

131 FERC ¶ 61,065  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
and John R. Norris.

ISO New England, Inc. and  
New England Power Pool Participants Committee

Docket Nos. ER10-787-000

New England Power Generators Association v.  
ISO New England Inc.

EL10-50-000

PSEG Energy Resources & Trade LLC, PSEG Power  
Connecticut LLC, NRG Power Marketing LLC,  
Connecticut Jet Power LLC, Devon Power LLC,  
Middletown Power LLC, Montville Power LLC,  
Norwalk Power LLC, and Somerset Power LLC v.  
ISO New England Inc.

EL10-57-000

ORDER ON FORWARD CAPACITY MARKET REVISIONS  
AND RELATED COMPLAINTS

(Issued April 23, 2010)

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1. In this order, the Commission accepts and sets for paper hearing a filing by ISO New England Inc. (ISO-NE) and the New England Power Pool Participants Committee (NEPOOL) (collectively, the Filing Parties) proposing revisions to the market rules for ISO-NE's Forward Capacity Market (FCM). The Commission also consolidates the two complaints captioned above with the proceedings regarding the Filing Parties' proposed changes to the FCM market rules.

**I. Background**

**A. FCM**

2. ISO-NE has recently implemented a forward market for capacity, pursuant to which resources compete in an annual Forward Capacity Auction (FCA) to provide capacity on a three-year-forward basis. Providers whose capacity clears the FCA acquire capacity supply obligations (CSOs), which they must fulfill three years later. The Commission has accepted market rules that outline the rights and obligations of capacity resources.<sup>1</sup> ISO-NE held the first two FCAs in 2008 (FCA # 1 and FCA # 2), the third FCA was held in October 2009 (FCA # 3), and the fourth FCA will be held in August 2010 (FCA # 4).

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<sup>1</sup> On February 15, 2007, ISO-NE filed revisions to its market rules to implement the FCM. The Commission accepted a portion of the market rules on April 16, 2007 (*ISO New England Inc.*, 119 FERC ¶ 61,045, *order on reh'g*, 120 FERC ¶ 61,087 (2007)), and the remainder on June 5, 2007 (*ISO New England Inc.*, 119 FERC ¶ 61,239 (2007), *reh'g denied*, 122 FERC ¶ 61,171 (2008)).

3. In a December 1, 2008 filing, *Various Revisions to FCM Rules Related to Bilateral Contracts and Reconfiguration Auctions* (FCM Phase II Filing), the Filing Parties identified certain issues that required further attention, such as the establishment of zones and requirements used in performing reliability reviews. The Filing Parties proposed a stakeholder process to address these issues. In June 2009, ISO-NE's Internal Market Monitor (IMM) issued its initial assessment of the FCM (IMM Report).<sup>2</sup> The IMM provided recommendations for certain improvements to the FCM, namely addressing the reliability criteria used for determining capacity zones and evaluating de-list bids, modifying the Alternative Capacity Price Rule (APR), and changing the use of the Cost of New Entry parameter (CONE) in determining the starting price for each FCA.

4. Based on the FCM Phase II Filing and the IMM Report, the NEPOOL stakeholders created the Forward Capacity Market Working Group (FCM Working Group), chaired by representatives from NEPOOL, the New England Conference of Public Utility Commissioners (NECPUC), and ISO-NE, to provide a stakeholder forum specifically constructed to consider FCM design changes. The FCM Working Group also considered recommended rule changes related to the APR, as required by section III.13.2.5.2.5(f) of the ISO-NE Tariff, which requires ISO-NE to evaluate whether the treatment of de-list bids rejected for reliability reasons should be modified.<sup>3</sup>

#### **B. Instant Filing**

5. On February 22, 2010, under section 205 of the Federal Power Act (FPA), the Filing Parties submitted revisions to the FCM rules (Rule Changes Filing), as a result of the stakeholder forum, addressing the concerns raised in the FCM Phase II Filing and the IMM Report. The Filing Parties state that the Rule Changes address each of the major recommendations in the IMM assessment.

6. The Filing Parties explain that the Rule Changes provide improved design of some market elements and additional detail and refinement to a number of related areas of the FCM rules. The Rule Changes include: (1) revisions to the existing APR; (2) increased transparency in the review of offers below 0.75 times CONE; (3) extension of the floor

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<sup>2</sup> Internal Market Monitoring Unit Review of the Forward Capacity Market Auction Results and Design Elements, ISO New England Inc. Market Monitoring Unit (June 5, 2009) ("Internal Market Monitor Report"), available at [http://www.iso-ne.com/markets/mktmonmit/rpts/other/fcm\\_report\\_final](http://www.iso-ne.com/markets/mktmonmit/rpts/other/fcm_report_final).

<sup>3</sup> This evaluation was required under section III.13.8.4 of the ISO-NE Transmission, Markets, and Services Tariff (Tariff), which requires a filing to be made regarding the results of that evaluation by May 17, 2010 and which the Filing Parties have provided in the instant filing.

price; (4) compensation when a resource's prorationing election is rejected for reliability reasons; (5) decoupling the FCA starting price from CONE; (6) revisions to the determination of CONE; (7) clarification regarding the obligations of resources that do not have CSOs; (8) revisions to the calculation of zonal requirements; and (9) improved modeling of capacity zones.

7. In addition to presenting the Rule Changes, the Filing Parties acknowledge that this filing does not resolve all of the major issues regarding the FCM design, largely due to the scope and timing of the FCM Working Group process. As a result, they commit to a future stakeholder process that will consider several issues, including the definition of out-of-market (OOM) resources, when the APR should be triggered, and how the price should be set in those circumstances. The Filing Parties also state that ISO-NE will retain an economic consultant to assist in addressing these issues. ISO-NE states that it will make a filing within 18 months of the date of the instant filing either proposing market rule changes or providing a status report of discussions on these and other related FCM matters.

8. The Filing Parties state that the Rule Changes are the product of an extensive stakeholder process that culminated in NEPOOL Participants Committee voting in support of the changes. The Filing Parties also note that while all Participants may agree that the Rule Changes represent an improvement to the status quo, some Participants with generating capacity sought additional changes; the entire Generation Sector opposed the final Rule Changes. Finally, the Filing Parties request an effective date of April 23, 2010 so that the changes may be effective for FCA # 4, scheduled for August 2, 2010.

### **C. NEPGA and PSEG Complaints**

9. Pursuant to section 206 of the FPA, on March 24, 2010, New England Power Generators Association (NEPGA) filed a complaint against ISO-NE,<sup>4</sup> and on April 4, 2010, PSEG Energy Resources & Trade LLC, *et al.*<sup>5</sup> filed a complaint against ISO-NE.<sup>6</sup> Both complainants expressly state that their complaints address the substance of the Filing Parties' proposed revisions to the FCM market rules and that they are filing these

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<sup>4</sup> *New England Power Generators Ass'n v. ISO New England Inc. (NEPGA v. ISO-NE)*, Docket No. EL10-50-000.

<sup>5</sup> PSEG Energy Resource & Trade LLC, PSEG Power Connecticut LLC, NRG Power Marketing LLC, Connecticut Jet Power LLC, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, and Somerset Power LLC.

<sup>6</sup> *PSEG Energy Resources & Trade LLC v. ISO New England Inc. (PSEG v. ISO-NE)*, Docket No. ER10-57-000.

complaints primarily to ensure that their alternative proposals may be considered at the same time that the Commission considers the revisions proposed by the Filing Parties.<sup>7</sup>

## **II. Notice of Filing, Interventions, Comments, Protests, and Answers**

10. Notice of the Rule Changes filing in Docket No. ER10-787-000 was published in the *Federal Register*, with motions to intervene, notices of intervention, comments, and protests due on or before March 15, 2010.<sup>8</sup> A list of the parties filing motions to intervene, notices of intervention, protests, comments, and answers is at Appendix A to this order.

11. Notice of the filing of the complaint in Docket No. EL10-50-000 was published in the *Federal Register*, with motions to intervene, notices of intervention, comments, and protests due on or before April 6, 2010.<sup>9</sup> A list of the parties filing motions to intervene, notices of intervention, answers, protests, and comments is at Appendix B to this order.

12. Notice of the filing of the complaint in Docket No. EL10-57-000 was published in the *Federal Register*, with motions to intervene, notices of intervention, comments, and protests due on or before April 22, 2010.<sup>10</sup> A list of the parties filing motions to intervene, notices of intervention, answers, protests, and comments is at Appendix C to this order.

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<sup>7</sup> See complaint in *NEPGA v. ISO-NE*, Docket No. EL10-50-000, at 1-2, footnotes omitted ("The Complaint replicates our Protest in Docket No. ER10-787-000, making only a few additional narrow points. . . . We file in this separate complaint proceeding, in addition to filing the Protest, in order to eliminate any argument that the relief we seek cannot be granted in response to our Protest, but only in response to a separate complaint") and complaint in *PSEG v. ISO-NE*, Docket No. EL10-57-000, at 2, footnotes omitted ("Joint Complainants file this separate Complaint in order to remove any potential procedural obstacles that would prevent the Commission from considering the fixes to the current FCM construct proposed by Dr. Bidwell in his attached affidavit, as well as the alternatives proposed by Joint Complainants in their protest to the FCM Revisions").

<sup>8</sup> 75 FR 9889 (2010).

<sup>9</sup> 75 FR 16096 (2010).

<sup>10</sup> 75 FR 18496 (2010).

### **III. Discussion**

#### **A. Procedural Issues**

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the notices of intervention and the timely filed unopposed motions to intervene in all three dockets serve to make the entities filing them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2009), we will grant the motions to intervene out of time in all three dockets, as granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest, comment or answer unless otherwise ordered by the decisional authority. We will accept the answers filed in these three proceedings because they have provided information that assisted us in our decision-making process.

#### **B. Overall Summary of the Commission Decision**

15. We find certain aspects of the Rules Changes Filing to be just and reasonable, as set forth in P 16 below, and we accept those provisions without suspension. Our preliminary analysis indicates that the remainder of the Rules Changes Filing has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. In consideration of the fact that ISO-NE must conduct its next FCA in August 2010, and of the uncertainty that would result from not having replacement tariff provisions in place to govern that auction, we will accept those remaining proposed tariff provisions for filing, suspend them for a nominal period, and make them effective April 23, 2010.<sup>11</sup> We will require the parties (both the Filing Parties and parties protesting the Rule Changes Filing) to make further arguments regarding most of those remaining aspects of the Rules Changes Filing, in a paper hearing, by submitting briefs as described below. We anticipate issuing an order

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<sup>11</sup> We note that while under section 205 of the FPA "the Commission may . . . require [a utility] to refund . . . such portion of such increased rates or charges as . . . shall be found not justified," the Commission has wide discretion in considering remedies. To provide parties sufficient certainty regarding the August 2010 auction, we intend to make any changes to the FCM tariff provisions prospective only and thus do not intend to order refunds. *See PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275, at P 63 (2009) (noting, with regard to PJM's capacity market auction procedures, that "because of the need for certainty in the [capacity market] auction, the normal section 205 process of suspending the filing, subject to refund, while a hearing is conducted is often not available").

on the issues addressed in the paper hearing which will be effective only going forward for auctions after August 2010.

**1. Tariff Provisions Not Set for Paper Hearing**

16. We consider the stakeholder process leading to the proposed revisions to have been appropriate (P 36-37), and we accept the following proposed Rule Changes as just and reasonable (i.e., the following issues are not required to be considered as part of the paper hearing established in this proceeding): the proposal to develop both local resource adequacy (LRA) and transmission security analysis (TSA) based requirements for import-constrained Capacity Zones and to set the local sourcing requirement (LSR) at the higher of the two values (P 108); the general provision to decouple the FCA Starting Price from the Cost of New Entry (CONE) as detailed below (P 139); the proposed revisions to the rules governing the review of offers below 0.75 times CONE (P 156); the compensation of resources that cannot prorate for reliability reasons (P 163); and the clarifications concerning the obligations of resources without a CSO (P 169). Additionally, the Commission is not setting for hearing the non-rate issues contained in PP 184-191.

**2. Tariff Provisions Set for Paper Hearing**

17. We will require the Filing Parties to provide additional support for certain of the tariff provisions that they have proposed, and we will also require the parties opposing those proposed tariff provisions to provide additional support for their views. Further, so as to ensure that NEPGA and PSEG are able to obtain full consideration of the arguments and alternative proposals they have raised in their complaints, we will require them to raise those same concerns in the paper hearing in Docket No. ER10-787-000. We will therefore consolidate the three dockets (Docket Nos. ER10-787-000, EL10-50-000 and EL10-57-000).<sup>12</sup>

18. As further discussed in the body of the order, the issues that we will consider in the paper hearing, and as to which we request briefing from the parties, are as follows:

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<sup>12</sup> On April 22, 2010, ISO-NE moved to dismiss the PSEG complaint in Docket No. EL10-57-000 on the basis that the complainants have failed to demonstrate why their concerns will not be adequately addressed in Docket No. ER10-787-000 or Docket No. EL10-50-000. The relief sought by ISO-NE is mooted by our decision to require all parties to present their arguments and concerns in the paper hearing we are ordering here.

a. **Issues Relating to Alternative Price Rule (APR)**

- 1) Triggering conditions, if any, for the APR
- 2) Treatment of OOM resources that create capacity surpluses for multiple years
- 3) Appropriate price adjustment under APR

b. **Modeling of Capacity Zones**

- 1) Whether zones should always be modeled
- 2) Whether all de-list bids should be considered in the modeling of zones
- 3) Whether a pivotal supplier test is necessary
- 4) Whether revisions to the current mitigation rules would be necessary in order to model all zones

c. **Proper Value of CONE**

Whether the value of CONE should be reset

**3. Price Floor**

19. The extension of the price floor for three further commitment periods (those governed by FCA ## 4, 5 and 6) has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. As discussed below at P 97, the Commission generally does not approve of price floors, but recognizes that as a transitional mechanism to offset the flaws in the existing APR, an extension of the price floor in this case may be appropriate. We are therefore accepting, suspending, and placing into effect this aspect of the Rules Changes Filing. We expect, however, that in the Commission's final order accepting an appropriate APR mechanism, we will terminate the price floor coincident with implementation of the new APR.<sup>13</sup> We are therefore not setting for paper hearing the question of whether a price floor for the FCM is appropriate.

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<sup>13</sup> As noted above, the Commission anticipates issuing an order on APR and related questions in time to govern FCA # 5.

#### 4. Paper Hearing Procedures

20. We will accept the proposed Rule Changes to allow market rules to be in place for the August 2010 FCA. Because, however, we recognize that the proposed tariff revisions, and the comments and protests thereto, raise concerns that the February 22 filing has not fully addressed, we will require the parties to address those concerns in a paper hearing before we issue a final order on those tariff provisions.<sup>14</sup>

21. The dates for submissions will be as follows:

- a) On July 1, 2010, First Briefs must be submitted on the issues identified in P 18 above. The Filing Parties must submit briefs addressing our questions, either supporting their prior proposal, or making new proposals. Any parties who wish to support the Filing Parties' proposed revisions must submit briefs at that time as well. Parties with other positions on those issues (such as the complainants in Docket Nos. EL10-50-000 and EL10-57-000) must simultaneously submit briefs supporting their views.
- b) On September 1, 2010, all parties who wish to do so may submit Second Briefs, in which they respond to the arguments made in the First Briefs.
- c) The Commission anticipates issuing an order in sufficient time to allow all parties to implement our findings prior to FCA #5.<sup>15</sup>

22. Since the paper hearing will be under both section 205 and section 206 of the FPA, we note that the Filing Parties have the burden under section 205 of proving that their proposed Rule Changes are just and reasonable. To the extent that the complainants in

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<sup>14</sup> We note that the Commission has "broad discretion in determining how best to handle related, yet discrete, issues in terms of procedures" (Louisiana Public Service Comm. v. FERC, 482 F.3d 510, 524 (D.C. Cir. 2007), *citing Mobil Oil Exploration & Producing S.E., Inc. v. United Distrib. Cos.*, 498 U.S. 211, 230 (1991) and "[t]he agency abuses that discretion only when its manner of proceeding significantly prejudices a party or unreasonably delays a resolution," *GTE Serv. Corp. v. FCC*, 2782 F.2d 263, 274 (D.C. Cir. 1986).

<sup>15</sup> The paper hearing will overlap with the 18-month stakeholder process that the Filing Parties state that they propose to commence, *see* P 7 above. In light of our order to participate in this paper hearing, it is possible that the Filing Parties may think it appropriate to suspend or in other ways alter their intention to resolve these issues through an internal stakeholder process; that decision, however, is in the hands of the stakeholders and we express no opinion on that question.

Docket Nos. EL10-50-000 and EL10-57-000 are asserting that the proposed Rule Changes are not just and reasonable, the burden will be on the Filing Parties to support their proposals. Under section 206, however, the burden is on the complainants in Docket Nos. EL10-50-000 and EL10-57-000 to support any challenges to tariff provisions which have previously been found just and reasonable<sup>16</sup> and any alternative that they propose to such provisions.

23. We strongly encourage the Filing Parties and their stakeholders to continue to negotiate so that these questions may be resolved by consensus to the greatest extent possible. Upon request, the Commission will appoint a settlement judge to assist with such negotiated resolution. It is our intention that, if practicable, we will issue an order terminating the transitional market rules and accepting longer-term market rules before March 1, 2011.

### **C. Challenges to FCM Working Group and Stakeholder Process**

24. As noted previously, ISO-NE formed the FCM Working Group as a result of issues identified in both ISO-NE's FCM Phase II Filing in December 2008 and the IMM Report in June 2009, when the IMM issued an initial assessment of the FCM and corresponding recommendations. The FCM Phase II Filing identified certain issues with the FCM design that required further attention, such as application of the TSA and its requirements, how Capacity Zones and LSRs are established, and aligning the standards to be used in establishing those zones and requirements with those used in performing reliability reviews. The FCM Working Group, which was created at the request of state regulators, addressed issues from both filings, other concerns to Participants, and recommended Rule Changes related to the APR as required by section III.13.2.5.2.5(f) of the ISO-NE Tariff.<sup>17</sup>

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<sup>16</sup> As noted in footnote 1, the current FCM market rules were previously accepted as just and reasonable. Thus, any party now challenging those market rules under section 206 must first show that those rules are unjust and unreasonable.

<sup>17</sup> ISO-NE Tariff § III.13.2.5.2.5(f) requires ISO-NE to "evaluate, in consultation with NEPOOL stakeholders and state utility regulatory agencies, whether to modify the treatment of de-list bids rejected for reliability reasons." The results are required to be filed by May 17, 2010; that requirement, however, has been met by the instant Rule Changes.

## 1. Protests, Comments, and Answers

25. The majority of the objections to the proposed revisions are made in the protests of the generation sector, and the complaints filed by NEPGA and PSEG. We respond to the arguments made by generators in the subsequent sections on each issue.

26. As a general matter, state regulators (NECPUC, CT DPUC, MA AG, New Hampshire Commission, CT OCC, and Vermont Parties) and Public Systems support the FCM Working Group process and urge acceptance of the filing in its entirety. CT DPUC, MA AG, New Hampshire Commission, and Vermont Parties support the proposed Rule Changes and request that the Commission approve the Rule Changes as a package without any further modifications, as they represent a balanced outcome for load and supplier interests and preserve the spirit of the FCM settlement. NECPUC and MA AG stress that the changes are the result of an extensive stakeholder process, in which concessions were made to accommodate all sides.<sup>18</sup> MA AG, CT OCC, and Public Systems support the changes because they incorporate recommendations from ISO-NE's IMM.

27. CT DPUC, NECPUC, and Public Systems state that the FCM has successfully achieved the Commission's objectives, because it attracts and retains ample capacity to assure reliability. According to those parties, the FCM has successfully kept existing generating resources in the market while also attracting new resources such as demand response and renewable generation that diversify New England's capacity resource portfolio. CT DPUC also asserts that the FCM has nearly eliminated the need for out-of-merit Reliability Must Run (RMR) contracts. Public Systems argue that the generation sector has failed to show the need to disrupt this well-functioning market, and they urge the Commission to resist calls to do so. CT DPUC also argues that ISO-NE is hesitant to make dramatic market design changes since doing so would alter the fundamental way prices are formed in the FCM's descending clock auction and would lock in higher, non-competitive, administratively dictated prices, which would give existing generators greater ability to control prices.

28. Transmission owners similarly support the filing. NU and NSTAR support the proposed Rule Changes as part of a compromise package that fairly balances competing interests and that, although some generators will argue that the Rule Changes do not go far enough, NU believes suppliers are significantly better off than if no changes were made to the FCM rules. NU also states that it believes the Commission should defer

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<sup>18</sup> NECPUC notes that concessions to the generation sector included the retention of a floor price for future auctions in exchange for also keeping the past OOM capacity in the auctions and the payment of full price to generators who cannot pro-rate their CSOs for reliability reasons.

action on any proposed modifications subject to the outcome of the continued future stakeholder processes regarding improvements to the FCM that ISO-NE has proposed. In their answer, National Grid and UI note that, at the time the Commission approved the original FCM settlement, it was mindful of the high level of consensus that existed among the stakeholders; they assert that a similar level of consensus led to the development of the rule changes filed in this docket, with all NEPOOL stakeholders and state parties participating in the stakeholder process and that only one sector (generation) is in substantial disagreement with the filing. National Grid states that the generators' alternative proposals should not be considered in this docket and that the only question before the Commission is whether the Rule Changes filed by the Filing Parties, with the agreement of a significant majority of the stakeholders, are just and reasonable.

29. Several of the generator parties argue that the Rule Changes are not balanced. For example, EPSA believes that the NEPOOL stakeholder process frequently produces skewed outcomes to the benefit of load interests and the detriment of the generation and supplier sectors. EPSA argues that the current stakeholder voting structure does not have sufficient balance to reach consensus positions. EPSA cites the results of the FCM market rule changes as proof of the imbalance – 70.1 percent and 71.69 percent in favor of section 12 and section 13 revisions, with opposition coming from the entire generation sector and further opposition or abstention from the supplier sector.<sup>19</sup> EPSA states that the imbalance results in unsustainable results that harm the entities that make significant infrastructure investments and are expected to continue to make such investments. EPSA notes that the Commission has recently reinforced the fact that a voting majority supporting or opposing a particular proposal makes it neither the best proposal, nor one that is just and reasonable.<sup>20</sup> Similarly, GDF Suez notes that the sectors with the greatest capital investment in this market are consistently overruled pursuant to the current governance voting system, which has helped to create the many flaws that continue to characterize the FCM.

30. CT OCC counters that some generator proposals are intended to penalize states that seek to encourage the development of new capacity resources through long-term contracts (which it considers an effective means of incenting needed capacity resources), and requests that the Commission avoid any actions that would go beyond the filing in discouraging long-term contracting. MA AG recognizes that the Rule Changes do not resolve all of the remaining issues regarding the FCM's design, but states that ISO-NE has committed to address these concerns through the stakeholder process in the near future.

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<sup>19</sup> EPSA Protest at 8.

<sup>20</sup> See *ISO New England Inc*, 130 FERC ¶ 61,105 (2010) (ICR Order).

31. In its answer, CT DPUC states that the generation sector substantially supported the principles behind the current FCM rules at the time that the Commission accepted the FCM settlement and only challenges those principles now because those rules are working against their interests. Thus, CT DPUC argues that the Commission should defer to the stakeholder process in this case and find just and reasonable the resulting package of FCM modifications.

32. In ISO-NE's answer, it states that challenges to the governance voting structure exceed the scope of a proceeding under section 205 of the FPA. NEPOOL similarly states that given that some of the changes proposed to its current market rules were designed to accommodate capacity sellers in the region, the suggestion that an entire sector was shut out of the process on the basis that it failed to achieve all of its goals in the stakeholder negotiations is simply wrong and lacks support and credibility. NEPOOL argues that its current voting structure (which is not being challenged here) is the product of the Commission's insistence that no business interest in New England have a controlling voting weight. NEPOOL argues that this is the wrong proceeding, time, and place collaterally to attack the governance process achieved in New England after more than a decade of negotiation and litigation, and that attack should be summarily rejected; thus, NEPOOL urges the Commission to reject clearly and definitively any suggestion that the stakeholder process is flawed.

33. NEPOOL acknowledges that many of the Rule Changes may not fully address the problems they are intended to solve, but points out that those changes benefit all parts of the market – including the generation sector, in that they retain the price floor for a limited period of time and provide a higher price to generators who are not permitted to prorate capacity for reliability reasons. It also states that the Rule Changes address the problem of excessive OOM capacity distorting the market price (although NEPOOL also notes that the IMM found that it was the excess amount of all capacity, not just OOM capacity, that caused prices to fall to the market floor in the first two auctions). Further, NEPOOL states that this is not the proceeding to weight the Rule Changes against alternative or additional changes.

34. The Joint Filing Supporters state in their answer that, given the comprehensive stakeholder working group process specifically constructed to consider recommendations for possible FCM design improvements, the positive super-majority vote at NEPOOL, and support from ISO-NE and NECPUC, the Commission should defer to the stakeholder process in this case and find just and reasonable the resulting package of FCM modifications.

35. In its answer, NEPGA states that the load parties sidestep the real issue – bidding into the auctions below cost – by erroneously claiming that existing generators are seeking a ban on subsidy programs. NEPGA argues that the parties omit any justification

for why the below-cost bids resulting from this procurement should be allowed to artificially suppress wholesale market prices.

## 2. Commission Determination

36. EPSA argues that the current stakeholder voting structure does not have sufficient balance to reach consensus positions, and some generator parties argue the Rule Changes are not balanced because the majority of NEPOOL participants are net purchasers. However, no party has alleged that the stakeholder process was not conducted properly. Further, a minority position held by a single unified sector (as, here, by the generator sector) may simply indicate financial interests, and is not necessarily representative of a flawed stakeholder process or a skewed result.<sup>21</sup> It appears that the instant filing is the outcome of a stakeholder process that was properly conducted under NEPOOL's governance procedures. As several parties have pointed out, this filing is not the appropriate vehicle to make changes to the NEPOOL governance process.

37. It is clear that the proposed Rule Changes do not represent a broad consensus among all sectors and protestors have raised important issues that require further consideration. As discussed above, the Commission is accepting the Filing Parties' revisions and establishing a paper hearing proceeding to address these issues.

### D. Revisions to the Alternative Capacity Price Rule

#### 1. Background

38. The current APR adjusts the Capacity Clearing Price upward, above the price that would otherwise arise, when OOM Capacity offers into the market, and when three additional conditions are met:

- a) New capacity is needed to meet the Installed Capacity Requirement (ICR) – that is, the ICR exceeds the amount of existing capacity;
- b) The total amount of capacity offered into the FCA at the beginning of the auction is adequate to meet the ICR; and
- c) The amount of OOM Capacity exceeds the need for new capacity – and thus, no new in-market capacity clears the market.

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<sup>21</sup> See ICR Order, 130 FERC ¶ 61,105 at P 87 (approving filing even though the End User Sector opposed it, stating, "We find no merit in Mass AG's argument that 'it is telling that the entire End User Sector, the interested parties that ultimately pay more for the cost of additional capacity' voted unanimously to support the NEPOOL proposal").

When all of these conditions are met, the APR resets the Capacity Clearing Price upward to the lower of (i) CONE or (ii) a penny below the lowest price offered by a new in-market resource, i.e., the price at which the last in-market resource withdrew from the auction.

39. In the first two FCAs, a total of 4,034 MW of new capacity cleared in the market, of which 1,197 MW were new generating resources.<sup>22</sup> In the first three auctions, the IMM identified a cumulative total of 3,351 MW of OOM Capacity.<sup>23</sup> Despite the entry of these new resources, the APR was never triggered, and the Capacity Clearing Price in each auction was set at the floor – i.e., 60 percent of CONE. The APR was not triggered because, in each FCA, the amount of existing capacity exceeded the ICR. In addition, the IMM states that none of the capacity that was identified as OOM affected the prices in the first three FCAs; the auction prices would have been set at the price floor even if none of this capacity had participated in the auctions.<sup>24</sup>

## 2. Filing Parties' Proposal

40. The Filing Parties state that one of the FCM design goals is to ensure that the FCA clearing price reflects the market cost of new entry when new entry is needed. The Filing Parties note that when significant quantities of OOM resources clear in the FCA and new entry is needed, the clearing price may not reflect the cost of new competitive resources because new resources are completely displaced by OOM resources that are willing to offer into the FCA at a price well below the cost of new resources supported only by market revenues. OOM capacity is capacity whose offer price, in the opinion of the IMM, is below the resource's long run average costs net of expected non-capacity market revenues.<sup>25</sup> The existing FCM rules include provisions for an APR,<sup>26</sup> which was originally intended to ensure that the capacity clearing price in the FCA reflects the cost

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<sup>22</sup> See IMM Report, Table 4-3.

<sup>23</sup> See ISO-NE Answer filed March 30, 2010 (March 30 Answer), Attachment A, Affidavit of David LaPlante (LaPlante Affidavit), Table 1, March 30, 2010.

<sup>24</sup> See IMM Report at 25.

<sup>25</sup> See ISO-NE Tariff § III.13.1.1.2.6.

<sup>26</sup> The existing APR process can be summarized as follows. The IMM reviews, in advance, the offer prices of all new resources that wish to submit offers below 0.75 times CONE. If the IMM determines that the offer of such a resource is not consistent with its long run average costs net of expected net non-capacity revenues, that resource is considered to be OOM Capacity.

of new entry when entry is needed, and to help prevent OOM capacity from artificially depressing market prices.<sup>27</sup>

41. The Filing Parties propose to expand the FCM rules to include three distinct alternative capacity price rules: APR-1, APR-2, and APR-3. The rationale for these changes, according to the Filing Parties, is to address situations in which certain capacity may inappropriately depress auction clearing prices, and that are not properly dealt with in the current market rules.

42. Under APR-1, cleared Permanent De-List Bids would be included in the triggering conditions. Under the existing rules, the first triggering condition is that the ICR exceeds the existing capacity. Under the proposed APR-1, the condition would be revised so that the ICR would exceed the amount of existing capacity remaining after deducting two types of De-List Bids. The first type includes Permanent De-List Bids that clear in the auction. The Filing Parties' witness, Dr. Ethier, states that Permanent De-List Bids should be considered because they increase the need for new capacity. The second type includes Permanent De-List Bids and Non-Price Retirement Requests rejected for reliability reasons. Dr. Ethier states that this second type of bid has the same effect on the auction price as other OOM capacity, since it is retained in the auction at a price below its costs. The Filing Parties argue that owners of these resources are unlikely to exercise market power, since their decisions to leave the market would be permanent. The Filing Parties are not proposing to consider other types of de-list bids because the resources submitting such bids could more easily exercise market power, since their decisions to leave the market would not be permanent.

43. The Filing Parties state that APR-2 is intended to account for situations in which a sufficiently large amount of OOM capacity in previous FCAs may eliminate the need for new capacity, and thus depress the price in a subsequent FCA. The Filing Parties state that APR-2 is designed to trigger the pricing adjustments when new capacity would have been needed but for the OOM resources that cleared in prior FCAs. Specifically, APR-2 is triggered when:

- a) No new capacity is needed;
- b) There is adequate supply to meet the ICR; and
- c) At the Capacity Clearing Price, the amount of New Capacity Required plus the amount of Permanent De-List Bids clearing in the FCA plus the amount of Carried Forward Excess Capacity is greater than zero.<sup>28</sup>

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<sup>27</sup> See *ISO New England Inc.*, 115 FERC ¶ 61,340, at P 113 (2006).

44. The Filing Parties propose to consider excess OOM capacity only on a prospective basis for FCAs that are held after this proposal is considered by the Commission, i.e., for FCA # 4 and later FCAs. Thus, the amount of Carried Forward Excess OOM Capacity for the first three Capacity Commitment Periods entering FCA # 4 would be considered zero. In addition, the Carried Forward Excess OOM Capacity would not be carried forward for more than six years. In the Filing Parties' view, this limitation reflects a concern that, if load growth is zero or negative over an extended period, setting an administrative price that reflects the cost of new entry far in the past would not provide a useful or accurate price signal. The Filing Parties state that a similar limit is in place in New York Independent System Operator (NYISO).

45. The Filing Parties propose to retain the existing pricing adjustments when APR is triggered by either APR-1 or APR-2. By contrast, APR-3 would apply a different price adjustment when it is triggered, as described below.

46. The Filing Parties state that APR-3, like APR-1, is designed to account for the price impact of rejected de-list bids. As noted in the discussion of APR-1, above, the Filing Parties argue that rejected de-list bids depress the clearing price under the current rules because the resource is retained in the auction at a price below its cost -- indeed, at essentially a zero price. Unlike APR-1 or APR-2, APR-3 would not be triggered when new capacity is either needed or would be needed even after considering Carried Forward Excess Capacity. When new capacity is not needed, according to the Filing Parties, a de-list bid from an existing resource would generally be expected to set the FCA price, but the price would be depressed if de-list bids are rejected for reliability reasons and retained in the FCA below their de-list bids. In these situations, APR-3 would adjust the clearing price through a formula. The formula begins by determining the price that would have resulted in the FCA if the rejected de-list bids had not been rejected. If the capacity price, before adjustment, is less than 0.6 times CONE, ISO-NE would then develop a demand curve where each price-quantity pair on the curve results in the same total costs as the price-quantity pair that would have resulted if the rejected de-list bids had not been rejected. The price would then be set at the intersection of the aggregate supply curve and this demand curve.

47. The Filing Parties state that in the absence of market power concerns, the APR-3 mechanism could be applied at any price level where rejected de-list bids equal or exceed the excess supply in the FCA. However, because the IMM has expressed concern about relying solely on its review of de-list bids to detect and prevent the exercise of market

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<sup>28</sup> Carried Forward Excess Capacity is OOM capacity from a prior FCA that carries forward (Carried Forward Excess OOM Capacity), along with other excess capacity that carries forward due to the rationing rules.

power, the Filing Parties propose to limit APR-3 to triggering at price levels that are likely to be reflective of true going-forward costs (below 0.6 times CONE).<sup>29</sup> The Filing Parties contend that the APR-3 mechanism triggers market power concerns because it creates the potential for a resource to get paid at above-market rates<sup>30</sup> and also to affect clearing prices through the withholding of certain resources, potentially raising the price paid to its other resources.

### **3. Protests, Comments and Answers**

48. The vast majority of the comments and protests addressing the Filing Parties' proposed Rule Changes focused on the proposed APR revisions.

49. Potomac Economics, the independent External Market Monitor (EMM) for ISO-NE, states that in accordance with section 10.4.2 of the NEPOOL Participants Agreement, NEPGA requested that the EMM evaluate the proper design of the APR, including the proposed Rule Changes affecting APR. The EMM states that it has agreed to conduct the requested analysis and that its comments here represent only an initial analysis. While noting that the proposed APR revisions are a general improvement, the EMM states that it disagrees with ISO-NE's proposed amendment to APR-1 that would categorize rejected de-list bids as OOM resources, and similarly argues that APR-3 (which establishes an administrative price when new capacity is not needed but de-list bids are rejected for reliability) should not be approved at this time. To support this argument, the EMM states that rejected de-list bids and OOM resources are fundamentally different and should not be considered similar for purposes of the FCA. Rather, the EMM argues that a rejected de-list bid implies that there is an un-modeled reliability requirement in the market. As a result, the EMM states that adjusting prices market-wide to improve the price in a limited area (as proposed under APR-3) is not a preferred solution. Instead, the EMM contends that it would be better to include this reliability requirement by modeling all of the necessary capacity zones.

50. In addition, the EMM notes that the proposed APR changes fail to trigger when new capacity is not needed or when the OOM quantity is less than the amount of new capacity needed, even though in both cases OOM capacity can substantially lower prices without an APR adjustment. The EMM also highlights that the proposed APR pricing provisions for APR-1 and APR-2 (to set the price at the lower of CONE or the lowest-cost uncleared new supply offer) may result in a price that is significantly lower than the

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<sup>29</sup> The Filing Parties note that experience has shown that large quantities of de-list bids have not been submitted above 0.6 times CONE.

<sup>30</sup> Resources with de-list bids rejected for reliability are compensated at their de-list bid.

new supply offer that would have cleared “but for” the OOM capacity. In order to address these APR issues, the EMM recommends that the Commission establish a stakeholder process with a 9-12 month timeframe.

51. NEPGA filed an extensive protest on the proposed APR Rule Changes (along with an alternative APR proposal), that is representative of the position of the majority of the generator parties, including Joint Protesters, IPA, Boston Gen, GDF Suez, Dynegy, BG Entities, and NextEra. NEPGA’s protest is premised on its assertion that the current “unjust and unreasonable” APR has failed to address thousands of megawatts of OOM supply, artificially distorting FCM prices downward and resulting in an oversupply of capacity during the first three FCAs. NEPGA contends in essence that under the current APR, monopsony power allows for intentional price suppression (through load contracting for capacity that offers at well below its cost) that could constitute market manipulation under section 222 of the FPA.<sup>31</sup> NEPGA states that such a pursuit is distinct from legitimate state policy objectives to pursue certain programs.

52. NEPGA argues that the current APR is flawed since it has loopholes in the triggering mechanism, including that it applies only when new capacity is needed, and then only for that FCA – in the next FCA, the same “uneconomic” capacity is deemed to be existing capacity and assumed to be unable to suppress prices. In addition, NEPGA states that the current APR pricing mechanism (retained for APR-1 and APR-2 under the proposal) only “walks back” to the offer price of the least expensive new resource not committed in the auction, while thousands of megawatts of OOM capacity can drive down the supply curve, resulting in small price corrections for potentially large price distortions.

53. NEPGA argues that the substantial amount of current OOM supply represents an exercise in price discrimination – an effort to pay new capacity a higher price and existing capacity a lower price. NEPGA notes that some parties (e.g., CT DPUC) have entered into contracts with new resources that expressly require these resources to bid into the FCM below costs to suppress the FCA clearing price. NEPGA contends that this will ultimately lead to market failure, eliminating competitive entry due to suppressed capacity prices, and requiring load to support all new entry through bilateral contracts under which load assumes full ownership risk. Further, NEPGA avers that the suppression of FCM prices is economically inefficient, leading to incorrect investment, retirement, and consumption decisions. Boston Gen contends that CT DPUC designed its Request For Proposals for new units with the intent of artificially suppressing FCM clearing prices, as the CT DPUC master agreement requires the contracted capacity to be

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<sup>31</sup> NEPGA states that it is not asking the Commission to determine whether this behavior in fact constitutes market manipulation.

bid in a manner that will depress the FCM market clearing prices. Boston Gen asserts that CT DPUC's conduct had the purpose and effect of artificially depressing FCM market clearing prices and as such, it constitutes market manipulation within the meaning of section 222 of the FPA and section 1c.2 of the Commission's regulations.

54. NEPGA argues that the Filing Parties' proposed APR revisions will similarly fail to address the distorting effect of OOM capacity. By contrast, NEPGA argues that under its proposal (which it claims uses mitigation measures in place in PJM Interconnection, L.L.C. (PJM) and NYISO), any state initiative that is not motivated by a desire to artificially suppress prices will remain unconstrained, receiving a relatively higher price. Further, NEPGA contends that ISO-NE's offer to have another stakeholder process to address these identical issues represents an admission that its proposed revisions fail to address the OOM issue and reveals the political difficulties of this issue. Instead, NEPGA maintains that any resolution of this issue must be in place for FCA # 4, scheduled for August 2010. NEPGA argues that if the market design flaws it highlights here concerned supplier market power, those concerns would be an immediate priority for the Commission.

55. Citing the flaws in the proposed Rule Changes, NEPGA notes that APR-1 still requires new entry in order to be triggered, a circumstance that is unlikely in light of New England's capacity surplus. Similarly, NEPGA argues that APR-2's six year "carry forward" mechanism simply requires that potential monopsonists add just enough OOM supply to outlast the rule. In addition, NEPGA notes that the proposed Rule Changes fail to address the existing OOM capacity from the first three FCAs, setting the carried forward excess capacity under APR-2 to zero for the fourth FCA, despite the fact that no retroactivity issue applies here; thus, NEPGA states that it is concerned with future FCAs and how they will be mitigated. Also addressing this point, Boston Gen argues that the Filing Parties' proposal should be rejected because it would legitimize and codify into the FCM rules past exercises of monopsony power and market manipulation.

56. NEPGA argues that APR-3, similarly to APR-1, is a marginal improvement but not sufficient since it also requires new entry. NEPGA states that APR-3 also mistakenly starts the demand curve at 0.6 times CONE (citing market power concerns) even though the Commission has agreed that dynamic de-list bids (those below 0.8 times CONE) do not constitute market power.

57. Last, NEPGA contends that there are substantial inaccuracies in the existing classification of units as OOM or in-market. Specifically, NEPGA contends that there are numerous resources that should be classified as OOM but currently are not. NEPGA avers that since the proposed Rule Changes clarify how the IMM will review potential OOM capacity offers below 0.75 times CONE, corrective action should be taken to avoid ineffective mitigation. Similarly, Boston Gen contends that ISO-NE fails to provide comparable treatment of generation and demand resources, or to properly account for

demand resources' costs for OOM calculations, because the FCM rules apply a different and incorrect measure of demand resources' costs. Boston Gen asserts that the incorrect standard for demand resources' costs for OOM purposes further distorts the already "dysfunctional" market by providing a loophole through which OOM Demand Resources can flood the market in the future.

58. NEPGA offers its own APR proposal, which it states is simple by comparison to that of the Filing Parties and similar to the APR mechanisms employed by PJM and NYISO. NEPGA states that its proposal employs a demand curve similar to APR-3 in all cases where (below 0.75 times CONE) OOM capacity offers into the market, replacing OOM offers with asset class-specific estimates of CONE.

59. As relief, NEPGA requests that the Commission reject the Filing Parties' proposed APR revisions, find NEPGA's proposal to be just and reasonable, and order ISO-NE to make a compliance filing incorporating NEPGA's proposal before FCA # 4. In addition, NEPGA requests that the Commission direct ISO-NE's IMM to assess the existing capacity resources in New England to determine whether they are OOM resources as NEPGA contends that the real level of OOM supply is far greater than currently assumed. If the Commission declines to approve NEPGA's proposal, NEPGA seeks an expedited hearing on the question of which APR mechanism should be implemented, to include which resources should be classified as OOM. NEPGA states that it is willing to support Settlement Judge proceedings for a limited time, such as 60 days. Alternatively, NEPGA states that the Commission should order an expedited paper hearing to resolve the issue on a fast-track basis. Last, if the Commission instead would "again" leave the OOM issue to the stakeholder process, NEPGA requests explicit guidance and a fast track deadline.

60. CT DPUC states that the APR changes are reasonable, because the FCM settling parties crafted the APR while assuming that a new combustion turbine or combined cycle plant would typically set the CONE and FCA clearing price each year when new capacity was needed to meet reliability requirements. CT DPUC explains that the FCM settling parties did not anticipate the effect that alternative resources would have on lowering the clearing price, nor the effect that policy and financial market developments would have on the conditions for triggering APR – CT DPUC argues that financial markets have demanded long-term bilateral contracts in order to finance new generating facilities. CT DPUC states that given recent economic and environmental developments, most, if not all, new generation resources in New England will be backed by multi-year bilateral contracts that pay the developers independently from the FCM. CT DPUC argues that because the APR was designed assuming that FCM revenue streams would be sufficient to stimulate new investment, and because this assumption no longer holds true, the Rule Changes to the APR are just and reasonable. CT DPUC urges the Commission to reject any proposal to expand the APR beyond the instant Rule Changes.

61. CT DPUC also argues that the new APR-2 is reasonable, because the fixed, six-year carryover period creates certainty and transparency and permits market participants and state regulators to estimate the impact of a particular bilateral contract. CT DPUC notes that APR-2 also properly excludes OOM capacity from the first three FCAs, since market participants and state regulators relied on the rules that were in place during these first three auctions. Additionally, CT DPUC states that the Rule Changes appropriately include in the definition of OOM capacity Permanent De-List Bids and Non-Price Retirement requests that ISO-NE rejects for reliability reasons, and properly excludes rejected single-year Static and Dynamic De-List Bids due to the potential for pivotal supply to deliberately trigger the APR mechanism.

62. CT OCC and CTAG state that they are concerned over the aspects of the Joint Parties' proposal that are intended to penalize states that seek to encourage the development of new capacity resources through long-term contracts. CT OCC and CTAG believe that long-term contracts are an effective and practical means of incenting new and needed capacity resources. CT OCC and CTAG request that the Commission avoid any actions that would go beyond that proposed in the filing in discouraging long-term contracting.

63. Maine Parties questions the necessity of the three proposed APRs, inquiring whether retaining the existing price floor would have been a simpler and more elegant approach. Maine Parties asks that ISO-NE and its stakeholders examine whether the price floor in the joint proposal might be adequate without the additional APRs. Citing the need for market-determined rather than administrative prices, Maine Parties states that the Commission should reject any proposed extension of the carry-forward limit beyond the seven-year period. Last, Maine Parties states that it is important that ISO-NE and its stakeholders further refine the definition of OOM resources so as to avoid classifying as OOM bilateral contracts that do not enter the auction for the purpose of lowering the price.

64. In its answer, ISO-NE states that the EMM and protesters have raised legitimate issues that require further consideration. However, ISO-NE argues that the protesters have not met their burden to reject the Filing Parties' section 205 filing, nor supported their claim that their alternative proposals are just and reasonable or that immediate action is required. Rather, ISO-NE notes that the premise that immediate action is required due to the "massive distortion" of OOM capacity is flawed; ISO-NE notes that the IMM indicates that each of the first three FCAs would have reached the price floor

even without the OOM capacity.<sup>32</sup> NEPOOL similarly notes in its answer that the proposed APR Rule Changes should be considered in light of the unchallenged fact that it was an excess of supply, and not OOM capacity that resulted in the first two FCAs clearing at the price floor. In addition, NEPOOL contends that consideration was in fact given to the significant OOM capacity that entered the first two FCAs, and an extension of the price floor is a reasonable compromise.

65. Further, ISO-NE states that claims by the generator parties that large volumes of in-market resources should have been reclassified as OOM are incorrect and unsupported since NEPGA witness Stoddard's analysis relies on three erroneous assertions: (1) that all of the 585 MW of new capacity treated as "existing" in the first FCA should have been treated as OOM, (2) that 2,778 MW of demand response would likely have been deemed OOM under the proposed Rule Changes, and (3) that the reduction in Net ICR that occurred between FCA # 2 and FCA # 3 would reduce (rather than increase) the surplus capacity.<sup>33</sup> Addressing the first assertion, ISO-NE states that the FCM rules expressly permitted certain to-be-constructed projects to be treated as existing in FCA # 1 and NEPGA has not demonstrated that this capacity was OOM. Addressing the second assertion, ISO-NE states that the IMM reviewed each demand resource in the qualification process to assess whether each offer was "in-market" and nothing in the proposed Rule Changes affects whether a particular project is in-market or OOM. Further, ISO-NE states that contrary to NEPGA's assertion, the majority of all demand response resources cleared in the FCAs came from private demand response providers, rather than from utility or state entities. Addressing the final assertion, ISO-NE states that a reduction in capacity will increase, rather than decrease, the capacity surplus. In summary, ISO-NE contends that NEPGA's argument concerning distorted FCA pricing due to OOM capacity requires that each of these assertions be accurate, but they are not. Thus, ISO-NE states that the Commission should not give any weight to NEPGA's argument.

66. Addressing NEPGA's proposed APR, ISO-NE states that a version of the proposal was considered in the FCM Working Group where two significant concerns were raised. First, ISO-NE states that NEPGA's proposal would require a significant expansion in the role of the IMM; NEPGA's proposal would require the IMM to determine a competitive offer for each resource below 0.75 times CONE. ISO-NE states that this would result in a more administrative means of offer determination than current versions of the APR and

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<sup>32</sup> ISO-NE highlights the IMM's finding that the surplus of cleared capacity above the ICR increased from 2,400 MW in FCA # 1 to 4,755 MW in FCA # 2, to 5,031 MW in FCA # 3, with large surpluses of net-of-cleared OOM-capacity surplus for each auction. ISO-NE March 30 Answer at 16-17 nn. 53-54, *citing* LaPlante Affidavit at P 5-6.

<sup>33</sup> LaPlante Affidavit at 2.

should be discussed with stakeholders. Second, ISO-NE notes that an earlier version of NEPGA's proposal raised concerns in the stakeholder process over incentives for large suppliers to strategically de-list; analysis has not been performed to determine whether those concerns still exist. Further, ISO-NE states that it is impossible to meet the protesters' requested deadline for any significant APR changes.

67. The Joint Filing Supporters reiterate the comments of CT DPUC, noting that future investment will not depend on expected FCM revenues, but will require "subsidies" or bilateral contract arrangements. The Joint Filing Supporters contend that these resources, which represent legitimate state policy initiatives, will likely be deemed OOM going forward, triggering the APR "virtually every year." As these programs are legitimate and necessary to develop long-term strategies to meet reliability needs at reasonable costs, the Joint Filing Supporters state that the Commission should reject the generators' efforts to portray these initiatives as intents to exercise market power – they state that many of these bilateral contracts stem from reliability concerns that were noted by the Commission and do not constitute manipulation. The Joint Filing Supporters argue that the Commission should not upset "fundamental" premises on which these contracts were based by treating these existing contracts as OOM on a going-forward basis. Further, addressing the surplus of capacity in New England, the Joint Filing Supporters contend that this stems from the failure of old and inefficient generators to retire, resulting in a proper lower FCM price. Last, the Joint Filing Supporters contend that the proposals to revise the APR offered by the generators are not based upon any new experience demonstrating that the APR is flawed but rather on provisions that were apparent when the APR was first approved.

68. In its answer, NEPGA argues that contrary to claims by ISO-NE's IMM, NEPGA's witness Stoddard never claimed that prices in the first three auctions would have been different without OOM entry and the prices may well have hit the floor regardless. Rather, NEPGA asserts that this does not mean that thousands of megawatts of existing OOM that have the ability to suppress prices for many years to come are not a critical issue that the Commission should address now. Further, NEPGA argues that the Joint Filing Supporters' consultant, Mr. Wilson, and his lone voice is not credible and should be given no weight because the EMM and other consultants unanimously support prompt action to take urgent additional steps to address OOM.

#### **4. Commission Determination**

69. APR is a market power mitigation rule intended to discourage buyers who have the incentive and ability to suppress market clearing capacity prices below a competitive level from doing so. We have previously accepted rules to address such uneconomic

entry in the capacity markets of ISO-NE, as well as in NYISO and PJM.<sup>34</sup> Our objective in accepting these provisions has been to ensure that the prices in capacity markets reflect the market cost of new entry when new entry is needed.

70. We agree with the EMM and the commenters that ISO-NE's existing APR does not fully meet this objective. For example, the existing APR provides a price adjustment for OOM resources only when there is a need for new capacity as reflected by an ICR that exceeds all existing capacity. But new capacity may be needed in other situations, such as when some existing capacity retires from the market. Moreover, we also agree with commenters that OOM resources can affect prices even when no new capacity is needed, by displacing what would otherwise be the marginal, price-setting existing resource. And we agree with commenters that the price adjustment under the existing APR does not always fully correct for the effect of OOM resources on the capacity price. That is, the existing APR does not establish the price that would have arisen had all of the OOM resources offered at prices that reflect their full entry costs net of in-market revenues. Thus, when OOM resources are offered into the market, the existing APR does not ensure that capacity market prices reflect the market cost of new entry when new entry is needed.

71. By accepting the Filing Parties' proposed changes to the APR while initiating further proceedings, we allow the proposed Rule Changes to be in effect for the August 2010 auction. Because the proposed Rule Changes do not address historical OOM capacity, it is unlikely that their adoption here would allow for the triggering of the proposed APR. However, the concerns raised by the EMM and the generators warrant further investigation and, therefore, we will require further proceedings, in the form of the paper hearing ordered herein, for the purpose of examining and resolving those concerns.

72. We agree with the general consensus among the commenters that the Filing Parties' proposal improves upon the existing APR in most or all respects, though these improvements may not have a significant effect for several years absent any revision stemming from the paper hearing. We agree that in determining whether new capacity is needed, it is reasonable to consider the amount of capacity that permanently de-lists in the auction, as is proposed in APR-1. That is because new capacity can be needed not only to meet load growth but also to replace capacity that de-lists. We also agree that the Filing Parties' proposal in APR-2 – to account for situations in which a sufficiently large

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<sup>34</sup> For ISO-NE, see *Devon Power LLC.*, 115 FERC ¶ 61,340, at P 113 (2006). For NYISO, see *New York Independent System Operator, Inc.*, 122 FERC ¶ 61,211, at P 100-106 (2008). For PJM, see *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331, at P 103-104 (2006).

amount of OOM capacity in one FCA eliminates the need for new capacity and depresses the capacity price in subsequent FCAs – improves upon the existing APR. In the absence of this change, it is possible that sponsors of OOM resources that represent a large share of the load could circumvent the application of the APR for several years by investing in sufficient OOM resources to maintain a continuous surplus of capacity over that period that avoids the need for new in-market capacity.

73. Not all commenters support the Filing Parties' third proposed change – to consider de-list bids rejected for reliability in the triggering conditions for APR-1 and APR-3. In particular, the EMM argues that the existence of such bids is evidence that the capacity market has ignored transmission constraints. In his view, an upward price adjustment such as the Filing Parties propose could be appropriate on the import side of the constraint (which is where the higher-priced capacity is needed), but not on the larger, export side of the constraint (where adequate supplies of lower-priced capacity already exist). He recommends rejecting this proposed change and, instead, creating more capacity zones so as to adequately reflect transmission constraints, while improving upon the market power mitigation measures. The Filing Parties and the EMM note that the preferred outcome would be for the auction to account for all transmission constraints, while ensuring that market power cannot be exercised. Both the Filing Parties and the EMM agree that the existing mitigation measures would not always prevent the exercise of market power in smaller zones in the capacity market. Until adequate mitigation measures are in place to address this issue, it may not be reasonable to model capacity zones that reflect all transmission constraints. Therefore, as with the other proposed APR rule changes, this change will be in effect for the August 2010 auction, but subject to further discussion in the paper hearing.

74. While the EMM and the generators agree that most or all of the Filing Parties' proposal is an improvement over the existing APR, they argue that the proposal does not adequately address their concerns. These concerns largely apply to three general issues: (1) the conditions that should trigger the APR, (2) the treatment of OOM resources that create surpluses for multiple years (including OOM capacity from prior FCAs), and (3) the appropriate price adjustment for OOM resources. We discuss each of these issues in turn below.

**a. The conditions that should trigger the APR**

75. The APR should be triggered when a buyer is in a position to exercise market power. A critical element is the determination of resources that are OOM because these are the resources that buyers might subsidize and offer non-competitively in order to suppress market-clearing prices. Under the current rules, as well as under the proposed revisions, the APR does not adjust capacity prices for cleared OOM resources, and thus, does not mitigate market power unless certain other conditions are also met – in particular, until there is a need for new capacity, or there would have been such a need

but for the entry of previous OOM resources. The EMM and the generators argue that these conditions are needlessly complex. They argue that OOM resources can lower capacity prices even if there is no need for new capacity, and thus, that price adjustments should be made whenever OOM resources bid below their actual net cost of entry.

76. We agree that the current restrictions on when the effects of potential buyer market power might be mitigated by the APR require further analysis and justification. A new OOM resource can suppress the market clearing price even when no new capacity is needed, by displacing a marginal existing resource that would otherwise have set the market price.<sup>35</sup> Thus, the existing APR triggering conditions, as well as the proposed changed conditions, may overlook situations in which an OOM resource may be used as an instrument of buyer market power. However, it may be reasonable to exempt OOM resources from mitigation when it is shown that they are not being used as a market power tool.

77. It would not be reasonable to trigger APR market power mitigation for an existing OOM resource in a given year if that resource has not inappropriately suppressed the market clearing price in that year. Therefore, we are not convinced that an APR price adjustment is necessarily reasonable in every year in which an OOM resource of any age clears the market. Thus, some limitations on when an OOM resource may trigger APR mitigation may be reasonable, in order to identify situations where an OOM resource is likely to inappropriately suppress the market price. Therefore, we direct parties to address further, in the First Briefs in the paper hearing discussed above, the appropriate conditions that should trigger mitigation under the APR. The briefs should include a discussion of how APR mitigation can be constructed so that load is able to hedge its capacity obligation outside of ISO-NE's capacity market with bilateral contracting while ensuring that such bilateral contracting does not distort the capacity market clearing price. Similarly, parties should address whether or how APR mitigation might accommodate OOM capacity introduced for resource adequacy or to satisfy public policy goals, such as the integration of renewable and demand response resources. In general, Commission precedent requires bright-line measures or tests to distinguish OOM capacity that should trigger APR mitigation (i.e., that used as a tool for price suppression)

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<sup>35</sup> Of course, in instances where the offer price of the displaced existing resource is below the price floor, the displaced resource would not have set the market price; rather, the price would have been set administratively at the floor. In these instances, the new OOM resource would not affect the market price.

from capacity that should not trigger such mitigation because it does not inappropriately suppress market-clearing prices below a competitive level.<sup>36</sup>

**b. The treatment of OOM resources that create surpluses for multiple years**

78. The current APR considers mitigation only when there are new OOM resources that have not cleared in a previous FCA. As discussed above, the Filing Parties' proposal would also consider OOM resources clearing in a given FCA that cleared in a previous FCA (with two limitations), and that created sufficient capacity surplus to displace new in-market capacity in the given FCA. The two limitations are that no OOM resource clearing in any of the first three FCAs would be considered, and that no OOM resource that first clears after the third FCA would be considered in more than six subsequent FCAs (for a total of seven FCAs).

79. As noted above, the generator parties argue that both limitations are unreasonable. They recommend rejecting the proposal to limit consideration of an OOM resource to no more than the current and six subsequent FCAs. Regarding the proposed exclusion of OOM resources in the first three FCAs, the generator parties argue that either the exclusion should be rejected, or else the duration of the proposed price floor extension should be increased to seven years (from the proposed three years). These two proposed exclusions involve different issues, since one applies to past OOM resources, which have already cleared at least one FCA, while the other applies to future OOM resources, which have not yet been built or cleared in an FCA. Therefore, we will address each exclusion separately.

80. There are at least two arguments for supporting the Filing Parties' proposal to exclude OOM resources clearing in the first three FCAs from consideration under the APR. First, as noted by CT DPUC, participants relied on the rules that were in place during the first three auctions, and it could be argued that any revisions addressing the treatment of these OOM resources should only occur on a prospective basis. Second, the Commission faced a similar issue in NYISO, where 1,000 MW of OOM capacity was built before NYISO adopted rules to address OOM investment. In the NYISO proceeding, the Commission approved NYISO's proposed rules to address future OOM investments, but concluded that the rules should not be applied to the 1,000 MW of OOM capacity that entered the market prior to adopting the rules.<sup>37</sup> In the *NYISO* case, the

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<sup>36</sup> See *New York Independent System Operator, Inc.*, 95 FERC ¶ 61,471 at 2 (2001).

<sup>37</sup> See *New York Independent System Operator, Inc.* 122 FERC ¶ 61,211, at P 118-119 (2008).

Commission found that mitigation policy should be directed at avoiding inefficient and unneeded entry.<sup>38</sup> Whether or not the entry of past resources was efficient or needed, their entry and their associated costs could not now be avoided, so mitigation would no longer be effective.

81. The generator parties offer the following in response. First, they argue that the large current surplus is destroying the business climate for merchant generation in New England, and unless a remedy occurs quickly, no merchant generation will be built in New England in the future, except with a long-term, cost-of-service contract. Moreover, in their view, the NYISO case differs from the instant New England situation because unlike in NYISO, an APR was already in place for ISO-NE to deter uneconomic entry when the New England OOM investments were made. Thus, according to the generator parties, while the APR was ineffective, its existence put OOM entrants on notice that conduct designed to distort market prices was disfavored and should not affect capacity market clearing prices.

82. Both sides of this issue raise important arguments on the treatment of historical OOM that require further consideration. We will therefore require the Filing Parties, and other parties with a position on this issue, to submit arguments on this issue to us in their First Briefs in the paper hearing discussed above.

83. Different considerations apply regarding the treatment of OOM resources that clear after the third FCA (i.e., FCAs held after the issuance of this order). A primary objective of APR mitigation is to address the suppression of market clearing prices due to OOM capacity. This is a principal reason for accepting the Filing Parties' proposal to consider the effect of OOM resources built after the issuance of this order that affect the capacity price in multiple years. A second, related reason is to remove a possible loophole in the application of the APR. That is, unless such effects are adequately considered, an entity that represents a sufficiently large share of ISO-NE load could avoid mitigation in future years (and, in principle, indefinitely into the future) by investing in sufficient OOM capacity so as to eliminate the need for new capacity. The Filing Parties argue that their proposed 6-year duration is sufficient in light of the expected load growth in relation to the current capacity surplus. In addition, they argue that a limit is reasonable so that if load growth were to be zero or negative over an extended period, setting an administrative price reflecting the cost of new entry would not provide a useful or accurate price signal. The generator parties respond that any duration limit would allow buyers to circumvent APR mitigation by investing in sufficient OOM resources to create a surplus that exceeds the duration limit. For example, they argue, if the duration is seven years, buyers can avoid APR mitigation by investing to create an 8-year surplus.

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<sup>38</sup> *Id.* at PP 100-101.

84. Both sides have raised important points about the duration of mitigation once an OOM resource has triggered APR mitigation. As the parties consider this issue further, we offer the following guidance. Our guidance is focused on determining when mitigation of a particular OOM resource used initially to suppress market clearing prices might be lifted. Two general options might be considered. First, surplus OOM capacity in one year could, in principle, suppress market clearing capacity prices for more than the seven years proposed by the Filing Parties, if the initial OOM surplus were substantial enough. The price suppressing effect could be offset by load growth or enhanced by load declines. Thus, mitigation could be applied for a period that accounted for the magnitude of the surplus introduced by the OOM capacity and the expected changes in load growth. Alternatively, APR mitigation could be lifted if offers from the OOM resource cleared in a FCA without replacing a lower cost in-market capacity resource. The statements submitted by the Filing Parties in their First Briefs should address these issues.

**c. The Appropriate Price Adjustment for OOM Resources**

85. As noted earlier, APR mitigation entails resetting the market price to the lower of (i) CONE, or (ii) a penny below the lowest price offered by a new in-market resource. The Filing Parties propose to continue to use these price reset rules when the conditions of either APR-1 or APR-2 are met, but to use different price reset rules involving the use of a demand curve when the conditions of APR-3 are met. The EMM and the generators argue that both the existing rules, and the Filing Parties' proposed rules as to APR-1 and APR-2, fail to fully adjust for the effect of OOM investment on the capacity price. We agree. For example, if an OOM resource were to displace a new, lower-social-cost, in-market resource, the current rules would reset the market price to CONE, even though the price that would have resulted in the absence of the OOM resource would be the offer price of the displaced in-market resource. On the other hand, and as explained in the previous section, the existing rules may reset the market price at a level above the level that would have resulted in the absence of the OOM resource in years when load growth is zero or negative (and thus, when the OOM resource displaces an existing resource).

86. As noted earlier, the generator parties propose a different method for resetting the capacity price that would provide a more substantial price adjustment for OOM capacity when establishing future capacity market prices. This method relies on a demand curve similar to the one proposed by the Filing Parties for APR-3. NEPGA argues that its proposal more accurately adjusts for the effect of OOM resources on the capacity price. This proposal would allow OOM resources to be cleared based on their as-submitted offer prices, and the cleared price and quantity would be at the intersection of the demand curve with the supply curve of as-submitted offer prices. Because of the characteristics of the demand curve, this intersection would result in the same total capacity bill as would result if the offer prices of the OOM resources had reflected their full net social entry costs. Thus, the generators argue that their proposal would appear to reduce or remove the financial incentive to invest in OOM resources purely for the purpose of

lowering capacity prices. The generator parties argue that their proposal also has the advantage that it would not interfere with the ability of states to promote investments in resources for other public policy purposes, such as the promotion of renewable generation.

87. In light of these issues, we are directing the parties to address, in their First Briefs, whether further changes are necessary to the price adjustment aspects of the APR. In particular, we encourage the development of mitigation mechanisms that result in market clearing prices that do not reflect the exercise of market power. Mechanisms that fail to address OOM capacity surpluses do not provide the long term price signals that support efficient private investment.

**E. Extension of the Floor Price**

**1. Filing Parties' Proposal**

88. Section III.13.2.7.3 of the Tariff provides that a Capacity Clearing Price Collar will be in effect for the first three “successful” FCAs, with a floor price of 0.6 times CONE and a price ceiling of 1.4 times CONE. Having completed three FCAs, this provision is now due to expire. However, the Filing Parties state that the Rule Changes include an extension of the 0.6 times CONE floor price for an additional three FCAs. The Filing Parties contend that the rationale for extending the floor price is to address the OOM resources that cleared in the first three FCAs, contributing to the excess capacity in New England and lower expected future FCM prices. The Filing Parties state that such treatment is appropriate since OOM capacity from the first three FCAs will not be included as Carried Forward Excess Out-of-Market-Capacity under the new APR-2 provision. Instead, the Filing Parties propose to retain the price floor while the current OOM capacity is eroded through load growth and retirement.

**2. Protests, Comments and Answers**

89. GDF Suez states that it supports the extension of the price floor, though it considers it an insufficient correction to the FCM. GDF Suez agrees that the extensive OOM capacity continues to exert downward pressure on the capacity price, depressing it to below competitive levels. GDF Suez requests that the Commission approve the extension of the price floor as some protection against the artificially depressed capacity prices that would otherwise occur in the FCM due to the surplus of OOM resources in ISO-NE. Similarly, the Joint Protesters assert that the price floor cannot be allowed to

expire as originally intended, and that some form of price floor should continue as long as the system is out of equilibrium.<sup>39</sup>

90. NEPGA, citing the “inefficiencies” in the current market, supports the extension of the price floor. Noting that a CONE reset would be the simplest methodology to restore the floor price of 0.6 times CONE to just and reasonable levels, NEPGA states that a floor price higher than the current \$2.95/kW-month is easily justified. In support, NEPGA notes that the fixed operating and maintenance (O&M) costs for RMR applicants in New England from 2006 to 2009 ranged from \$3.16 to \$7.45/kW-month. In addition, NEPGA expresses concern that the extension of the floor is limited to only three years. Specifically, NEPGA states that since the rationale for extending the price floor is to address the OOM resources that cleared in the first three FCAs, the price floor should be extended to seven years, consistent with the Filing Parties’ evidence.<sup>40</sup>

91. Boston Gen states that extending the floor price for the next three FCAs is not an adequate substitute for recognizing OOM capacity that will, by the Filing Parties’ estimation, take seven years to work off. Boston Gen states that it is less sanguine than others (including NEPGA) about the benefits of extending the 0.6 times CONE floor price, because it may have the perverse effect of favoring older, less frequently run generation units at the expense of newer, cleaner, more frequently run generation units. Boston Gen asserts that the Filing Parties’ proposal barely begins to address FCM’s serious structural flaws and a more appropriate first step would be to reset CONE to a realistic estimate of the actual cost of new entry.

92. The Joint Protesters argue that the Filing Parties’ proposed price floor (0.6 times CONE) is below the level necessary to constitute a just and reasonable rate for long-term participants in the FCM and is unsupported by substantial evidence. To return to just and reasonable rates, the Joint Protesters state that the Commission should direct ISO-NE to set the price floor at the original floor of \$4.50/kW-month or, alternatively, at the weighted-average cost of plant fixed O&M established under RMR contracts entered into by ISO-NE and approved by the Commission between 2006-2009, which would exceed \$4.00/kW-month. However, the Joint Protesters state that, at a minimum, the Commission should set the question “at what level should the floor price be set in order

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<sup>39</sup> The Joint Protesters note that the cleared quantity of resources in FCA # 3 was 36,995 MW which was 5,030 MW above the region’s net capacity requirements. Joint Protesters protest at 30.

<sup>40</sup> NEPGA notes that the Filing Parties propose to allow Carried Forward Excess Out-of-Market Capacity to be applied for purposes of the APR to the initial auction plus six years, a total of seven years based on the time necessary for projected load growth to absorb the OOM capacity. NEPGA protest at 78.

to provide a reasonable opportunity that it allows FCM suppliers to recover their current-period fixed O&M costs” for hearing, and condition its acceptance of this filing on the outcome of that proceeding.<sup>41</sup>

93. In addressing arguments that the current floor price of \$2.95/kW-month must be just and reasonable since suppliers did not de-list during FCA # 3 when this value represented the price floor, the Joint Protesters contend that one auction does not establish a just and reasonable floor price level. In support, the Joint Protesters explain that the Commission has repeatedly cautioned participants that the FCM is a long-term market, and that prices may fluctuate above or below the anticipated equilibrium price of the market. The Joint Protesters assert that suppliers may have stayed in FCA # 3 because of anticipation that FCM would be reformed on a going-forward basis. Further, they argue that it would be erroneous for the Commission to view the bargained-for floor price from the FCM settlement as evidence that the proposed floor price is a just and reasonable rate.

94. Several of the load interests note that the extension of the current price floor was part of an overall compromise on the Rule Changes, providing stability to the market. For example, MA AG states that the floor price extension was a major concession to capacity suppliers given the region’s current capacity surplus and will lead to higher capacity prices than there would have been were the market allowed to clear naturally. MA AG notes that it only agreed to the price floor extension for another three FCAs in order for the Rule Changes to reach broad stakeholder consensus. Further, it states that the agreed-upon price floor level (0.6 times CONE) was the result of lengthy discussions amongst ISO-NE, NECPUC, and NEPOOL stakeholders. By contrast, MA AG states that increasing the price floor level to \$4.00-\$5.00/kW-month, as some capacity suppliers advocated, would impose too high a cost on ratepayers and would dampen any signal for uneconomic existing resources to exit the market. CT DPUC also notes that the floor provides an opportunity for demand resources to continue to be capacity resources without risking diminishing revenues.

95. In response to NEPGA’s assertion that the floor price is too low because it does not cover the fixed O&M costs of a resource, the IMM notes that this assertion is “completely unsupported by economic theory.”<sup>42</sup> The IMM argues that this assertion is flawed because it ignores net energy market revenues, which help to cover fixed O&M costs. Further, the IMM notes that there should not be a general right to recover costs in the market as long as resources are allowed to voluntarily leave, as resources with market-based rates are not guaranteed certain price levels or cost recovery. In addition,

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<sup>41</sup> Joint Protesters protest at 32.

<sup>42</sup> IMM Answer at 7.

both the IMM and CT DPUC argue that the assertion that the price floor is too low also is contradicted by the FCA results, when resources remained in the auctions down to the price floor. In summary, the IMM states that the abundant surplus of capacity in the presence of a floor price is consistent with economic theory that in a competitive market there should be no price floor, since a floor price creates excess capacity and interferes with efficient retirement decisions.

### 3. Commission Determination

96. The price floor issue arises here because, under the current Tariff,<sup>43</sup> FCA # 4 is scheduled to be the first auction conducted without a price collar. Despite the overall surplus of capacity in New England, the Filing Parties propose to extend the price floor “to address the OOM resources that cleared in the first three FCAs” as these resources “have had a downward effect on expected future prices.”<sup>44</sup> Although the Filing Parties propose a new carried-forward excess capacity mechanism under APR-2, they state that it may not be appropriate to employ it on historical OOM capacity since (1) if the carry-forward rules had been in effect, resources that did not sufficiently support their offers below 0.75 times CONE in the first three FCAs may have provided additional data to support their offers and thereby may have not been considered OOM; and (2) rule changes should be applied on a prospective basis to minimize market uncertainty. Instead, the Filing Parties propose that the price floor be extended for the next three FCAs as a “reasonable compromise” to “address the effect of past OOM activity, while recognizing that the OOM entry was treated appropriately by the rules in effect at that time.”<sup>45</sup>

97. Generally speaking, the Commission would prefer that the market be allowed to clear naturally, which has not happened to date under the Commission-approved price collar; all three FCAs have reached the price floor with excess capacity. We understand that the Filing Parties view the price floor extension as a compromise to address historical OOM. Importantly, we also note that according to the IMM, the first three FCAs would have reached the price floor even without the OOM capacity.<sup>46</sup> However, we are aware that while the first three FCAs would most likely have reached the price floor without the OOM capacity, due to the significant OOM capacity that has entered the market, future

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<sup>43</sup> See ISO-NE Tariff § III.13.2.7.3.

<sup>44</sup> Rule Changes Filing, Attachment 3, Testimony of Robert Ethier (Ethier Testimony) at 19.

<sup>45</sup> *Id.* at 20.

<sup>46</sup> LaPlante Affidavit at 8.

FCA prices are likely to be lower (all other things being equal) absent any carry-forward treatment as proposed under APR-2. As such, and while we are requiring the parties to address APR concerns in their First Briefs, as discussed above, the Commission finds it appropriate to extend the price floor as a transitional measure pending APR revisions. As stated above, however, we anticipate that in the Commission's final order accepting an appropriate APR mechanism, we will terminate the price floor coincident with the implementation of that new mechanism.

98. Addressing the level of the price floor during this interim period, we find the Filing Parties' proposal to extend the current 0.6 times CONE floor price to be an appropriate transitional mechanism pending any APR revisions. Some of the generator parties seek a higher price floor going forward based on the O&M costs associated with historical RMR applications in New England. However, we find no basis for such a request. To begin with, we note that the Commission-approved FCM settlement enacted a price floor only for the first three FCAs and then only at a price level of 0.6 times CONE. The generator parties are requesting an extension of the floor *and* an increase in its price level despite the fact that the IMM states that the first three FCAs would have reached the price floor even without the OOM capacity; i.e., at a time when New England has a significant capacity surplus in addition to the historical OOM capacity. While we agree that a proper APR is important to address OOM (potentially even historical OOM in this case), we find that a corresponding increase in the price floor would provide the wrong economic signal at this time. As we stated in *Bridgeport Energy, LLC*, in a competitive market, the Commission is responsible for providing a resource with "the opportunity to recover its costs," not a guarantee.<sup>47</sup> Further, the Joint Protesters caution that the Commission should not put any value on the fact that generators stayed in the last FCA down to the price floor of \$2.95/kW-month, since one auction price does not establish the value of a just and reasonable compensation for the long run. Ironically, they also seek correction of that same price level despite the fact that the price floor would have been reached in all of the FCAs without the OOM capacity. We find no basis for the requested correction, and approve the extension of the floor price here on an interim basis as discussed above.

## **F. Calculation of Zonal Requirements**

### **1. Filing Parties' Proposal**

99. The Rule Changes synchronize the local resource adequacy criteria used to determine the resource adequacy requirement with the transmission security criteria used when reviewing de-list bids for the FCA. Under the current Tariff, the Local Sourcing

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<sup>47</sup> 113 FERC ¶ 61,311 (2005).

Requirement (LSR) is calculated using only resource adequacy criteria. The Rule Changes provide that requirements taking into account both resource adequacy and transmission security will be developed for each import-constrained zone. The Filing Parties state that under the Rule Changes, the term “Local Sourcing Requirement” will continue to be used, but it will now refer to “the higher of” the LRA or the TSA requirement. The input assumptions of the LRA will also be changed only to include the contribution of resources sufficient to meet the ICR, rather than all interconnected resources. The TSA results in a local zonal capacity requirement calculated using deterministic transmission load flow analyses that are focused on ensuring that the identified zone will have sufficient resources to operate the transmission system securely following selected contingency events.

100. The Filing Parties also note that while the TSA for each potential Capacity Zone will be set at a level sufficient to cover most reasonably anticipated events, it will not be set at a level high enough to guarantee that every combination of obligated resources within the zone will meet system needs. The Filing Parties explain that the changes in the input assumptions involve: (i) reducing a discount factor used to determine forced outage assumptions for peaking generation (thermal quick-start units) from 33 percent to 20 percent; and (ii) including Real-Time Emergency Generator responses in the TSA.<sup>48</sup> The Filing Parties state that ISO-NE will periodically review the appropriateness of the assumptions for both LRA and TSA with the Reliability Committee and is committed to continuing to refine the determination of the LSR if necessary.

## **2. Protests, Comments, and Answers**

101. Generally speaking, most of the commenters support this methodology revision in order to address the potential disconnect between the resource adequacy requirements established for the FCAs and the reliability reviews of resources seeking to de-list. National Grid states that it supports the Filing Parties’ proposal to revise the methodology for calculating the LSR for import-constrained Capacity Zones by setting the LSR at the higher of the calculated LRA or TSA requirements. In addition, National Grid supports ISO-NE’s commitments to enhance the process for identifying solutions to problems identified in the TSA and other zonal configuration issues.<sup>49</sup> National Grid states that it

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<sup>48</sup> See Rule Changes Filing, Attachment 4, Testimony of Mark Karl (Karl Testimony) at 14.

<sup>49</sup> National Grid states that ISO-NE has committed to further examining two important issues: (i) to work with stakeholders to find possible alternatives for a more efficient and effective market if the TSA deterministic requirement continues to, over time, exceed the LRA probabilistic requirement in determining whether to model zones; and (ii) to enhance the Regional System Planning process to consider the impact of

(continued...)

believes that higher local generation requirements may not always be the best solution for customers, especially if the additional generation is being added, over and above the LRA requirement, to address transmission security. National Grid states its appreciation for ISO-NE's commitment to consider alternative solutions based on resulting data that would enhance the regional system planning process and ensure that alternative solutions to zonal needs are considered. National Grid also states that the Filing Parties' commitment to exploring enhancements to the Regional System Planning Process represents an important step in making sure that New England takes a broad and comprehensive approach to these important reliability issues.

102. CT DPUC also states that the Rule Changes appropriately harmonize the TSA and the LRA Requirement. CT DPUC states that it supports this proposal only because ISO-NE has changed some assumptions in its TSA analysis to more closely reflect actual performance, as the CT DPUC has urged in prior proceedings, and the changes are just and reasonable.

103. EPSA, NEPGA, and the Joint Protesters approve of the revisions to the methodology for calculating the LSR for import-constrained capacity zones. However, as noted in the next section, EPSA believes that additional steps should be taken to address the structural barriers that prevent proper locational price signals from being formed to reflect the value of capacity in a constrained location.<sup>50</sup>

104. GDF Suez agrees with the revisions which state the LSR will be calculated as the higher of 1) the LRA, which is the current LSR calculation, or 2) the TSA calculation. However, GDF Suez requests that the Commission direct ISO-NE to submit revised tariff sheets to correct the tariff provisions dealing with the calculation of the maximum capacity limit (MCL)<sup>51</sup> for export constrained load zones to mirror the discussion in the Rule Changes transmittal letter. GDF Suez notes that the MCL for export-constrained load zones is calculated as the difference between the ICR for New England and the LSR for the rest of New England. GDF Suez states that the tariff provisions, as submitted by ISO-NE, incorrectly substitutes "LRA" for "LSR" in the calculation of the MCL. GDF Suez states that this change is inconsistent with the transmittal letter, which states that the

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proposed transmission topology changes on zonal configuration and requirements; to identify emerging issues that may require changes in zonal configuration; to identify effective solutions to local security and reliability needs; and, to project zonal configurations under alternate expansion strategies.

<sup>50</sup> EPSA Protest at 20.

<sup>51</sup> The MCL refers to the maximum amount of resources that can be procured in an export-constrained load zone.

Rule Changes should only apply to import-constrained load zones. GDF Suez argues that if uncorrected, this change will misstate the MCL and underestimate the ICR for the rest of New England whenever TSA is greater than LRA.

105. In its answer, ISO-NE argues that the “correction” to the calculation of the MCL proposed by GDF Suez is inappropriate and should be rejected. ISO-NE states that the instant filing did not change any tariff provisions regarding the MCL. ISO-NE argues that GDF Suez is trying to impose a change that was discussed and rejected in the stakeholder process by suggesting that this change is necessary to correct a minor oversight in drafting the tariff language. ISO-NE states that revising the “error” that GDF Suez claims ISO-NE made would result in a significant and unintended design change to the FCM. ISO-NE explains that an export-constrained region may not contain more than 100 percent of the resources required to meet local requirements plus the additional quantity that can pass the export constraint. ISO-NE states that the correction GDF Suez seeks would require ISO-NE to somehow devise criteria for calculating a local security requirement for an import-constrained region where the “local” region is the entire New England control area, less Maine. ISO-NE states that the correction proposed by GDF Suez is incorrect and inappropriate and should be rejected by the Commission. ISO-NE notes that local TSA requirements have no impact on the total New England ICR nor on the ability of resources that are export constrained to meet the New England ICR. In essence, ISO-NE argues that there is no basis to establish a “local” pool-wide security requirement and such a change would not have any impact on relieving the constraint.

106. GDF Suez responded to ISO-NE’s Answer and states that not only did ISO-NE not address the issues GDF Suez raised in its protest, but ISO-NE also presented new arguments on the issue of MCLs and capacity zones that warrant a response. GDF Suez states that its original protest requested that the definition of MCL properly reflect the complementary relationship between the amount of capacity that is required to be purchased in the Rest of New England Capacity Zone and the amount of capacity that can be sourced in the Maine Capacity Zone.<sup>52</sup> GDF Suez argues that using the LRA to calculate the MCL that may be procured in Maine, ISO-NE ignores the possibility that a higher amount of capacity (under the TSA standard) may be required in the Rest of New England. GDF Suez states that ISO-NE’s Answer still does not address GDF Suez’s concern that, should the amount of capacity required to be purchased in the Rest of New England zone increase based on the TSA, a resource seeking to de-list in the Rest of New England Capacity Zone could be prevented from de-listing because it is needed under the TSA. Additionally, GDF Suez claims that the tariff language ISO-NE uses is confusing, making it difficult to determine to which geographical or electrical area ISO-NE is referring. Finally, GDF Suez argues that ISO-NE has not adequately

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<sup>52</sup> GDF Suez Answer to ISO-NE March 30 Answer at 2.

explained why it cannot increase the amount of capacity purchased in the Rest of New England capacity zone (consistent with a TSA requirement of Rest of New England), and why de-list bids of resources inside the Rest of New England will not be subject to a TSA as part of their reliability review. GDF Suez continues to contend that ISO-NE should be required to correct its error and make a compliance filing providing a full explanation addressing these issues.

107. In response, ISO-NE submitted a further answer. ISO-NE continues to assert that GDF Suez's request for relief would dramatically change the existing calculation of the MCL, which is not at issue in the instant filing. ISO-NE states that GDF Suez refuses to acknowledge the failure of its request in the stakeholder process, and asserts that GDF Suez is improperly bypassing the stakeholder process by attempting to persuade the Commission to require a tariff change that was already rejected by stakeholders. ISO-NE states that the change to section III.12.2.2(d) is a conforming change that would preserve the existing method for calculating the MCL, not a change to a rate, term or condition under the Tariff. Ultimately, ISO-NE argues that GDF Suez's request would lead to a fundamental change to the manner in which the region establishes the ICR and alter the "complementary relationship" GDF Suez states it wishes to maintain between the amount of capacity that is required to be purchased in the Rest of New England Capacity Zone and the amount of capacity that can be sourced in the Maine Capacity Zone. ISO-NE asserts that this proceeding is not the appropriate forum for GDF Suez to challenge the entire design of the FCM, or to raise issues that are properly addressed in other proceedings. ISO-NE states that the proper course of action for GDF Suez would be to file a section 206 complaint.

### **3. Commission Determination**

108. We find that the proposed Rule Change to develop both LRA and TSA based requirements for import-constrained Capacity Zones and to set the LSR at the higher of the two values is just and reasonable. We note that this is an issue that has arisen previously when ISO-NE rejected de-list bids for reliability, and the offered approach is a well-reasoned solution that has broad NEPOOL stakeholder support. Addressing the specific argument raised by GDF Suez, it appears that under the premise of preserving the relationship between the MCL, ICR, and LSR for the Rest of New England Capacity Zone (the entire New England control area excluding Maine), GDF Suez is seeking the development of a "local" TSA requirement for the Rest of New England Capacity Zone. We agree with ISO-NE that local TSA requirements have no impact on the total New England ICR nor on the ability of resources that are export constrained to meet the New England ICR. GDF Suez is seeking to revise the current ICR/MCL methodology, an issue not before us in this proceeding. Importantly, we note that GDF Suez has not demonstrated that the approach offered by ISO-NE is in error or that it is unjust and unreasonable.

## **G. Improved Modeling of Capacity Zones**

### **1. Filing Parties' Proposal**

109. With respect to improved modeling of capacity zones, the Filing Parties state that they explored: (a) various zonal definitions for use as the starting point for initially modeled capacity zones in the FCA; and (b) whether more bids should be considered to allow for additional modeling of capacity zones during a FCA. Addressing the initially modeled zones in an FCA, the Rule Changes provide that the existing energy market Load Zones and/or their subdivision be used as the basis for modeling potential Capacity Zones in the FCA. The Filing Parties explain that the use of existing energy market Load Zones: (a) avoids the creation of another zonal system in the ISO-NE markets; (b) conforms to existing ISO-NE settlement systems and trading patterns; (c) ensures that Capacity Zones will not cross state or utility boundaries; and (d) partially coincides with the electrical boundaries of what could be considered “pure” capacity reliability zones. The Filing Parties also note that Capacity Zones modeled in each FCA will be the same as those modeled in subsequent Reconfiguration Auctions associated with the same Capacity Commitment Period, in order to maintain the stability of the initially modeled Capacity Zones.

110. Addressing the formation of capacity zones during the FCA, the Filing Parties explain that under the current Tariff, import-constrained capacity zones are modeled before the auction only if the aggregate supply within a particular zone is less than or equal to its LSR. Thus, the current rules do not allow for the modeling of a separate capacity zone if resources within the zone de-list during the auction. The Filing Parties state that to the extent possible in light of market power concerns, resources successfully de-listing in the FCA should be allowed to affect price separation among capacity zones.

111. Specifically, the proposal will allow Non-Price Retirement Requests, Permanent De-List Bids, and Static De-List Bids from non-Pivotal Suppliers, Export Bids from non-Pivotal Suppliers, and Administrative Export De-List Bids from non-Pivotal Suppliers to be considered in the modeling of an Import-Constrained Capacity Zone for the instant FCA.<sup>53</sup> The proposal creates a “Pivotal Supplier Test” to identify which capacity suppliers offering Static De-List Bids (which commit to de-list for a single year) are non-

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<sup>53</sup> A Non-Price Retirement Request is a binding request to retire the entire capacity of a generator regardless of price. A Permanent De-List Bid is a bid to permanently remove a capacity resource from the capacity market. A Static De-List Bid is a bid to remove a capacity resource from the capacity market for a one year period above 0.8 times CONE.

pivotal and therefore likely to offer competitively.<sup>54</sup> With these changes, separate zones are likely to be modeled more often, allowing the auction to develop separate prices in different locations more frequently, sending accurate price signals that promote efficient decisions.<sup>55</sup>

112. The Filing Parties contend that the benefits of more efficient pricing should be balanced against the risk of the exercise of market power by those submitting these offers. The Filing Parties state that attempts to exercise market power using Non-Price Retirement Requests and Permanent De-List Bids are unlikely because they require that a resource shut down permanently and retire permanently from the FCA, respectively, and so they should be included in a zonal determination. Similarly, since non-pivotal suppliers are unable to unilaterally set the zonal price, the Filing Parties note that these resources risk having their de-list bids accepted if their bids are too high.

113. The Filing Parties contend that absent market power concerns, the FCA could consider all bids and offers to identify the most efficient solution to satisfy the resource requirements. However, due to concerns over existing resources exercising market power through de-list bids (specifically in concentrated, constrained zones), the Filing Parties are not proposing to allow Dynamic De-List Bids,<sup>56</sup> Static De-List Bids from Pivotal Suppliers, Export Bids from Pivotal Suppliers, and Administrative Export De-List Bids from Pivotal Suppliers to be an input in determining whether to model zones.<sup>57</sup> These bids will be ineligible to stop the auction clock within a zone and set a locational price.

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<sup>54</sup> A resource is deemed pivotal if some capacity is needed from the resource to satisfy a zone's LSR.

<sup>55</sup> The Filing Parties state that resources submitting successful de-list bids of these types should not be considered available during the commitment period and therefore should not be included as capacity when making a zonal determination.

<sup>56</sup> A dynamic de-list bid is a bid that may be submitted by existing resources at prices below 0.8 times CONE. By definition, these bids are not reviewed by the IMM to determine whether the offer is consistent with the resource's long run average costs net of expected revenues other than capacity revenues.

<sup>57</sup> The Filing Parties argue that this position is consistent with market power concerns raised in the IMM Report.

## 2. Protests, Comments, and Answers

114. The EMM explains that in accordance with section 10.4.2 of the NEPOOL Participants Agreement, in January 2010, a group of New England generators also requested that the EMM conduct an independent analysis of the Filing Parties' proposed changes to the modeling of zonal capacity and the associated pricing rules for such zones. The EMM states that it has agreed to conduct the requested analysis and that its comments here represent only an initial analysis.

115. The EMM supports the fact that the proposed Rule Changes will increase the likelihood that a capacity zone will be modeled. However, the EMM states that there will remain instances when a capacity zone may not form even when there is a need for local resources to meet reliability at a cost higher than the market-wide clearing price.<sup>58</sup> The EMM argues that additional work is needed to allow the prices in capacity zones to more fully reflect the system's capacity needs, such as always modeling capacity zones, although this may raise market power concerns that are not fully addressed by the current mitigation measures. Thus, the EMM states that it is not surprising that the market design (in this case always modeling the capacity zones) has been "compromised" to mitigate market power; the triggering criteria for capacity zones under the current FCM rules primarily serve a market power mitigation function.<sup>59</sup> The EMM states that it recommends improving the mitigation measures as necessary such that it would be possible to always model the capacity zones, as altering the market design to address market power leads to economic inefficiencies.

116. NEPGA, the Joint Protesters and EPSA each argue that the proposed Rule Changes will help permit locational pricing but do not go far enough. As relief, they argue that (1) zones should be modeled all of the time (not just when new entry is required); and (2) all types of de-list bids should be considered in the determination of capacity zone prices.

117. In light of the existing IMM review of de-list bids, EPSA believes that capacity zones should be modeled regardless of the supply/demand balance in the zone. The Joint Protesters argue that the market rules proposed by the Filing Parties would prohibit the modeling of constrained capacity zones in many situations, and is thus not just and reasonable as proposed. As the Joint Protesters explain, under the FCM, in order for zonal capacity prices to separate, the ISO-NE must make the administrative decision to model the zone prior to the auction because if the zone is not modeled, then capacity

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<sup>58</sup> In such cases, these de-list bids will be rejected to satisfy reliability.

<sup>59</sup> As an example, the EMM notes that ISO-NE has rejected de-list bids during two different FCAs without triggering the formation of zones.

prices literally cannot separate from the rest of the pool. The Joint Protesters assert that modeling a zone does not cause capacity prices within the zone to separate, but simply allows for that possibility. The Joint Protesters state that if zonal prices separate, the FCM will correctly identify a zone where a shortage exists, properly signaling that additional investment in this separated zone will offer a higher return on investment than investment in the broader regional zone.

118. Arguing that capacity zones should always be modeled, NEPGA explains that even as mitigated de-list bids have been rejected for reliability reasons in prior FCAs, there has been a single region-wide clearing price. NEPGA explains that true locational pricing remains elusive for two primary reasons: (i) there are powerful political and consumer pressures against creating separate zones, which are likely to have higher prices; and (ii) there is a strong predilection for market design elements that have the effect of aggressively and automatically mitigating supplier bids, particularly as areas become more constrained, which are exactly the circumstances when locational pricing would be likely to arise. NEPGA contends that the failure to model zones makes it far more likely that there will be a need for OOM reliability payments. NEPGA asserts that no party has offered a defensible reason why zones should not always be modeled.

119. NEPGA also argues that all bid types should be considered in the formation of zones, as currently too many bids are automatically assumed to be the exercise of market power and ignored in the clearing price, which creates a further barrier to efficient locational pricing. According to NEPGA, the Filing Parties' proposal to increase some of the types of bids that can be considered in the formation of zones during an FCA has the following problems: (i) the definition of "pivotal" is far too narrow; (ii) all static de-list bids are mitigated and thus should be considered; and (iii) dynamic de-list bids are below the threshold that stakeholders and the Commission have determined need not be reviewed by the IMM and therefore should also be considered.

120. The Joint Protesters similarly argue that mitigated delist bids must be eligible to set price and should not prevent zone modeling. The Joint Protesters assert that the Filing Parties have not demonstrated that their mitigation proposal is just and reasonable, or necessary to protect market participants from market power abuses, given the comprehensive mitigation of such bids that already exists in the FCM rules. The Joint Protesters explain how all static de-list bids above 0.8 times CONE are cost-based bids, approved by the IMM, and then filed with the Commission for further review. The Joint Protesters argue that given the pervasive mitigation measures already in place, the Filing Parties' proposal to further restrict bids placed by "pivotal" suppliers is misguided and not just and reasonable. NEPGA states that the mitigation rules are apparently robust enough to set the payment to a supplier, yet somehow not robust enough to set a market price for a constrained zone. EPSA states that additional mitigation procedures mask the

true price signals necessary to reflect the marginal cost of capacity, incent investment, and ensure market efficiency.<sup>60</sup> EPSA states that it is concerned that the proposed revisions will necessitate reliability agreements while not addressing the need to improve zonal definition and price-setting eligibility and ultimately undermining efficient market performance.

121. The Joint Protesters and NEPGA each state that the Filing Parties' definition of "Pivotal Supplier" is unduly restrictive because the proposed definition fails to include the quantity of new capacity resources that have qualified for participation in the auction. NEPGA argues that there is no justification for this treatment since every resource that qualifies for an FCA must submit an extensive qualification package, be approved for participation, and must offer or face penalties. According to the Joint Protesters and NEPGA, any test to determine whether a supplier is "pivotal" should: (i) be measured at the outset of the auction based on the total amount of qualified capacity competing to clear in the zone, including both new and existing capacity; (ii) exclude suppliers in a zone with less than 20 percent market share; and (iii) only apply to dynamic delist bids, since all static de-list bids are subject to review and approval as cost-based. NEPGA states that the Commission should make these changes if a pivotal supplier test is found to be necessary. However, as NEPGA proposes that all de-list bids be considered in the modeling of zones, it states that any pivotal supplier test would be irrelevant.

122. The Joint Protesters and NEPGA assert that dynamic delist bids should be eligible to set zonal prices since they necessarily reflect a substantial discount from the expected long-run equilibrium price in the FCM. The Joint Protesters maintain that dynamic delist bids should be eligible to set price in order to reflect relative capacity scarcity in different locations, otherwise the proposed Rule Changes virtually assure that there will be no differentiation among zonal prices, a core objective of the FCM. NEPGA states that the Filing Parties fail to provide any specific reasoning for excluding dynamic de-list bids in either the filing or the testimony, and the Commission has previously approved the stakeholder's position that de-list bids below 0.8 times CONE did not require review since they are at a price level that does not reflect market power. NEPGA explains that dynamic de-list bids from suppliers with a single resource in a zone should also be considered for zonal formation because these resources, even if considered pivotal under any standard, would have no portfolio to benefit and thus no economic incentive to withhold.

123. MA AG states that generator proposals to expand the de-list bids that are eligible to set Capacity Zone prices, model all Capacity Zones at all times, and revise the Pivotal Supplier definition, can all be resolved through the stakeholder process. It argues that

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<sup>60</sup> EPSA Protest at 21.

therefore, there is no need for the Commission to consider these issues at this time. MA AG acknowledges that always permitting zonal prices to separate could improve the FCM's overall efficiency by sending appropriate locational price signals to the market in order to incent new capacity where it is needed. However, MA AG states that the Filing Parties and NECPUC have not had a chance to evaluate the potential impacts that these proposed amendments could have on the FCM.

124. National Grid states that it reluctantly supports the Filing Parties' step to go beyond the original limitations on the ability of existing resources to affect zone creation and price formation, and it urges the Commission to reject any attempts to further erode the protections against market power from the original FCM settlement. National Grid also states that it is critical that the Commission support ISO-NE's methodology for determining whether a supplier is considered to be pivotal.

125. CT DPUC states that the Rule Changes for modeling Capacity Zones are reasonable and limit the generators' ability to exercise market power through the strategic de-listing of resources. CT DPUC argues that the Rule Changes appropriately do not consider Dynamic De-List Bids when modeling zones and recognize the need to limit pivotal suppliers' opportunities to affect FCM outcomes by similarly excluding capacity associated with all "pivotal" de-list bids. CT DPUC states that the Filing Parties' proposed rules for modeling capacity zones are just and reasonable and should not be expanded further.

126. Further, in its answer, CT DPUC states that the Joint Filings' proposal to model capacity zones reasonably balances the need for locational pricing and market power concerns. CT DPUC contends that the Commission should reject the proposals to model all zones before the auction or allow all de-list bids to be considered in the formation of capacity zones. CT DPUC argues that modeling all zones in every auction will not produce better price signals for locational investment, nor will it provide appropriate compensation to existing generators, but rather will increase the incentives and the opportunities for pivotal generators to exercise market power to set the FCA price. CT DPUC recognizes that it may be undesirable from an efficiency perspective to model all zones in each FCA and may exacerbate the "boom and bust" investment cycles in constrained zones. CT DPUC asserts that the generators advocating changes to the Filing Parties' proposal seek to capture the windfalls that volatile prices in constrained zones will frequently provide, but they are not entitled to additional price premiums for their past investment decisions. CT DPUC explains that the generators' proposal to include all de-list bids in the zone determinations and zonal price formation will result in the removal of essential protections against the manipulation of FCA prices.

127. CT DPUC explains that the generators' criticism of the Filing Parties' proposed pivotal supplier test is incorrect because it is just and reasonable and uses the correct measure of available capacity. According to CT DPUC, the safe harbor to the pivotal

supplier test that generators' advocate would remove essential market power protections. CT DPUC explains that NEPOOL stakeholders previously considered and rejected PSEG's safe harbor proposal exempting any owner with less than five percent of total capacity from the pivotal supplier test. CT DPUC argues that the generators' attempt to justify this proposal badly mischaracterizes the Commission's market-based rate authorization policies and the Commission has previously considered and rejected NRG's similar proposal.<sup>61</sup> CT DPUC asserts that the pivotal supplier test is a necessary screen to guard against price manipulation so no minimum threshold should be imposed. Finally, CT DPUC argues that the Rule Changes properly exclude dynamic de-list bids from zonal consideration in light of market power concerns.

128. In its answer, the IMM responds to the EMM's suggestion to model capacity zones all of the time. The IMM states that it agrees that modeling capacity zones all of the time is the preferred approach to running an efficient auction, but states that this requires comprehensive mitigation measures for all de-list bids. The IMM also agrees with the generator parties that zonal creation and the associated pricing impact of de-list bids in the FCM need to be further examined and improved. However, the IMM strongly disagrees with the generator parties that the existing mitigation measures are comprehensive and effective enough to allow all zones to be modeled all of the time.

129. The IMM believes that modeling all zones all of the time cannot be done without a comprehensive mitigation strategy that examines all types of de-list bids to determine if they are competitive. Additionally, the IMM argues that when considering mitigation rules, O&M costs associated with being in the capacity market and the opportunity costs of selling capacity to adjacent markets need to be considered in the net risk-adjusted going-forward costs to be considered. The IMM states that the current rules do not distinguish between going forward costs for resources wanting to remain in the energy market and those resources wanting to exit the energy market. The IMM argues that it is necessary to review the current mitigation rules to ensure they are appropriate, comprehensive and effective; if they do not meet these requirements, new rules should be proposed.<sup>62</sup>

130. Addressing the request to model all zones all of the time, ISO-NE states that stakeholders would first need to consider additional mitigation provisions and whether any safe harbor (e.g., dynamic de-list bids are not reviewed by the IMM) remains appropriate with the expanded modeling of zones. Further, ISO-NE states that in addition to market power concerns, expanding the modeling of zones would require consideration of the ability of the descending clock auction process to model the zonal

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<sup>61</sup> CT DPUC Answer at 42 n.166.

<sup>62</sup> IMM Answer at 3-6.

topology. For example, mesh networks, where each zone is connected to more than one adjacent zone, may not be represented with the descending clock. Thus, ISO-NE states that any order that were to require modeling of all zones all the time also would need to require modeling of constrained zones (a) where meaningful and discrete transfer limits can be calculated between zones, and (b) where the resulting zonal topology can be represented in the auction design. ISO-NE states that these issues would require significant further analysis.

### **3. Commission Determination**

131. As the Filing Parties note, under the current rules, the possibility of zonal price separation is determined in advance of the auction. A zone is allowed to establish a separate, higher price only if there is a need for new capacity in the zone in advance of the auction; a zone is deemed to require new capacity only if the amount of capacity needed inside the zone (i.e., the LSR) exceeds the amount of aggregate capacity in the zone (only then will the zone be modeled). However, zonal price separation could be justified even if new capacity is not needed. For example, the marginal cost of retaining sufficient existing capacity in a particular zone could be higher than in the rest of New England. In this situation, higher prices would be justified inside the zone to retain this capacity since, otherwise, the marginal resource would want to retire, leaving the zone with insufficient capacity. This situation has occurred in previous FCAs. Without a modeled zone in these situations, ISO-NE is required to instead reject de-list bids for reliability, and the resource is paid its marginal going-forward cost (as reflected in its bid). Other resources in the same zone are paid the lower, pool-wide price.

132. ISO-NE could allow the auction to determine where zonal price separation is justified, (i.e., by determining a separate zonal price if resources within a particular zone de-list during the auction), but it has elected not to do so because it is concerned that generators in relatively small zones could exercise market power. Supporting the proposed Rule Changes (and in agreement with the recommendation of the IMM), the Filing Parties contend that certain resources without market power that successfully de-list from an FCA should be permitted to affect zonal price separation, since it enables FCA prices to more accurately reflect the actual capacity situation. We agree that the proposed revisions to allow certain additional de-list bids<sup>63</sup> to be considered in the modeling of an Import-Constrained Capacity Zone are a market improvement, since successful de-listing by these resources means that they should not be relied upon to provide capacity during the commitment period.

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<sup>63</sup> Non-Price Retirement Requests, Permanent De-List Bids, and Static De-List Bids from non-Pivotal Suppliers, Export Bids from non-Pivotal Suppliers, and Administrative Export De-List Bids from non-Pivotal Suppliers.

133. The generator parties note their support for the aforementioned revisions but contend that they do not go far enough. Rather, the generators believe that adequate mitigation exists such that the fears of market power in the determination of zones are exaggerated, and thus all de-list bids (including dynamic bids and those bids that the Filing Parties would deem “pivotal”) should be considered in the determination of zones. The EMM agrees that all zones should be modeled but agrees with the IMM’s concern over the adequacy of ISO-NE’s current mitigation rules. The EMM, citing NYISO’s modeling of the New York City zone despite similar market power concerns, recommends that mitigation should be revised as necessary (consistent with what NYISO undertook) to prevent the proper market design from being “compromised.” The IMM agrees with the generator parties that it is important to model zones whenever possible but “strongly disagrees” with the premise that adequate mitigation exists presently to enact this provision now. Instead, potentially concerned over the fact that dynamic de-list bids are not reviewed (by definition), the IMM recommends a comprehensive review of ISO-NE’s mitigation rules prior to such a change.

134. The Commission believes that it is important to model zones wherever possible to set appropriate locational prices. We have cited the need for locational pricing in New England for many years, noting that its absence in the Installed Capacity (ICAP) market (the predecessor to the FCM) was a significant flaw since “location is an important aspect of ensuring optimal investment in resources.”<sup>64</sup> The FCM incorporates locational pricing, but through three FCAs, zonal price separation has yet to occur despite the rejection of de-list bids for reliability in the first and third FCAs. Moreover, as noted by the generator parties, even if the proposed Rule Changes on this issue were in place at the time of those two auctions, no zonal price separation would have occurred.<sup>65</sup>

135. While we believe that always modeling zones should be the ultimate goal, we agree with ISO-NE that such a change would require further analysis and is not required to be implemented prior to FCA # 4. Rather, we note that all parties have raised valid concerns on this issue, including whether the current mitigation rules are adequate to model zones at all times, whether all de-list bid types should be allowed to set a zonal price (i.e., whether a “pivotal supplier” test is necessary, and whether it should have a market share threshold), and what, if any, corresponding revisions to the current mitigation rules are necessary. We believe that the proposed Rule Changes to consider

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<sup>64</sup> *New England Power Pool and ISO New England, Inc.*, 100 FERC ¶ 61,287, at 62,278 (2002).

<sup>65</sup> In the first FCA, the Norwalk units that were found to be needed for reliability submitted dynamic de-list bids which are ineligible for consideration under the Filing Parties zonal determination. Similarly, the Salem Harbor units that were found to be needed for reliability in the third FCA would likely fail the Pivotal Supplier test.

additional de-list bids in the modeling of zones represent a first step to the zone modeling issue, and we will accept these revised rules on a transitional basis. We will, however, direct the Filing Parties and any other parties who wish to address this question to do so in their First Briefs in the paper hearing.

## **H. Decoupling the FCA Starting Price from CONE**

### **1. Filing Parties' Proposal**

136. Under the current FCM rules, the FCA starting price for a Capacity Zone is set at two times CONE; however, the IMM Report states that the starting FCA price should be separated from the other uses of CONE.<sup>66</sup> The Filing Parties maintain that economic theory suggests that a high auction starting price has no negative pricing effects while there are risks of short supply and a failed auction from too low a starting price. Since it appears that there are significant differences between the prices at which new demand resources and new generation resources stay in the auction, the IMM recommends that the auction starting price should be decoupled from CONE and set at a level high enough to ensure that both generation and demand resources will enter and create a competitive auction. The Filing Parties propose that the FCA starting price continue to be set at two times the CONE applicable to each Capacity Zone for the next three auctions. However, they propose a starting price for the Capacity Commitment Period beginning on June 1, 2016 of \$15/kW-month, which is a fixed amount not based on CONE, and which will coincide with the expiration of the floor price extension. Thereafter, the starting price will be adjusted annually using a rolling three-year average of the Handy-Whitman Index of Public Utility Construction Costs.<sup>67</sup> The Filing Parties also note minor changes relating to references to CONE elsewhere in the Tariff.

### **2. Protests, Comments, and Answers**

137. NEPGA agrees that the proposal to decouple the auction starting price from the currently undervalued level of CONE may resolve one issue related to the problem of CONE currently being undervalued, but it does not address the real issue, which is that CONE has fallen to low levels with no basis in reality. However, NEPGA argues that a locked-in starting price of \$15/kW-month is too low and may have the unintended consequence of suppressing forever the auction starting price rather than allowing CONE

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<sup>66</sup> Transmittal, Rule Changes Filing, at 22, *citing* IMM Report at 53.

<sup>67</sup> The Filing Parties note that an additional rule change is necessary to add detail regarding the appropriate Handy-Whitman index to rely upon for inflation adjustments. They state that they will include this detail change in a package of rule changes to be filed later in 2010.

and the auction starting price to reset each year or to periodically reflect the updated costs of a new generation resource.

138. NEPGA states that the proposed FCA starting price of \$15/kW-month is an improvement over the current default at two times CONE, but contends that the Filing Parties have ignored the IMM's recommendation to establish a mechanism to adjust the starting price to make it more reflective of current costs. While NEPGA argues that the CONE value should be increased to a level reflecting the cost of new generation, it offers the alternative of setting the auction starting price at the higher of two times CONE or \$15/kW-month, as adjusted for inflation.

### **3. Commission Determination**

139. The Commission accepts the Filing Parties' general proposal to decouple the FCA Starting Price from CONE as just and reasonable. As explained by the IMM, the starting price for a descending-clock auction should be set high enough to attract sufficient participation for a competitive auction.<sup>68</sup> This proposal to decouple the FCA starting price from CONE appears to enjoy fairly wide support, as even NEPGA admits that decoupling the starting price from CONE may resolve one of the CONE issues.

140. We do not agree with NEPGA's contention that an FCA starting price of \$15/kW-month is too low. NEPGA has failed to demonstrate that the Filing Parties' proposal is not just and reasonable. While NEPGA has argued extensively that the current ISO-NE CONE value itself is below the values of both PJM and NYISO, we find that to be a different argument than the proper starting point of the FCA. A reasonable starting price for the auction must be higher than the actual cost of an efficient resource to enter the market, so that the auction can attract new entry when it is needed. We note that no party has demonstrated that a proper CONE value (now, or in the near future) is in excess of the proposed auction starting price of \$15/kW-month, and thus, arguments that such a value "locks in" a starting price that is "too low" are unsupported. Therefore, we agree with the recommendation of the IMM (as noted by the Filing Parties) that the \$15/kW-month starting price for the FCA represents a level that is high enough to ensure that both generation and demand resources will enter to create a competitive auction.<sup>69</sup> Further, that argument also ignores the proposed annual update of the auction starting price based on the Handy-Whitman Index, which should ensure that the FCA starting price exceeds the CONE value.

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<sup>68</sup> IMM Report at 53.

<sup>69</sup> Transmittal, Rule Changes Filing at 22, noting that there is a significant difference between the prices at which new generation and demand resources will stay in the FCA.

141. Under the proposed Rule Changes, ISO-NE will continue to set the FCA starting price at two times CONE for the next three FCAs (during which the Filing Parties propose to retain the price floor), which the Commission has previously found to be reasonable.<sup>70</sup> As noted above, however, we anticipate that at the time that the Commission accepts an appropriate APR mechanism and terminates the price floor, the starting price should, at that point, be decoupled from CONE as intended by the Filing Parties' filing. We are, therefore, accepting here a starting price of \$15/kW-month for the first FCA held without a price floor. Last, the Filing Parties note that an additional rule change is necessary to add detail regarding the appropriate Handy-Whitman Index to use, and we expect the Filing Parties to file such a proposed change later in 2010.

## **I. Determination of CONE**

### **1. Filing Parties' Proposal**

142. CONE has numerous purposes in the FCM construct. Several parameters are a function of CONE, including the offer price thresholds for the various de-list bids, the starting price of each FCA (2 times CONE), IMM review of offers from new capacity (below 0.75 times CONE), and the floor price (0.6 times CONE). Currently, CONE is calculated pursuant to the existing formula in the FCM rules, such that it equals 70 percent of the CONE from the previous FCA plus 30 percent of the Capacity Clearing Price from the previous FCA. CONE is not updated if any of a list of conditions is met, including when new entry is not required in the FCA. In that case, under the current rules, the CONE value is carried forward to the next FCA.

143. To prevent CONE from becoming stale, under the Rule Changes, the Filing Parties propose that when the CONE is not updated using the 70/30 formula from section III.13.2.4, it will be adjusted using a rolling three-year average of the Handy-Whitman Index of Public Utility Construction Costs. The Rule Changes also clarify that CONE for the fourth FCA is \$4.918/kW-month, the same value as for the third FCA, and that the first application of the Handy-Whitman Index would not occur until after the fourth FCA. Last, the proposed Rule Changes add to the list of conditions under which the 70/30 formula will not be applied – where the FCA price is set administratively pursuant to either the price floor or any of the proposed Alternative Capacity Price Rules, since using this formula when administrative pricing occurs is inconsistent with the purpose of CONE which is to reflect the market-determined cost of new entry. The Filing Parties note that at \$4.918/kW-month, the current CONE value is below most estimates of the cost of new entry for generating resources.

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<sup>70</sup> *ISO New England Inc.*, 119 FERC ¶ 61,045, at P 53, 60 (2007).

## 2. Protests, Comments, and Answers

144. The generator parties find the proposed CONE revisions beneficial but argue that they do not go far enough as the CONE value is too low. For example, Boston Gen states that it is hard to imagine that the cost of entry into New England has declined over 34 percent, from \$7.50/kW-month to \$4.918/kW-month, in just two years, and ISO-NE has not provided any evidence to that effect. Boston Gen notes that if the Handy-Whitman Index escalation factor were applied to the initial CONE value of \$7.50/kW-month, it would be well over \$11.50/kW-month, an increase of over 50 percent. EPSA also argues that the current CONE level of \$4.918 kW-month is too low given the prevailing costs of real peaking generators in ISO-NE. EPSA states that the proposed revisions will not allow attempts to exit the market under the new APR rules because of the deflated CONE value in effect. EPSA contends that the current CONE value does not provide generators with a reasonable opportunity to receive a return on and of its investment. NEPGA argues that the resulting CONE price is strictly the result of a mathematical calculation, unlinked from any market information about the true revenue requirements of new capacity resources.

145. Further, the generation sector argues that CONE should be reset to more reasonable levels, as other markets have recently done. According to NEPGA's consultant, Mr. Stoddard, "the Commission has recently approved comparable values of \$6.70/kW-month in PJM and \$8.92/kW-month in New York."<sup>71</sup> According to the Joint Protesters, ISO-NE's CONE value is below the values the Commission has determined are just and reasonable in other markets, even though there are no fundamental differences in underlying costs; thus, the CONE value is now outside the zone of reasonableness when compared against the actual cost of new entry. Boston Gen asserts that CONE for the fourth FCA should be set administratively such that it actually reflects the cost of new entry, not the effects of OOM from the first three FCAs.

146. EPSA requests that the Commission require ISO-NE to make a compliance filing that resets CONE to more reasonable levels, as in PJM and NYISO, that more accurately reflect the cost of entry for a peaking unit. If the Commission does not require that CONE be reset, EPSA states that the Commission should accept the proposal to decouple CONE from the related FCM mechanisms, specifically, the auction starting price, and require that the starting price is the higher of \$15/kW-month or two times CONE to take effect no later than the fifth FCA. Also if the Commission does not require CONE to be reset, EPSA requests that the Commission approve ISO-NE's proposal to adjust CONE based on the Handy-Whitman index of utility construction costs to reflect inflation, and

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<sup>71</sup> NEPGA protest at 69, *citing* NEPGA Protest, Exhibit 3, Affidavit of Robert Stoddard (Stoddard Affidavit) at 115.

should be approved to be implemented for the fourth FCA rather than delayed until the fifth FCA.

147. NEPGA supports the Filing Parties' proposal for the inflation adjustment based on a Handy-Whitman industry index, but NEPGA does not support the Filing Parties' proposed one-year delay in the operation of the inflation adjustment. NEPGA states that the Commission should direct ISO-NE to immediately apply an inflation adjustment and to file with the Commission the Handy-Whitman industrial index it intends to use. Given its use in fifteen applications in the FCM's market rules, EPSA states that CONE must be set at a level and updated on a periodic basis to ensure that the parameter reflects current market conditions and economic realities.

148. If the Filing Parties do not reset the CONE value administratively, NEPGA argues that many CONE-dependent provisions (in addition to the FCA starting price) need to be addressed. For example, they contend that OOM resources are eligible to bypass the APR if bidding above 0.75 times CONE (\$3.69/kW-month currently) while the actual cost of new entry is in the range of \$9 to \$10 – a large loophole in the application of the APR. Alternatively, NEPGA states that ISO-NE could adopt asset class-specific standards of review for new resource offers consistent with PJM's Minimum Offer Price Rule. The Joint Protesters assert that the CONE reforms proposed by NEPGA in its protest should be adopted by the Commission.

149. In its answer, CT DPUC states that the Filing Parties' modifications to CONE are reasonably tailored to preserve this core FCM mechanism. CT DPUC contends that the FCM settling parties intended CONE to be an empirical measure that reflects actual clearing prices in the FCA, not an engineering estimate for a hypothetical generation plant. Further, CT DPUC explains that the FCM settling parties anticipated that other types of new entrants would also bid to set the actual cost of new entry, but the generators' narrow view ignores the costs of other new entrants that may set price in the FCA. CT DPUC argues that the Commission should reject NEPGA's request to reset CONE to more reasonable levels and need not address their alternative proposal because the Filing Parties' changes are just and reasonable.

### **3. Commission Determination**

150. The Commission finds the Filing Parties' proposed Rule Changes concerning the CONE mechanism to be just and reasonable. While the generator parties seek an increase in the CONE value, we note that the specific value of CONE is not part of the instant filing. Rather, the proposed Rule Changes concern an updating mechanism for CONE, including to address potential inflation in instances where the CONE value is not reset under the current 70/30 formula. Boston Gen and other generator parties argue that the CONE level reflects the effects of OOM from the first three FCAs. In contrast, the IMM Report notes that "because of the large amount of new, in-market resources

(primarily new demand resources) that remained in the auction until the floor price was reached, both FCA # 1 and FCA # 2 would have cleared at the floor price even if no out-of-market resources had participated in the auctions.”<sup>72</sup> Further, in ISO-NE’s answer, the IMM notes that OOM entry also did not have an effect on the FCA # 3 clearing price reaching the price floor.<sup>73</sup> As such, while OOM entry may ultimately result in the CONE value staying at a relatively low value for a longer time than it would have otherwise, arguments that OOM entry has triggered the current CONE value appear to be flawed. We also fail to see how arguments that the CONE value is simply the product of a mathematical calculation (and thus, is disconnected from reality) are relevant, since the CONE 70/30 update mechanism was agreed to in the FCM settlement, and the generator parties do not seek to revise it here. Last, to the extent that the generator parties contend that the IMM analysis fails to properly consider all of the OOM capacity in its analysis, we note that they have not supported such an allegation.

151. However, we do agree with the generator parties that the proper CONE value is important, since it is tied to numerous aspects of the FCM. As noted by the generator parties, it is clear that the CONE value in ISO-NE is well below the CONE values in both NYISO and PJM. While we do not agree with the logic offered by the generator parties as to why ISO-NE’s CONE value is relatively lower, it still leaves open this issue of an appropriate value for CONE going forward. This issue is significant since, for example, the IMM review of de-list bids from new capacity (to assess OOM capacity) is only triggered *below*  $0.75 * \text{CONE}$ . As some of the generator parties have indicated, at very low levels of CONE, this allows parties seeking to affect the FCM price the ability to offer new capacity well below their resource costs, yet at a level above the IMM threshold for review. Therefore, as the CONE value is intrinsically tied to the OOM determinations that are part of the APR Issue, we will require the Filing Parties and others to address in their First Briefs in the paper hearing, above, the issue of the proper CONE value.

152. Finally, we will not require ISO-NE to implement the inflation adjustment with FCA # 4 as NEPGA and EPSA request, because the qualification process has already begun for the fourth FCA and it would not be reasonable to change the expected CONE in the middle of that process.

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<sup>72</sup> IMM Report at 3.

<sup>73</sup> LaPlante Affidavit at 8.

## **J. Review of Offers Below 0.75 times CONE**

### **1. Filing Parties' Proposal**

153. The Filing Parties state that the IMM review of offers from New Generating Capacity Resources and New Demand Resources below 0.75 times CONE are being clarified in the Rule Changes. Specifically, the Filing Parties note that the changes provide additional detail concerning whether an offer is consistent with the long-run average costs of a resource net of expected net revenues other than capacity revenues. The Filing Parties state that these changes provide that expected net revenues may include economic development incentives that are offered broadly by state or local governments and are not expressly intended to reduce prices in the FCM. This determination applies to whether FCM offers are treated as in-market, and eligible to set a clearing price, or OOM. The proposed changes also clarify that conventional economic development incentives, e.g., property tax reductions to attract industry, are considered in-market since they are typically offered to a wide range of industries. The Filing Parties state that these rules will not change the determination of whether a specific project is found to be in-market or out-of-market or change the Tariff's basic principle on this differentiation, but the changes do require additional reporting of information regarding offers from new resources submitted at prices below 0.75 times CONE.<sup>74</sup>

### **2. Protests, Comments, and Answers**

154. National Grid supports the Filing Parties' request for additional information and transparency for OOM determinations via changes requiring reporting information regarding offers from new resources submitted at prices below 0.75 times CONE, since this change provides needed clarity, detail, and specificity to the existing rules.

155. NEPGA supports the Filing Parties' proposed language to increase the transparency of the review of bids below 0.75 times CONE by the IMM. However, NEPGA states that the new language should include an express statement that any revenue stream made available to new resources but not to existing resources of the same technology type, will be considered OOM.

### **3. Commission Determination**

156. We find that the proposed revisions to the rules governing offers below 0.75 times CONE are just and reasonable. The Filing Parties' proposal provides additional clarity

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<sup>74</sup> Under section III.13.8.1, ISO-NE is required to file an informational filing no later than 90 days prior to the FCA describing its determinations with respect to that FCA, including supporting documentation.

on the determination of whether offers below 0.75 times CONE should be considered in-market or OOM. Further, the proposed revisions will require that additional details be provided in ISO-NE's informational filing to the Commission outlining the IMM determinations on these offers prior to each FCA, providing additional transparency to this process. Regarding NEPGA's requested additional language, we find that NEPGA has not provided sufficient basis for this request and has not demonstrated that the Filing Parties' proposal is unjust and unreasonable without this language.

**K. Rejection of Prorating Election for Reliability Reasons**

**1. Filing Parties' Proposal**

157. Under the current market rules, ISO-NE is required to procure no more than the region's ICR in each FCA. For the first three auctions, ISO-NE's Tariff created a capacity price collar, so that the price paid to resources may not go more than a certain amount higher than or lower than CONE. The lower bound of this collar is 60 percent of CONE, and section III.13.2.7.3(b) of the Tariff currently provides that if, during the auction, the clearing price for capacity falls to 0.6 times CONE, capacity offers are prorated. When the price gets to 0.6 times CONE, a supplier may choose either to prorate price (i.e., to sell all of the megawatts that it has offered into the capacity market, at a lower price than the Capacity Clearing Price) or to prorate quantity (i.e., to sell fewer megawatts, but receive the full Capacity Clearing Price for those megawatts). If, however, ISO-NE determines that for reliability reasons it will require a supplier's entire offer, that supplier may not choose to prorate quantity, and must prorate price.<sup>75</sup>

158. This provision has been a source of controversy in the past, with capacity providers arguing that if their entire offers are needed for reliability reasons, they should

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<sup>75</sup> See ISO-NE Tariff, § III.13.2.7.3(b):

Where the Capacity Clearing Price reaches 0.6 times CONE, . . . the total payment to all listed capacity resources during the associated Capacity Commitment Period shall be equal to 0.6 times CONE times the Installed Capacity Requirement . . . . Payments to individual listed resources shall be prorated based on the total number of MWs of capacity clearing in the FCA . . . . Suppliers may instead prorate their bid MWs of participation in the Forward Capacity Market by partially de-listing one or more resources. . . . Any proration shall be subject to reliability review.

be paid the full Capacity Clearing Price for the entirety of those offers.<sup>76</sup> The Filing Parties propose to revise section III.13.2.7.3(b)(iv) to provide that, for FCAs subject to the floor price, a resource that may not choose to prorate quantity for reliability reasons will receive compensation based on the Capacity Clearing Price for each of its megawatts that clears the auction; resources denied megawatt prorationing as a result of a reliability review will receive compensation based on the Capacity Clearing Price with an associated cost allocation to Network Load in the affected Reliability Region. The Filing Parties explain that the change provides that, where prorationing is rejected for reliability reasons, the resource's payment shall not be prorated based on the total number of megawatts of capacity clearing at the Forward Clearing Price. Rather, the difference between its actual payment based on the Capacity Clearing Price and what its payment would have been had prorationing not been rejected for reliability reasons will be allocated to Network Load within the affected Reliability Region.

159. The Filing Parties state that this change is intended to compensate capacity that is deemed necessary for reliability at a price level equal to that received by those resources that are providing capacity not specifically needed for reliability. They state that, in making this change, they intend to eliminate, on a prospective basis, the recurring argument that denying megawatt prorationing to resources on the basis that they are needed for reliability is inconsistent with the compensation provided to resources that are not permitted to de-list from the FCA altogether for similar reliability reasons.

## 2. Protests, Comments, and Answers

160. NEPGA supports the changes proposed with respect to compensation where a resource's prorationing election is rejected for reliability reasons. Boston Gen similarly states that this change resolves a recurring fairness problem. Boston Gen notes, however, that the filing indicates that the proposed revisions to the prorating provisions are intended to address this issue on a prospective basis. It asks the Commission to make clear that the revisions would apply to "any denial of capacity prorating for reliability reasons that occurs after the effective date of the relevant tariff sheets, including prorating of capacity that cleared the third FCA."<sup>77</sup> It points to the fact that, as the Commission stated in finding that the issue of capacity prorating by resources in the Boston sub-area was not yet before it when ISO-NE filed the results of the third FCA,<sup>78</sup> ISO-NE indicated that resources in the Boston subarea may not be able to prorate quantity for the 2012-

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<sup>76</sup> See *ISO New England, Inc.*, 123 FERC ¶ 61,290 (2008), *reh. den.*, 130 FERC ¶ 61,235 (2010).

<sup>77</sup> Boston Gen protest at 30.

<sup>78</sup> *Id.* at 31, citing *ISO New England Inc.*, 130 FERC ¶ 61,145, at P 4 (2010).

2013 Commitment Period, but that question has not yet been decided. Therefore, Boston Gen suggests, the new regulation regarding prorationing should apply in the event that some or all Boston suppliers are not allowed to prorate quantity for the 2012-2013 Commitment Period.

161. MA AG states that despite the increased costs to ratepayers that will result from this revision, the MA AG supported this revision in order for the Rule Changes to reach broad stakeholder consensus. CT DPUC states that it would not have acceded to these provisions but for the agreement that the FCM modifications would be presented to the Commission as a package. NU states that this provision has broad support within NEPOOL.

162. In its answer, NEPOOL notes that the proposed Rule Changes ensure that MWs that are not able to prorate for reliability reasons are paid at the same price as other MWs, despite the Commission's recent conclusion that such a change is not necessary for the current Market Rules to be just and reasonable.

### **3. Commission Determination**

163. The Commission will accept this proposed change. The Commission has accepted the current compensation scheme for resources that are denied the ability to prorate their megawatts for reliability on the basis that section III.13.2.7.3(b) of the ISO-NE Tariff prohibits ISO-NE from paying more capacity than what is equal to the ICR times the clearing price.<sup>79</sup> However, we have indicated previously that the issue should be addressed in stakeholder proceedings, as occurred here.<sup>80</sup> We agree that this proposed solution is an improvement and addresses an inconsistency between the compensation provided to resources that are denied the ability to prorate megawatts at the price floor and other cleared capacity.

164. Boston Gen requests that this provision be made effective with respect to the 2012-2013 Commitment Period. We deny this request. Boston Gen's request would require implementation of this change after the relevant auction occurred (FCA # 3) but prior to ISO-NE's determination on prorationing for the same auction, inviting arguments that the rules were changed "in the middle of the game." We find that it is reasonable that such a change (which might require load parties in the Boston sub-area to receive a greater allocation of capacity costs for the 2012-2013 period) be put in place on a prospective basis, (i.e., beginning with FCA # 4) and not affect ISO-NE's upcoming

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<sup>79</sup> *ISO New England, Inc.*, 123 FERC ¶ 61,290, at P 74 (2008).

<sup>80</sup> *ISO New England Inc.*, 130 FERC ¶ 61,145, at P 20 (2010).

determination as to whether Boston sub-area units will be able to prorate megawatts as a result of FCA # 3.

165. We note that the proposed tariff language from section III.13.2.7.3 suggests that both the extension of the price floor and the revised proration methodology discussed above will occur for the capacity commitment periods beginning in June 2013, June 2014, and June 2015. As noted above, however, we anticipate that the price floor may be terminated prior to these auctions, at which time these prorating rules will become moot.

## **L. Resource Obligation**

### **1. Filing Parties' Proposal**

166. The Filing Parties state that language is added to section III.13.6.4, which specifies that a Generating Resource having no CSO is not required to offer into the Day-Ahead Energy Market or Real-Time Energy Market. The Filing Parties state that this provision reflects the intent of the market design to procure capacity equal to the ICR, and for the ICR to reflect the region's anticipated capacity needs, without relying on unobligated resources. This change clarifies that when ISO-NE requests energy from unobligated capacity, the resource shall not be obligated "under section III.13 of the Tariff" to provide energy from that capacity and shall not be subject to any section III.13 availability penalties for failure to provide energy from that capacity.

### **2. Protests, Comments, and Answers**

167. NextEra states that the proposed revisions to section III.13.6.4 of the Tariff, are a complete reversal from the revisions approved during a November 6, 2009 Participants Committee meeting. NextEra states that the November version properly required resources being compensated for reliability to address reliability concerns first, since doing otherwise would be unduly discriminatory to those that are not compensated for reliability. By contrast, NextEra states that the proposed section III.13.6.4 allows ISO-NE operators total discretion on when to call on generators without a CSO and when to call on resources that are being compensated for providing a reliability service. NextEra argues with the excess capacity in New England, outside of emergencies, it would be unjust and unreasonable to permit ISO-NE operations to continue relying or otherwise calling on generation resources without a CSO, even if doing so might allow ISO-NE to avoid calling on certain resources that have accepted such obligations but may not be able to respond. NextEra requests that the Commission reject the clarification revisions to section III.13.6.4 and direct ISO-NE to submit a compliance filing providing that resources without a CSO may only be called upon during emergencies.

168. In its answer, ISO-NE maintains that NextEra's request is unnecessary and untimely because ISO-NE is currently in the process of revising Operating Procedure 4

(OP4) such that the treatment of resources that do not have a CSO in the FCM is already being addressed in a manner consistent with NextEra's desires. Further, ISO-NE explains that the NEPOOL-approved language referenced by NextEra was part of a design-based document not supported by ISO-NE, so the Filing Parties did not scrap the language, rather they did not support it in the first place. ISO-NE states that if NextEra would like to revise the language further, it should raise the issue in the stakeholder process.

### **3. Commission Determination**

169. We agree with the Filing Parties that the clarifying language to section III.13.6.4 of the Market Rule is appropriate. ISO-NE is currently in the process of revising its OP4 procedures, and it appears that NextEra's concerns will be addressed by those revisions. In addition, we note that our assessment of whether the proposal before us is just and reasonable is not affected by whether a prior draft version of certain language was proposed in the stakeholder proceeding. Rather, such iterations are to be expected in a stakeholder process. We find the Filing Parties' proposed clarification of the obligations of a CSO to be just and reasonable.

#### **M. Proposed Stakeholder Process**

##### **1. Filing Parties' Proposal**

170. As noted previously, the Filing Parties propose to hold future stakeholder processes, with the assistance of an economic consultant, in order to address remaining concerns to Participants and continue to improve the FCM. Issues to be considered include further refining the definition of OOM resources, when the APR should be triggered, and how the price should be set under the APR. The Filing Parties state that the economic consultant will consider approaches that rely on auction prices rather than administrative pricing wherever possible. ISO-NE commits to produce a filing within 18 months or less from the date of the instant filing either proposing new rule changes or providing a status update. ISO-NE states that it believes this can be accomplished in less time than 18 months, but such a timeline is dependent upon the reviews by the EMM and the conclusions of the economic consultant.

171. In addition, ISO-NE notes that if over time the TSA deterministic requirement continues to exceed the LRA probabilistic requirement in determining whether to model zones,<sup>81</sup> ISO-NE commits to work with stakeholders in the future on possible alternative

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<sup>81</sup> The LRA probabilistic requirement is based on a Loss of Load Expectation (LOLE) of disconnecting non-interruptible customers no more than once every ten years (or an annual LOLE of 0.1).

solutions (e.g., transmission solutions) which might prove more effective and efficient for the markets and customers in the long-run. ISO-NE also commits to studying the contribution that resources without a CSO make to system reliability. ISO-NE explains that it will collect data on the participation in the energy market of resources without a CSO for the first two Capacity Commitment Periods and will discuss the data with stakeholders and whether further action is appropriate.

172. Last, ISO-NE states that it will also enhance the Regional System Planning process to consider the following: the impact of proposed transmission topology changes on zonal configuration and requirements; identification of emerging issues that may require changes in zonal configuration; identification of effective solutions to local security and reliability needs; and projections of zonal configurations under alternate expansion.

## **2. Protests, Comments, and Answers**

173. Generally speaking, the generator sector argued that another stakeholder process on top of the process that was just held would not solve any of these still-unresolved issues. For example, NEPGA contends that without Commission impetus, future revisions to the FCM will not eliminate the price-distorting effects of buyer market power or other OOM activity. NEPGA asserts that the fact that ISO-NE is admitting that further work is necessary implicitly admits that the proposed Rule Changes do not adequately address the problem. NEPGA states that an additional stakeholder process is both unnecessary and an unjust and unreasonable perpetuation of an unjust and unreasonable tariff provision, as stakeholders just finished extensive deliberations of these identical issues. Thus, NEPGA states that the Commission can and should resolve these issues on its own.

174. Similarly, NextEra does not believe that the Filing Parties have adequately justified their proposal to hold an additional 18-month stakeholder process that would seek to resolve some of the long-standing issues related to the FCM. NextEra states that the stakeholder process has repeatedly shut out the Generation Sector from providing input into proposed revisions made to the FCM. NextEra cites the proposed revisions to the treatment of OOM resources, the modeling of capacity zones, and the proposed truncated extension of the price floor as examples of the lop-sided nature of the stakeholder process.

175. The EMM recommends that the Commission establish a specific timetable for the stakeholder process and mandate that ISO-NE file proposed solutions at the end of this process. The EMM states that in light of the importance of these issues, 9 to 12 months is a more reasonable timeframe for a stakeholder process to address APR, zonal modeling issues, and the relevant market monitoring and mitigation provisions.

176. BEMI states that although many issues contained in the design-based document produced by the FCM Working Group were addressed during the stakeholder process, BEMI believes, and ISO-NE has agreed, that additional review of how the section 10 changes to the design-based document<sup>82</sup> would impact the FCM are necessary prior to implementing these items into the FCM design. BEMI states that further improvements to the FCM design are possible and future stakeholder processes should be held to consider such improvements. Therefore, BEMI requests, to the extent that ISO-NE intends to limit the scope of the stakeholder process to exclude these issues, that the Commission direct ISO-NE to consider the issues identified in section 10 of the design-based document during the stakeholder process and to include a report or proposed revisions addressing these issues as a part of its filing at the conclusion of the 18-month process.

177. NSTAR explains that it supports ISO-NE's commitment towards continuing its stakeholder initiatives and further improving upon the FCM design. However, NSTAR requests that ISO-NE provide additional details on how the proposed economic consultant will be decided upon, exactly what issues in addition to what it already identified<sup>83</sup> will be evaluated by the consultant and the EMM, and how often ISO-NE will meet with stakeholders to discuss the consultant's and the EMM's assignments, findings, and efforts. Similarly, addressing ISO-NE's commitment to working with stakeholders on possible alternatives if the TSA requirement used in determining the LSR continues to exceed the LRA requirement "over time," NSTAR requests that ISO-NE specify the "period of time" in which such an observation must be made in order to initiate stakeholder discussions on this potential issue. Finally, NSTAR requests that ISO-NE provide specifics on the method by which it will incorporate the proposed enhancements to the RSP process, if stakeholders will be consulted, whether a filing will be made with the Commission for approval of these considerations as part of the RSP process, and when this filing will be made.

178. National Grid states that it supports ISO-NE's commitment in the proposed Rule Changes to study the contribution that resources without a CSO make to system

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<sup>82</sup> The section 10 changes of the DBD relate to import capacity resources and include: (i) enhancement of the capability of an Import Capacity Resource to acquire a CSO from an Import Capacity Resource that cleared on another interface and/or from an internal Capacity Resource; and (ii) allow for capacity wheel-through where ISO-NE acts as the intervening control area, e.g. a transaction from the Quebec Control Area that flows across ISO-NE and sinks into the New York ISO.

<sup>83</sup> NSTAR states that ISO-NE anticipates further addressing refinements to the definition of OOM resources, when the APR should be triggered, and how the price should be set under APR.

reliability. National Grid notes that while it supports the Rule Changes, it also believes that care must be taken to avoid saddling consumers with excessive costs in pursuit of “illusory” reliability improvements. While National Grid appreciates ISO-NE’s focus on reliability, it states that it strongly believes that once ISO-NE obtains and studies the relevant data, it will be clear that resources without a formal CSO have contributed and continue to contribute in a real and significant way to NEPOOL’s reliability needs. Therefore, National Grid states that the LSR should and must recognize some level of reliability contribution from existing installed resources without a CSO.<sup>84</sup>

179. NEPOOL states that the region is committed to working to improve the FCM, including incorporating into the stakeholder process information provided by the EMM that was not available to the stakeholders prior to their vote on the instant filing, in addition to newer information provided by the generators.

180. NEPOOL objects to any assertions that there is no reason to continue the collaborative stakeholder process. NEPOOL states that it would welcome participation by knowledgeable Commission staff to the extent that can be accomplished consistent with the Commission’s obligations to consider any resulting proposal, and would not object to periodic reports that allow the Commission to ensure diligence is being exercised and progress is being made. NEPOOL urges the Commission to reject clearly and definitively any suggestion that the stakeholder process should be bypassed in addressing further changes to the FCM design and urges further that the Commission insist that all future refinements and improvements be vetted first through the NEPOOL stakeholder process.

181. In its answer, ISO-NE requests that the Commission uphold its filing as just and reasonable, approve it effective April 22, 2010, and allow for continued consideration of further FCM design changes in the stakeholder process resulting in a section 205 filing no later than December 15, 2010. ISO-NE also argues that the instant filing is not a settlement or compromise, thus does not require special treatment and must be approved notwithstanding the availability of other proposed solutions. ISO-NE also states that the stakeholder process, facilitated or monitored with the help of Commission staff, is a much more constructive environment to consider further changes to the design of the FCM than a litigation or settlement judge process.

182. In its answer, NEPGA explains that FCM is at a critical juncture and thus another stakeholder process is not appropriate. NEPGA reiterates that the Commission should address the OOM issue now. Further, NEPGA states that the Commission should require ISO-NE to implement as many reforms as it can as soon as it can, and to fully explain to the Commission any delays that may arise.

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<sup>84</sup> National Grid Comments at 10-11.

### **3. Commission Determination**

183. As discussed above, we are setting many of the questions that the parties raise here for paper hearing. Given that extensive stakeholder proceedings up to this point have not fully resolved these heavily-contested issues, we will not require ISO-NE or NEPOOL to continue with stakeholder processes. However, we encourage the parties to continue stakeholder discussions in light of the guidance provided by this order, if they believe such a process will be useful and may lead to a negotiated resolution.

#### **N. Miscellaneous**

##### **1. Maine Parties' Argument on Cost Analysis**

184. Maine Parties state that they do not oppose the changes to the FCM submitted by the Filing Parties. However, Maine Parties attribute their abstention in the stakeholder process to ISO-NE's lack of cost analysis associated with the major design changes. Maine Parties believe that ISO-NE ignored the commitment it made in Docket No. ER09-1051,<sup>85</sup> which stated ISO-NE would provide information regarding cost implications and analysis when proposing market rule changes even after the NECPUC representative asked ISO-NE several times for an analysis of the cost implications of the proposed major design changes.

185. In its answer, ISO-NE states that, as was noted in the Rule Changes transmittal letter, ISO-NE provided an estimate of the cost impact of the rule changes related to the APR.<sup>86</sup> In addition, ISO-NE states that during the stakeholder process, ISO-NE provided Maine Parties with a quantitative analysis, including a calculation estimating the cost savings of reducing the risk premium in the FCM through better auction design and price formation; the analysis also included various steps in the calculations shown to allow better understanding and to facilitate stakeholders' own analysis of alternatives. Finally, ISO-NE notes that a qualitative analysis of the long-term need for the APR was also provided to stakeholders.

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<sup>85</sup> Maine Parties cite to the April 28 2009 transmittal letter in *ISO New England Inc. and New England Power Pool*, Docket No. ER09-1051-000 at 117, in which the Filing Parties stated, "In evaluating any major ISO initiative that . . . improve[s] the functioning of ISO-NE competitive markets for the benefit of consumers, the ISO will provide quantitative and qualitative information on the need for and the impacts, including costs, of the initiative." *See* Maine Parties' protest at 6 n.7.

<sup>86</sup> Transmittal, Rule Changes Filing at 4 n.12.

## **2. Commission Determination**

186. The Commission finds that ISO-NE has fulfilled its commitment to provide cost estimates or impact of rule changes, as set forth in the Order No. 719 compliance filing. While encouraging ISO-NE to follow through on this commitment in order to ease stakeholder access to information, we note that it is not yet an obligation since the Commission has not issued an order on the responsiveness section of the Order No. 719 compliance filing.

## **3. GDF Suez Argument**

187. GDF Suez explains that currently LSEs are permitted to designate their own or contracted capacity resources to self supply their capacity needs as an alternative to purchasing capacity in the FCA. However, if the nomination is less than the LSEs' actual peak load three years later, the LSE is precluded from self supplying the additional load and must purchase the difference at a premium. GDF Suez argues that LSEs should be allowed to self supply their full capacity needs with no premium attached since doing so will have no impact on the administration of the FCA. GDF Suez further explains that an LSE with generating capacity may designate that capacity for self supply in a FCA up to the level of its peak load responsibility at the time of the self-supply designation, but this designation may be significantly below its estimated future peak load responsibility and is therefore required to sell generating capacity. GDF Suez argues that the market rule is imbalanced since LSEs selling generating capacity they could not use as self supply into the FCM receive less than the capacity clearing price. Thus, GDF Suez argues, LSEs that are not allowed to adjust their supply to meet incremental load end up being charged more for their purchase to meet that load than its own resources are paid.<sup>87</sup> GDF Suez requests that the Commission direct ISO-NE to amend the market rules to allow LSEs that have incremental load and also have resources that cleared the relevant FCA to update their self-supply designations up to the start of the relevant Capacity Commitment Period.

## **4. Commission Determination**

188. The Commission will not direct ISO-NE to amend the market rules to allow LSEs additional flexibility to self supply. We find that GDF Suez's request is outside the scope of this proceeding and we will not address this issue here. GDF Suez is free to raise this issue in the stakeholder process if it has further concerns about flexibility to self supply.

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<sup>87</sup> GDF Suez Protest at 7-8.

## 5. Bidwell Status as Witness

189. In their answer, the Joint Filing Supporters state that generator parties now assert, with support from the affidavit of Miles O. Bidwell, on behalf of Boston Gen, that wholesale changes to the FCM are necessary despite the FCM's success. Addressing the Bidwell affidavit, the Joint Filing Supporters argue that the Commission should give no weight to Dr. Bidwell's affidavit, since his "entire affidavit is corrupted by the fact that he was previously a consultant to the CT DPUC during the FCM Settlement negotiations" and, therefore, privy to confidential internal discussions within the CT DPUC relating to its strategy and intentions in developing and agreeing to accept the FCM settlement. The Joint Filing Supporters assert that the CT DPUC will take action in the future if further proceedings ensue, in order to "prevent any further breaches."

190. Boston Gen states that they retained Dr. Bidwell to testify in this proceeding, since they share his long-standing convictions and principles. They argue that excluding the Bidwell affidavit is unfounded and contrary to Commission precedent. Citing Rule 509(a) of the Commission's Rule of Practice and Procedure<sup>88</sup> and the Commission's long-standing precedent,<sup>89</sup> Boston Gen states that Dr. Bidwell's testimony is directly relevant in this proceeding. Boston Gen states that the Bidwell affidavit is based on well-accepted principles of economic analysis, as well as evidence relied on by other expert witnesses. Boston Gen asserts that the Joint Filing Supporters have not provided evidence for their claim that Dr. Bidwell disclosed any confidential information obtained during the course of his work for the CT DPUC.

## 6. Commission Determination

191. We agree with Boston Gen's comments regarding Commission policy on the admissibility of evidence. Boston Gen notes that the Joint Filing Supporters have failed to provide any reason to exclude Dr. Bidwell's testimony, and we agree. Dr. Bidwell's testimony has a direct relationship to this instant proceeding, and it is not irrelevant, immaterial, or unduly burdensome. When receiving expert testimony, we expect that the expert has submitted his or her testimony with integrity and honesty and not, as the Joint Filing Supporters allude, simply to put in writing the agenda of the entity that has retained the expert. Therefore, since we have no reason to believe that Dr. Bidwell divulged any sort of confidential information related to CT DPUC's strategy or

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<sup>88</sup> 18 C.F.R. § 385.509(a) (2009).

<sup>89</sup> Boston Gen states that it is the Commission's long-standing precedent to admit evidence unless the information has no possible relationship to the controversy, is irrelevant, or immaterial, or unduly burdensome. *Entergy Servs, Inc.* 109 FERC ¶ 61,108, at P 7 (2004).

negotiation intentions for the FCM settlement, all expert testimonies shall be allowed to remain in this proceeding.

The Commission orders:

(A) We hereby accept the Rule Changes Filing, as discussed above.

(B) We hereby set for paper hearing the issues identified in P 18, as discussed above.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

Appendix A: ER10-787-000: Motions to intervene and protests, comments and answers  
*Motions to intervene*

Brick Power Holdings LLC

Calpine Corporation

Connecticut Municipal Electric Energy Cooperative (CMEEC), Massachusetts Municipal Wholesale Electric Company (MMWEC), and New Hampshire Electric Cooperative, Inc. (NHEC) (Public Systems)

Connecticut Office of Consumer Counsel and Attorney General of Connecticut (CT OCC and CTAG)

Consolidated Edison Energy, Inc.

Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (Constellation)

Exelon Corporation

Long Island Power Authority and LIPA

Dominion Resources Services, Inc.

Eastern Massachusetts Consumer-Owned Systems

Entergy Nuclear Power Marketing, LLC

HQ Energy Services U.S.

Massachusetts Department of Public Utilities (Mass DPU)

Millennium Power Partners, L.P.

Mirant Energy Trading, LLC; Mirant Canal, LLC; and Mirant Kendall, LLC (Mirant Parties)

NAEA Energy Massachusetts, LLC

NAEA Newington Energy, LLC

NEPOOL Industrial Customer Coalition

Potomac Economics (the External Market Monitor, or EMM)

PPL EnergyPlus, LLC; PPL Maine, LLC; PPL Wallingford Energy, LLC (PPL)

Trans-Canada Power Marketing, Ltd.

United Illuminating Company (UI)

*Motions to intervene and protests or comments and answers*

ANP Funding I, LLC (ANP), a wholly owned subsidiary of International Power America, Inc.

BG Dighton Power, LLC (BG Dighton), Lake Road Generating, L.P., MASSPOWER and BG Energy Merchants, LLC. (BG Entities)

The Boston Gen Companies are Boston Generating, LLC; Mystic I, LLC; Mystic Development, LLC; and Fore River Development, LLC. (Boston Gen)

Brookfield Energy Marketing Inc. (BEMI)

Connecticut Department of Public Utility Control (CT DPUC)

Dynegy Power Marketing, Inc. and Casco Bay Energy Company, LLC (Dynegy)

Electric Power Supply Association (EPSA)

GDF Suez Energy Marketing NA, Inc. (GDF Suez)

ISO-NE Internal Market Monitor (IMM)

PSEG Energy Resources & Trade LLC and PSEG Power Connecticut LLC (PSEG Companies); and NRG Power Marketing LLC, Connecticut Jet Power LLC, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, and Somerset Power LLC (NRG Companies) (together, Joint Protesters or PSEG/NRG)

Massachusetts Attorney General (MA AG)

Maine Public Utilities Commission (Maine Commission) and the Maine Office of the Public Advocate (together, Maine Parties)

National Grid USA and its New England utility operating subsidiaries (New England Power Company, Massachusetts Electric Company, The Narragansett Electric Company, and Granite State Electric Company) (together, National Grid)

New England Conference of Public Utility Commissioners (NECPUC)

New Hampshire Public Service Commission (New Hampshire Commission)

The Northeast Utilities Companies (NUSCO) filed by their agent, Northeast Utilities Service Company (NUSCO are comprised of The Connecticut Light and Power Company, Western Massachusetts Electric Company, and Public Service Company of New Hampshire)

New England Power Generators Association Inc. (NEPGA)<sup>90</sup>

NextEra Energy Resources, LLC (NextEra)

NSTAR Electric Company (NSTAR)

Vermont Department of Public Service and Vermont Public Service Board (together, Vermont Parties)

*Answers*

CT DPUC (together with the Vermont Parties and NUSCO)

CT OCC

IMM

ISO-NE

Joint Filing Supporters (CT DPUC, the Vermont Parties and NUSCO)

National Grid (together with UI)

NEPOOL

Public Systems

Boston Gen (answer to CT DPUC's answer)

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<sup>90</sup> ANP Funding filed a certificate stating that it intended to join NEPGA's protest.

GDF Suez (answer to ISO-NE's answer)

ISO-NE (answer to GDF Suez's answer)

**Appendix B: EL10-50-000: Motions to intervene and protests, comments and answers**

*Motions to intervene and notices of intervention*

ANP Funding I, LLC

BG Entities

Boston Gen

Brick Power Holdings LLC

Bridgeport Energy, LLC

Calpine Corporation

Consolidated Edison Energy, Inc.

Constellation

CT DPUC

BG Entities

Con Ed

Dominion Resources Services, Inc.

Dynegy

GDF Suez

HQUS

Mass DPU

Millennium Power Partners, LP (Millennium)

Mirant

NAEA Energy Massachusetts, LLC

NAEA Newington Energy, LLC

NextEra Energy Resources, LLC

NEPOOL Industrial Customer Coalition

NRG Companies

NUSCO

PPL

PSEG Companies

Trans-Canada Power Marketing, Ltd.

Vermont Parties

*Motions to intervene with answers, protests, or comments*

CT OCC

Eastern Massachusetts Consumer-Owned Systems

EPSA

Entergy Nuclear Power Marketing, LLC

Exelon

ISO-NE

MA AG

Maine Commission

Millennium Power Partners, L.P.

National Grid, Maine Commission, and the Energy Consortium

NECPUC

NECPUC, CT DPUC, Vermont Parties, NUSCO, New Hampshire Commission

NEPOOL

NEPGA

New Hampshire Commission

NSTAR

Public Systems

UI

**Appendix C: EL10-57-000: Motions to intervene and protests, comments and answers**

*Motions to intervene and notices of intervention*

ANP Funding I, LLC

Boston Gen Companies

Bridgeport Energy, LLC

Brookfield Energy Marketing Inc.

Calpine Corporation

CT DPUC

Connecticut Municipal Electric Energy Cooperative, et. al.

Constellation Energy Commodities Group, Inc and Constellation NewEnergy Inc.

Dominion Resources Services, Inc.

Dynegy Power Marketing Inc., et. al.

Eastern Massachusetts Consumer-Owned Systems

Electric Power Supply Association

Maine Public Utilities Commission

Massachusetts Department of Public Utilities

Millennium Power Partners, L.P.

Mirant Parties

NEPOOL Industrial Customer Coalition

New England Power Generators Association Inc.

NextEra Energy Resources, LLC

Northeast Utilities Service Company

PPL EnergyPlus, LLC, et. al.

Vermont Department of Public Service

*Motions to intervene with answers, protests, or comments*

Connecticut Department of Public Utility Control, et. al.

Exelon Corporation

National Grid USA

New England Conference of Public Utilities Commissioners

New Hampshire Public Utilities Commission

NEPOOL

NSTAR Electric Company and the Massachusetts Attorney General

The United Illuminating Company

*Motion to Dismiss Complaint Or, In the Alternative, Answer*

ISO New England Inc.