148 FERC ¶ 61,185
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

ISO New England Inc. Docket No. ER14-2440-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued September 12, 2014)

1. On July 16, 2014, pursuant to section 205 of the Federal Power Act (FPA),[1] ISO New England Inc. (ISO-NE) submitted proposed revisions[2] to its Transmission, Markets and Services Tariff (Tariff) to allow a non-commercial capacity resource to file with the Commission a request for a one-year deferral of its Capacity Supply Obligation[3] under certain circumstances. In this order, we accept the proposed Tariff revisions, effective July 17, 2014, as requested.

I. Background

2. Under ISO-NE's existing Forward Capacity Market (FCM) rules, a new capacity resource that clears a Forward Capacity Auction (FCA) – and thus assumes a Capacity Supply Obligation – has 39 months between the auction and the start of the associated Capacity Commitment Period[4] to finalize permitting, financing, and construction and

[1] 16 U.S.C. § 824d (2012).

[2] ISO New England Inc., ISO New England Inc. Transmission, Markets and Services Tariff, Exhibit IA, Exhibit IA ISO-NE Financial Assurance Policy, 34.0.0 and III.13.3, III.13.3 Critical Path Schedule Monitoring, 8.0.0.

[3] A Capacity Supply Obligation is an obligation to provide capacity from a resource, or a portion thereof, to satisfy a portion of the Installed Capacity Requirement. A Capacity Supply Obligation is acquired through a Forward Capacity Auction, a reconfiguration auction, or a Capacity Supply Obligation Bilateral. Tariff section I.2.

[4] A Capacity Commitment Period is the one-year period from June 1 through May 31 for which obligations are assumed and payments are made in the Forward Capacity Market. *Id*.

declare the resource commercial. Prior to the auction, ISO-NE works with the resource to establish a schedule of project development milestones and the dates by which the resource expects to achieve them. The new resource also submits to ISO-NE financial assurance at various points along this development schedule.

3. Also under the existing Tariff, if a new resource fails to meet the milestones in the development schedule and appears unlikely to achieve commercial operation by its commitment period, ISO-NE may, at its discretion, submit a filing with the Commission to terminate the Capacity Supply Obligation. If the Commission approves the termination, the sponsor must forfeit its financial assurance, and ISO-NE attempts to replace the missing capacity through reconfiguration auctions. According to ISO-NE, such terminations only occur in the most egregious cases. If the Capacity Supply Obligation is not terminated and the resource fails to achieve commercial operation by the start of the Capacity Commitment Period, the resource receives its full capacity payments at the auction clearing price but must attempt to cover its Capacity Supply Obligation through an arrangement with a suitable substitute resource. For any portion of the Capacity Supply Obligation that it does not cover, the resource will be subject to Shortage Event penalties, which, under current market rules, cannot exceed the resource's capacity revenue.

II. Proposed Tariff Revisions

4. The proposed Tariff revisions would allow a new capacity resource that will not be operational by the commencement of the Capacity Commitment Period for which it has a Capacity Supply Obligation to seek a one-year deferral of its Capacity Supply Obligation under certain limited circumstances. The resource must first request and receive from ISO-NE a written reliability determination indicating that the absence of the resource's capacity would result in a transmission system reliability issue[5] in both the associated Capacity Commitment Period and the subsequent Capacity Commitment Period. If ISO-NE makes such a determination, then the resource may file with the Commission for a one-year deferral of its Capacity Supply Obligation. The resource must include in its filing to the Commission (1) the reliability determination from ISO-NE; (2) a demonstration that the deferral is critical to the resource's ability to achieve commercial operation; and (3) a demonstration that the project's development delay is due to factors beyond the control of the resource.

[5] Specifically, the reliability assessment will determine whether the absence of the resource's capacity would result in the violation of North American Electric Reliability Corporation or Northeast Power Coordinating Council criteria or ISO-NE System Rules. Proposed Tariff section III.13.3.7.

5. The proposed revisions state that if the Commission approves a resource's deferral request, all of the rights, obligations, payments, and charges associated with the Capacity Supply Obligation will apply one year later than they otherwise would have applied without the deferral. This includes the five- or seven-year new entry capacity price lock-in if the resource opted for such a lock-in at the time it first cleared the FCA.[6] During the deferral period, the resource may not seek to buy or trade out of its Capacity Supply Obligation,[7] and ISO-NE retains the right to seek termination of the Capacity Supply Obligation if the resource appears incapable of meeting its deferred commercial operation date. The revisions also state that a resource that receives a deferral must submit a portion of its required financial assurance on an accelerated timeline. Specifically, the resource must submit within 30 days of the Commission's acceptance of its deferral request any financial assurance that would apply – pursuant to the financial assurance rules applicable to the FCA in which the resource cleared – to a resource that has not achieved commercial operation one year after the start of a Capacity Commitment Period in which it has a Capacity Supply Obligation.[8]

6. ISO-NE states that the proposed revisions are preferable to the available alternatives to address the loss of capacity due to a resource's failure to become operational on time. ISO-NE states that while other resources acquired in future capacity auctions, or transmission enhancements, might eventually meet the reliability need, any such alternative solutions would become commercial much later than a resource that has cleared a prior FCA, even with a one-year deferral of its Capacity Supply Obligation. ISO-NE also argues that supporting a resource that was selected through the FCM process for purposes of ensuring resource adequacy is preferable to seeking a substitute resource – if any is even available – through a Gap Request for Proposals or other similar extraordinary means. ISO-NE further explains that simply allowing a resource that is

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[6] For FCAs 1-8, the new entry capacity price lock-in was five years. The Commission recently accepted ISO-NE's proposal, as part of a new system-wide sloped demand curve construct, to extend the lock-in period to seven years beginning with FCA 9. *ISO New England Inc. and New England Power Pool Participants Committee*, 147 FERC ¶ 61,173 (2014).

[7] If the resource bought or traded out of any portion of its Capacity Supply Obligation prior to the Commission's approval of the deferral, the resource must forfeit any arbitrage profits gained through that transaction. Alternatively, if the resource covers the Capacity Supply Obligation at a loss and receives a deferral, it will still incur the loss.

[8] Proposed Tariff Section I, Exhibit IA, Section VII.B.2.c; ISO-NE Testimony of Robert G. Ethier at 12.

unable to fulfill its Capacity Supply Obligation to continue into its Capacity Commitment Period after failing to find a substitute resource to cover its obligation is a poor option because the currently-effective market rules create a "no-lose" situation for the resource and a cost burden to load: the resource still receives its full monthly capacity payments but can only lose capacity revenue through the infrequent occurrence of an extended reserve deficiency, known as a Shortage Event.[9]

7. With regard to concerns that the proposed revisions could undermine the incentive for a resource to ensure that it reaches commercial operation on time, ISO-NE posits that the revisions partially mitigate those concerns by limiting applicability of the deferral rules to new capacity resources that are critical for reliability in multiple Capacity Commitment Periods and that cannot achieve commercial operation on time due to factors beyond their control.

8. ISO-NE also states that it will work with stakeholders to consider the prospective need for the proposed deferral provisions and whether other steps, such as changing the length of the capacity market planning period, qualification criteria, or financial assurance provisions, are appropriate in light of several major, Commission-approved capacity market changes (i.e. two-settlement market design, sloped demand curve, extended new entry price lock-in, increased financial assurance).

9. Finally, ISO-NE requests waiver of the Commission's 60-day prior notice requirement to allow the Tariff revisions to become effective on July 17, 2014. ISO-NE states that it is important that these changes become effective as soon as possible in order to allow their use by a resource that has received a Capacity Supply Obligation and will likely be needed for reliability, but will not be able to become commercial on time.

III. Notice of Filing and Responsive Pleadings

10. Notice of the filing was published in the *Federal Register*, 79 Fed. Reg. 42,784 (2014), with interventions and protests due on or before August 6, 2014. Brookfield Energy Marketing LP, Calpine Corporation, Consolidated Edison Energy, Inc., Dominion Resources Services, Inc., GDF SUEZ, Emera Energy Services Inc., Exelon Corporation, Footprint Power Salem Harbor Development LP (Footprint), Massachusetts Attorney General (Massachusetts AG), New England States Committee on Electricity (NESCOE), New England Power Generators Association, Inc. (NEPGA), New England Power Pool Participants Committee (NEPOOL), NextEra Energy Resources, LLC and New Hampshire Transmission, LLC (NextEra), Northeast Utilities Service Company, NRG

[9] ISO-NE explains that since the FCM began in 2010, there has been only one Shortage Event. ISO-NE Transmittal at 5.

Companies (NRG), and PSEG Companies (PSEG) filed timely motions to intervene, and Massachusetts Department of Public Utilities (Massachusetts DPU) filed a notice of intervention. Footprint, Massachusetts AG, Massachusetts DPU, NEPOOL, and NESCOE also filed comments. NEPGA, NextEra, NRG, and PSEG filed protests. On August 21, 2014, ISO-NE and Footprint filed answers.

IV. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the notice of intervention and timely-filed motions to intervene serve to make the entities that filed them parties to this proceeding.

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to an answer or protest unless otherwise ordered by the decisional authority. We will accept the answers filed in this proceeding because they provided information that assisted us in the decision-making process.

B. Comments, Protests, and Answers

13. Footprint states that it is the developer of a new 674 MW combined-cycle natural gas-fired generating resource to be located in Salem, Massachusetts. Footprint explains that the resource's full 674 MW of capacity cleared in FCA 7 in the Northeast Massachusetts (NEMA)/Boston capacity zone for the Capacity Commitment Period from June 2016 to May 2017 but that, for reasons beyond Footprint's control, the resource will not reach commercial operation by June 1, 2016, as planned. Footprint states that its project is the first new merchant project representing a completely unsubsidized and uninstalled resource to clear in an FCA, and that it has done everything possible to meet the deadlines of a new resource with a Capacity Supply Obligation, including beginning the permit application process on the day it purchased the Salem Harbor property six months prior to the auction in which it cleared.

14. Footprint supports ISO-NE's proposed Tariff revisions and states that they are appropriate to ensure that the FCM can work properly. It also states that the mere possibility of deferral will not incent new resources to seek unnecessary deferrals, because a deferral entails delaying capacity revenue for a full year and because, by the time the sponsor would ever contemplate a deferral, it would have already paid substantial financial assurance and other development costs, virtually all of which are non-refundable.

15. Massachusetts AG, Massachusetts DPU, and NESCOE also support the proposed Tariff revisions, stating that the ability for a resource to seek a one-year deferral is important to maintaining near-term reliability in New England and to the viability of the

FCM, particularly at a time when the region is losing significant amounts of generation. Massachusetts AG states that the proposed revisions are necessary to ensure that delays caused by state siting and permitting processes do not thwart otherwise economically viable new resources that are needed for reliability. Massachusetts DPU states that it also has an interest due to the local reliability benefits of the Footprint project and that the NEMA/Boston capacity zone will be short of capacity by 130 MW in 2016-17, and by 282 MW for 2017-18, without the new Footprint resource. Massachusetts DPU also states that it is satisfied that the conditions for a deferral are adequately stringent to safeguard against abuse of the deferral rule. NESCOE expresses concerns that the Tariff revisions reflect a significant change to the market rules, come after limited opportunity for stakeholder input, and may represent a retroactive application of market rules; however, NESCOE states that those concerns are outweighed by the risks of not accepting the Tariff revisions, such as potential reliability problems and cost impacts.

16. NEPGA, NextEra, NRG, and PSEG filed protests in opposition to the proposed revisions. They argue that the proposed revisions are intended to benefit one specific market participant, Footprint, and that Footprint should therefore file a waiver request with the Commission, rather than ISO-NE proposing generic market rule changes. NEPGA states that the Commission has previously denied requested tariff changes when the proposed change was effectively intended to benefit an individual market participant, apply for a limited period of time, or both. NextEra states that no evidence exists that a three-year forward period has impeded any development of new gas-fired power plants in PJM Interconnection, L.L.C., and there is no indication in New England that it has impeded other resources in the queue. NextEra also states that, contrary to ISO-NE's statements, feasible transmission upgrade alternatives exist that could be developed by April 2018.

17. PSEG states that market participants competed on a level playing field and ISO-NE should not be able to change long-standing market rules after-the-fact simply because one market participant will be adversely affected. PSEG states that ISO-NE's assertion that the proposed Tariff revisions are necessary to protect reliability are inconsistent with ISO-NE's statements related to the recent system-wide capacity market demand curve proceeding, in which ISO-NE designed the operation of the capacity market such that ISO-NE would not intervene in market outcomes unless the Loss of Load Expectation fell below one day in five years.[10] PSEG states that it does not believe that the one day in

[10] The Tariff defines Loss of Load Expectation as "the probability of disconnecting non-interruptible customers due to a resource deficiency." Tariff section I.2. The one day in five years standard refers to the level of resource adequacy that is expected to result in one day of customer disconnection over the course of a five-year period.

five years standard would be violated if Footprint withdrew its project or was terminated by ISO-NE. PSEG thus requests that, at a minimum, ISO-NE's proposed Tariff revisions be modified such that a deferral, which PSEG considers to be extraordinary relief, would only be considered if the one day in five years standard would not be met due to the loss of a non-commercial resource's capacity.

18. NRG argues that the proposed revisions give unsuccessful developers a "get out of jail free" card and unravel Tariff protections designed to ensure that only viable projects participate in the FCA. NRG states that ISO-NE is asking the Commission to approve a market design intended to result in the system operating at a capacity deficit for the 2016-17 Capacity Commitment Period and that ISO-NE should instead avail itself of existing Tariff rules to solicit replacement capacity through an early reconfiguration auction. NRG further asserts that the proposed revisions raise issues of retroactive ratemaking by changing the settled expectations of market participants who entered into various transactions in reliance on the current rules. NRG argues that the Commission has stated that it will apply *Mobile-Sierra*[11] protection to capacity auction results and that ISO-NE has not even attempted to meet the "public interest" burden necessary to revisit the rates, terms, or conditions of an FCA that has already been run. NRG also contends that allowing a non-commercial capacity resource to defer its entry into the market will suppress prices under the new demand curve structure, scheduled to go into effect for FCA 9. NRG states that the deferred resource will be given full status as an existing resource for future FCM periods even though it does not actually exist, and that its inclusion as an existing resource will suppress clearing prices for the region and the capacity zone in which the resource is to be located.

19. If the Commission allows ISO-NE's filing to go into effect, NRG requests that the Commission require resources seeking a deferral to meet more stringent financial assurance requirements. Specifically, NRG requests that, at a minimum, resources that cleared prior to FCA 9 be required to post financial assurance consistent with the more stringent financial assurance policies that apply to FCA 9. NRG also states that, if the Commission rejects a resource's filing for a deferral, ISO-NE should be required to terminate the resource's Capacity Supply Obligation immediately.

20. In its answer to protests, ISO-NE states that the market rule changes that ISO-NE proposes in this proceeding were properly filed as Tariff revisions under section 205 of the FPA and should not, as protestors contend, have been filed as a waiver request by Footprint. ISO-NE states that the Commission approves waivers in instances where deadlines are missed, deposits are late, and similar acts of one market participant are

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[11] *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956).

excused. ISO-NE asserts that the proposed Tariff revisions in the instant proceeding are distinguishable from a waiver request because they will be generally applicable to any participant that meets the criteria set forth in them and because they include new Tariff provisions, not merely provisions being waived. ISO-NE states that its commitment to further address this issue in the stakeholder process is not an admission that the deferral mechanism is either unnecessary or a solution for a single participant.

21. ISO-NE further asserts that the proposed Tariff revisions do not constitute retroactive ratemaking and apply only prospectively and with notice. To support its point, ISO-NE cites two cases in which the Commission accepted market rule changes during the interval between the primary auction and the Capacity Commitment Period for that auction. ISO-NE also states that protestors are incorrect when they state that the Commission should apply *Mobile-Sierra* protection to the terms and conditions of a Capacity Supply Obligation that are affected by the proposed Tariff revisions. ISO-NE states that the proposed rule changes in this proceeding do not alter capacity auction results, and therefore the *Mobile-Sierra* standard is inapplicable.

22. ISO-NE states that protestors are incorrect when they argue that the inclusion of a deferred resource's capacity in subsequent FCAs will suppress prices, displace new entry or uprates of existing resources, or unfairly curtail market opportunities. ISO-NE asserts that any time a non-commercial resource clears an FCA, its capacity will be included in that auction, and likely one or more subsequent auctions, even though the resource is not yet commercial. ISO-NE argues that because of this FCM design feature, a risk always exists that a new resource that has cleared an FCA will never become commercial, and therefore this risk is not newly introduced by the proposed Tariff revisions in this proceeding. ISO-NE further disputes claims that granting a resource a deferral is discriminatory and harms other, similarly-situated participants, instead asserting that a resource that meets the criteria necessary to receive a deferral is inherently not similarly-situated to other resources. ISO-NE opposes PSEG's request that the Commission modify the proposed Tariff revisions such that a deferral only be considered if ISO-NE finds that the Loss of Load Expectation will fall below one day in five years without the resource's capacity. ISO-NE states that the only question before the Commission is whether the proposed Tariff revisions are just and reasonable and that therefore PSEG's request should be denied.

23. ISO-NE opposes protestors' calls to require more financial assurance from resources receiving a deferral or to require that the more onerous financial assurance obligations applicable to FCA 9 be applied to a deferred resource that cleared in an earlier FCA. ISO-NE states that such a change runs counter to the purpose of providing for a deferral and would make it more, rather than less, difficult for a deferred resource to achieve commercial operation by its deferred deadline. ISO-NE also objects to the automatic termination of a resource's Capacity Supply Obligation, if the Commission rejects a resource's filing for a deferral.

C. Commission Determination

24. We accept ISO-NE's proposed Tariff revisions to allow a non-commercial capacity resource to file a request with the Commission to defer for one year its Capacity Supply Obligation under specified circumstances, to become effective July 17, 2014, as requested.[12]

25. We find that the proposed Tariff revisions are just and reasonable because they provide a narrowly-tailored, additional alternative mechanism through which ISO-NE can address a demonstrable reliability concern by accommodating a resource that, due to circumstances beyond its control, is unable to meet its commercial operation date within the timeframe required by its Capacity Supply Obligation. The proposed revisions contain sufficient safeguards to ensure that they do not serve as a means for resources to avoid their obligations. Specifically, prior to filing a deferral request with the Commission, ISO-NE must first determine that the resource's capacity is necessary for reliability in two consecutive Capacity Commitment Periods. The resource must then demonstrate to the Commission that it is unlikely to achieve commercial operation without a one-year deferral of its Capacity Supply Obligation and that the factors causing the delay are beyond its control. We are satisfied that this combination of requirements will sufficiently limit the applicability of the deferral rules to prevent their abuse or misuse.[13]

26. We are not persuaded by arguments that the instant filing is solely intended to benefit Footprint and that instead of ISO-NE proposing new Tariff revisions, Footprint should have sought waiver of the existing Tariff requirements. Like any applicant, ISO-NE may seek to revise its Tariff pursuant to section 205 as it sees fit. ISO-NE, as the system administrator, has observed an issue affecting the reliability of its markets, and it has properly sought to address that issue by proposing Tariff revisions here.

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[12] *See* sections 35.3(a)(1) and 35.11 of the Commission's regulations, 18 C.F.R. §§ 35.3(a)(1); 35.11 (2014); *Central Hudson Gas and Electric Corp*., 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992). Given that we are accepting the proposed Tariff revisions, and because earlier Commission action on any forthcoming deferral request would be beneficial to all FCM participants, we find good cause to grant waiver of the Commission's 60-day notice requirement.

[13] Because we find the Tariff revisions as proposed to be just and reasonable, we need not address modifications to the revisions offered by protestors. *See Oxy USA, Inc. v. FERC*, 64 F.3d 679, 691 (D.C. Cir. 1995); *Cities of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984).

27. Protestors also argue that the proposed Tariff revisions will serve as a "get out of jail free" card for capacity resource developers. We disagree. As discussed above, we find that the requisite criteria for seeking a deferral provide adequate safeguards against abuse. Further, a resource that receives a deferral must submit a portion of its required financial assurance on an accelerated timeline and is subject to measures that prevent the resource from benefitting financially from the deferral.[14] The resource also remains subject to the possibility of termination if ISO-NE believes the resource will not become commercial even under the deferred timeline.

28. We also are not persuaded by arguments that the proposed Tariff revisions are inferior to existing Tariff mechanisms for addressing a resource's inability to timely meet a Capacity Supply Obligation. The possibility of a deferral simply provides another option for addressing late commercial development and in some circumstances could be preferable to existing alternatives, such as wholly terminating the resource's Capacity Supply Obligation prior to the start of the Capacity Commitment Period. The potential permanent loss of the resource's capacity may threaten reliability in the region for multiple years until adequate replacement capacity is developed. Further, if a capacity resource enters its Capacity Commitment Period without having achieved commercial operation, the resource could receive its full monthly capacity payments but only lose capacity revenue through availability penalties that have a limited effect due to the infrequent occurrence of Shortage Events. Therefore, a non-commercial capacity resource that maintains part or all of its Capacity Supply Obligation into its Capacity Commitment Period could represent a burden to consumers, who must pay for non-existent capacity. Allowing a resource to defer its Capacity Supply Obligation helps ensure that consumers receive the service for which they paid.

29. Furthermore, contrary to protestors' assertions, the proposed Tariff revisions do not constitute retroactive ratemaking. There is a difference between upsetting the expectations of market participants, which might be the case here, and retroactive ratemaking.[15] Where protestors have asserted that proposed Tariff revisions would disrupt settled expectations mid-course and harm market participants who relied on the

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[14] For example, during the deferral period, the resource may not seek to buy or trade out of its Capacity Supply Obligation, and if the resource bought or traded out of any portion of its Capacity Supply Obligation prior to the Commission's approval of the deferral, the resource must forfeit any arbitrage profits gained through that transaction. If the resource covers the Capacity Supply Obligation at a loss and receives a deferral, it will still incur the loss.

[15] *ISO New England Inc. and New England Power Pool*, 145 FERC ¶ 61,095, at PP 28-29 (2013).

existing Tariff in calculating prices and entering into contracts, the Commission has considered a "balancing of interests"[16] or "balancing of equities"[17] in determining the appropriate outcome. Thus, the Commission has accepted revisions where the benefits outweighed any settled expectations,[18] and we do so here. The benefits expected to result from the proposed Tariff revisions, including preventing consumers from having to pay for non-existent capacity or possibly face a multi-year capacity shortfall, outweigh market participants' reliance upon the existing FCM rules that do not include a provision allowing a capacity resource to seek a one-year deferral of its Capacity Supply Obligation under certain, limited circumstances.

30. As to NRG's argument that the proposed Tariff revisions must be reviewed under *Mobile-Sierra*, the Commission has stated that the *Mobile-Sierra* "public interest" analysis extends only to FCA and reconfiguration auction clearing prices, with clearing prices becoming "finalized" after the Commission approves ISO-NE's FCA results filing,[19] and not to other FCM rules.[20] Specifically, in the Commission's order accepting the FCM settlement agreement, the Commission stated that "[o]ur reading of [section 4.C of the settlement agreement] indicates that…the 'public interest' standard will only apply to…the final clearing prices in the FCA and any reconfiguration auctions permitted under the market rules…"[21] The FCM rules, terms, and conditions implicated in this proceeding do not change FCA clearing prices and therefore, consistent with Commission precedent, are not subject to analysis under *Mobile-Sierra*.

31. We also disagree with NRG's contention that allowing a capacity resource to defer its entry into the market, rather than terminating its Capacity Supply Obligation, will inappropriately suppress prices because the capacity resource will be "given full status as

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[16] *ISO New England Inc.*, 134 FERC ¶ 61,128, at P 39 (2011).

[17] *ISO New England Inc. and New England Power Pool Participants Committee*, 132 FERC ¶ 61,136, at P 30 (2010).

[18] *ISO New England and New England Power Pool*, 145 FERC ¶ 61,095 at PP 28, 30.

[19] *Devon Power LLC*, 115 FERC ¶ 61,340, at P 182 (2006). The Commission clarified that the just and reasonable standard applies to its review of ISO-NE's FCA results filing. *Id.* P 185.

[20] *Id.* P 182.

[21] *Id.*

an Existing Resource…even though it does not actually exist."[22] Any time a non-commercial resource clears an FCA, the resource's capacity may conceivably – and not improperly – be included as existing capacity in the subsequent FCAs prior to the commencement of its first Capacity Commitment Period. Unless and until ISO-NE files and the Commission accepts a termination of the resource's Capacity Supply Obligation due to the resource's failure to adhere to its development schedule, the resource will be considered an existing resource in subsequent FCAs despite the risk that it may still fail to achieve commercial operation on time (or at all). This is an inherent possibility of allowing non-commercial resources to participate in FCAs. Allowing a one-year deferral of a resource's Capacity Supply Obligation does not introduce a new possibility of price suppression in subsequent FCAs, particularly given that ISO-NE retains the right to, at any point, file with the Commission to terminate a deferred resource's Capacity Supply Obligation if it deems the resource unlikely to achieve commercial operation by its new deadline.

32. Finally, while we find that the proposed Tariff revisions are a just and reasonable solution to the problem of siting- and permitting-related development delays, we encourage ISO-NE to work with stakeholders, as it has stated that it will do, to determine whether another long-term solution exists given the implementation of a number of FCM rule changes beginning with FCA 9.

The Commission orders:

The proposed Tariff revisions are hereby accepted for filing, to become effective on July 17, 2014, as requested, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[22] NRG Protest at 8.