123 FERC ¶ 61,266
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

ISO New England Inc. Docket No. ER08-830-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued June 13, 2008)

1. On April 15, 2008, ISO New England Inc. (ISO-NE) filed a proposed revision to Market Rule 1 related to the Day-Ahead Load Response Program (DALRP). The proposal would lower the current DALRP heat rate index from 12.92 to 11.37 MMBtu/MWh. In this order, the Commission accepts ISO-NE's proposed tariff revisions.

I. **Background**

A. **The DALRP**

2. ISO-NE's DALRP provides Market Participants the opportunity to offer a price and firm amount of load reduction that they are prepared to deliver in real-time, if day-ahead locational marginal prices (LMPs) clear at levels that equal or exceed the Market Participant's offer. Participants whose load reductions clear in the DALRP are paid the day-ahead LMP for the amount cleared.[1] If they reduce more in real time than the amount cleared in the DALRP as measured against their Customer Baseline, they are paid for the excess at the real-time LMP. If they reduce less in real-time relative to their cleared day-ahead offer, DALRP participants must buy back the difference at the real-time LMP.

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[1] The DALRP program hours are from 7:00 AM to 6:00 PM on non-holiday weekdays.

3. ISO-NE states that the DALRP was not designed to directly reduce day-ahead generation commitments or the day-ahead LMP, but rather is intended to encourage load response during high-price hours to improve market efficiency. The DALRP is based on the premise that if the cleared DALRP offers are delivered in real-time, they will reduce real-time LMPs. Thus, payments made to DALRP assets are funded through uplift, based on the theory that all consumers will benefit from real-time electricity demand response during high-price hours.

4. To determine the actual quantity of load reduction that a demand response asset achieves during load response events, the asset's actual consumption is compared to a Customer Baseline, which is intended to estimate an asset's normal daily consumption pattern in the absence of demand response behavior. The baseline is a 10-day rolling average of interval meter data from days on which no load response event has occurred for the asset (i.e., an asset's offer is not accepted into the DALRP, so it receives no payment for reduction). The purpose of a rolling average is to ensure that the asset's Customer Baseline is continually updated to reflect its normal daily consumption pattern as this pattern changes over the course of the year. Days with load response events, including days on which an asset's DALRP offer was accepted, are excluded from the calculation of the asset's Customer Baseline, because consumption during those days is assumed to reflect an intentional load reduction.

B. Proceedings in Docket No. ER08-538-000

5. In a February 2008 filing with the Commission in Docket No. ER08-538-000, ISO-NE stated that it had uncovered a flaw in the program rules that allowed DALRP participants to exaggerate the load reductions from their demand response assets by overstating their assets' Customer Baseline. According to ISO-NE, several DALRP participants had deliberately established a high Customer Baseline in one time period – e.g., the summer peak season – and then locked in that high Customer Baseline during lower load seasons by submitting offers into the DALRP at what was then the Minimum Offer Price of $50/MWh for each day thereafter. In today's market, a $50/MWh minimum offer (established in the tariff before the recent increase in fuel prices) is virtually guaranteed to clear during the DALRP hours.[2] ISO-NE also pointed out that

[2] ISO-NE stated that when the $50/MWh Minimum Offer Price was introduced in 2002, natural gas prices were less than $4.00/MMBtu and wholesale energy prices exceeded $50/MWh less than 12 percent of the time. By comparison, ISO-NE noted that a market Participant offering to reduce load during eligible program hours at $50/MWh would have cleared *every* eligible day since January 1, 2007.

many assets were offering the minimum amount (100 kW) into the DALRP, when those assets would be capable of providing significantly greater load reduction. Because these small amounts offered at the $50/MWh price were certain to clear, the asset's Customer Baseline would not update, and remained static, so that even in winter, an asset's baseline might be set by 10 days of summer use. The result was that DALRP payments were made to assets to compensate them for load reduction, even though these assets were consuming electricity at levels that would, in fact, be normal for that lower load season. (Importantly, as noted previously, the participants were not paid solely for the 100 kW offered into the DALRP but for the net difference between their actual consumption and the Customer Baseline – any perceived reductions over 100 kW were paid at the real-time LMP.)

6. In its February filing, ISO-NE also offered evidence that other DALRP participants were intentionally inflating their baselines when they first registered to participate in the DALRP, either by increasing consumption or decreasing the output of behind-the-meter generation that is normally on-line during known DALRP measurement hours. In this way, the participant's asset would consume abnormally large amounts during the period that would establish its initial baseline, and once the baseline was established, the asset's consumption would drop to normal levels. ISO-NE stated that during the previous four months, 75 percent of the cleared MW in the DALRP (from 26 out of 46 assets) had a static Customer Baseline. Further, total DALRP payments had grown almost tenfold in the past year – DALRP payments totaled $1.74 million in 2006 and $16.81 million in 2007 and the number of assets offering into the DALRP had more than doubled since August 2007. ISO-NE observed that the trend at that time was that all DALRP participants were offering to interrupt load at the floor price every eligible hour of every weekday.

7. ISO-NE argued that the impacts of this behavior went beyond excessive energy payments. It stated that an asset's overstated Customer Baseline affects operations and planning, since planners assume that the same amount of demand response that occurs in the DALRP is also likely to be available for interruptions in real time, if an emergency occurs, since assets in the DALRP have to be part of the Real-Time Load Response Program. Thus, ISO-NE asserted that this illusory amount of load that appeared to be available for interruption in fact distorted planning and threatened resource adequacy. Further, ISO-NE noted that an inflated Customer Baseline also resulted in excess capacity payments, since the transitional capacity payments for ISO-NE's Forward Capacity Market (FCM) are also based on the Customer Baseline.

8. In order to address the flawed DALRP, ISO-NE proposed to revise its tariff so that the Minimum Offer Price would be set at a monthly indexed level based on fuel prices, rather than a flat $50/MWh. When the DALRP was originally created, the Minimum

Offer Price had been based on an implicit heat rate of 12,920 MMBtu/kWh. Thus, ISO-NE proposed to develop an indexed price based on that same implicit heat rate.[3] ISO-NE believed that this change would ensure that offers from DALRP participants would clear only on high price days, rather than every day. ISO-NE argued that the indexed Minimum Offer Price would thus restore the intent of the program to "shave the peak" on high price days, rather than providing a daily additional income stream. Raising the Minimum Offer Price would also cause the Customer Baselines of DALRP assets to update much more frequently and eliminate the strategic behavior of bidding at the Minimum Offer Price to create a static Customer Baseline.

9. In an order issued on April 4, 2008,[4] the Commission approved ISO-NE's proposed tariff revisions, finding that the proposed changes would restore the DALRP to its intended purpose – to provide benefit to the system at times of high LMPs – while protecting customers from being charged for services that were not in fact provided. The Commission also cited ISO-NE's commitment to review the issue and to make a subsequent filing by April 15, 2008 that would either inform the Commission regarding ISO-NE's findings, or propose additional tariff changes resulting from the stakeholder process. The April 4 Order also noted that the Office of Enforcement (OE) was conducting a non-public investigation into whether any participants in the DALRP have violated the Commission's rules.[5]

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[3] As an example, the basis for the calculation as shown below for February 2008:

DALRP Minimum Offer Price set in 2002 = $50/MWh

Average Daily Spot price for Gas in NY in 2002 = $3.87/MMbtu

Dividing the Minimum Offer Price by the daily spot = 12,920 MBtu/kWh

February 2008 Fuel Price Index = $9.35/MMBtu

Multiplying the current fuel price ($9.35) by the implicit heat rate from above (12,920 MBtu/KWh), the Minimum Offer Price for the DALRP for February 2008 would be $121/MWh.

[4] *ISO New England Inc*., 123 FERC ¶ 61,021 (2008) (April 4 Order). EnerNOC, Inc. filed a request for rehearing, which is currently pending.

[5] Since the issuance of the April 4 Order in Docket ER08-538-000, a generator has asked OE to expand the scope of its investigation into the effects of the bidding behavior observed in the DALRP to determine whether overstated baselines by demand resources also resulted in the manipulation of FCM capacity obligations.

C. The Instant Proposal (DALRP Heat Rate Revision)

10. In compliance with its commitment, ISO-NE filed the current proposed tariff revisions on April 15. In this proposal, ISO-NE seeks to change the effective heat rate upon which the DALRP minimum offer price is based from 12.92 to 11.37 MMBtu/MWh. This proposal failed in the NEPOOL stakeholder process, receiving 58 percent of the necessary 60 percent to receive NEPOOL support. ISO-NE further states that during the stakeholder process, alternative proposals for the DALRP from Constellation NewEnergy (Constellation), EnerNOC, Inc. (EnerNOC), and the Industrial Energy Consumer Group (IECG) were also considered and rejected.

11. In support of its proposal, ISO-NE states that it retained Dr. Miriam Goldberg of KEMA Consulting (KEMA) as an independent expert to assist in evaluating these competing proposals. ISO-NE states that Dr. Goldberg's work analyzed the impact of alternative heat rate (i.e., Minimum Offer Price) assumptions on the accuracy of the Customer Baseline, as well as the alternative proposals submitted by stakeholders. ISO-NE states that the results of this analysis assisted in evaluating the tradeoff between the minimum offer price and the accuracy of the Customer Baseline against which load reduction quantities and resulting payments are determined.

12. ISO-NE maintains that Dr. Goldberg's analysis shows that the effective heat rate can be reduced to 11.37 MMBtu/MWh using ISO-NE's present Customer Baseline methodology. According to ISO-NE, Dr. Goldberg's quantitative analysis indicates that ISO-NE's proposed revision to the DALRP Minimum Offer Price is just and reasonable, because this lower effective heat rate would increase the number of days that DALRP offers would clear the Day-Ahead Energy Market "without overly sacrificing baseline accuracy."[6] ISO-NE states that based on 2007 Day-Ahead Energy Market prices, this change would increase the percentage of DALRP program hours that would clear at the minimum offer price from 11 percent to 21 percent, thus providing additional opportunities for assets to submit offers that would clear in the DALRP, while continuing to appropriately limit the availability of the payments for demand response to high-demand periods. ISO-NE argues that the change would, nevertheless, maintain fidelity to the principle of maximizing Customer Baseline accuracy so as to detect whether load reductions are real.

13. ISO-NE states that the KEMA analysis also demonstrates that the instant proposal is superior to the alternatives proposed by EnerNOC, Constellation and IECG. ISO-NE argues that the analysis shows that the Customer Baseline methodology advanced by EnerNOC (to restore the Minimum Offer Price to $50/MWh and to implement a new

[6] ISO-NE transmittal letter at 5.

Customer Baseline methodology that uses a weighted average of interval meter data from up to forty-five of the most recent non-holiday weekdays) is less accurate than ISO-NE's current Customer Baseline methodology when combined with a higher heat rate assumption. ISO-NE states that Constellation's proposal, on the other hand, is flawed because it did not directly address the issue of DALRP participants' strategic behavior. Lastly, ISO-NE contends that IECG's proposal to establish a DALRP option with a $50/MWh minimum offer price combined with a Customer Baseline established in consultation with ISO-NE would allow DALRP participants to obtain energy payments for permanent load shifts during low and high-LMP periods, thus creating a new demand response program that represents a departure from the current DALRP.

14. Finally, ISO-NE explains in its proposal that the DALRP is one of the price-sensitive demand response programs that are set to expire on May 31, 20l0 upon the effectiveness of the first Capacity Commitment Period under the Forward Capacity Market (FCM). Section III.E.1.3 of the ISO-NE Tariff states:

> Consideration of the Load Response Program for energy-based resources beyond May 31, 2010 is subject to further study and consultation with NEPOOL stakeholders and state utility regulatory agencies. The resulting determination will be filed by the ISO in an amended Market Rule filing in adequate time to allow for such program to continue uninterrupted beyond May 31, 2010.

15. ISO-NE contends that given this May 31, 2010 expiration date, a decision on the future of the price-response programs is needed by the second quarter of 2009, as at least a year will be required to develop and implement software changes if the programs are extended and changes are agreed upon. Thus, ISO-NE states that in support of the future stakeholder process to provide input on this decision, it plans to initiate the process of evaluating the Load Response Programs in October 2008. ISO-NE explains that as the stakeholder process will consider the objectives and design of potential continuing price-response programs, it will also necessarily consider the appropriate customer baseline methodology for those programs.[7] ISO-NE plans to make a subsequent report to the Commission by February 16, 2009 regarding the decision ultimately to either terminate or continue the current Load Response Programs.

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[7] *Id*. at 7.

II. Notice and Responsive Pleadings

16. Notice of the filing was published in the *Federal Register*, with interventions and protests due on or before May 6, 2008.[8] Dynegy Power Marketing Inc., New England Power Pool Participants Committee (NEPOOL), New England Conference of Public Utility Commissioners (NECPUC), the Connecticut Department of Public Utility Control (CT DPUC), NRG Companies,[9] and Northeast Utilities Service Company (NUSCO)[10] filed timely motions to intervene. EnerNOC filed a timely motion to intervene, comments, and a request for expedited approval. NEPOOL filed a motion for leave to file comments out of time and comments. ISO-NE filed an answer to the comments of EnerNOC and NEPOOL, and NEPOOL filed an answer to ISO-NE's answer.

Comments and Answer

17. In its comments, EnerNOC argues that the instant proposal is "severely flawed" because it fails to address the fundamental problem with the DALRP – accurate Customer Baselines. Nevertheless, EnerNOC seeks expedited approval of ISO-NE's proposal (requesting that the Commission direct ISO-NE to make the proposed revision effective no later than June 1, 2008) because it will permit demand response providers an "incremental opportunity" to participate in ISO-NE's energy markets. EnerNOC argues that the revisions proposed by ISO-NE should be treated as an interim measure until the fundamental baseline problem is resolved. EnerNOC argues that ISO-NE’s use of a Minimum Offer Price establishes an arbitrary threshold that prevents demand response resources from providing downward pressure on real-time prices at anything below the Minimum Offer Price. EnerNOC contends that, once a more accurate Customer Baseline methodology is developed, the Minimum Offer Price aspect of the DALRP should be eliminated so as to permit demand response resources to participate in energy markets on a "nondiscriminatory basis" with generation assets. EnerNOC requests that the Commission direct ISO-NE to immediately convene additional stakeholder meetings to

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[8] 73 Fed. Reg. 17,967 (2008).

[9] The NRG Companies are NRG Power Marketing LLC, Connecticut Jet Power LLC, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, and Somerset Power LLC.

[10] NUSCO states that it is acting as agent for its electric utility transmission, distribution, and generation company affiliates: The Connecticut Light and Power Company, Western Massachusetts Electric Company, and Public Service Company of New Hampshire.

address the Customer Baseline methodology, with methodology revisions due to the Commission by October 1, 2008.

18. NEPOOL, in its comments, highlights the fact that in contrast to the DALRP revisions from the April 4 Order, the instant proposal does not have NEPOOL support[11] since it seeks to change the original design and intent of the DALRP without completing an evaluation of the overall program. Further, NEPOOL contends that the Commission should not approve the DALRP Heat Rate Revision unless it concludes that the change improves the DALRP, especially in light of the fact that the proposal is not supported by NEPOOL or state regulators. NEPOOL urges the Commission to issue an order affirming ISO-NE's commitment to initiate a stakeholder process in October 2008 to review the future of the Load Response Programs and file a report with the Commission by February 16, 2009, detailing its decision to either terminate or continue the Load Response Programs. NEPOOL also states that the two-month stakeholder process that led to the instant filing reinforced the need for additional opportunities to evaluate the DALRP in a more comprehensive manner. NEPOOL contends that to the extent the region determines that the DALRP should be continued beyond May 31, 2010, the associated stakeholder process will provide ample opportunities to review and evaluate problems in the DALRP that have already been identified (including the determination of individual Customer Baseline methodologies), and that it would not be beneficial at this point to devote substantial resources to the instant proceeding unless that proceeding provided demonstrable advantages to the region.

19. In its answer, ISO-NE first asks the Commission to reject EnerNOC's request for a June 1, 2008 effective date for the proposed DALRP Heat Rate Revision (instead of July 1, 2008 as requested). ISO-NE notes that only the public utility with the rights under section 205 of the Federal Power Act[12] may either exercise the right to request an effective date consistent with section 205 or request a waiver of section 205 notice requirements. Further, ISO-NE states that if EnerNOC's request were granted, it would require ISO-NE to implement the DALRP Heat Rate Revision with less than the sixty days notice required by section 205, though neither ISO-NE nor EnerNOC has requested waiver of the sixty-day notice. In regard to EnerNOC's request that the Commission direct ISO-NE to immediately convene an additional stakeholder process to address the customer baseline methodology aspect of the DALRP, ISO-NE states that it has already

[11] NEPOOL notes that with a vote of 58.45 percent in favor, the DALRP Heat Rate Revision failed to receive the sixty percent vote necessary for support by the NEPOOL Participants Committee.

[12] 16 U.S.C. § 824d (2000).

committed to review the future of the Load Response Programs (including the DALRP) beginning in October 2008, and that the timing of this scheduled review reflects other regional priorities. ISO-NE states that as part of this review, if price-response programs are to be continued after May 2010, stakeholders will also consider the baseline methodologies that would be appropriate for the type of program to be implemented at that time.

20. In response to NEPOOL's argument that the Commission should not approve the proposed DALRP Heat Rate Revision due to the lack of support from NEPOOL and state regulators, ISO-NE contends that granting NEPOOL's request would improperly establish a different standard of review than the just and reasonable requirement of section 205. ISO-NE argues that nothing in the NEPOOL Participants Agreement[13] contemplates that a different standard of review should apply in the circumstances where an advisory vote does not reach the 60 percent threshold, yet here NEPOOL asks the Commission to reject the filing even if it is just and reasonable. In addition, responding to NEPOOL's assertion that the proposed DALRP Heat Rate Revision seeks to change the original design and intent of the DALRP without completing an evaluation of the overall program, ISO-NE argues that the proposed change is consistent with the Commission's previously stated objective that DALRP payments be provided only during peak periods when demand is high relative to supply, yet still offers demand response providers the potential for increased DALRP participation. Further, ISO-NE states that NEPOOL offers no evidence or analytical support for its position.

21. In its answer to ISO-NE's answer, NEPOOL states that it offered comments on the proposed ISO-NE DALRP Heat Rate Revision filing to ensure that the Commission was fully aware of the unusual circumstances surrounding the filing of the DALRP Heat Rate Revision, in order for the Commission to take those circumstances specifically into account when considering ISO-NE's filing. NEPOOL argues that in light of the unusual facts surrounding this filing, the Commission should verify that ISO-NE's filing is an improvement to the status quo. In addition, NEPOOL states that ISO-NE's current proposal to lower the heat rate (and corresponding Minimum Offer Price) associated with the DALRP is inconsistent with ISO-NE's representation in the proceedings leading to

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[13] ISO-NE states that the Participants Agreement governs the processes by which Governance Participants, which by definition include NEPOOL Participants, provide and ISO-NE receives input and advice. It is available at http://www.isone.com/regulatory/part_agree/participants_agreement.pdf.

the April 4 Order that lowering the heat rate would conflict with the original design goals of the DALRP as approved by the Commission.[14]

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 (2007), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. NEPOOL's motion for leave to file comments out of time is granted, given the early stage of the proceedings.

23. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers filed by ISO-NE and NEPOOL because they have provided information that assisted us in our decision-making process.

B. DALRP Heat Rate Revision Proposal

1. April 4 Order

24. As discussed above, in the April 4 Order the Commission approved a tariff revision to allow the DALRP Minimum Offer Price to be tied to the Forward Reserve Fuel Index.[15] The purpose of this revision was to address the fact that the Minimum Offer Price no longer reflected relatively high price hours due to the dramatic increase in fuel prices in New England since 2002 when the $50/MWh was first proposed, and allowed certain program participants intentionally to establish a static Customer Baseline in order to receive energy and capacity payments "even though the customer is taking no action to reduce its usual consumption levels."[16]

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[14] NEPOOL answer at 8, *citing* ISO-NE transmittal letter, Docket No. ER08-538-000 (February 5, 2008) at 15.

[15] The Forward Reserve Fuel Index is the index used to calculate the monthly Forward Reserve Threshold Price as defined in section III.9.6.2 of Market Rule 1. The index reflects current market conditions.

[16] April 4 Order, 123 FERC ¶ 61,021 at P 50.

25. The tariff revision approved in the April 4 Order led to an increased Minimum Offer Price, eliminating participation in the DALRP below the relatively higher fuel-indexed monthly fuel price.[17] In the April 4 Order, we reiterated our support for a Minimum Offer Price construct in the DALRP – we stated that "our approval of the Minimum Offer Price was based on our view that in the DALRP, demand response was desirable, and should be financially supported, during peak periods when demand was high relative to supply, i.e., not at all levels of supply and demand."[18] Further, we noted that because DALRP offers would no longer clear every day, the proposal approved in the April 4 Order would allow Customer Baselines to be more accurate (since the baselines only update on days when offers are not accepted), and would help protect customers from being charged for services that are not in fact provided.[19]

2. Current Proposal

26. Although we recognize that the instant proposal failed to garner the 60 percent support necessary to receive stakeholder approval, we find the proposal to be just and reasonable. While we concluded in the April 4 Order that ISO-NE's earlier rate proposal was just and reasonable, that does not prevent us from concluding here that this new proposal submitted under Federal Power Act section 205 is just and reasonable. The Commission has previously stated, "different rate proposals can be just and reasonable, and . . . more than one method can be correct for calculating rates."[20] We approve the instant DALRP Heat Rate Revision proposal.

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[17] For example, as we noted in the April 4 Order, with a February 2008 Fuel Price Index of $9.35/MMBtu, multiplying the fuel price by the implicit heat rate from above, the Minimum Offer Price for February 2008 would be $121/MWh.

[18] April 4 Order, 123 FERC ¶ 61,021 at P 52 ("[t]he program is intended to encourage reduced consumption during peak periods when demand is high relative to supply energy and energy prices rise. It is reasonable to limit the additional payment incentive for reducing demand to periods when demand is high relative to supply, and not to offer the incentive when supply is ample relative to demand. Establishing a suitable bid floor or minimum triggering price, as proposed by ISO-NE, is one way to target the incentives to these tight-supply periods"), *citing New England Power Pool*, 105 FERC ¶ 61,211, at P 21 (2003) and *New England Power Pool*, 101 FERC ¶ 61,344, at P 44 (2002).

[19] April 4 Order, 123 FERC ¶ 61,021 at P 59.

[20] *International Transmission Co.*, 123 FERC ¶ 61,065, at P 20 (2008) (citations omitted); *see also* April 4 Order, 123 FERC ¶ 61,021 at P 47.

27. As noted previously, ISO-NE retained KEMA to evaluate several competing proposals as part of the stakeholder process. The analysis specifically analyzed the impact of alternative heat rate (i.e., Minimum Offer Price) assumptions on the accuracy of the Customer Baseline, and included a review of the alternative proposals submitted by stakeholders. Importantly, no party has formally protested ISO-NE's instant proposal, and no party challenged KEMA's results or its underlying methodology. We note that under the current DALRP construct (where the Customer Baseline is only updated on days when offers in the DALRP are not accepted), there will always be a trade-off between baseline accuracy and participation in the DALRP – i.e., as the number of days in which DALRP offers are rejected increases, by default the Customer Baseline will be more accurate, at the expense of short term (and potentially long-term) DALRP participation. The Customer Baseline is a lagging indicator of DALRP participation. As such, a reasonable judgment has to be made concerning an acceptable baseline error rate so as not to discourage participation in programs like the DALRP. We believe that ISO-NE's proposal, based upon KEMA's analysis of baseline error rates for different heat rate values, achieves an appropriate balance between baseline accuracy and DALRP participation,[21] restricting DALRP payments to periods of high LMPs while continuing to protect customers from being charged for services that are not in fact provided.

28. EnerNOC urges the Commission to approve the filing on an expedited basis, although it characterizes the proposal as "flawed." While EnerNOC would have the Commission limit its approval of the filing to an "interim" basis, we note that there is no provision in section 205 that allows the Commission to approve filings in this manner. Rather, we find the proposal to be just and reasonable on its merits. As for EnerNOC's contentions (consistent with its position in Docket No. ER08-538-000) that once a more accurate Customer Baseline methodology is developed, the Minimum Offer Price aspect of the DALRP should be eliminated to permit demand response resources to participate in energy markets on an equal basis with generation assets, we note that this request is not part of the instant proposal, and we therefore do not address it.

29. We similarly recognize that the lack of support of NEPOOL and state regulators for the instant proposal is driven largely over concerns over whether the instant proposal is truly "better" than the status quo that was approved in the April 4 Order. NEPOOL argues that ISO-NE seeks to change the original design and intent of the DALRP without completing an evaluation of the overall program. We disagree with NEPOOL's

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[21] ISO-NE states that based on 2007 Day-Ahead Energy Market prices, the proposed change would increase the percentage of DALRP program hours that would clear at the Minimum Offer Price from 11 percent to 21 percent. ISO-NE transmittal letter at 6.

assertion. In our view, the instant proposal continues to restrict DALRP payments to periods of high LMPs while continuing to protect customers from being charged for services that are not in fact provided, which was also ISO-NE's purpose in the filing approved in the April 4 Order (and strongly supported there by NEPOOL). As detailed below, we find that requested evaluation of the overall DALRP program can be addressed in the review of the Load Response Programs which are scheduled to terminate on May 31, 2010, coincident with the effectiveness of the first Capacity Commitment Period under the Forward Capacity Market.

3. <u>Future Stakeholder Process</u>

30. EnerNOC contends that the instant proposal fails to address the Customer Baseline, noting that "[t]he problem is, and continues to be, with the calculation of customer baselines."[22] EnerNOC states that the Commission should direct ISO-NE to immediately convene additional stakeholder meetings to address the Customer Baseline methodology, with methodology revisions due to the Commission by October 1, 2008. In its answer, ISO-NE argues that it has already committed to review the future of the Load Response Programs (including the DALRP) beginning in October 2008, and that if price-response programs are to be continued after May 2010, baseline methodologies appropriate for the type of program that would be implemented at that time will be considered as well. NEPOOL urges the Commission to issue an order affirming ISO-NE's commitment to initiate such a stakeholder process, with a commitment to file a report with the Commission by February 16, 2009 detailing its decision to either terminate or continue the Load Response Programs.

31. Integration of Demand Resources into system operations and planning and system infrastructure upgrades is one of ISO-NE's high-priority projects through 2010.[23] Thus there will be a need for an accurate baseline for measuring performance of demand resources independent of any future price-response program. Accurate representation of the customer's normal load is necessary to measure and verify that the load reductions indeed occur, so that demand response providers get paid for their service and New England consumers pay only for the service provided. As such, we agree with ISO-NE that evaluation of baseline methodologies is necessarily linked to the integration of demand response into its markets.[24] We will require ISO-NE to file a report with the Commission by February 16, 2009 detailing its decision to either terminate or continue

[22] *Id.* at 7.

[23] *Id.*

[24] *Id.*

the Load Response Programs. However, we will also require as part of the February report that ISO-NE include a review of the current Customer Baseline methodology and a timetable for implementing any changes necessary for demand resources to participate in its markets on a comparable basis to generating resources. In light of our acceptance of ISO-NE's stated commitment, we will deny EnerNOC's request for the Commission to direct ISO-NE to immediately convene additional stakeholder meetings, with Customer Baseline methodology revisions due to the Commission by October 1, 2008.

4. Effective Date

32. Regarding EnerNOC's requested June 1 effective date for the instant proposal, we agree with ISO-NE that under section 205, only the filing party may either exercise the right to request an effective date consistent with section 205 or request a waiver of section 205 notice requirements. Further, if EnerNOC's request were granted, it would require ISO-NE to implement the DALRP Heat Rate Revision with less than the sixty days notice required by section 205, though neither ISO-NE nor EnerNOC has requested waiver of the sixty-day notice. We will therefore deny EnerNOC's request and grant the July 1, 2008 effective date requested by ISO-NE.

The Commission orders:

(A) ISO-NE's proposed DALRP revision is hereby accepted effective July 1, 2008, as discussed in the body of this order.

(B) ISO-NE is directed to file a report with the Commission by February 16, 2009, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.