

150 FERC ¶ 61,065
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.

ISO New England Inc. and New England Power Pool Docket No. ER14-1639-001
Participants Committee

ORDER DENYING REHEARING, PROVIDING CLARIFICATION
AND DIRECTING FURTHER COMPLIANCE FILING

(Issued January 30, 2015)

1. By order issued May 30, 2014, the Commission accepted, subject to condition, revisions to the ISO New England Inc. (ISO-NE) Transmission, Markets and Services Tariff (Tariff) to establish a system-wide sloped demand curve and related parameters for use in ISO-NE's Forward Capacity Market (FCM) (Demand Curve Changes).¹ Several parties seek rehearing or clarification of various aspects of the Demand Curve Order. As discussed below, we will deny rehearing, but provide a clarification and direct ISO-NE to submit a compliance filing within 30 days of the date of this order.

I. Background

2. ISO-NE administers the 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. 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 by capacity zone. The amount of capacity needed system-wide in an FCA is the net Installed Capacity Requirement (net ICR), and the amount of capacity needed within a given capacity zone is the Local Sourcing Requirement for that zone.

3. Prior to FCA 8, held in February 2014, ISO-NE determined that there was the potential for a capacity shortage in the auction, after many years of operating with a

¹ *ISO New England Inc. and New England Power Pool Participants Committee*, 147 FERC ¶ 61,173 (2014) (Demand Curve Order).

capacity surplus, and that the administrative pricing provisions in the Tariff potentially could be invoked.² Thus, in November 2013, ISO-NE submitted a proposal to raise those Tariff-set administrative prices for FCA 8. By order issued January 24, 2014, the Commission accepted ISO-NE's proposal, subject to condition.³ In that proceeding, ISO-NE also posited that a sloped demand curve would be a long-term solution to the issues presented in the filing, obviating the need for administrative pricing rules, and ISO-NE stated its intention to file a sloped demand curve with the Commission in the summer of 2014. Recognizing ISO-NE's commitment to develop a sloped demand curve in the near future, the Commission directed it to submit a sloped demand curve by April 1, 2014, in order to allow sufficient time for implementation prior to FCA 9.

4. On April 1, 2014, ISO-NE and the New England Power Pool Participants Committee (together, the Filing Parties) submitted the proposed Demand Curve Changes. The Demand Curve Changes established a system-wide, but not zonal, sloped demand curve construct in the FCM. The Demand Curve Changes (1) defined the shape of the system-wide sloped demand curve; (2) extended from five to seven years the period that a new resource may elect to receive its initial clearing price (referred to as the "lock-in period"); (3) established a limited, 200 MW per year, exemption for Renewable Technology Resources⁴ from the capacity market's buyer-side mitigation rules known as the minimum offer price rule; (4) eliminated the system-wide administrative pricing rules that were necessary in certain market conditions under the previous vertical demand curve construct; and (5) included other conforming changes.

5. In the Demand Curve Order, the Commission conditionally accepted the Demand Curve Changes effective June 1, 2014, subject to a compliance filing clarifying how new

² ISO-NE's Tariff sets forth administrative pricing rules that may be triggered in FCAs under certain situations, including insufficient competition or inadequate supply. In those situations, the administrative pricing rules dictate how certain capacity resources will be compensated.

³ *ISO New England Inc.*, 146 FERC ¶ 61,038 (2014).

⁴ The proposed Tariff provisions provided that a Renewable Technology Resource is a resource that qualifies as a renewable or alternative energy generating resource in the state in which it is geographically located and is receiving an out-of-market revenue source supported by a state- or federally-regulated rate, charge, or other regulated cost recovery mechanism. Tariff section III.13.1.1.7. The Renewable Technology Resource exemption allows any unused portion of the 200 MW not subject to the minimum offer price rule to carry forward for up to three years for a possible total of 600 MW.

resources would qualify for the Renewable Technology Resource exemption in future auctions.⁵

II. Requests for Rehearing

6. Exelon Corporation and Entergy Nuclear Power Marketing, LLC (Exelon and Entergy); Massachusetts Municipal Wholesale Electric Company and New Hampshire Electric Cooperative, Inc. (Public Systems); New England Power Generators Association, Inc. (NEPGA); NextEra Energy Resources LLC, PSEG Companies, NRG Companies and Dominion Resources Services, Inc. (NextEra); PSEG Companies (PSEG); and TransCanada Hydro Northeast Inc. and TransCanada Power Marketing Ltd. (TransCanada) seek rehearing of the Demand Curve Order.⁶

7. Petitioners request rehearing regarding four topics: (1) the limited exemption for Renewable Technology Resources from the minimum offer price rule; (2) the extension of the price lock-in period for new resources from five to seven years; (3) the absence of an exemption from the minimum offer price rule for resources that self-supply; and (4) whether the Demand Curve Changes meet reliability requirements. We will deny the requests for rehearing but provide a clarification with respect to whether resources can use both the renewables exemption and the new resource lock-in, as discussed below.

A. Renewables Exemption

1. Demand Curve Order

8. As noted above, in the Demand Curve Order, the Commission accepted the Filing Parties' proposal to include a 200 MW exemption from the minimum offer price rule for Renewable Technology Resources, a limit that is set at approximately ISO-NE's estimate of average annual load growth. The exemption provides for any unused portion of the 200 MW allowance to carry forward for up to three years for a possible total exemption of 600 MW in any given year.

9. To qualify for the Renewable Technology Resource exemption, a resource must (1) receive an out-of-market revenue source supported by a state- or federally-regulated rate, charge, or other regulated cost recovery mechanism and (2) qualify as a renewable

⁵ On July 11, 2014, ISO-NE submitted the required compliance filing in Docket No. ER14-1639-002. The compliance filing was accepted via delegated letter order on November 13, 2014.

⁶ Two or more of the referenced parties together will be referred to as Petitioners.

or alternative energy generating resource under any New England state's mandated renewable or alternative energy portfolio standards or, in states without a standard, qualify under that state's renewable energy goals as a renewable resource. The resource must qualify as a renewable or alternative energy generating resource in the state in which it is geographically located.⁷

2. Requests for Rehearing

10. Petitioners argue that the Commission failed to adequately address record evidence that the exemption will suppress FCM clearing prices. They assert that the Demand Curve Order erroneously establishes that out-of-market entry into the FCM is unjust and unreasonable only if it "severely" suppresses clearing prices.⁸ NextEra states that the harmful effects of price suppression may be further magnified within local capacity zones, particularly smaller and export constrained zones, which will have steeper demand curves.⁹ In any case, NEPGA disputes the Commission's reliance on ISO-NE's statement that including 1,100 MW of zero-priced state-sponsored entry in its modeling adequately addresses the concern that the Renewable Technology Resource exemption would severely suppress prices, stating that ISO-NE's statement is simply an historical fact and is otherwise unsupported.¹⁰

11. Exelon challenges the Commission's conclusion set forth in the Demand Curve Order that load growth will mitigate any price suppression associated with the renewables exemption. Exelon states that load growth is already being relied upon to mitigate other extra-market pricing mechanisms in ISO-NE, including the capacity carry forward rule,¹¹ and, according to Exelon, load growth cannot simultaneously correct for multiple price

⁷ Section III.13.1.1.1.7.

⁸ Exelon and Entergy at 22-26; NEPGA at 3-4; NextEra at 3-10, 16, 18-19 (all citing Demand Curve Order, 147 FERC ¶ 61,173 at P 84).

⁹ NextEra at 16.

¹⁰ NEPGA at 5-6.

¹¹ When some but not all of a new resource's bid capacity is needed to satisfy a Capacity Zone's Local Sourcing Requirement, the Capacity Carry Forward Rule allows the amount of excess new capacity to be carried forward into future FCAs, if the relevant new resource elects not to prorate the amount of capacity it is offering down to the level needed in the current FCA. Tariff section III.13.2.7.9.1; *see also id.* section III.13.2.6.

suppressive factors.¹² NextEra similarly asserts that tying the exemption cap to expected load growth does not ameliorate the effects of price suppression. Moreover, NextEra questions whether load growth will increase by 200 MW per year, as projected by ISO-NE, as well as ISO-NE's argument that the 200 MW cap is unlikely to be reached.¹³ NextEra also states that the Commission erred in failing to consider an alternate proposal proffered by Brookfield Energy Marketing LP, which NextEra claims would have mitigated price suppression, or set the matter for hearing.¹⁴

12. Moreover, several Petitioners assert that the Renewable Technology Resource exemption is inconsistent with Commission precedent, including *NESCOE*, in which the Commission denied a complaint seeking a blanket exemption from buyer-side mitigation for renewable resources that qualify under state renewable portfolio programs.¹⁵ Petitioners state that although the Commission in *NESCOE* acknowledged that PJM Interconnection, L.L.C. (PJM) provided for a similar exemption, the Commission also explained that a blanket exemption for renewables could have a greater price suppressing effect in ISO-NE's smaller markets.¹⁶ Moreover, TransCanada asserts that ISO-NE's exemption at issue here is even broader than the renewables exemption in PJM, stating that PJM's exemption only applies to resources that are unlikely to have the ability to suppress prices.¹⁷

13. NextEra states that the Demand Curve Order is also inconsistent with the Commission's order addressing ISO-NE's so-called "Pay for Performance" mechanism, even though both orders were issued the same day.¹⁸ NextEra asserts that in the former order, the Commission viewed favorably ISO-NE's efforts to design its markets to replicate the characteristics that would exist in an uncapped energy market based on economic reasoning. NextEra states that, in contrast, the Commission approved in the

¹² Exelon and Entergy at 25.

¹³ NextEra at 10-12.

¹⁴ *Id.* at 24-26.

¹⁵ Exelon and Entergy at 18-22 (citing *New England States Committee on Electricity v. ISO New England Inc.*, 142 FERC ¶ 61,108 (2013) (*NESCOE*)).

¹⁶ Exelon and Entergy at 20.

¹⁷ *Id.* at 12-14.

¹⁸ NextEra at 23-24 (citing *ISO New England Inc.*, 147 FERC ¶ 61,172 (2014)).

Demand Curve Order a renewables exemption that uneconomically suppresses prices, which NextEra states does not replicate a free market. NextEra argues that the Commission's policies must be consistent, or the Commission must explain any inconsistencies.¹⁹

14. TransCanada states that it is unlawful for the Commission to accommodate state policy objectives when doing so conflicts with the Commission's statutory obligations under the FPA.²⁰ TransCanada states that the Commission failed to address its arguments that the Renewable Technology Resource exemption unduly discriminates among generation resources belonging to different classes because only resources that qualify as a Renewable Technology Resource are exempt from the minimum offer price rule, and that it unduly discriminates among renewable resources in different states because definitions of the term "renewable resource" vary depending upon the states in which a resource is located.²¹

15. Exelon and Entergy also argue that the Commission should provide that renewable resources eligible for the minimum offer price rule exemption should not be eligible to elect the price lock-in provisions applicable to new resources.²² Exelon and Entergy state that renewable resources do not require the same revenue guarantees provided to other new entrants given that renewable resources often are not required to participate in the capacity market and rely on out-of-market payments to recover their costs. Accordingly, Exelon and Entergy argue, since the seven year revenue guarantee provided to new resources will not have any effect on whether renewable resources enter the market, there is no need to incur additional costs that would result from extending the new entry price guarantee to such resources.

3. Commission Determination

16. As discussed below, we deny Petitioners' requests for rehearing on this issue. However, in response to Exelon's concerns, we will provide a clarification with respect to whether resources can use both the renewables exemption and the new resource lock-in and direct ISO-NE to submit a compliance filing within 30 days of the date of this order.

¹⁹ NextEra at 23-24.

²⁰ TransCanada at 21-22.

²¹ *Id.* at 6-9.

²² Exelon and Entergy at 26.

17. We disagree with contentions that accepting the Renewables Technology Resource exemption was inconsistent with Commission precedent. Several Petitioners reiterate protest arguments that the Renewable Technology Resource exemption should be rejected, because it is similar to the proposal requested in *NESCOE*, where the Commission denied a complaint seeking such an exemption. As an initial matter, as the Commission explained in the Demand Curve Order, nothing in *NESCOE* prevented ISO-NE from subsequently proposing a similar exemption.²³ The Commission found that complainants in *NESCOE* failed to meet their burden under section 206 of the FPA²⁴ to show that then-existing buyer-side mitigation provisions in ISO-NE's tariff were unjust, unreasonable, unduly discriminatory or preferential absent the requested exemption.²⁵ That finding does not preclude either ISO-NE from proposing a similar provision at a later date or the Commission from accepting it if it is shown to be just and reasonable.²⁶

18. Further, although there are differences between ISO-NE's and PJM's markets as discussed in *NESCOE*, the Demand Curve Order also explained that the implementation of a sloped demand curve in ISO-NE helps mitigate the price-suppressing effects of the Renewable Technology Resource exemption in ISO-NE's market.²⁷ This is because small changes in quantity will have a much smaller impact on price when using a downward sloping demand curve than they would using a vertical demand curve. As to differences between ISO-NE's and PJM's minimum offer price rule (and exemptions therein), although the Commission allowed PJM to focus its minimum offer price rule on

²³ Demand Curve Order, 147 FERC ¶ 61,173 at P 86 (citing *NESCOE*, 142 FERC ¶ 61,108 at P 37).

²⁴ 16 U.S.C. § 824e (2012).

²⁵ *NESCOE*, 142 FERC ¶ 61,108 at PP 32-33.

²⁶ See, e.g., *Cities of Bethany, et al. v. FERC*, 727 F.2d 1131 (D.C. Cir. 1984); *Oxy USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995).

²⁷ Demand Curve Order, 147 FERC ¶ 61,173 at P 83. “[W]hile exemptions in general can lower prices, the exemption proposed here is coupled with a sloped demand curve that will limit the impact of price suppression as compared to the existing vertical demand curve. As ISO-NE explains, if all resources offered as price takers, under the vertical demand curve the market-clearing price would be zero at a quantity equal to net ICR; under a sloped demand curve, the market-clearing price would be approximately \$13/kW-mo.”

particular types of generation, the Commission did not require it.²⁸ The Commission has recognized that market design and rules need not be identical among the regions and may instead reflect the unique characteristics of the markets as necessary.²⁹

19. We further disagree with NextEra's argument that the Demand Curve Order is inconsistent with the Commission's order on ISO-NE's "Pay for Performance" mechanism because, according to NextEra, the Renewable Technology Resource exemption does not attempt to replicate a "free market" while the Pay for Performance mechanism does. The comparison is inapt, as each mechanism addresses a different aspect of ISO-NE's market design and serves a different purpose.³⁰

20. As to arguments that the Renewable Technology Resource exemption will result in price suppression or that the Commission established a standard that out-of-market entry into the FCM is unjust and unreasonable only if it "severely" suppresses clearing prices, the cited language from the Demand Curve Order simply acknowledged that exemptions in general can lower prices, but found that coupling the Renewable Technology Resource exemption with the particular parameters of ISO-NE's sloped demand curve will limit the impact of price suppression. The less steep the slope of a demand curve, the less impact any exemption will have. For example, an exemption will

²⁸ *PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090 at P 166 (2013) (dismissing arguments that its minimum offer price rule should apply to all resource types, not just a sub-set of resource types, noting that the minimum offer price rule may be focused on those resources that are most likely to raise price suppression concerns).

²⁹ 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 ¶ 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)).

³⁰ The referenced "Pay for Performance" mechanism addresses issues related to generator performance, while the Renewable Technology Resource exemption addresses issues related to mitigation.

have a greater impact with a vertical demand curve than it will with a sloped demand curve.

21. Further, as the Demand Curve Order notes, the Renewable Technology Resource exemption is limited to a total of up to 200 MW per FCA, pro-rated over all the New England States as necessary, with a carryover of any unused portion for up to three years, resulting in a maximum possible total exemption of 600 MW in any given FCA. Even if the full amount of resources qualifying as Renewable Technology Resources clears the market, these resources would only displace the new entry required to meet load growth. Merchant entry would still be needed in order to meet anticipated retirements, which are expected to be significant over the next several years, resulting in the FCM still clearing near net Cost of New Entry (CONE). Thus, the cap on the number of MWs eligible for the exemption, coupled with the parameters of the sloped demand curve all serve to limit any systematic downward pressure on prices.

22. Regarding NextEra's assertion that load growth may increase by less than 200 MW per year, load growth may be more or less than ISO-NE anticipates. However, we find that it is appropriate that ISO-NE base the Renewable Technology Resource exemption on its current estimate of average annual load growth (189 MW), as this is the best estimate available to ISO-NE at this time. We note ISO-NE's commitment to revisit the cap on the Renewable Technology Resource exemption in the future, should the entry of Renewable Technology Resources exceed load growth.³¹ We also are not persuaded by Exelon's and Entergy's arguments that load growth is already being used to mitigate other out-of-market pricing mechanisms, including the capacity carry forward rule, and it is inappropriate to rely on load growth to correct for multiple price suppressive factors. Exelon and Entergy misconstrue the Commission's statements regarding the capacity carry forward rule. As an initial matter, the Commission did not find in the relevant order that load growth was being relied on to mitigate the capacity carry forward rule,³² but, regardless, Exelon and Entergy do not explain why load growth could not mitigate multiple price suppressive factors.

23. While NEPGA challenges the Commission's reliance on ISO-NE's statement that including 1,100 MW of zero-priced state-sponsored entry in its modeling adequately addresses the concern that the Renewable Technology Resource exemption would

³¹ ISO-NE Answer, Docket No. ER14-1639-000, at 16 (filed May 1, 2014).

³² *ISO New England, Inc.*, 135 FERC ¶ 61,029, at P 69 (2011). Rather, the Commission noted that the extent of price suppression resulting from new out-of-market resources could depend on load growth and other new in-market generation that enters the market during the same time period.

severely suppress prices, we remain satisfied with ISO-NE's explanation. The amount of zero-priced entry of Renewable Technology Resources in any year will not exceed 600 MW, a figure significantly below the 1,100 MW figure for zero-priced entry modeled by the Brattle Group. And, as ISO-NE noted, the entry of natural gas-fired resources will not add to that figure in the future because natural gas-fired entry will be prohibited from submitting zero-priced offers under the present minimum offer price rule.³³

24. With respect to NEPGA's apprehension about price suppression within local capacity zones, we continue to find that its concerns are overstated. We expect that, based on ISO-NE's statements, ISO-NE will implement sloped demand curves at the zonal level for FCA 10,³⁴ which will limit the ability of any Renewable Technology Resource to suppress prices. For FCA 9, we reiterate that only 200 MW of Renewable Technology Resources may qualify for the exemption, and, given that ISO-NE will prorate Renewable Technology Resources if it receives more than this amount, it is unlikely that all 200 MW would be located within a single zone.

25. We also continue to disagree with arguments that the Renewable Technology Resource exemption is unduly discriminatory because similar resources located in different states could qualify for the exemption or not, depending on the policies of each state in which the resources are located. The Commission explained in the Demand Curve Order that the exemption recognizes all New England state policies, rather than favoring a particular approach, and is available to any entity that builds renewable resources as part of its state's renewable portfolio standards program. Further, ISO-NE clarified in its compliance filing that the market rules setting forth the eligibility criteria for the renewables exemption state that new resources may qualify for the exemption in future auctions only as long as the new resources satisfy the criteria to qualify as a renewable or alternative energy technology or project under its respective state's renewable standard or goal that was in effect on January 1, 2014. ISO-NE stated that establishing a fixed definition for resources that may seek an exemption is intended to address concerns about the open-ended nature of creating an exemption that would automatically include additional resource types that might be created by future state laws, i.e., criteria that could be modified by future state action without further review by the Commission, ISO-NE, and stakeholders.³⁵ Thus, individual states cannot change the

³³ ISO-NE Answer, Docket No. ER14-1639-000, at 16 (filed May 1, 2014).

³⁴ ISO New England Inc., Report on Progress Toward Developing Zonal Demand Curves, Docket No. ER14-1639-000 (filed Dec. 2, 2014).

³⁵ *ISO New England Inc.*, Docket No. ER14-1639-002 (Nov. 13, 2014) (delegated letter order).

definition in an attempt to gain an advantage vis-à-vis the Renewable Technology Resources exemption.

26. We also again reject arguments that the Renewable Technology Resource exemption discriminates between renewable resources and other types of resources. As the Commission has previously explained, the FPA does not forbid preferences, advantages, and prejudices per se. Rather, FPA section 205(b) prohibits “undue” preferences, advantages and prejudices.³⁶ Here, the different treatment is not unduly discriminatory because renewable resources are not similarly situated to other types of resources in that they are unlikely to be used for price suppression. As the Commission has explained, because renewable resources such as wind and solar can only qualify a fraction of their nameplate capacity, renewable resources are a poor choice if a developer’s primary purpose is to suppress capacity market prices.³⁷ ISO-NE has further made renewables an undesirable choice for suppressing capacity market prices by limiting the exemption to 200 MWs.

27. Having stated the foregoing, we agree with Exelon and Entergy that a resource that elects to utilize the renewables minimum offer price rule exemption should not also be allowed to utilize the new resource lock-in. In issuing the Demand Curve Order, the Commission did not interpret the Demand Curve Changes as allowing that result. The Demand Curve Order found that the extended lock-in period was necessary to incent new entry and to address “the real risk of lack of investment when new capacity is needed and a high reliance on merchant entry.”³⁸ As Exelon and Entergy point out, renewable resources do not require the same revenue guarantees provided to other new entrants, and such a lock-in will have little effect on whether renewable resources enter the market, but will increase costs to ratepayers. Therefore, given the need to clarify, we direct ISO-NE to submit, within 30 days of the date of issuance of this order, Tariff revisions clarifying that a resource may not utilize both the renewable resource exemption and the new resource price lock-in.

³⁶ *Communication of Operational Information Between Natural Gas Pipelines and Elec. Transmission Operators*, Order No. 787, 145 FERC ¶ 61,134, at P 13 (2013).

³⁷ *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,022, at P 153 (2011).

³⁸ Demand Curve Order, 147 FERC ¶ 61,173 at PP 56 and 58.

B. Lock-in Extension**1. Demand Curve Order**

28. The Commission accepted the Filing Parties' proposal to extend the price lock-in period for a new resource clearing the FCA from five to seven years, during which time the new resource will lock-in the capacity clearing price for the first year's FCA, regardless of the subsequent auctions' clearing prices. The Commission accepted the Filing Parties' proposal to extend the lock-in period in order to set the demand curve price cap at a lower level while still inducing investment. The Commission accepted the Filing Parties' rationale that extending the lock-in would reduce near-term risks by providing a longer price lock-in period in order to send a price signal more consistent with long-run expectations of a stable and robust market.³⁹

2. Requests for Rehearing

29. Exelon and Entergy argue that extending the new-entry price lock-in from five to seven years is an unreasonable and unsupported departure from established policy and precedent. They argue that the Demand Curve Order focused on price guarantees as a developer requirement, even though, according to Exelon and Entergy, Commission precedent holds that such new entry price guarantees protect new entrants from the immediate price impact of their entry and are not intended to support investment decisions or facility financing.⁴⁰ They further argue that the lock-in extension is unduly discriminatory and will suppress capacity market clearing prices and distort the capacity market.⁴¹ Exelon and Entergy assert that, having implemented a sloped demand curve to address risks faced by potential new entrants, there is no basis for the additional step of extending the lock-in period, which, they argue, undermines the benefit of the price signal sent by the sloped demand curve.⁴² Further, they state that the Commission failed to address the additional price discrimination between new and existing generation resources that will result from extending the lock-in period, that the extension of the lock-in period increases the price suppression associated with the new entry price guarantee,

³⁹ *Id.* PP 56-59.

⁴⁰ Exelon and Entergy at 9-14.

⁴¹ *Id.* at 14-18.

⁴² *Id.* at 15.

and that the Commission's "balancing" approach erroneously concludes that the price suppression associated with a seven-year price lock is just and reasonable.⁴³

30. NEPGA asserts that the Commission departed from precedent in finding that extending the lock-in period strikes an appropriate balance between incenting new entry and the price cap level and is an appropriate way to provide investor insurance, contrary to its findings when rejecting a similar proposal in PJM.⁴⁴ NEPGA argues that the Commission failed to explain how it could approve a seven-year lock-in period for ISO-NE when it rejected a five-year lock-in extension in PJM on the basis that it "had the effect of providing long-term revenue assurance to a degree that was unjust and unreasonable" and because it would cause unjust and unreasonable price discrimination.⁴⁵

3. Commission Determination

31. We deny Petitioners' requests for rehearing on this issue. The Commission explained in the Demand Curve Order that the extended price lock-in period is directly correlated with the sloped demand curve parameters, and rejecting the extended price lock-in period would have required a higher price cap in order to achieve the same level of reliability. Although ISO-NE could have achieved the same level of new investment by increasing the price cap to two times net CONE (i.e., from \$17.73/kW-month to \$23.00/kW-month), this action would have exposed consumers to very high prices in the event that an auction is not competitive. Thus, the Commission concluded, although the lock-in extension may result in lower market clearing prices than otherwise, other aspects of the sloped demand curve help to assure that, taken as a whole, the demand curve construct will allow resources to achieve the stated reliability goal while reducing price volatility.

32. We disagree that the extended lock-in period results in undue discrimination, because resources that are entering the FCM now are not similarly situated to resources that entered the market previously. The perceived risks in the FCM are currently unnaturally high, due to recent market changes and the fact that, in the first six FCAs, price floors set the auction clearing prices. Thus, at this time, offers submitted by new entrants reflect more than the normal volatility that the initial five-year lock-in period was designed to ameliorate.

⁴³ *Id.* at 16-17 (citing *PJM Interconnection, L.L.C.* 126 FERC ¶ 61,275, at P 150 (2009)).

⁴⁴ NEPGA at 6-7.

⁴⁵ *Id.* at 7.

33. Additionally, and contrary to NEPGA's assertion, the Demand Curve Order distinguished the Commission's actions from its earlier rejection of a lock-in extension in PJM. The Demand Curve Order explained that the proposed PJM lock-in extension went beyond the intent of the original price lock-in provision, which was designed to address issues related to "lumpy" investment in a small zone, and that, because no party had shown that extending the lock-in term would strike a "superior balance to the existing provisions," the Commission rejected the PJM proposal.⁴⁶

34. NEPGA's argument fails to recognize that, in rejecting the PJM lock-in extension, the Commission engaged in a balancing of considerations. In that case, the Commission determined that the benefits of a longer lock-in period, including aid to developers in financing a project, were outweighed by other considerations, specifically "the possible uplift payments in excess of auction clearing prices."⁴⁷ In contrast, in the Demand Curve Order, the Commission found that the benefits of extending the price lock-in period outweighed other considerations, stating that

the lock-in extension represents an attempt to balance numerous considerations. The proposed extension not only addresses specific issues unique to the New England region, such as the real risk of lack of investment when capacity is needed and a high reliance on merchant entry, but it is also closely linked to the design of the sloped demand curve and the parameters chosen.⁴⁸

C. Self-Supply

1. Demand Curve Order

35. The Demand Curve Order dismissed requests for a self-supply exemption as beyond the scope of the FPA section 205 filing, noting that ISO-NE did not propose such an exemption, nor did the Commission require it.⁴⁹

⁴⁶ Demand Curve Order, 147 FERC ¶ 61,173 at P 57, quoting *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275 at PP 149-150.

⁴⁷ *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275 at PP 149-150.

⁴⁸ Demand Curve Order, 147 FERC ¶ 61,173 at P 58.

⁴⁹ *Id.* P 95.

2. Requests for Rehearing

36. Public Systems argue that the Commission failed to consider their request that the Commission require ISO-NE to include an exemption from buyer-side mitigation for self-supplied resources and erroneously dismissed it on procedural grounds. Public Systems state that the Commission did not address the merits of their argument that the sloped demand curve is not just and reasonable and is unduly discriminatory between ISO-NE and PJM customers because it does not include a self-supply exemption.⁵⁰ Public Systems further argue that the Commission intruded on state and non-public utilities' jurisdiction to make generation development and resource portfolio decisions by accepting rules that do not let them choose the resources to use to fulfill their capacity supply obligation.⁵¹

3. Commission Determination

37. We deny Public Systems' request for rehearing. As stated in the Demand Curve Order, Public Systems' request for a self-supply exemption is beyond the scope of this proceeding. Additionally, the Commission noted that market participants may continue to use self-supplied resources without an exemption from the minimum offer price rule and, by offering existing resources as price-takers, can ensure that these resources will clear in the FCA.⁵²

38. Further, we note that the D.C. Circuit Court of Appeals recently rejected Public Systems' contention that the failure to allow a self-supply exemption exceeds the Commission's jurisdiction by, in effect, regulating generation facilities. The court stated that "states remain free to subsidize the construction of new generators, and load serving entities to build or contract for any self-supply they believe is necessary; FERC's orders simply regulate the 'price constructs that result in offers into the capacity market from these resources that are not reflective of their actual costs.'"⁵³ The court further noted that it has previously rejected similar arguments, finding that the Commission has

⁵⁰ Public Systems at 4-11.

⁵¹ *Id.* at 12-13.

⁵² Market participants also can use the unit-specific review process for new resources for the market participant to demonstrate that its actual costs are below its asset-specific benchmark.

⁵³ *New England Power Generators Ass'n v. FERC*, 757 F.3d 283, 291 (D.C. Cir. 2014) (quoting *ISO New England, Inc.*, 138 FERC ¶ 61,027, at P 170 (2011)).

jurisdiction to regulate a key input into the market-based mechanism, such as mitigation parameters.⁵⁴

D. Reliability Requirements

1. Demand Curve Order

39. The Demand Curve Order found that the demand curve design appropriately balances multiple considerations, including reliability concerns, and can reasonably be expected to elicit sufficient capacity to meet ISO-NE's stated reliability objective on average over time.⁵⁵

2. Requests for Rehearing

40. PSEG states that the Commission failed to respond to its contention that the shape of the sloped demand curve is inconsistent with the North American Electric Reliability Corporation (NERC) and Northeast Power Coordinating Council, Inc. (NPCC) "one day in ten years" (1-in-10) installed capacity criterion because it contemplates cycles in which, over multiple planning periods, the standard would not be satisfied, and erroneously found that the sloped demand curve meets ISO-NE's stated reliability objective.⁵⁶ Specifically, PSEG states that the sloped demand curve does not meet the requirements of Regional Reliability Standard BAL-502-FRC-02 [sic], Requirement R1.1.⁵⁷ PSEG also argues that the Commission ignored its concerns that the opportunity for a resource to recover its net CONE relies on ISO-NE's willingness to operate its system at levels below the NERC criterion, stating that the sloped demand curve's price cap is reached when supply priced below the cap drops to a one-day-in-five-years (1-in-5) Loss of Load Expectation (LOLE).⁵⁸

⁵⁴ *Id.* (citing *Connecticut Dep't of Public Utility Control v. FERC*, 569 F.3d 477, 481-82 (D.C. Cir. 2009)).

⁵⁵ Demand Curve Order, 147 FERC ¶ 61,173 at PP 29-30.

⁵⁶ PSEG at 5-7.

⁵⁷ *Id.* at 7-10.

⁵⁸ *Id.* at 10-13.

3. Commission Determination

41. We deny PSEG's request for rehearing. The Demand Curve Order addressed the concerns raised regarding whether the sloped demand curve will meet the stated reliability objective of a 1-in-10 LOLE, finding that the sloped demand curve's design avoids falling below a 1-in-5 LOLE in any individual time period and can reasonably be expected to elicit sufficient capacity to meet the 1-in-10 LOLE objective on average over time.⁵⁹ The Commission rejected arguments suggesting that meeting that standard on average over time was unjust and unreasonable.⁶⁰

42. Moreover, the Regional Reliability Standard PSEG cites for its contention that the ISO-NE sloped demand curve does not meet the required reserve planning margin is not applicable to ISO-NE. BAL-502-RFC-02 is a regional reliability standard applicable to covered entities located in the ReliabilityFirst Corporation (RFC) NERC region, in which PJM resides; however, ISO-NE is located in the NPCC NERC region. As ISO-NE explained, it developed the proposed demand curve with assumptions to meet a 0.1 day/year LOLE over the long term, consistent with the NPCC system planning criteria.⁶¹ Furthermore, even if BAL-502-RFC-02 were applicable here, it does not impose a resource adequacy requirement. As the Commission noted when accepting BAL-502-RFC-02, the only obligations under BAL-502-RFC-02 are analysis and documentation requirements.⁶² BAL-502-RFC-02 requires the planning coordinator to calculate what the reserve margin would need to be in order to meet the 0.1 day/year LOLE but does not require the planning coordinator to actually procure enough generation to achieve this reserve margin or any other reserve margin.⁶³ Thus, PSEG's argument is not persuasive.

⁵⁹ Demand Curve Order, 147 FERC ¶ 61,173 at P 29.

⁶⁰ *Id.* P 30.

⁶¹ ISO-NE Transmittal, Docket No. ER14-1639-000, at 7 (filed Apr. 1, 2014) (citing NPCC Reliability Reference Directory # 1, Design and Operation of the Bulk Power System, December 1, 2009; Newell and Spees Testimony at 8-10).

⁶² *Planning Resource Adequacy Assessment Reliability Standard*, Order No. 747, 134 FERC ¶ 61,212, at P 33 (2011).

⁶³ *Id.* P 23 (“Specifically, BAL-502-RFC-02 mandates planning, it does not require entities to secure any resources as an outcome of the resource adequacy assessment.”).

43. Despite arguing that it is not sufficient for the demand curve to meet the 1-in-10 LOLE objective on average over time, PSEG also argues that ISO-NE should include an assurance in its Tariff that it will administratively intervene only when the system falls below the 1-in-5 LOLE level. We will not direct such a requirement, because, we note ISO-NE has agreed to discuss with stakeholders the actions that ISO-NE might take in the event that the FCM fails to result in sufficient capacity.⁶⁴ We also note that, should ISO-NE decide it is necessary to take out-of-market actions, it would likely need to file Tariff revisions with the Commission, providing a check on whether such actions are appropriate. For example, PSEG points to ISO-NE's proposal to allow certain units to defer their Capacity Supply Obligations to demonstrate the type of actions it believes would be inappropriate;⁶⁵ however, the Commission deliberated on that proposal after considering comments from all interested parties.⁶⁶

The Commission orders:

(A) The requests for rehearing of the Demand Curve Order are hereby denied, 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, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁶⁴ ISO-NE Answer, Docket No. ER14-1639-000, at n. 22 (filed May 1, 2014).

⁶⁵ See ISO-NE Transmittal, Docket No. ER14-2440-000 (July 16, 2014).

⁶⁶ *ISO New England Inc.*, 148 FERC ¶ 61,185 (2014).