

150 FERC ¶ 61,064
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

New England Power Generators Association, Inc.

Docket No. EL14-7-001

v.

ISO New England Inc.

ORDER DENYING REHEARING AND CLARIFICATION

(Issued January 30, 2015)

1. By order issued January 24, 2014, the Commission granted in part and denied in part New England Power Generators Association, Inc.'s (NEPGA) complaint against ISO New England Inc. (ISO-NE), which alleged that certain administrative pricing provisions in ISO-NE's Transmission, Markets and Services Tariff (Tariff) were unjust, unreasonable, and unduly discriminatory.¹ NEPGA seeks rehearing or clarification of the Complaint Order. For the reasons discussed below, we deny NEPGA's request for rehearing or clarification.

I. Background

2. ISO-NE administers a Forward Capacity Market (FCM), in which eligible resources compete in an annual Forward Capacity Auction (FCA), 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

¹ *New England Power Generators Assn., Inc. v. ISO New England Inc.*, 146 FERC ¶ 61,039 (2014) (Complaint Order).

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

both as a whole, i.e., as the system-wide New England Control Area, and by Capacity Zone.³

3. Under normal conditions, an auction should produce a single clearing price for all cleared resources at the point where the demand curve and the supply curve intersect. However, under certain conditions the prices paid to cleared resources may be administratively determined by the Tariff and differ based on whether a resource is new or existing. Three such conditions and their associated Tariff provisions are at issue in this proceeding: (1) when low supply triggers the Inadequate Supply provisions;⁴ (2) when low competition triggers the Insufficient Competition provisions;⁵ and (3) when some but not all of a new resource's offered capacity is needed in an FCA and that resource elects not to prorate its offered capacity down to the level needed, resulting in the resource's excess capacity being carried forward into the subsequent FCA, thereby triggering the Capacity Carry Forward Rule.⁶

4. Relevant here, the Tariff provides for administratively-set prices in the above-mentioned circumstances as follows. In general, if the Inadequate Supply or Insufficient Competition rules are triggered, existing resources receive either a Tariff-set administrative price or the Capacity Clearing Price, with the Tariff-set administrative price serving as a price ceiling. New resources receive the FCA Starting Price if the Inadequate Supply rule is triggered and the Capacity Clearing Price if the Insufficient Competition rule is triggered.

³ The zones for the eighth FCA were: Maine, Connecticut, Northeastern Massachusetts/Boston (NEMA/Boston), and Rest-of-Pool.

⁴ ISO-NE Tariff section III.13.2.8.1. In general, the Inadequate Supply provisions are triggered if, at the FCA Starting Price, the amount of new resources available is less than the amount of new capacity required.

⁵ *Id.* section III.13.2.8.2. In general, the Insufficient Competition provisions are triggered if there are less existing resources than capacity required and not enough qualified new resources to assure adequate competition in the auction.

⁶ *Id.* section III.13.2.7.9. Under the Capacity Rationing Rule, most FCA offers and bids "must clear or not clear in whole, unless the offer or bid specifically indicates that it may be rationed." *Id.* section III.13.2.6 (Capacity Rationing Rule). When some but not all of a new resource's offered capacity is needed to satisfy a Capacity Zone's Local Sourcing Requirement, the Capacity Carry Forward Rule allows the amount of excess new capacity to be carried forward into future FCAs, if the relevant new resource elects not to prorate the amount of capacity it is offering down to the level needed in the current FCA. *Id.* section III.13.2.7.9.1; *see also id.* section III.13.2.6.

5. Under the Capacity Carry Forward Rule, the Capacity Clearing Price for the relevant Capacity Zone is the lesser of the following: (1) \$0.01 below the price at which the last New Generating Capacity Resource, New Import Capacity Resource, or New Demand Resource in the Capacity Zone withdrew from the FCA; or (2) the applicable net Cost of New Entry (Net CONE) value.⁷ However, if there is Insufficient Competition in the Capacity Zone and no capacity offered from new resources has been withdrawn from the auction, then the Capacity Clearing Price shall equal the applicable net CONE value.

6. In addition, another Tariff provision, the Capacity Commitment Period Election,⁸ can affect the administrative prices paid to existing resources. Under that provision, a new resource offering capacity into the FCM must specify whether, if its new capacity offer clears in the FCA, the associated Capacity Supply Obligation and Capacity Clearing Price (indexed for inflation) shall continue to apply after the Capacity Commitment Period associated with the FCA in which the offer clears, for up to six additional and consecutive Capacity Commitment Periods (this option is referred to here as “New Entrant Pricing”).⁹ The Tariff allows a new entrant to lock in the first auction clearing price for up to six additional auctions in order to mitigate price risk. If a new resource elects New Entrant Pricing, the resource may not submit any type of de-list or export bid in subsequent FCAs for Capacity Commitment Periods for which the resource owner elected to have the New Entrant Pricing apply.¹⁰ In other words, in order to lock-in the first-year price, the Tariff requires that the capacity be offered as a price taker (i.e., at a zero-price offer) in all future years for which it receives the first-year capacity price.

7. On October 31, 2013, pursuant to section 206 of the Federal Power Act (FPA),¹¹ NEPGA filed a complaint against ISO-NE alleging that the Inadequate Supply provision, Insufficient Competition provision, and the Capacity Carry Forward Rule produce administrative prices for existing resources that are far below the prices paid to new

⁷ The Tariff defines Net CONE as the estimated gross cost of entry for a new capacity resource net of revenues from energy, reserve, and other markets. *Id.* section I.2.2.

⁸ *Id.* section III.13.1.1.2.2.4.

⁹ *Id.* At the time of NEPGA’s complaint, the price lock-in period was five years. However, by order issued May 30, 2014, the Commission accepted ISO-NE’s proposal to extend the lock-in period to seven years. *ISO New England, Inc. and New England Power Pool Participants Committee*, 147 FERC ¶ 61,173, at P 54 (2014) (reh’g pending).

¹⁰ ISO-NE Tariff section III.13.1.1.2.2.4.

¹¹ 16 U.S.C. § 824(e) (2012).

resources and do not reflect the outcome of a competitive market.¹² NEPGA further proposed specific revisions to these Tariff provisions, including raising the Tariff-set administrative prices to 1.1 times the Offer Review Trigger Price (ORTP) for a combustion turbine.

8. On November 25, 2013, while NEPGA's complaint was pending, ISO-NE submitted, in Docket No. ER14-463-000, a proposal pursuant to section 205 of the FPA¹³ to raise the Tariff-set administrative prices to \$7.025/kW-month for FCA 8. ISO-NE made its proposal in recognition that, after many years of operating with a capacity surplus, there was the potential for a capacity shortage in FCA 8, which would cause the administrative pricing provisions in the Tariff to be invoked. Noting that its FCM was, at that time, based on a vertical demand curve, ISO-NE also stated that it was developing a downward sloping demand curve that would alleviate the need for administrative pricing rules.

9. In the Complaint Order, the Commission granted in part and denied in part NEPGA's complaint.¹⁴ The Commission found that the Tariff's administrative pricing for existing resources in situations of Inadequate Supply and Insufficient Competition was unjust and unreasonable because it could result in prices that were not reflective of supply conditions.¹⁵ However, the Commission did not adopt NEPGA's proposed Tariff revisions to revise the administrative pricing rules, finding that while the proposal might be sufficient to retain existing resources, the proposed Tariff revisions would not appropriately protect consumers and the market from sudden, significant price increases. The Commission explained that, in the context of the administrative prices at issue and the shifting supply-demand realities in New England, it must strike a balance between, on one hand, setting a price that will retain enough existing resources to maintain reliability and, on the other hand, protecting consumers from overpaying for that capacity and minimizing price volatility that could undermine both investor and consumer confidence in the market.¹⁶

¹² NEPGA Complaint at 17.

¹³ 16 U.S.C. § 824d (2012).

¹⁴ Complaint Order, 146 FERC ¶ 61,039 at P 1.

¹⁵ *Id.* P 47.

¹⁶ *Id.* PP 51-52.

10. Rather than adopting NEPGA's proposal, the Commission noted its concurrently-issued order in Docket No. ER14-463-000, accepting subject to condition ISO-NE's above-referenced administrative pricing revisions submitted in that proceeding. The Commission explained that by conditionally accepting those revisions, the Commission established the just and reasonable rate to replace the rates found to be unjust and unreasonable in the Complaint Order. Of note, the order in Docket No. ER14-463-000 also directed ISO-NE to submit a sloped demand curve by April 1, 2014, to allow sufficient time for implementation prior to FCA 9.¹⁷

11. As to NEPGA's challenges to the Capacity Carry Forward Rule, the Complaint Order denied NEPGA's complaint on that issue.¹⁸ The Commission reasoned that carrying forward the capacity from a resource with a multi-year price lock-in will not necessarily suppress prices below competitive levels because there is not necessarily a link between the capacity carried forward in a zone and the amount of excess capacity remaining in that zone.¹⁹ In response to NEPGA's argument that ISO-NE's zero-price offer requirement is inconsistent with the Commission's rejection of zero-price offers in PJM Interconnection, L.L.C. (PJM), the order noted that ISO-NE's and PJM's tariffs differed substantially at the time, including, most importantly, PJM's use of a sloped demand curve.²⁰

12. On May 30, 2014, in Docket No. ER14-1639-000, the Commission accepted, subject to condition, ISO-NE's proposal to implement a system-wide sloped demand curve starting in FCA 9 (Demand Curve Changes).²¹ Relevant here, the Demand Curve Changes eliminated the use of the Inadequate Supply and Insufficient Competition rules at the system-wide level. The Demand Curve changes also revised the Tariff-set administrative price established under the Inadequate Supply and Insufficient Competition rules at the zonal level to equal the higher of Net CONE or the Capacity Clearing Price for the Rest-of Pool Capacity Zone. In addition, the Commission accepted an extension of the New Entrant Pricing lock-in period from five years to seven years.

¹⁷ *ISO New England Inc.*, 146 FERC ¶ 61,038, at P 30 (2014).

¹⁸ Complaint Order, 146 FERC ¶ 61,039 at P 56.

¹⁹ *Id.* P 57.

²⁰ *Id.* P 58.

²¹ *ISO New England, Inc. and New England Power Pool Participants Committee*, 147 FERC ¶ 61,173 (2014) (Demand Curve Order) (reh'g pending).

II. Request for Rehearing²²

13. On rehearing of the Complaint Order, NEPGA argues that the Commission should require administrative prices applicable in cases of Inadequate Supply and Insufficient Competition to be based on the ORTP for a combustion turbine, which NEPGA contends is a more accurate measure of the cost of new entry than the historic CONE values that form the basis of the \$7.025/kW-month rate approved by the Commission for FCA 8. NEPGA states that \$7.025/kW-month is 40 percent lower than the ISO-NE Internal Market Monitor's estimate of the FCA 8 ORTP for a combustion turbine and less than one-half of the price needed to produce new entry in FCA 7.²³ NEPGA asserts that the Commission did not explain its use of a balancing approach to depart from the market design underlying the FCM. NEPGA states that it does not dispute or support reopening the FCA 8 auction results and instead requests that the Commission direct ISO-NE to use the ORTP-based values going forward.

14. NEPGA further argues that the Commission should require ISO-NE to eliminate the requirement that capacity suppliers with multi-year price protection offer their capacity as price-takers and instead require these suppliers to offer at a price that is no less than the clearing price or the applicable benchmark price for new entry. NEPGA asserts that the zero-price offer requirement suppresses market prices and perpetuates price discrimination between new and existing resources.²⁴ NEPGA states that the Commission did not account for the link between the applicable Capacity Supply Obligation and the price suppression resulting from zero-price offers.²⁵ NEPGA argues that when capacity resources are offered as price-takers, the zero-price offers shift the demand curve to the right, suppressing the eventual clearing price and displacing other non-zero-price offers that would have cleared absent the carry-forward capacity.²⁶ NEPGA further argues that, while the ability to elect a multi-year price guarantee shields new capacity from the price suppression resulting from new entry, there are no comparable protections for existing resources, which are impacted by both the increase in

²² NEPGA filed one rehearing request regarding the Complaint Order and the companion order accepting ISO-NE's tariff revisions, *ISO New England Inc.*, 146 FERC ¶ 61,038 (2014). As the two dockets are not consolidated, we will address the arguments in separate orders. *See ISO New England, Inc.*, 150 FERC ¶ 61,066 (2015).

²³ Rehearing Request at 14.

²⁴ *Id.* at 22.

²⁵ *Id.* at 23.

²⁶ *Id.* at 24.

supply and the price suppression resulting from the zero-price offer.²⁷ As a result, in its view, there is no assurance that capacity prices for incumbents will ever approach new entry price levels because existing generation receive prices set under flawed Tariff rules rather than the clearing price paid to new entrants.²⁸ NEPGA states that the Commission has previously recognized the price suppression resulting from zero-price offers and that it is not restricted to markets with sloped demand curves.²⁹ Moreover, NEPGA argues, even if it were true that price suppression associated with zero-priced offers is restricted to markets with sloped demand curves, the Commission should have required ISO-NE to eliminate the zero-price offer requirement when it accepted a sloped demand curve in ISO-NE's capacity market.³⁰

III. Discussion

15. We deny NEPGA's request for rehearing or clarification. We disagree with NEPGA's assertion that the Commission did not justify its use of a balancing approach in rejecting NEPGA's proposal for ORTP-based administrative pricing. The Commission may consider a wide variety of factors in determining whether rates are just and reasonable under the FPA.³¹ In this case, the Commission considered multiple factors, including the need to ensure reliability by retaining enough existing resources, the need to protect consumers from overpaying for that capacity, and the need to minimize price volatility that could undermine investor and consumer confidence in the market.³²

16. As the Commission explained in the Complaint Order, absent sufficient evidence that a rate increase of such significant magnitude is necessary to incent new entry and retain existing capacity resources, the Commission found, and we reaffirm here, that NEPGA's proposal does not appropriately protect consumers and the market from sudden, significant price increases.³³

²⁷ *Id.* at 25.

²⁸ *Id.*

²⁹ *Id.* at 26-27 (citing *ISO New England, Inc.*, 135 FERC ¶ 61,029, at PP 60, 62 (2011); *California Independent System Operator Corp.*, 142 FERC ¶ 61,191, at P 28 (2013)).

³⁰ *Id.* at 29.

³¹ *See Colorado Interstate Gas Co. v. FPC*, 324 U.S. 581, 589 (1945).

³² Complaint Order, 146 FERC ¶ 61,039 at P 52.

³³ *Id.* PP 51, 54.

17. Turning to the Capacity Carry Forward Rule and New Entrant Pricing, NEPGA argues that the Commission should require ISO-NE to eliminate the requirement that capacity suppliers with multi-year price protection offer their capacity as price-takers because it suppresses market prices and perpetuates price discrimination between new and existing resources. NEPGA further asserts that the Commission, in declining to require ISO-NE to eliminate this requirement, did not account for the link between the applicable Capacity Supply Obligation and the price suppression resulting from zero-price offers. We are unpersuaded by this argument.

18. The premise of the FCM design is that resources submit offers based on their going-forward costs.³⁴ Because new resources typically have very low going-forward costs once they have entered the market, it is efficient for those resources to be selected over older existing resources with higher going-forward costs.³⁵ Thus, we find that it is appropriate for generators relying on New Entrant Pricing to submit zero-price offers during the lock-in period because zero-price offers are likely to approximate the low going-forward costs of new resources that have incurred most or all of their construction costs by the end of their first commitment year and are generally less expensive to run than older, less efficient resources. Moreover, even a resource that recently cleared an FCA as a new resource and does not have a price lock-in would typically submit a zero-price offer in order to ensure that it is taken in the auction.

19. We also reject NEPGA's argument that, because the administrative pricing provisions, including the Capacity Carry Forward Rule and New Entrant Pricing rule, may result in price differences between new and existing resources, they are unduly discriminatory. These provisions are appropriately designed to meet particular and distinct goals. The Capacity Carry Forward Rule ameliorates the reduction in prices paid to existing resources when the entry of new resources results in excess capacity. The New Entrant Pricing lock-in mitigates price risk. While NEPGA points out that the Commission once rejected a proposal requiring new capacity sellers to submit zero-price offers in PJM, we note that market design and rules need not be identical among the regions to be just and reasonable, and there can be more than one just and reasonable rate.³⁶ As we explain in the order denying Exelon and Calpine's complaint issued

³⁴ See *ISO New England Inc.*, 130 FERC ¶ 61,108, at P 31 (2010).

³⁵ See *PJM Interconnection, L.L.C.*, 129 FERC ¶ 61,081, at P 24 (2009).

³⁶ See, e.g., *PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,063, at P 39 (2007) (“[T]he Commission has permitted different just and reasonable rate designs reflective of particular system characteristics and stakeholder input. In this regard, we have stated our deference to regional preferences a number of times, for instance in Order No. 2000, and in *PJM Interconnection, L.L.C.*, 96 FERC ¶ 61,060, at 61,220 (2001), as well as in our approval of rate designs for different regional markets.”) (citing *Southwest Power Pool, Inc.*, 106 FERC ¶ 61,110, at 61,397 (2004); *Southwest Power Pool, Inc.*, 111 FERC

(continued...)

concurrently with this one in Docket No. EL15-23-000, ISO-NE's and PJM's new entrant pricing rules involve differing mechanics beyond the zero-price offer requirement itself.³⁷ Therefore, such precedent is not controlling in ISO-NE.³⁸ Because NEPGA has failed to show that the existing Tariff's New Entrant Pricing is unjust and unreasonable, we need not address NEPGA's proposed remedy. Accordingly, we deny NEPGA's request for rehearing or clarification.

The Commission orders:

NEPGA's request for rehearing or clarification is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¶ 61,118, at 61,653 (2005); *California Independent System Operator Corp.*, 109 FERC ¶ 61,301 (2004), *reh'g denied*, 111 FERC ¶ 61,337 (2005); *New England Power Pool and ISO New England, Inc.*, 109 FERC ¶ 61,252 (2004), *order granting clarification*, 110 FERC ¶ 61,003 (2005)); *Midwest Independent Transmission System Operator, Inc.*, 127 FERC ¶ 61,109, at P 20 (2009) (It is well established that there can be more than one just and reasonable rate); *New York Indep. Sys. Operator, Inc.*, 126 FERC ¶ 61,320, at P 40 (2009) (“there can be more than one just and reasonable planning process and RTOs and ISOs [Independent System Operators] are not required to have identical planning processes”).

³⁷ See *Exelon Corporation and Calpine Corporation v. ISO New England, Inc.*, 150 FERC ¶ 61,067 (2015).

³⁸ See, e.g., *ISO New England Inc.*, 133 FERC ¶ 61,229, at P 38 (2010) (“[W]e agree with Transmission Parties that, to the extent Genco cites precedent involving other regions with different tariff language...such precedent is not controlling in ISO-NE.”)