectiveness of the Tariff provisions. ISO-NE's proposal will remedy the IC Gap by allowing the Insufficient Competition rule to trigger when the amount of new capacity offered from New Generation Capacity Resources and New Demand Resources is either less than 300 MW or less than twice the amount of New Capacity Required, with no gap in between. We reject as beyond the scope of this proceeding GDF Suez's request that the Commission additionally direct ISO-NE to include New Import Capacity Resources as either new or existing capacity in the Insufficient Competition trigger. GDF Suez agrees that ISO-NE's proposal here addresses the material gap it is intended to remedy.⁴⁵

36. However, we have identified an ambiguity in the provisions governing the Inadequate Supply and Insufficient Competition rules. ISO-NE states in its filing that the Insufficient Competition rule is intended to trigger only when there is adequate supply; yet, based on the Tariff language, the Inadequate Supply and Insufficient Competition rules can be triggered simultaneously.⁴⁶ Situations in which a market participant is "pivotal" would trigger the Insufficient Competition rule anytime there is Inadequate Supply.⁴⁷ If an FCA is considered to have both Inadequate Supply and Insufficient Competition, the pricing provisions of the two rules conflict, and the Tariff does not indicate which provision takes precedence. Therefore, we require ISO-NE to submit a compliance filing within 60 days of the date of this order, explaining whether the Inadequate Supply and Insufficient Competition rules can be triggered at the same time, and, if so, which pricing provision takes precedence.

⁴⁵ The purpose of ISO-NE's proposal is to allow the rule to properly trigger when it otherwise would not under the current Tariff, while GDF Suez proposes to prevent the rule from triggering when it otherwise would.

⁴⁶ See ISO-NE Transmittal at 10.

⁴⁷ This is because Inadequate Supply is triggered when the total of existing and new resources is less than ICR. ISO-NE's definition of "pivotal," for purposes of determining Insufficient Competition, indicates that some portion of a market participant's new capacity is required to satisfy the ICR. See Tariff, section III.13.2.8.2(b)(iii).

3. Other Changes

i. ISO-NE's Filing

37. ISO-NE also proposes to remove from section III.13.2.8.1.1 of the Inadequate Supply rule the definition of "New Capacity Required" for the Rest-of-Pool Capacity Zone and replace it with a definition of "New Capacity Required" for the system-wide context. ISO-NE explains that this rule change is necessary because the Rest-of-Pool Capacity Zone itself cannot have Inadequate Supply or Insufficient Competition, so the definition of New Capacity Required is unnecessary and confusing. ISO-NE proposes to replace the old definition with a definition of New Capacity Required system-wide because that phrase is used in section III.13.2.8.2.1.1 but is not currently defined there.⁴⁸

38. ISO-NE further seeks to modify section III.13.2.8.2(a) of the Insufficient Competition rule to clarify the treatment of permanently de-listed resources (and capacity otherwise obligated) in the calculation of any amount by which the ICR or Local Sourcing Requirement (LSR),⁴⁹ as applicable, exceeds capacity offered from existing capacity resources. ISO-NE explains that the current Tariff does not make it clear that, in determining whether Insufficient Competition exists system-wide or in an import-constrained capacity zone, permanently de-listed resources and capacity that is otherwise obligated for the Capacity Commitment Period should not be considered existing capacity.

39. ISO-NE also submits proposed Tariff revisions to clarify the treatment of de-list and export bids when the Capacity Clearing Price is set administratively due to the operation of the Capacity Carry Forward rule. ISO-NE states that the Capacity Carry Forward rule includes an administrative price to which the Capacity Clearing Price is set if the rule is triggered. However, ISO-NE explains, the current text of section III.13.2.5.2.7, where the Capacity Clearing Price is set pursuant to the Inadequate Supply or Insufficient Competition rules, does not address how de-list and export bids should be treated where the Capacity Clearing Price is set in this manner. ISO-NE proposes language to Tariff section III.13.2.5.2.7 to address how such bids are treated.⁵⁰

⁴⁸ ISO-NE Transmittal at 14.

⁴⁹ The LSR represents the amount of capacity needed within a given Capacity Zone.

⁵⁰ In other words, a permanent de-list bid, static de-list bid, or export bid clears that would not otherwise have cleared, then the amount of de-listed or exported capacity is not replaced in the current auction and is included in subsequent annual reconfiguration

ii. Comments

40. Numerous parties stated their support for these additional changes to the administrative pricing provisions. Other parties argued that these changes were not appropriately filed under the exigent circumstances provision.⁵¹

iii. Commission Determination

41. We accept ISO-NE's three proposed changes to the administrative pricing provisions that (1) replace the definition of "New Capacity Required" with one that applies system-wide; (2) modify the Insufficient Competition rule to clarify the treatment of permanently de-listed resources in the calculation of any amount by which the ICR or LSR, as applicable, exceeds capacity offered from existing capacity resources; and (3) clarify the treatment of de-list and export bids when the Capacity Clearing Price is set administratively due to the operation of the Capacity Carry Forward rule. We agree with ISO-NE that these rule changes help clarify how the administrative pricing rules operate and remove ambiguities and flaws, and no party has asserted otherwise.

4. Exigent Circumstances**i. ISO-NE's Filing**

42. ISO-NE submits all of these changes pursuant to the Exigent Circumstances provision at section 11.2 of the Participants Agreement, which allows ISO-NE to unilaterally make section 205 filings, without full stakeholder process, where "[ISO-NE] determines in good faith that failure to immediately implement a change would substantially and adversely affect either system reliability or security or the competitiveness or efficiency of the New England Markets and that invoking the normal stakeholder review procedures set forth in Section 11.1, 11.3, or 11.4 of the Participants Agreement would not allow for timely redress of [ISO-NE's] concerns."⁵²

43. ISO-NE states that exigent circumstances are present here because prompt implementation of the Tariff revisions is necessary to address the flaws in FCM rules

auctions. ISO-NE Transmittal at 15.

⁵¹ Arguments concerning the use of the exigent circumstances provision are addressed in the next section.

⁵² ISO-NE Transmittal at 6.

prior to the conduct of FCA 8 during the first week of February 2014. ISO-NE adds that, if the flaws go unaddressed, the auction could produce anomalous results.

ii. Comments and Protests

44. Several parties assert that ISO-NE has not demonstrated that exigent circumstances exist.⁵³ The state parties argue that the Commission should reject ISO-NE's claim of exigent circumstances, claiming that ISO-NE fails to meet either prong of the relevant requirements. The state parties argue that asserting that market flaws could produce anomalous auction results is insufficient to demonstrate a good faith determination that failure to implement ISO-NE's proposed rules would "substantially and adversely affect" either "system reliability or security" or "the competitiveness or efficiency of the New England Markets."⁵⁴

45. The state parties add that a finding of exigent circumstances under the conditions presented by ISO-NE would unreasonably lower the threshold and set a "disturbing precedent."⁵⁵ The state parties assert that the Commission should only allow ISO-NE to bypass state and stakeholder input in circumstances where exigent conditions truly exist and where failing to obtain such input prior to making a filing was genuinely unavoidable, which they argue is not the case here.

46. The state parties assert that ISO-NE does not consider consumer cost implications associated with its preferred actions, and, therefore, the stakeholder process is the only means under today's regional structure where the states and others can make cost and other consequences to consumers a relevant element in the range of potential solutions.

47. NEPOOL argues that the Commission should treat ISO-NE's filing as a section 206 filing and on the same footing as the other unilateral proposals pending before the Commission to improve the FCM, noting that the Participants Agreement deliberately set a high bar for exigent circumstances filings to discourage bypassing the

⁵³ See, e.g., The Connecticut Parties Protest at 4; Mass AG Protest at 4, 6-7; NESCOE Protest at 9; NECPUC Protest at 4-6; Public Systems Comments at 5-6; NEPOOL Industrial Customer Coalition Comments at 1 and 3; Energy New England and Participating Municipal Systems at 6; NextEra Protest at 7-8; NEPOOL Comments at 2.

⁵⁴ The Connecticut Parties Protest at 4. The Connecticut Parties add that the current Inadequate Supply and Insufficient Competition rules' rate currently in place is just and reasonable.

⁵⁵ NESCOE Protest at 9.

normal stakeholder process. Regardless, NEPOOL urges the Commission to act by January 24, 2014 positing that clarity on the FCM rules is necessary going into FCA 8.⁵⁶ The state parties assert that, to the extent the Commission finds that changes to the administrative pricing rules are warranted, the Commission should instead direct ISO-NE to initiate a stakeholder process in accordance with the Participants Agreement to ensure that revisions to the market rules are in place well before FCA 9, since it is too late in the process for new entrants to come forward anyway.

48. The state parties add that ISO-NE is conflating exigent circumstances with a mere change in circumstances (i.e., the increased potential for the Inadequate Supply or Insufficient Competition rule to trigger), and thus has not sufficiently demonstrated that exigent circumstances exist. They therefore argue that ISO-NE should not receive any deference under section 205 of the FPA.

49. The municipals posit that three rule changes discussed in ISO-NE's filing (i.e., replacement of the definition of "New Capacity Required," clarification of the treatment of permanently de-listed resources and capacity otherwise obligated, and clarification of the treatment of de-list and export bids under the operation of the Capacity Carry Forward Rule) were inserted after discussions with stakeholders at the Market Committee meetings, and these three additional rule changes might be sound proposals but there is no basis for why they should bypass the usual stakeholder process.⁵⁷

iii. Commission Determination

50. While various parties assert that ISO-NE has not demonstrated that exigent circumstances exist, we disagree.

51. The Participants Agreement defines exigent circumstances as circumstances such that the ISO determines in good faith that failure to immediately implement a change would substantially and adversely affect either system reliability or security or the competitiveness or efficiency of the New England Markets, and that invoking the normal stakeholder review procedures set forth in Section 11.1, 11.3 or 11.4 of the Participants Agreement would not allow for timely redress of the ISO's concerns.⁵⁸

⁵⁶ NEPOOL Comments at 2 and 11-12.

⁵⁷ Energy New England and Participating Municipal Systems Comments at 6.

⁵⁸ Section 1.1. of the Participants Agreement.

52. ISO-NE has shown that the prescribed criteria are satisfied here. The record reflects an unforeseen change in circumstances, namely, a drastic shift from a years-long capacity surplus to a potential capacity shortage,⁵⁹ and the specter of substantial retirements is undisputed. In the face of these conditions, ISO-NE justifiably determined that failing to immediately implement a change prior to FCA 8 could affect the short-term competitiveness and efficiency of the markets and, in the long-term, affect system reliability. Although the state parties assert that ISO-NE is conflating exigent circumstances with a mere change in circumstances, in this case, the difference is one without distinction. Regardless, as we explain here and in the companion order in Docket No. EL14-7-000, the change in circumstances require immediate redress prior to FCA 8 when the provisions at issue could likely trigger.

The Commission orders:

(A) ISO-NE's filing is hereby accepted, subject to condition, effective January 24, 2014, as discussed in the body of this order.

(B) ISO-NE is hereby directed to submit a compliance filing within 60 days of the date of this order and a proposed demand curve by April 1, 2014, as discussed in the body of this order.

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

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁵⁹ ISO-NE represents that it discovered in October 2013 that the supply-demand balance in the region had dramatically changed, and no party contests that statement.

Appendix A

Motions to Intervene	
American Public Power Association	Energy New England, Inc. and Participating Municipal Systems (Braintree Electric Light Department, Concord Municipal Light Plant, Groveland Electric Light Department, Hingham Municipal Lighting Plant, Littleton Electric Light & Water Department, Merrimac Municipal Light Department, Middleton Electric Light Department, Rowley Municipal Lighting Plant, Taunton Municipal Lighting Plant and Wellesley Municipal Light Plant)
Attorney General of the Commonwealth of Massachusetts (Mass AG)	EnerNOC, Inc.
Brookfield Energy Marketing LP	Exelon Corp.
Calpine Corp.	Footprint Power Salem Harbor Development LP
Commissioner of the Connecticut Department of Energy and Environmental Protection	George Jepsen, Attorney General for the State of Connecticut
Connecticut Municipal Electric Energy Cooperative, Massachusetts Municipal Wholesale Electric Company, New Hampshire Electric Cooperative, Inc., and Vermont Public Power Supply Authority (Public Systems)	GDF Suez Energy Marketing North America, Inc. (GDF Suez)
Consolidated Edison Energy, Inc. and Consolidated Edison Solutions, Inc.	H.Q. Energy Services (U.S.) Inc.
Connecticut Office of Consumer Counsel	Maine Public Advocate Office
Dominion Resources Services, Inc. (late-filed motion to intervene)	Maine Public Utilities Commission
Dynegy Marketing and Trade, LLC	NEPOOL Industrial Customer Coalition
Electric Power Supply Association	New England Conference of Public Utility Commissioners

Motions to Intervene, con't.	Notices of Intervention
New England Power Generators Association (NEPGA)	Connecticut Public Utilities Regulatory Authority
New England Power Pool Participants Committee (NEPOOL)	Maine Public Utilities Commission
New England States Committee on Electricity (NESCOE)	Massachusetts Department of Public Utilities (Mass DPU)
NextEra Energy Resources, LLC	Comments and Protests
Northeast Utilities Service Co. (late-filed motion to intervene)	Attorney General of the Commonwealth of Massachusetts (Mass AG)
NRG Companies	Energy New England, Inc. and Participating Municipal Systems ⁶⁰
PSEG Companies	Electric Power Supply Association (EPSA)
TransCanada Power Marketing Ltd.	Connecticut Municipal Electric Energy Cooperative, Massachusetts Municipal Wholesale Electric Company, New Hampshire Electric Cooperative, Inc., and Vermont Public Power Supply Authority (Public Systems)
United Illuminating Company	Connecticut Office of Consumer Counsel
Verso Paper Corp.	Connecticut Public Utility Regulatory Agency (Connecticut PURA), Connecticut Office of Consumer Counsel, George Jepsen, Attorney General for the State of Connecticut, and the Connecticut Department of Energy and Environmental Protection (the Connecticut Parties) ⁶¹
	GDF Suez Energy Marketing North America, Inc. (GDF Suez)

⁶⁰ Energy New England and Participating Municipal Systems object to all of ISO-NE's proposed changes except the change to the IC Gap.

⁶¹ The Connecticut Office of Consumer Counsel incorporates by reference the protest filed by the Connecticut Parties.

Comments and Protests, con't.	New England Power Pool Participants Committee (NEPOOL)
The Massachusetts Department of Public Utilities (Mass DPU)	New England States Committee on Electricity (NESCOE) ⁶²
NEPOOL Industrial Customer Coalition	NextEra Energy Resources, LLC
New England Conference of Public Utility Commissioners (NECPUC) ⁶³	Northeast Utilities Services Co. (Northeast Utilities) and United Illuminating Company
New England Power Generators Association (NEPGA) ⁶⁴	PSEG Companies (PSEG)

⁶² The Mass DPU states that it incorporates by reference, adopts, and joins in the argument set forth by NESCOE in its Motion to Intervene and Protest in the instant proceeding. NECPUC also states that it supports the NESCOE protest in the instant proceeding and incorporates and adopts the arguments made therein.

⁶³ NECPUC's comments are limited to ISO-NE's proposed modifications to the Inadequate Supply and Insufficient Competition rules.

⁶⁴ NextEra supports NEPGA's protest. PSEG states that it supports NEPGA's complaint and requests that the Commission consider ISO-NE's proposal here in conjunction with the NEPGA complaint proceeding.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

New England Power Generators Association, Inc.

Docket No. EL14-7-000

v.

ISO New England Inc.

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.

Philip D. Moeller
Commissioner

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England Inc.

Docket No. ER14-463-000

(Issued January 24, 2014)

CLARK, Commissioner, *dissenting*:

While I applaud the Commission for moving in the right direction by partially granting NEPGA's complaint in the companion docket, EL14-7-000, 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 this docket.

Since the administrative price would apply only during certain auctions when new entry is needed, it should reflect a reasonable estimate of the cost of new entry. Almost a year ago, this Commission accepted the currently effective Offer Review Trigger Price of \$10.00/kW-month for a combustion turbine as a reasonable proxy for the cost of new entry in New England.⁶⁵ The market price during periods when new capacity is needed should ordinarily be at least as high as the annualized cost of a new entrant, and NEPGA's proposed price would, in fact, be tied to the estimated cost of a new combustion turbine.

ISO-NE's proposed administrative price of \$7.025/kW-month falls short because it is lower than the current Offer Review Trigger Price for a combustion turbine or any other generation technology specified in the Tariff. In fact, ISO-NE gets to its \$7.025/kW-month price through the use of a historical CONE that retail suppliers, generators *and* ISO-NE have all agreed is no longer representative of a competitive market outcome.⁶⁶ I do not believe this is an appropriate or legally sustainable analysis.

While I believe today's order in this docket and EL14-7-000 appropriately relies on market fundamentals as a basis for finding the current tariff provisions no longer just and reasonable, the determination in these orders to accept ISO-NE's proposed administrative price is not supported by the record. While it may be a tough call, in the long-term the New England region would be better served by this Commission making a decision based on market fundamentals.

⁶⁵ *ISO New England, Inc.*, 142 FERC ¶ 61,107 (2013).

⁶⁶ *See* 146 FERC ¶ 61,038, at PP 13 & 21 (2013).

For these reasons, I respectfully dissent from this order.

Tony Clark
Commissioner