

149 FERC ¶ 61,227
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 Nos. ER15-117-000
EL14-99-000

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS
AND DIRECTING COMPLIANCE FILINGS

(Issued December 15, 2014)

1. On October 16, 2014, in compliance with an Order to Show Cause issued by the Commission,¹ ISO New England Inc. (ISO-NE) submitted revisions to its Transmission, Markets and Services Tariff (Tariff) to provide for the review and potential mitigation of importers' supply offers prior to each annual Forward Capacity Auction (FCA). In this order, we accept ISO-NE's tariff revisions, subject to further compliance filings, effective October 17, 2014, as requested. We direct ISO-NE to submit compliance filings, as discussed below.

I. Background

A. Forward Capacity Market

2. ISO-NE administers the Forward Capacity Market (FCM), in which resources compete in annual FCAs to provide capacity three years in advance of the relevant delivery year.² 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 distinct zones, known as Capacity Zones.³ The amount of capacity needed system-wide in an FCA is termed the net Installed Capacity Requirement.⁴ Resources offer to sell capacity by submitting de-list bids (i.e.,

¹ *ISO New England Inc.*, 148 FERC ¶ 61,201 (2014) (Show Cause Order).

² ISO-NE has held eight FCAs to date, with FCA 1 held in February 2008.

³ Tariff section III.12.4.

prices below which they will not provide capacity) into the auction; thus, when the auction clears, all resources whose de-list bids were at or below the clearing price will receive capacity supply obligations.

3. ISO-NE seeks to prevent new and existing resources from exercising either seller-side market power (to prevent sellers from seeking to raise prices above a competitive level) or buyer-side market power (to prevent buyers from subsidizing new entrants to enable those entrants to make offers at levels that will artificially depress the clearing price), through their de-list bids. Prior to each auction, to ensure that existing resources cannot exercise seller-side market power, ISO-NE's Internal Market Monitor reviews Permanent and Static De-List Bids from existing resources to determine whether the bids are consistent with the resource's net risk-adjusted going forward and opportunity costs.⁵ If the Internal Market Monitor determines that the bid is consistent with the resource's costs, the bid is entered into the auction; otherwise, it is rejected.⁶

4. Additionally, to ensure that new resources are not exercising buyer-side market power, a new resource must generally offer at its Offer Review Trigger Price, which is intended to represent the costs of each resource type, unless the resource receives approval from the Internal Market Monitor prior to the auction to offer at a lower price. A new resource must provide cost support for an offer below the relevant Offer Review Trigger Price to enable the Internal Market Monitor to determine if the offer is consistent with the estimated costs of that particular resource.

5. Imports could exercise either seller-side or buyer-side market power. ISO-NE's current Tariff provisions, however, provide for only limited review of the offers of import resources. Under section III.13.1.3.5.6 of the Tariff, the Internal Market Monitor "shall review each offer from Existing Import Capacity Resources and New Import Capacity Resources" and "[a]n offer from an Existing Import Capacity Resource or a New Import

⁴ The Installed Capacity Requirement is the "level of capacity required to meet the reliability requirements defined for the New England Control Area[.]" Tariff section I.2.2. The net Installed Capacity Requirement is the Installed Capacity Requirement minus the Hydro-Quebec Interconnection Capability Credit. *See, e.g.*, Tariff section III.13.2.2.

⁵ Tariff section III.13.1.2.3.2.

⁶ ISO-NE also reviews each Permanent De-List Bid, Static De-List Bid, and Export Bid prior to an auction to determine if the capacity associated with the bids is needed for reliability. Subsequently, during the auction, ISO-NE reviews each Dynamic De-List Bid to determine if the capacity associated with each of those bids is needed for reliability. The Internal Market Monitor does not review Dynamic De-List Bids during the auction for consistency with each resource's costs.

Capacity Resource shall be rejected if the Internal Market Monitor determines that the bid may be an attempt to manipulate the Forward Capacity Auction, and the matter will be referred to the Commission[.]”⁷ ISO-NE has explained that this review takes place as part of the qualification process, and it only involves ensuring that the behavior of import resources is consistent with their actions in previous FCAs, rather than evaluating the bids of import resources for consistency with their net risk-adjusted going forward costs, as is done for the offers of other resources.⁸ ISO-NE has stated that the Internal Market Monitor does not have the authority to reject offers by import resources during the auction.⁹

6. On September 16, 2014, in Docket No. EL14-99-000, the Commission issued the Show Cause Order, expressing concern with the tariff’s treatment of imports. The Commission stated:

Unlike the situation at the initiation of the FCM in 2008, ISO-NE is currently facing the possibility that future capacity auctions may begin with a very small surplus, if any, above the net Installed Capacity Requirement. These tight capacity conditions may allow suppliers who are aware of their pivotal role in the market to exercise market power. Under such conditions, we are concerned that the market mitigation provisions currently contained in the Tariff may not protect customers against unjust and unreasonable prices for capacity. Specifically, although the Commission previously determined that most imports should be treated like existing internal resources for mitigation purposes, *the tariff does not currently require the [Internal Market Monitor] to ensure that the de-list bids of importers are consistent with their net risk-adjusted going forward and opportunity costs, as it does with regard to other existing resources.* We are concerned that this may create an opportunity for the exercise of market power by importers and otherwise may result in preferential or unduly discriminatory treatment favoring importers over other capacity resources.¹⁰

⁷ Tariff section III.13.1.3.5.6.

⁸ Tariff sections III.13.1.2.3.2.1, and III.13.1.2.3.2.1.1.1.

⁹ July 17 Letter, Docket No. ER14-1409-000, Answer to Question 5, at p. 8 (“[s]ection III.13.1.3.5.6 of the Tariff relates to the [Internal Market Monitor] review of qualification offers from import resources. Qualification reviews are conducted prior to the auction, not during the auction; consequently, this section does not provide the [Internal Market Monitor] authority to reject offers by import resources during the auction”).

¹⁰ Show Cause Order, 148 FERC ¶ 61,201 at P 10 (emphasis added, footnotes omitted).

7. Accordingly, the Commission required ISO-NE to either submit tariff revisions that provide for the review and potential mitigation of importers' offers in a manner similar to the manner in which other, existing resources are reviewed and mitigated, or show cause why it should not be required to do so.

B. The Tariff Revisions Filing

8. ISO-NE complied with this obligation by filing the instant tariff revisions on October 16, 2014, docketed in Docket No. ER15-117-000.

9. ISO-NE agrees that improvements to the mitigation mechanism for imports in the FCM are appropriate and should be implemented in time for the upcoming ninth FCA (to be conducted beginning February 2, 2015 for the Capacity Commitment Period beginning on June 1, 2018). ISO-NE asserts that the Tariff changes filed here are designed to determine which New Import Capacity Resources have market power (that is, which are "pivotal") and to apply mitigation to those suppliers in a manner consistent with the mitigation that is applied to existing resources, as contemplated by the Commission.¹¹

10. ISO-NE notes that under the currently effective market rules, most New Import Capacity Resources are able to withdraw their capacity from the FCA at any price from the auction starting price to their Offer Review Trigger Price of \$0.00/kW-month.¹² As a result, these resources are provided with an opportunity to introduce inefficiency into the auction by leaving at prices above their net risk-adjusted cost, or by remaining in the auction at prices below that cost.

11. ISO-NE states that the proposed tariff revisions determine which New Import Capacity Resources have market power through a single pivotal supplier test, and apply mitigation to those resources. ISO-NE states that the proposed revisions will require New Import Capacity Resources associated with pivotal import portfolios to stay in the capacity auction at prices above their competitive offer price, as determined by the ISO-

¹¹ Transmittal at 2-3. ISO-NE clarifies that the revisions address only the treatment of New Import Capacity Resources because Existing Import Capacity Resources are already effectively mitigated. ISO-NE states that Existing Import Capacity Resources and Existing Generating Capacity Resources are subject to the same qualification process which provides for the submission of de-list bids and for the review of these bids by the Internal Market Monitor.

¹² ISO-NE explains that the Tariff treats most imports as new capacity. Pursuant to Section III.13.1.3.4 of the Tariff, most import capacity not associated with a multi-year contract is treated as new capacity and designated an Offer Review Trigger Price of \$0.00/kW-month. ISO-NE Transmittal at 3.

NE's Internal Market Monitor, and will be required to leave the auction at prices below their competitive offer price. ISO-NE notes that stakeholders will have the opportunity to challenge the Internal Market Monitor's determinations once they are submitted to the Commission as part of the qualification results.

12. ISO-NE states that the pivotal supplier test for New Import Capacity Resources will evaluate whether any capacity from a supplier's import portfolio is needed to meet the projected shortfall of existing resources in meeting the Installed Capacity Requirement.¹³ In addition, ISO-NE specifies that the proposed pivotal supplier test will also consider capacity import limitations, the total amount of qualified capacity on each import interface, the amount of qualified capacity by supplier on each interface, and the concentration of control across the pool of New Import Capacity Resources. ISO-NE clarifies that the proposed pivotal supplier test assumes that other new resources (generation or demand response) will not be available at competitive offer prices to meet the calculated shortfall. ISO-NE asserts that this assumption is necessary in order to avoid underestimating market power, under-mitigation, and an increased potential for the exercise of market power.¹⁴

¹³ Specifically, proposed section III.A.21.2(d) describes the calculations performed by ISO-NE to determine whether a New Import Capacity Resource is associated with a pivotal supplier. New section III.A.21.2(d) proposes the following actions: (1) ISO-NE will calculate system need as 1.1 multiplied by the Installed Capacity Requirement (net of HQICCs) minus the total amount of qualified capacity from Existing Generating Capacity Resources and Existing Demand Resources for the Capacity Commitment Period, (2) for each interface, ISO-NE will determine an amount equal to the lesser of: (a) the capacity transfer limit of the interface (net of tie benefits); and (b) the total amount of qualified capacity from New Import Capacity Resources and Existing Import Capacity Resources over the interface, (3) for each interface, ISO-NE will determine an amount equal to the lesser of: (a) the capacity transfer limit of the interface (net of tie benefits); and (b) the total amount of qualified capacity from New Import Capacity Resources and Existing Import Capacity Resources over the interface minus the total amount of qualified capacity from all New Import Capacity Resources over the interface that are controlled by the supplier, (4) if the sum of the amounts calculated for all interfaces in subsection (3) above is less than the system need as calculated in subsection (1) above and less than the sum of the amounts calculated for all interfaces in subsection (2) above, then the supplier is pivotal. Otherwise, the supplier is determined to not be pivotal by the Internal Market Monitor. *See* revised Tariff section III.A.21.2(d).

¹⁴ ISO-NE Transmittal at 10 n.29.

13. ISO-NE states that the proposed tariff revisions will require all New Import Capacity Resources to submit cost data to the Internal Market Monitor or face exclusion from the FCA.¹⁵ Specifically, ISO-NE will require New Import Capacity Resources to submit data related to the expected costs of purchasing power outside the New England Control Area, expected transmission costs outside the New England Control Area, expected transmission costs associated with importing into the New England Control Area, as well as reasonable opportunity costs and risk adjustments.¹⁶ ISO-NE explains that the Internal Market Monitor will use the cost data to establish New Resource Offer Floor Prices for New Import Capacity Resources that are associated with pivotal suppliers. For these resources, ISO-NE states that the New Resource Offer Floor Price will be equal to the offer price requested by the Project Sponsor if the Internal Market Monitor determines the submitted cost data to be accurate and reasonable.

14. Alternatively, if the Internal Market Monitor disagrees with the submitted cost data, it will reset the resource's New Resource Offer Floor Price to a competitive offer. ISO-NE explains that the Internal Market Monitor will develop a competitive offer by taking into account operating and maintenance costs, market and non-market revenues, applicable opportunity costs, and a reasonable valuation of the risk associated with assuming a Capacity Supply Obligation. For resources that are not associated with a pivotal supplier, the Internal Market Monitor will set the resource's New Resource Offer Floor Price to \$0.00/kW-month.¹⁷

15. ISO-NE maintains that the proposed tariff revisions aim to limit the exercise of market power and ensure that resources do not leave the auction at prices inconsistent with their net risk-adjusted costs. However, ISO-NE notes that "while these changes represent significant steps to address the problem identified by the Commission . . . [i]t is

¹⁵ ISO-NE Transmittal at 8. ISO-NE further notes that although the cost information will be used to establish New Resource Offer Floor Prices only for New Import Capacity Resources that are associated with pivotal suppliers, it is nonetheless appropriate to collect this information from all New Import Capacity Resources. The pivotal supplier test must be completed substantially before the FCA commences, and before the final opportunity for new resources to withdraw from participation in the auction. ISO-NE asserts that, as a result, it is possible that some suppliers deemed not pivotal in advance of the auction could in fact be pivotal during the auction, and that the submission of cost information from all New Import Capacity Resources will provide an important check on conduct during the FCA and will enable the Internal Market Monitor to more effectively guard against manipulation. ISO-NE Transmittal at 5.

¹⁶ ISO-NE Transmittal at 9.

¹⁷ ISO-NE Transmittal at 8.

important, however, to understand the limitations of these changes.”¹⁸ ISO-NE states that under tight capacity supply conditions, ISO-NE may need to depend on imports to meet some of its capacity needs.¹⁹ ISO-NE states that it does not have the authority to require capacity from neighboring regions such as New York or Quebec to offer into New England’s capacity market, and that while New Import Capacity Resources are subject to qualification requirements to participate in a capacity auction that are similar to those for Existing Generating Capacity Resources, there are few barriers to exit for New Import Capacity Resources during the period between qualification and the start of the auction. ISO-NE asserts that this “provides additional opportunity for New Import Capacity Resources to assess, and even impact, the competitiveness of capacity supply without being contested by additional responsive entry.”²⁰

16. ISO-NE notes that, for the tenth FCA and beyond, the mitigation process proposed in the instant filing will occur during the typical qualification period. However, ISO-NE proposes an accelerated schedule in order to implement the revised mitigation provisions for the upcoming ninth FCA.²¹ ISO-NE expresses its commitment to consider further enhancements to the Tariff that will align the treatment of New Import Capacity Resources with that of existing resources in the qualification and mitigation periods prior to the FCA. Additionally, ISO-NE states that the Internal Market Monitor commits to evaluate the performance of the pivotal supplier test and will consider, in conjunction with stakeholders, whether any additional changes are necessary with respect to the mitigation of imports for subsequent FCAs.

17. ISO-NE states that, although it was not able to take the revisions included in the instant filing through the typical stakeholder process, it presented the revisions at a New England Power Pool (NEPOOL) Markets Committee meeting held on October 8, 2014 and at a NEPOOL Participants Committee meeting held on October 15, 2014. ISO-NE explains that the NEPOOL Participants Committee supported the tariff revisions with a vote of 79.4 percent in favor.

18. ISO-NE acknowledges that the NEPOOL Participants Committee also approved an amendment (NEPOOL Amendment) to the proposed tariff revisions with a vote of 83.2 percent in favor. ISO-NE explains that the NEPOOL Amendment would permit New Import Capacity Resources to: (i) submit up to five price-quantity pairs for consideration by the Internal Market Monitor, as opposed to a single requested floor

¹⁸ ISO-NE Transmittal at 6.

¹⁹ ISO-NE Transmittal at 6.

²⁰ ISO-NE Transmittal at 6.

²¹ ISO-NE Transmittal at 11.

price;²² and (ii) partially withdraw from the ninth FCA by the date and in the manner specified in revised Section III.13.1.3.5.7. ISO-NE notes that it did not support the NEPOOL Amendment, arguing that it did not have sufficient opportunity to evaluate the appropriateness of this proposal. In any case, ISO-NE asserts that as a practical matter, it is not feasible to implement the NEPOOL Amendment in the auction process and software in time for the ninth FCA.²³

19. ISO-NE requests waiver of the Commission's 60-day notice requirements,²⁴ to allow the proposed tariff revisions to become effective October 17, 2014, and be put in place before the ninth FCA is held on February 2, 2015.

II. Notice of Filings and Responsive Pleadings

20. Notice of the Commission's Show Cause Order in Docket No. EL14-99-000 was published in the *Federal Register*, 79 Fed. Reg. 57,075 (2014), with interventions and protests due on or before October 7, 2014. NEPOOL; National Grid; Essential Power, LLC; the New England States Committee on Electricity (NESCOE); Consolidated Edison Energy (Con Ed); NRG Companies (NRG); PSEG Companies (PSEG); Champlain, Vermont d/b/a TDI New England Inc.; Casco Bay Energy; H.Q. Energy Services U.S. (HQUS); Northeast Utilities Service Company (NU); Connecticut Municipal Electric Energy Cooperative, Massachusetts Municipal Wholesale Electric Company, and New Hampshire Electric Cooperative, Inc.; Brookfield Energy Marketing LP (Brookfield); New England Power Generators Association (NEPGA); Public Citizen, Inc. (Public Citizen); and Dominion Resources Services (Dominion) filed timely motions to intervene. The Massachusetts Attorney General and Connecticut Department of Public

²² Under the current Tariff, other new resources are allowed to offer up to five different price-quantity pairs indicating the amount of capacity that the resource would be willing to provide at that price. For example, if a resource wished to offer 30 MW into the auction, it could offer 10 MW at \$10/MW, another 10 MW at \$20/MW, and its remaining 10 MW at \$30/MW. See Tariff section III.13.2.3.2(a)(i) (a new resource's offer "shall be defined by the submission of one to five prices, each strictly less than the Start-of-Round Price but greater than or equal to the End-of-Round Price, and an associated quantity in the associated modeled Capacity Zone. . . . Such a New Capacity Offer shall imply a supply curve indicating quantities offered at all of that round's prices")

²³ ISO-NE Transmittal at 14.

²⁴ See *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *order on reh'g*, 65 FERC ¶ 61,081 (1993); *Central Hudson Gas and Electric Corp.*, 60 FERC ¶ 61,106 at 61,338, *reh'g denied*, 61 FERC ¶ 61,089 (1992) (*Central Hudson*).

Utility Regulation filed timely notices of intervention. United Illuminating Company (UI); the Electric Power Supply Association; and the Connecticut Attorney General filed motions to intervene out of time. Public Citizen filed a protest, and NEPOOL filed a response to Public Citizen's protest.

21. Notice of ISO-NE's October 16, 2014 filing in Docket No. ER15-117-000 was published in the *Federal Register*, 79 Fed. Reg. 63,390 (2014), with interventions and protests due on or before November 6, 2014. PSEG, GDF Suez Energy Marketing (GDF Suez), HQUS, NEPOOL, Exelon Corporation (Exelon), NRG, Dominion, Con Ed, NESCOE, UI, Public Citizen, Entergy Nuclear Power Marketing, Brookfield, NEPGA, NU and Emera Energy Services, Inc., filed timely motions to intervene. NEPGA and NEPOOL filed comments, and Public Citizen and Brookfield filed protests. HQUS filed an answer to NEPGA's comments, ISO-NE filed an answer to Brookfield's protest and NEPGA's comments, and Brookfield filed an answer to ISO-NE's answer on December 5, 2014.²⁵

III. Discussion

A. Procedural Issues

22. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motions to intervene and notices of intervention serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), we will grant the late-filed motions to intervene, given those parties' interest in this proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

23. 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 a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers filed here, because they have provided information that assisted us in our decision-making process.

B. Analysis

24. We conditionally accept ISO-NE's filing, subject to further compliance filings, and we grant ISO-NE's request for waiver to enable these tariff provisions to become

²⁵ NEPOOL's comments, Public Citizen's and Brookfield's protests, and ISO-NE's and Brookfield's answers were docketed in both Docket Nos. ER15-117-000 and EL14-99-000. However, because these submittals pertain to ISO-NE's October 16, 2014 tariff revisions, we will consider them part of the Docket No. ER15-117-000 proceeding.

effective October 17, 2014, as requested above.²⁶ We find that ISO-NE's proposal is a significant step toward decreasing the opportunity for importers to exercise market power, because pivotal suppliers will be required to submit offers consistent with their net risk-adjusted going forward and opportunity costs. We will, however, require ISO-NE to submit further compliance filings, as discussed below.

1. **Permitting Imports to Submit Up to Five Price-Quantity Pairs into an Auction, and Related Issues**

a. **Comments and Protests**

25. NEPOOL attaches to its comments the above-referenced NEPOOL Amendment, which reflects specific proposed tariff revisions allowing importers to submit up to five price-quantity pairs and allowing a New Import Capacity Resource to be partially or wholly withdrawn from the ninth FCA if found to be associated with a pivotal supplier. NEPOOL, NEPGA, and Brookfield urge the Commission to approve both the Tariff revisions proposed by ISO-NE and the NEPOOL Amendment. These parties state that the NEPOOL Amendment would provide needed flexibility to importers, by allowing importers to submit multiple price-quantity pairs, as well as permitting importers to decide to withdraw all or some of these price-quantity pairs.²⁷

26. In particular, Brookfield argues that limiting New Import Capacity Resources to a single price-quantity pair would require each of these resources to either offer all of its qualified capacity at a price determined by the Internal Market Monitor, or withdraw all qualified capacity prior to an auction.²⁸ Brookfield maintains that the Internal Market Monitor's New Resource Offer Floor Price would not appropriately reflect a New Import Capacity Resource's opportunity costs and risks incurred unless the resource is able to submit multiple price-quantity pairs. Brookfield explains that importers may face situations where risk increases or decreases depending on the quantity of capacity sold

²⁶ See *Central Hudson, supra*.

²⁷ NEPOOL notes that the Internal Market Monitor opposed the NEPOOL Amendment, arguing that the current auction software is not able to accommodate multiple price-quantity pairs in the ninth FCA for New Import Capacity Resources. In addition, NEPOOL notes that the Internal Market Monitor stated that it will not be able to afford sufficient time for an adequate review of multiple offers from New Import Capacity Resources in the ninth FCA. NEPOOL Comments at 7.

²⁸ Brookfield notes that New Import Capacity Resources do not have a must-offer obligation to participate in an auction and therefore, should not be forced to consider whether to offer or withdraw all of their capacity. November 6, 2014 Protest at 14-15.

from a resource.²⁹ Further, Brookfield states that a single resource may have a portion of capacity that has a higher risk-adjusted opportunity cost and another portion of capacity that has a lower risk-adjusted opportunity cost. Brookfield argues that a single price cannot accurately reflect the varying risks associated with different portions of capacity from an importer. Brookfield states that the risk of undercompensating higher-cost portions of import resources will incentivize importers to withdraw from an auction entirely. Brookfield argues that, instead, rational importers should be able to withdraw capacity associated with risk-adjusted opportunity costs greater than the New Resource Offer Floor Price.³⁰

27. Brookfield maintains that ISO-NE's proposed New Resource Offer Floor Price for a New Import Capacity Resource will not function in a manner similar to a Static De-List Bid for an existing resource, as suggested by ISO-NE.³¹ Brookfield argues that the current tariff rules allow each Existing Generating Capacity Resource to submit a Static De-List Bid with up to five price-quantity pairs in an Existing Capacity Qualification package.³²

28. Additionally, Brookfield objects to ISO-NE's proposal to prevent importers that withdraw capacity prior to an FCA from participating in subsequent reconfiguration auctions or bilateral transactions, as well as ISO-NE's proposal to not allow New Import Capacity Resources to decrease their de-list bids, similar to existing resources. Brookfield argues that these actions will create barriers to importer participation.

29. Further, Brookfield states that ISO-NE's proposal will impose a pivotal supplier test on New Import Capacity Resources and not on other new resources. Brookfield additionally contends that ISO-NE's proposed pivotal supplier test for New Import Capacity Resources incorrectly assumes that other new resources (generation or demand response) will not be available at competitive offer prices to meet the expected shortfall of existing resources in meeting the Installed Capacity Requirement. Brookfield asserts that the proposed pivotal supplier test should account for other new qualified capacity resources in order to more accurately reflect the supply of capacity available to meet the

²⁹ Brookfield November 6, 2014 Protest at 11.

³⁰ Brookfield November 6, 2014 Protest at 15.

³¹ Brookfield November 6, 2014 Protest at 13-14.

³² Brookfield November 6, 2014 Protest at 14 (citing Tariff section III.13.1.2.3.1.1). Brookfield also notes that importers have been allowed to submit up to five price-quantity pairs in the previous eight FCAs. Brookfield November 6, 2014 Protest at 5.

Installed Capacity Requirement.³³ Further, Brookfield argues that ISO-NE's proposed pivotal supplier test is unduly discriminatory as it will only be applied to New Import Capacity Resources. Brookfield states that, as a result, these resources will automatically fail the test during situations where existing suppliers are unable to meet the resource adequacy requirement.

30. Brookfield requests that the Commission, at a minimum, direct ISO-NE to: (1) implement the NEPOOL Amendment for the ninth FCA; (2) allow importers a seven-day time period after the Internal Market Monitor reviews their de-list bids to decide if they are willing to accept a lower price; (3) allow withdrawn capacity to participate in subsequent bilateral transactions and reconfiguration auctions; and (4) review the pivotal supplier test with stakeholders and implement any additional changes before the tenth FCA.³⁴

b. Answers

31. In its answer, ISO-NE states that the use of multiple price-quantity pairs for New Import Capacity Resources would be impractical and could jeopardize the ninth FCA.³⁵ ISO-NE states that for resources that require market power mitigation, the current auction software limitations require ISO-NE to rely on several manual processes.³⁶ ISO-NE states that, in the event the Commission were to direct the use of multiple price-quantity pairs for New Import Capacity Resources associated with pivotal suppliers, the number of manual interventions in the auction mechanisms could increase significantly and "introduce needless risk and uncertainty into the auction."³⁷ Furthermore, ISO-NE states that it is not possible to design, test, and implement the necessary changes in time for the ninth FCA. However, ISO-NE states it will consider with stakeholders in the future whether this functionality would be worthwhile to add, but urges the Commission to resist calls for a specific commitment as to the timing or outcome of such consideration.

32. ISO-NE contends Brookfield is confusing the ability to reduce the amount of capacity offered as prices drop *during* the FCA with the ability to withdraw capacity *before* the FCA begins.³⁸ ISO-NE states that a withdrawal from the auction

³³ Brookfield November 6, 2014 Protest at 18-19.

³⁴ Brookfield November 6, 2014 Protest at 3.

³⁵ ISO-NE November 19, 2014 Answer at 3.

³⁶ ISO-NE November 19, 2014 Answer at 4.

³⁷ ISO-NE November 19, 2014 Answer at 5.

³⁸ ISO-NE November 19, 2014 Answer at 6.

constitutes a complete and irrevocable decision to cease participating in the qualification process and FCA entirely.³⁹ ISO-NE further states that new generating resources are not permitted to withdraw a portion of their original offer prior to the auction, and that the treatment of New Import Capacity Resources in the Tariff revisions filed here is the same. ISO-NE argues that the withdrawal mechanism was never intended as a tool for new resources to manage the amount of capacity to be offered in a FCA and "extending its use in this manner would be detrimental to the market design and would require fundamental changes to the qualification and auction process for all new resource types."⁴⁰

33. ISO-NE states that New Import Capacity Resources should not be provided an opportunity to decrease their offers, and that, although under the revised rules, a New Import Capacity Resource's floor price will function in much the same manner as a Static De-List Bid does for an existing resource, ISO-NE did not propose, and the Commission did not direct, that New Import Capacity Resources would be treated identically to existing resources. ISO-NE states that outside of the mitigation treatment applied during the FCA, New Import Capacity Resources will continue to be treated under the general qualification and offer submittal framework applicable to new resources.⁴¹

34. ISO-NE does not support Brookfield's proposal to allow withdrawn New Import Capacity Resources to participate in reconfiguration auctions and bilateral transactions and it disagrees with Brookfield's assertion that there is no fundamental difference between Qualified Capacity from import resources withdrawn prior to the FCA and Qualified Capacity that simply does not clear the FCA.⁴² ISO-NE explains that a withdrawal prior to the FCA terminates a potential new resource entirely such that it does not retain its Qualified Capacity to use in a reconfiguration auction or bilaterally.⁴³ ISO-NE argues there is no good reason to change the FCA to provide this functionality, and to

³⁹ ISO-NE November 19, 2014 Answer at 6 (citing Tariff section III.13.1.1.2 ("A Project Sponsor [of a New Generating Resource] may withdraw from the qualification process at any time prior to three Business Days before the submission of the financial assurance deposit . . . by providing written notification of such withdrawal to the ISO. Any withdrawal, whether pursuant to this provision or as determined by the ISO . . . shall be irrevocable"))).

⁴⁰ ISO-NE November 19, 2014 Answer at 7.

⁴¹ ISO-NE November 19, 2014 Answer at 11-12.

⁴² ISO-NE November 19, 2014 Answer at 7.

⁴³ ISO-NE November 19, 2014 Answer at 8.

do so would require significant and fundamental changes to the qualification and auction processes for all new resource types.

35. Finally, ISO-NE argues that the pivotal supplier test is not unduly discriminatory and that Brookfield mischaracterizes how the test works. ISO-NE contends that the Commission explicitly directed ISO-NE to address potential opportunities for the exercise of market power from importers and that the application of a similar mechanism to other new resources would be beyond the scope of this proceeding.⁴⁴ Additionally, ISO-NE reiterates that the new provisions only apply mitigation where it is needed, such that New Import Capacity Resources that are in portfolios that have market power will be affected, leaving New Import Capacity Resources in portfolios that do not have market power with the ability to offer their capacity flexibly in the FCA.

36. Furthermore, ISO-NE disagrees with Brookfield's assertion that "whenever existing suppliers are insufficient to meet the resource adequacy requirement, importers will automatically fail the pivotal supplier test and be forced in the ISO-NE Proposal's mitigation scheme."⁴⁵ ISO-NE states a New Import Capacity Resource will only be mitigated if, after the removal of the associated supplier's *import* capacity, there is insufficient supply available to meet the resource adequacy requirement and the amount of capacity available to meet the resource adequacy requirement both before and after the removal of the supplier's import capacity is impacted.⁴⁶ ISO-NE also argues that it is not appropriate to also subtract other types of new resources from the Installed Capacity Requirement in calculating the system need because they are not subject to a competitiveness test and mitigation, and therefore subtracting other types of new resources would overstate the amount of competitive supply available and understate the extent to which import portfolios have market power.⁴⁷ ISO-NE states that it has offered to undertake a review of the performance of the pivotal supplier test and will consider the need for a more comprehensive test.

⁴⁴ ISO-NE November 19, 2014 Answer at 9.

⁴⁵ ISO-NE November 19, 2014 Answer at 9 n.26 (citing Brookfield Protest at 18).

⁴⁶ ISO-NE November 19, 2014 Answer at 10 (citing revised Tariff section III.A.21.2(d)).

⁴⁷ ISO-NE November 19, 2014 Answer at 11.

37. In its response to ISO-NE's answer, Brookfield argues that there are various means at ISO-NE's disposal that could allow ISO-NE to enter multiple price-quantity pairs for imports into the ninth FCA. Brookfield asserts that ISO-NE could input multiple price-quantity pairs into the auction software in the form of existing resources submitting a Static De-List Bid.⁴⁸

38. Brookfield states that restricting New Import Capacity Resources associated with a pivotal supplier to one price-quantity pair in the auction may lead to market inefficiency and higher consumer costs. Brookfield reiterates its argument that restricting New Import Capacity Resources associated with a pivotal supplier to one price-quantity pair would prevent these resources from accurately valuing the risk-adjusted opportunity costs associated with different portions of capacity. Brookfield argues that this restriction forces New Import Capacity Resources to choose between the risk of selling capacity with higher risk-adjusted opportunity costs at a lower price, or withdrawing all capacity in advance of the auction.

39. Brookfield argues that allowing New Import Capacity Resources associated with a pivotal supplier to partially withdraw capacity in advance of an auction would permit flexibility to account for the risk of disagreement with the Internal Market Monitor during the qualification process as to the costs and risks of meeting the supplier's capacity obligation.⁴⁹ Brookfield states that it is requesting that ISO-NE allow New Import Capacity Resources associated with a pivotal supplier to partially withdraw capacity after the qualification process and prior to the FCA. Brookfield notes that ISO-NE's argument that new generating resources are not permitted to withdraw a portion of their original offer prior to the auction should not apply to New Import Capacity Resources that are backed by existing generation facilities. Brookfield argues that new generating resources do not face situations of partial withdrawal as New Import Capacity Resources do, because either a new generating resource will be built, or it will not, whereas a new import resource that is backed by multiple specific generating facilities may choose to commit some or all of those facilities.⁵⁰

40. Further, Brookfield reiterates that New Import Capacity Resources that withdraw in advance of an FCA should be permitted to participate in reconfiguration auctions and bilateral transactions for the Capacity Commitment Period. Brookfield asserts that existing tariff language suggests that new generation facilities that qualify for a later FCA and become operational prior to that Capacity Commitment Period are allowed to

⁴⁸ Brookfield December 5, 2014 Answer at 6.

⁴⁹ Brookfield December 5, 2014 Answer at 8-9.

⁵⁰ Brookfield December 5, 2014 Answer at 10.

participate in reconfiguration auctions for an earlier Capacity Commitment Period without regard to whether they participated in the FCA associated with that earlier Capacity Commitment Period.⁵¹ Brookfield argues that New Import Capacity Resources should not be subject to incomparable treatment by prohibiting these resources from participating in subsequent reconfiguration auctions.

c. Commission Determination

41. With regard to the question of whether imports should be allowed to submit up to five price-quantity pairs of de-list bids in the ninth FCA, we reject Brookfield's request for relief on this question with regard to the ninth FCA because it is not feasible to implement in time for the ninth FCA.

42. We recognize that there is value in allowing all resources to submit multiple price-quantity bids. Specifically, allowing suppliers of New Import Capacity Resources to submit multiple price-quantity bids would permit suppliers to appropriately reflect opportunity costs and risks incurred. As Brookfield notes, importers may face situations where risk increases or decreases depending on the quantity of capacity sold from a resource.⁵² A single price-quantity pair may not accurately reflect these varying risk-adjusted opportunity costs. Limiting a New Import Capacity Resource to a single price-quantity pair would require the resource to either offer all of its qualified capacity at a price determined by the Internal Market Monitor, or withdraw all qualified capacity prior to an auction, and a rational importer may choose to withdraw from an auction if it believes a single price-quantity pair will not ensure proper cost recovery.

43. In addition, preventing a New Import Capacity Resource from offering more than one price/quantity pair is inconsistent with the rules applicable to internal resources and could, therefore, be viewed as unduly discriminatory⁵³ absent a reason for making this distinction between New Import Capacity Resources and other types of capacity suppliers.

⁵¹ Brookfield December 5, 2014 Answer at 11-12 (citing Tariff section III.13.4.2, *et seq*).

⁵² Brookfield November 6, 2014 Protest at 11.

⁵³ Under the current Tariff provisions for Static De-List Bids, Permanent De-List Bids, and Export Bids, existing internal generation resources are permitted to submit up to five price-quantity pairs. *See* Tariff sections III.13.1.2.3.1.1, III.13.1.2.3.1.2, III.13.1.2.3.1.3.

44. While we are sympathetic to importers' need for flexibility, we agree with ISO-NE that it is simply not feasible to implement such changes in the auction process and software in time for the ninth FCA.⁵⁴ We note that ISO-NE and the Internal Market Monitor both indicate that the current auction software will require revisions in order to accommodate multiple price/quantity pairs for importers. On this basis, we reject Brookfield's request that the Commission require ISO-NE to immediately revise its tariff to allow imports to submit up to five price-quantity pairs of de-list bids representing its capacity in an FCA. We find that, even absent the ability for importers to submit up to five price-quantity pairs of capacity, ISO-NE's current proposal represents a significant step to address the problem identified by the Commission in the Show Cause Order, namely, the need to prevent resources participating in the FCA from exercising market power and leaving the auction at prices inconsistent with their net risk-adjusted costs.

45. We will, however, require ISO-NE to submit tariff revisions in time for implementation for the tenth FCA which allow importers to submit up to five price-quantity pairs, together with any necessary mitigation provisions to address the exercise of market power. We will require ISO-NE to fulfill this compliance obligation in sufficient time to implement new tariff revisions for the tenth FCA, but in any case, no later than April 1, 2015.

46. Brookfield also requests that the Commission permit an importer to partially withdraw capacity. Brookfield contends that this flexibility will address the risk of disagreement with the Internal Market Monitor over the value of risks and associated costs. We reject Brookfield's request. We find that allowing importers to partially withdraw capacity would allow importers to exercise significant market power. If such a provision were in place, pivotal importers could strategically manage the amount of their capacity to be offered in an FCA, after the deadline for new generators to enter the market has passed, affecting market clearing prices. Moreover, as ISO-NE notes, other new generating resources are not permitted to "partially" withdraw prior to an auction.⁵⁵

⁵⁴ ISO-NE Transmittal at 14.

⁵⁵ ISO-NE November 19, 2014 Answer at 6.

47. With regard to the related question of whether importers should be permitted a seven-day period⁵⁶ to reduce the price of their capacity that will participate in the FCA below the price initially accepted by the Internal Market Monitor during qualification, and whether withdrawn import capacity should be allowed to participate in subsequent bilateral transactions and reconfiguration auctions, we reject both of these proposals.

48. Brookfield's requests for relief in these two areas disregard the primary difference between imports and resources located inside ISO-NE. When a new internal resource first seeks to participate in the FCM, its offer price is evaluated by the Internal Market Monitor for consistency with its cost to enter the New England market in order to ensure that a new entrant is not seeking to exercise buyer-side market power (by offering at an artificially low price). Once a new resource's offer price is accepted by the Internal Market Monitor and the resource clears in an auction, it becomes an existing resource, and stays in that status until it retires. Each existing resource has a must-offer obligation each year. Most existing resources have low going-forward costs because their construction is completed and their construction costs are sunk. Thus, low offer prices from existing resources are likely to reflect competitive bidding behavior and not an exercise of buyer side market power. There is, however, no must-offer requirement on resources outside of New England, and an external resource may choose each year whether or not to offer into the ISO-NE capacity market, based on its determination of the opportunity costs of staying in the New England market versus other possible options (such as, for instance, participating in the New York or PJM capacity markets). These opportunity costs may be significantly higher than the going forward costs of existing internal resources in New England. Thus, for external resources, low offer prices below their opportunity costs could be an exercise of buyer side market power. For this reason, an import is considered to have the potential to exercise buyer-side market power in each year that it chooses to seek to participate in the FCA, and thus is generally treated as "new" for purposes of each FCA.

⁵⁶ It is not clear when Brookfield proposes that this seven-day period should start (Brookfield simply states that "the Commission should order ISO-NE to . . . allow importers a seven-day window to reduce their de-list bids," Brookfield November 6, 2014 Protest at 3). Since, however, Brookfield is basing this request on the fact that "[e]xisting resources, whether they are associated with pivotal suppliers or not, then have the flexibility within seven days of the [Internal Market Monitor]'s determination of the ceiling for their Static De-List Bids to reduce [the prices of] their Static De-List Bid" (Brookfield November 6, 2014 Protest at 7 n.37 (emphasis added, citing existing Tariff section III.13.1.2.3.2.1.1.2)), it appears that Brookfield would seek a seven-day window to open after new resources are qualified by ISO-NE to participate in the FCA.

49. Brookfield asks the Commission to “allow importers a seven-day window [after being qualified to participate in an FCA] to reduce [the price of] their de-list bids”⁵⁷ Brookfield appears to be basing this request on the fact that “[e]xisting resources, whether they are associated with pivotal suppliers or not, then have the flexibility within seven days of the [Internal Market Monitor]’s determination of the ceiling for their Static De-List Bids to reduce their Static De-List Bid.”⁵⁸ But, as discussed above, New Import Capacity Resources are not in the same position as existing resources; New Import Capacity Resources, like other new resources, can exercise buyer market power and potentially suppress auction clearing prices by remaining in the auction at prices below their competitive offer price. Brookfield’s request for relief fails to recognize that new imports are not similarly situated to existing resources in this regard.

50. Brookfield additionally states that ISO-NE’s tariff “suggests” that resources whose capacity did not clear the FCA may offer that capacity in reconfiguration auctions and bilateral transactions, and the same treatment should be provided to imports.⁵⁹ However, as ISO-NE states, a withdrawal prior to the FCA terminates a potential new resource entirely, such that it may not participate in a later reconfiguration auction or bilateral transaction.⁶⁰ What Brookfield is seeking here is a different benefit: the ability to go through the qualification process, become qualified at a particular offer price, and then choose to withdraw some or all of its capacity from an FCA and then participate in reconfiguration auctions or bilateral transactions. Giving a new resource the ability to follow this course of action would create a significant opportunity for the exercise of market power, particularly in a tight supply scenario: a resource with relatively low costs could opt to stay out of the FCA (thus ensuring higher prices) and then take advantage of those higher prices through its later transactions in reconfiguration auctions and bilaterally. For this reason, we reject Brookfield’s request for relief.

⁵⁷ Brookfield November 6, 2014 Protest at 3.

⁵⁸ Brookfield November 6, 2014 Protest at 7 n.37 (emphasis added, citing existing Tariff section III.13.1.2.3.2.1.1.2. Specifically, under section III.13.1.2.3.2.1.1.2 of the Tariff, resources may choose to withdraw the Static De-List Bid entirely or submit revised prices for the Static De-List Bid.).

⁵⁹ Brookfield November 6, 2014 Protest at 16 n.81 (citing to Tariff section III.13.4.2.1.1); Brookfield December 5 Answer at 11-12 n.41 (citing to Tariff sections 1.2.2 and 13.4.2 *et seq.*).

⁶⁰ ISO-NE November 19, 2014 Answer at 7-8 (“withdrawal prior to the Forward Capacity Auction terminates a potential new resource entirely. . . [and the resource] does not retain its Qualified Capacity to use in a reconfiguration auction or bilaterally”).

51. We further agree with ISO-NE's proposal to include only existing resources that have been competitively screened or mitigated and to exclude unscreened new internal resources in applying the pivotal supplier test.

52. Under ISO-NE's proposal, the supplier of a new import resource will be subject to mitigation if it is found to be pivotal. A supplier is pivotal if at least some of its capacity is needed to meet demand – that is, if demand cannot be fully met with the aggregate supply offered by all other suppliers. ISO-NE proposes to exclude all supplies of new internal resources in calculating the aggregate supply offered by all other suppliers, stating that “in the absence of a competitiveness test and mitigation as appropriate, such resources may exit the Forward Capacity Auction at prices just below the starting price, which may be well above the resource's expected net risk adjusted cost.”⁶¹ Netting capacity from the Installed Capacity Requirement that is not subject to a competitiveness test and mitigation when calculating the system need, as Brookfield requests, would overstate the amount of competitive supply available, and would understate the extent to which import portfolios have market power, which in turn will result in a greater potential for the exercise of market power.

53. Finally, we will require ISO-NE to submit a compliance filing to clarify the language in III.13.1.3.5.7 (Qualification Determination Notification for New Import Capacity Resources). This language misidentifies the section explaining the pivotal supplier test (which is found in III.A.21.2 (the section with the new resource offer floor price), not, as ISO-NE states, in III.A.21.1.1 (the benchmark price section)). We will require ISO-NE to correct this tariff language in a compliance filing within 30 days of the date of this order.

2. Backing of Imports by an External Control Area

a. Comments and Protests

54. NEPGA requests that the Internal Market Monitor address the contrasting treatment of external resources backed by an External Control Area in future stakeholder discussions. Specifically, NEPGA states that Import Capacity Resources backed by an External Control Area may avoid, or obscure, Internal Market Monitor review of the project-specific offer costs needed to support the offer by submitting system load and capacity projections for the External Control Area.⁶² However, NEPGA states that

⁶¹ ISO-NE November 19, 2014 Answer at 11.

⁶² NEPGA explains that importers may submit these system load and capacity projections in order to show sufficient excess capacity during the Capacity Commitment Period to back the New Import Capacity Resource. NEPGA November 6, 2014 Comments at 5 (citing Tariff section III.13.1.3.5.3).

internal generation resources must provide detailed project-specific cost information when their offers are subject to mitigation review. NEPGA requests that the Commission direct ISO-NE to address this issue in stakeholder discussions following the ninth FCA.

b. Answers

55. HQUS filed an answer to NEPGA's comments, in which it alleges that NEPGA's comments raise the issue of whether imports backed by an external control area should be eliminated so that all imports must be backed by a specific resource.⁶³ HQUS urges the Commission to reject NEPGA's request to explore this issue in a future compliance filing. HQUS argues that permitting imports backed by an external control area to participate in the FCM does not result in undue discrimination. HQUS explains that, similar to other resources, these imports must participate in ISO-NE's qualification process. HQUS recognizes ISO-NE's commitment to evaluate whether future changes to the mitigation rules should be considered following the ninth FCA. HQUS states that ISO-NE and stakeholders may decide to include discussion of this issue at that time.

56. In its answer, ISO-NE urges the Commission to reject NEPGA's request to impose a compliance obligation on ISO-NE to address the issue of Internal Market Monitor review of costs for imports backed by an external control area. It states that, as NEPGA acknowledges, the Internal Market Monitor is committed to reviewing the functioning of the new mitigation mechanism for imports after the ninth FCA, and NEPGA may continue to discuss its concerns with ISO-NE and may initiate a proceeding in the stakeholder process to address this question.⁶⁴

c. Commission Determination

57. We will not impose a compliance obligation on ISO-NE or the Internal Market Monitor to address NEPGA's concern. This issue is beyond the scope of the Show Cause Order, which required ISO-NE to address the question of appropriate mitigation for importers. We encourage NEPGA to pursue its concerns through the ISO-NE stakeholder process.

⁶³ HQUS November 13, 2014 Answer at 1-2.

⁶⁴ ISO-NE November 19, 2014 Answer at 12.

3. Stakeholder Process and Nature of ISO-NE Filing

a. Comments and Protests

58. NEPOOL asks the Commission to accept both the ISO-NE filing, and the NEPOOL Amendment.⁶⁵ NEPOOL states that the ISO-NE filing and the NEPOOL amendment were voted on separately in the NEPOOL Participants Committee, and both achieved the necessary super-majority to pass, with the NEPOOL Amendment receiving a 3.84 percent higher vote.⁶⁶

59. NEPOOL states that stakeholders were afforded a limited amount of time to review ISO-NE's proposed tariff revisions, as well as the NEPOOL Amendment. According to NEPOOL, stakeholders were given 30 days to consider ISO-NE's proposed revisions, as opposed to a typical time period of 75-90 days.⁶⁷ As a result, NEPOOL states that stakeholder votes for both ISO-NE's proposed tariff revisions and for the NEPOOL Amendment reflected many abstentions by members who noted that they did not have sufficient time to adequately consider either set of changes.

60. NEPOOL asserts that it is unclear whether ISO-NE is proceeding under section 205 of the FPA (in which case, NEPOOL argues, the "jump ball" provision of the NEPOOL Participants Agreement applies),⁶⁸ or in compliance with the Commission's show cause order issued under section 206. Under either scenario, NEPOOL urges the Commission to consider the NEPOOL Amendment on an equal footing with the ISO-NE filing. It states that the NEPOOL Amendment would provide more flexibility to the market to reflect actual circumstances of the imports, rather than prescribing rules that limit the flexibility of offers simply to satisfy ISO-NE's administrative convenience.

⁶⁵ During the NEPOOL stakeholder process, the NEPOOL Participants Committee approved an amendment proposed by Brookfield as to these issues. NEPOOL October 31, 2014 Comments at 7.

⁶⁶ NEPOOL October 31, 2014 Comments at 5.

⁶⁷ NEPOOL October 31, 2014 Comments at 3.

⁶⁸ Under Section 11.1.5 of the NEPOOL Participants Agreement, NEPOOL market rule proposals that are supported by a vote of at least 60 percent of the Participants Committee may be presented to the Commission on an equal footing with alternate proposals by ISO-NE, and the Commission may adopt all or any part of either proposal. NEPOOL October 31, 2014 Comments at 11 n.20.

61. NEPOOL requests that, whether the Commission accepts the ISO-NE filing or the NEPOOL Amendment, it recognize the following commitments made by ISO-NE during the stakeholder process were important to stakeholders in voting for both proposals: (1) the Internal Market Monitor will describe the impact of the tariff revisions on subsequent FCAs to the NEPOOL Markets Committee; and (2) ISO-NE (a) will evaluate how the import mitigation rules performed in ninth FCA, (b) will share that evaluation with the NEPOOL Markets Committee, and (c) will consider with NEPOOL whether any additional changes are necessary with respect to the mitigation of imports for subsequent FCAs, and if so, review those changes with NEPOOL before filing any changes with the Commission.⁶⁹

62. Public Citizen asserts that ISO-NE should not have excluded abstention votes when determining that the NEPOOL Participants Committee supported the proposed tariff revisions with a vote of 79.4 percent in favor. Public Citizen argues that, if ISO-NE included abstentions, the proposed revisions would have received a vote of 41.7 percent in favor.⁷⁰

b. Answers

63. ISO-NE asserts in its answer that as this is not a proceeding pursuant to section 205, the “jump ball” provisions of the NEPOOL Participants Agreement do not apply. As discussed above, ISO-NE urges the Commission to reject the proposal, made by Brookfield and supported by NEPOOL, to permit an importer to offer its capacity in five quantity pairs, and to withdraw one or more of those separately priced quantity pairs from the ninth FCA rather than withdrawing its entire resource.⁷¹

c. Commission Determination

64. We find that ISO-NE’s tariff filing is not a section 205 filing. Rather, it is a filing made in compliance with the Commission’s Show Cause Order, and is therefore governed by section 206. Thus, section 11.1.5 of the NEPOOL Participants Agreement does not apply. Accordingly, we reject the NEPOOL Amendment. For the reasons discussed above, we are directing ISO-NE to submit tariff revisions allowing importers to submit up to five price-quantity pairs for the tenth FCA.

⁶⁹ NEPOOL October 31, 2014 Comments at 14.

⁷⁰ Public Citizen October 7, 2014 Protest and Comments, Docket No. EL14-99-000 at 11; Public Citizen November 6, 2014 Comments, Docket No. ER15-117-000 at 4.

⁷¹ ISO-NE November 19, 2014 Answer at 3.

4. **Expansion of Proceedings to Broader Questions Regarding the FCM**

a. **Comment and Protests**

65. In both its protest in Docket No. EL14-99-000 and its protest in Docket No. ER15-117-000, Public Citizen requests that the Commission expand these proceedings to determine whether the eighth FCA produced just and reasonable rates and, if not, to determine what the just and reasonable rates should be. Public Citizen reiterates its concerns regarding the impact of a possible exercise of market power by the owners of the Brayton Point generating plant on the capacity prices resulting from the eighth FCA. In addition, Public Citizen alleges that the ISO-NE stakeholder process does not adequately represent the interests of household consumers,⁷² and does not ensure just and reasonable rates to customers. Public Citizen requests that the Commission expand this proceeding to consider stakeholder transparency improvements.⁷³

b. **Answers**

66. In its reply to Public Citizen's comments in Docket No. EL14-99-000, NEPOOL requests that the Commission reject Public Citizen's request to expand the scope of this proceeding to include consideration of changes to the ISO-NE stakeholder process. NEPOOL argues that comments submitted in this proceeding should solely consider whether the tariff revisions proposed by ISO-NE adequately address the Commission directives in the September 16 Order. NEPOOL asserts that end users⁷⁴ are allocated a voting share equal to that of the New England's transmission, generation, supplier, alternative resource, and municipal utility interests. Further, NEPOOL states that end users are entitled to participate in all NEPOOL governance matters, including voting

⁷² Public Citizen alleges that a disparity of resources available to NEPOOL stakeholders exists. Specifically, Public Citizen states that End Users representing households are not able to fully participate in the stakeholder process due to an insufficient amount of resources. Public Citizen argues that other stakeholder sectors, including the Generation and Supplier sectors, have full-time staff that allows them to monitor and effectively participate in the ISO-NE stakeholder process. Public Citizen November 6, 2014 Comments, Docket No. ER15-117-000, at 5.

⁷³ Public Citizen October 7, 2014 Protest and Comments, Docket No. EL14-99-000, Protest at 11; *see also* Public Citizen November 6, 2014 Comments, Docket No. ER15-117-000.

⁷⁴ NEPOOL notes that household consumers are considered "end users" in the ISO-NE stakeholder process. NEPOOL October 22, 2014 Answer, Docket No. EL14-99, at 3.

membership in all Principal Committees. In addition, NEPOOL notes that the Consumer Liaison Group was established in order to provide stakeholders with an opportunity to provide input on topics being addressed in the Participants Processes and by ISO-NE. NEPOOL argues that Public Citizen should avail itself of the existing stakeholder process, and not this proceeding, in order to explore possible reforms to the stakeholder process.

c. Commission Determination

67. We will not expand the scope of this proceeding as requested by Public Citizen. With regard to the rates resulting from the eighth FCA, those rates went into effect by operation of law, and the requests for rehearing in that case were dismissed.⁷⁵ We are unable to reopen the question of the justness and reasonableness of the eighth FCA rates. We also reiterate that, contrary to Public Citizen's assertions, there is no evidence that the owners of Brayton Point engaged in any inappropriate behavior in the eighth FCA. Rather, as stated in the Show Cause Order, the Commission's Office of Enforcement found credible justifications for the owners' decision to permanently remove Brayton Point from the FCM.

68. With regard to Public Citizen's broader concerns, we agree that, as NEPOOL suggests, the ISO-NE stakeholder process is the appropriate venue to initiate broad reforms as to stakeholder participation of the type that Public Citizen seeks.

The Commission orders:

(A) ISO-NE's proposed tariff provisions are hereby conditionally accepted, subject to a compliance filing, effective October 17, 2014, as discussed in the body of this order.

(B) ISO-NE is hereby directed to submit a compliance filing within 30 days of the date of this order, to clarify the language in III.13.1.3.5.7 (Qualification Determination Notification for New Import Capacity Resources), as discussed in the body of this order.

⁷⁵ See Notice of Filing Taking Effect by Operation of Law, Docket No. ER14-1409-000, September 16, 2014 and Notice of Dismissal of Pleadings, Docket No. ER14-1409-000, October 24, 2014 (*appeal pending sub nom. Public Citizen, Inc., and George Jepsen, Attorney General of Conn. v. FERC*, D.C. Cir. Nos. 14-1244 and 14-1246).

(C) ISO-NE is hereby directed to submit a compliance filing no later than April 1, 2015, with tariff revisions allowing importers to submit up to five price-quantity pairs in the tenth FCA, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.