125 FERC ¶ 61,069
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ISO New England, Inc. and New England Power Pool Docket No. ER07-476-002

ORDER ACCEPTING COMPLIANCE FILING AND REQUIRING FURTHER COMPLIANCE FILING

(Issued October 16, 2008)

1. On May 27, 2008, ISO New England Inc. (ISO-NE) and New England Power Pool (NEPOOL) (collectively, Filing Parties) filed proposed amendments to ISO-NE's tariff in compliance with the Commission's February 25, 2008 order in this proceeding[1] and with Order Nos. 681 and 681-A.[2] New England Public Systems (NEPS) protested, arguing that the May 27 filing fails to offer firm long-term coverage in a manner required by the February 25 Order. As discussed below, we accept ISO-NE and NEPOOL's May 27 Filing as in compliance with the February 25 Order and Order Nos. 681 and 681-A and require a further compliance filing.

I. Background

2. On January 29, 2007, ISO-NE and NEPOOL filed proposed tariff revisions to implement long-term firm transmission rights (LTTRs)[3] in New England in compliance

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[1] *ISO New England and New England Power Pool*, 122 FERC ¶ 61,172 (2008) (February 25 Order).

[2] *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, FERC Stats & Regs. ¶ 31,226 (2006), *order on reh'g*, Order No. 681-A, 117 FERC ¶ 61,201 (2006).

[3] The Filing Parties use the acronym "LFTR" in their proposal. This abbreviation is consistent with the terms used in the Second Restated New England Power Pool Agreement, or the ISO-NE Transmission, Markets and Services Tariff. Notwithstanding the Filing Parties' use, when we refer to Long Term Transmission Rights generally, we use the abbreviation "LTTR" rather than "LFTR" in order to provide consistency with Commission precedent relating to Order No. 681. *See Midwest Independent Transmission System Operator, Inc.*, 119 FERC ¶ 61,143 (2007); *Cal Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274 (2006); and *PJM Interconnection, LLC,* 117 FERC
(continued)

with Order Nos. 681 and 681-A. In the February 25 Order, the Commission issued an order accepting in part and rejecting in part the Filing Parties' compliance filing, finding that the Filing Parties' proposal failed to comply, as discussed further below, with Guideline 4 and Guideline 7 of Order Nos. 681 and 681-A.

3. Specifically, Guideline 4[4] states that LTTRs must be made available with term lengths (and/or rights to renewal) that are sufficient to meet the needs of load serving entities (LSEs) to hedge long-term power supply arrangements made or planned to satisfy a service obligation. The length of term of renewals may be different from the original term. Transmission organizations may propose rules specifying the length of terms and use of renewal rights to provide long-term coverage, but must be able to offer firm coverage for at least a 10 year period.

4. With respect to Guideline 4, the Commission found that Filing Parties' proposal was overly restrictive and did not satisfy the guideline because the proposal did not provide firm coverage for a power supply arrangement with a term that was not an exact multiple of five years, which is the term for which Allocated LFTRs were available under the original proposal.[5]

5. The Commission therefore directed Filing Parties to amend their proposal in order to provide sufficient flexibility to enable firm coverage for power supply arrangements with initial terms of at least five years and that are not necessarily multiples of five, and allow LTTRs to be renewed when the remaining term of a power supply arrangement is less than five years. The Commission stated that the required term of the renewal could be either five years or the remaining term of the power supply arrangement.[6]

6. Guideline 7[7] states that the initial allocation of the LTTRs shall not require recipients to participate in an auction. The Commission rejected Filing Parties' proposal because it effectively required the LSE to submit a winning bid in an auction to obtain LTTRs and, as a result, expose the LSE to unacceptable auction price risk. Under the

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¶ 61,220 (2006). We do, however, use the abbreviation LFTR when referring to "Allocated," "Auctioned," and "Incremental" rights in order to be consistent with ISO-NE's tariff.

[4] *See* 18 C.F.R. 42.1(d)(4) (2008).

[5] For example, a LSE with an eight-year supply contract would be able to obtain LTTRs with a term of five years, but would not be able to renew those LTTRs to cover the remaining three years of the contract.

[6] February 25 Order, 122 FERC ¶ 61,173 at P 66-67.

[7] *See* 18 C.F.R. 42.1(d)(4) (2008).

Filing Parties' initial proposal, the price of the Allocated LFTRs was determined by the most recent auction. However, under that proposal, the LSE was essentially required to participate in the auction as a "price-taker" because it had to nominate itself for Allocated LFTRs before the auction. Thus, LSEs had to commit to purchase Allocated LFTRs before knowing the price.[8]

7. In the February 25 Order, the Commission suggested two options to comply with Order No. 681. The first approach was to offer LTTRs with a fixed price, known in advance for the full term of the LTTRs, to LSEs that meet eligibility requirements. The Commission added that the fixed price should be specific as to the source and sink of the LTTRs and could be based on the results of one or more recent auctions, recently observed congestion costs, or other readily quantifiable measure of the value of the LTTRs.[9] The second approach suggested by the Commission was to make LTTRs available to eligible LSEs, with the price of the LTTRs determined through annual auctions, and to provide the LSEs with an allocation of annual Auction Revenue Rights sufficient to offset the price of the LTTRs as determined in the auctions.[10]

II. The Filing

8. Filing Parties state that they have revised their proposal so that there will be a firm price for Allocated LFTRs before an eligible entity either elects to purchase an Allocated LFTR for its initial five-year term or before electing an annual renewal beyond the initial five-year term. Filing Parties state that under the revised proposal, the firm price for the initial five-year term of Allocated LFTRs is based on the results of the most recent LTTR auction that will be held just prior to the process for nominating and awarding Allocated LFTRs. Filing Parties contend that the proposal's reliance on results of the most recent auction is an advantage over other alternatives because it makes the pricing of Allocated LFTRs more forward looking than other pricing methods, such as any method that would be based on historical congestion data.[11]

9. Filing Parties also state that they have revised their proposal to allow Allocated LFTRs to be renewed in increments that are not necessarily multiples of five years. Filing Parties propose to allow eligible entities, on an annual basis, to extend the term of an Allocated LFTR for an additional 12-month period. Filing Parties contend that the annual renewal option remains in effect for so long as the eligible entity remains eligible

[8] February 25 Order, 122 FERC ¶ 61,173 at P 138.

[9] *Id.* P 141.

[10] *Id.* P 142.

[11] Filing Parties May 27, 2008 Filing at 7.

to receive Allocated LFTRs. They contend that the fixed price of the renewal option is based on the most recent auction result for the renewal year, and the option is exercised only after the fixed price is known by the Allocated LFTR holder.

10. Filing Parties request an effective date of August 29, 2008, the same as requested in the January 29, 2008 Filing. Filing Parties contend that assuming Commission acceptance of the tariff changes included in the May 27 filing by no later than January 2009, the ISO currently expects that the LTTR package will be implemented in late 2010 for LTTRs that will be effective beginning with the 2011 calendar year.

11. In the initial proposal, the Filing Parties proposed that 50 percent of the network capability of the New England transmission system would be made available in the initial LFTR auction. Filing Parties explain that under the new proposal, Allocated LFTRs will not be available for request until after the LTTR auction. As a result, Filing Parties request that only 25 percent of the network capability be made available in the first year of the relevant LTTR auction period. They state that this preserves the availability of a full 25 percent share of network capability for Allocated LFTRs.[12]

12. Filing Parties now propose to exclude radial facilities from network capability available in the LTTR auction, which differs from the initial proposal. Since Allocated LFTRs will no longer be nominated and included in the auction, it is necessary to hold aside (for nomination by eligible entities) the radial facilities for allocation along with the related Allocated LFTR across network facilities.[13]

13. Filing Parties also now propose that a price of zero be assigned to any nominated LTTR for which the auction-based price is negative.[14] Filing Parties state that this is appropriate because under the new proposal – in which LTTRs are not part of the auction process – it is possible that no eligible entity will nominate "flow" rights, and all eligible entities might request "counterflow" rights. Filing Parties assert that if this happened, there would be no money in the auction revenue fund to pay out to the counterflow holders.[15]

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[12] Section III. 7.3.1(a) (Network Capability Available for FTR Auctions) and 7.7.3 (Network Capability for Allocated LFTRs) of ISO-NE's Tariff.

[13] Section III.7.3.1(a) (Network Capability Available for FTR Auctions) and 7.7.3 (Network Capability for Allocated LTTRs) of ISO-NE's Tariff.

[14] Section III.7.7.7 (Determination of the Market Value of Feasible LTTR Awards) of ISO-NE's Tariff.

[15] Filing Parties cite *New York Independent System Operator, Inc.*, 123 FERC ¶ 61,044, at P 129 (2008).

III. Notice of Filing and Responsive Pleadings

14. Notice of Filing Parties' filing was published in the *Federal Register*, 73 Fed. Reg. 33,071 (2008), with interventions, protests and comments due on June 17, 2008. NEPS filed a protest. DC Energy, LLC (DC Energy) filed comments in support. Filing Parties and NEPS filed answers.

15. NEPS ask the Commission to reject ISO-NE's May 27 Filing because it complies with neither the February 25 Order nor Orders Nos. 681 and 681-A, and is not otherwise just and reasonable.

16. NEPS contend that Filing Parties have failed to make LTTRs available that would provide firm coverage for at least 10 years at prices known in advance, as required by the February 25 Order and Guidelines 4 and 7. NEPS state that an eligible LSE will only know the price of an Allocated LFTR for the first five years, and after that, based on the May 27 Filing, the annual price determination will be based on the results of the then-most-recent auction. It complains that an LSE will not know the price for the Allocated LFTR in the sixth year until ISO-NE conducts an auction for that right in year five.

17. Further, NEPS state that LSEs seeking to acquire an Allocated LFTR associated with the planned development of a new resource would face even more difficult choices with less information. It states that, under Filing Parties' compliance filing, an LSE seeking to secure an Allocated LFTR before committing to purchase the output of a new generating facility with a construction lead-time of three years would know the Allocated LFTR price for, at most, only the first two years during which the generating resource was expected to be operational.[16]

18. NEPS argue that parties will have to either forego Allocated LFTR coverage in years 6 through 10 or accept the prices produced by future auctions. NEPS assert that parties will be provided less price certainty than exists today, which was the intention of Guidelines 4 and 7. NEPS also contend that Filing Parties' proposal results in the termination of all renewal rights for subsequent years if a party decides not to renew an Allocated LFTR in a given year.

19. Finally, NEPS ask the Commission to direct Filing Parties to submit a compliance filing adopting NEPS's pricing approach. They argue that their proposal would allow LSEs to forgo a predictable percentage of their ARR revenue while the actual dollar amounts would vary based on changes in the auction revenues to be distributed, meaning its proposal automatically adjusts the price paid for an Allocated LFTR based on actual congestion levels.[17] NEPS also note that the Commission has rejected the idea of

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[16] NEPS June 17, 2008 Protest at 5.

[17] *Id.* at 8-9.

unnecessary out-of-market costs being passed on to consumers being used as a basis for rejecting NEPS's pricing proposal.[18] It also states that a continuation of the stakeholder process is unlikely to bear fruit on these issues.

20. DC Energy filed comments in support of Filing Parties' proposal. DC Energy contends that, as required by the February 25 Order, the proposal does not require entities eligible for Allocated LFTRs to participate in an LTTR auction and will allow eligible entities to choose whether to purchase Allocated LFTRs at a fixed price. DC Energy contends that this right provides a significant benefit to eligible entities that is not offered to many market participants. DC Energy further states that it agrees with the Filing Parties that reliance on the results of the most recent auction provides an advantage over other alternatives because the pricing for Allocated LFTRs will be more forward-looking than other pricing methods. DC Energy argues that the most recent auction prices incorporate a collective market view of how future events, such as planned transmission upgrades, will affect congestion patterns and the value of particular LTTR paths.[19]

21. DC Energy contends that the Filing Parties' proposal to allow eligible entities, on an annual basis, to extend the term of an Allocated LFTR for an additional 12-month period should remain in effect for so long as the eligible entity remains eligible to receive Allocated LFTRs. DC Energy argues that the annual renewal option satisfies the Commission's requirements by providing both a fixed price for the renewal option and the flexibility of one-year extensions, and guaranteeing eligible entities the ability to acquire Allocated LFTRs over the full duration of their long-term power supply commitments, however long those might be.[20]

22. Filing Parties disagree with NEPS's assertion that its compliance filing does not comport with Guidelines 4 and 7 and the guidance provided in the February 25 Order. With respect to Guideline 4, Filing Parties state that its proposal does in fact offer firm coverage for at least a 10-year period since an eligible entity can obtain an Allocated LFTR with a core term of five years, with firm year-by-year renewal rights for an indefinite period thereafter. For Guideline 7, it states that its compliance filing does not make the initial five-year term or the extensions subject to the outcome of an auction. In addition, it notes that the price outcome of the auction is known in advance of when the LSE must make a binding commitment to acquire the initial LFTR or any of the subsequent one-year extensions.

23. Filing Parties also state that NEPS's pricing proposal was rejected repeatedly by stakeholders, and adopting its approach could delay the adoption of LFTRs in the region

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[18] *Id*. at 8.

[19] DC Energy June 16, 2008 Filing at 4.

[20] *Id*. at 5.

since it would require software and system adjustments. Finally, Filing Parties argue that Order Nos. 681 and 681-A do not require it to meet a new criterion formulated by NEPS to "accommodate the lead time inherent in developing new generating resources to be covered by a…LTTR."[21]

24. Filing Parties also clarify what it considers an incorrect characterization made by NEPS in its protest regarding the timing of the exercise of the one-year Allocated LFTR renewal options. Filing Parties state that an "LSE will have the information on which to base its decisions on the first four years of LTTR extensions within the first five years of the initial LFTR term."[22] As an example, Filing Parties state that a holder of a "year one through five" Allocated LFTR can decide whether to extend its LTTR for year six in year two based on the price for the final effective year (i.e., year six) of the second LTTR auction. According to the Filing Parties' proposal, the prices for Allocated LFTRs for year six will be known after the auction near the end of year 1. The auction at the end of year 2 provides prices for year 7.[23]

25. In its answer, NEPS ask the Commission to deny Filing Parties' motion for leave to answer NEPS's protest because, NEPS claim, it misstates the manner in which annual renewals of Allocated LFTRs would be priced, fails to address key points in NEPS's protest, and mischaracterizes NEPS's positions. NEPS argue that Filing Parties' July 2 Answer fails to show that Filing Parties' proposal offers rights with terms that are sufficient to hedge long-term power supply arrangements, which NEPS contend is the fundamental requirement stated by Order No. 681. NEPS repeat their contention that Filing Parties' filing fails to provide known-in-advance pricing beyond an LTTR's initial five-year term. They state that Filing Parties' description of the proposed pricing policy does not track the annual renewal and pricing process laid out in the proposed tariff language.[24] According to NEPS, if an LSE renews an Allocated LFTR during year five to cover year six, the year-six price will be determined by the auction held in year five, not the auction that was held in year two.

26. Nevertheless, NEPS state that the difference between prices set in years two and five is largely beside the point because the LTTR price would not be set until after the LSE makes a binding commitment to enter into the long-term power-supply arrangement for which it is seeking to hedge congestion. According to NEPS, this fact inhibits an LSE's ability to plan, contract for, or develop long-term power supply arrangements if

[21] Filing Parties July 2, 2008 Answer at 8 (citing NEPS June 17, 2008 Protest at 2, 5).

[22] *Id*. at 9.

[23] Filing Parties July 2, 2008 Answer at 9.

[24] NEPS July 17, 2008 Answer at 6 (citing Proposed Section III.7.7.10(a)).

the LSE cannot predict effectively the congestion or hedging costs it will incur seeking to deliver the output of those resources. For years six and beyond, NEPS continue, Filing Parties' May 27 Filing provides no more price certainty than is available today using annual one-year auctions.[25] NEPS also contend that restrictive renewal eligibility requirements make matters worse. They state that proposed Section III.7.7.10(a) of the ISO-NE Tariff would cut off future renewal eligibility if an LSE decides that the price for an Allocated LFTR in a given year is unacceptable. NEPS state that Filing Parties' Answer does not even acknowledge this fact.

27. Finally, NEPS state that Filing Parties failed to respond substantively to its observation that the May 27 pricing proposal does not accommodate new resource development. They argue that Filing Parties' decision to price LTTRs for a five-year period from the most recent auction exacerbates this problem because much of the initial five-year term could be taken up in development and construction of the new resource.

IV. Discussion

A. Procedural Matters

28. Pursuant to Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers filed herein because they have provided information that assisted us in our decision-making process.

B. Commission Determination

29. We find that the Filing Parties' proposal complies with the directives of the February 25 Order and Guidelines 4 and 7 of Order Nos. 681 and 681-A. With respect to Guideline 7, we disagree with NEPS's contention that the Filing Parties' proposal fails to offer firm coverage for a ten-year period as required by Guidelines 4 and 7 of Order No. 681. Order No. 681 did not require transmission organizations to make available LTTRs at a fixed price for a ten-year term in order for such LTTRs to be considered "firm" coverage. It instead provided that transmission organizations can offer 10-year coverage through any mix of term lengths and renewals that stakeholders agree to, as long as the coverage is "firm", meaning that the *quantity* of the rights allocated is fixed over the 10-year period and that the rights are fully funded, i.e., the rights provide full reimbursement of any congestion costs that are incurred.[26] In Order No. 681, the term "price certainty" is used in the context of full funding of LTTRs.[27] With respect to price, Guideline 7 only

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[25] *Id*. at 6-7.

[26] Order No. 681, FERC Stats & Regs. ¶ 31,226 at P 258.

[27] *Id.* P 170.

requires that the LTTRs be made available to LSEs without their having to participate in an auction.

30. We disagree with NEPS's assertion that the Filing Parties' proposal is unjust and unreasonable because basing Allocated LFTRs after year five on the outcome of auctions after year five will result in price uncertainty for LSEs. Under the Filing Parties' proposal, LSEs know the price of the Allocated LFTRs before they must commit to receiving the Allocated LFTRs for the respective period. Although LTTRs are awarded based on an auction price, the cost of Allocated LFTRs is known in advance of when the LSE must make a binding commitment to acquire the initial LFTR or any of the subsequent one-year extensions. Thus, LSEs will know the price of both the five-year LFTRs and the one-year LFTRs before they commit to purchase them.

31. NEPS argue that there should be a known price for the Allocated LFTRs before signing a long-term power purchasing agreement. However, Order No. 681 did not require transmission organizations to provide known LTTR prices to LSEs before the LSEs commit to a long-term power purchasing agreement. Further, the Commission did not require a fixed price for 10-year LTTRs in Order No. 681.

32. We also find that the Filing Parties' Guideline 4 revisions comply with the directives of the February 25 Order and Order Nos. 681 and 681-A. In the February 25 Order, the Commission stated that the required term of the renewal could be either five years or the remaining term of the power supply arrangement.[28] We find that the Filing Parties' proposal to allow 12-month renewal rights beyond year five through the end of an LSE's long term service agreement complies with the February 25 Order because it accommodates long-term power supply arrangements that could be more than five years and less than ten years. Thus, under the Filing Parties' proposal, an eligible entity can obtain an Allocated LFTR with a core term of five years, with firm 12-month renewal rights for an indefinite period thereafter (even extending beyond ten years), so long as eligibility is maintained. Therefore, we find that Filing Parties proposal meets the Guideline 4 requirement because the quantity of LTTRs awarded (for the initial five-year term and subsequent 1-year terms) remains fixed over the full ten-year period. Thus, the LSEs will know the price of both the five-year LTTRs and the 1-year LTTRs before they enter a binding commitment for the Allocated LFTRs. However, Filing Parties' proposal is unclear as to whether a customer with a power supply contract with at least five years remaining in year six has the option of obtaining a new 5-year LFTR. That is, it is unclear whether the proposal would allow such a customer to re-enter the LFTR allocation process as a new customer and request a new 5-year LFTR with the same priority as other new customers that are similarly situated. To accommodate these customers, we find that the proposal should be revised or clarified, as necessary, to

[28] February 25 Order, 122 FERC ¶ 61,173 at P 66-67.

provide the option to re-enter the LFTR allocation process as a new customer. Therefore, we direct Filing Parties to file a revised proposal that allows customers to obtain a new 5-year LFTR under such circumstances in its compliance filing as ordered below.

33. Further, we disagree with NEPS's contention that the Filing Parties' proposal is unjust and unreasonable for an LSE that decides not to renew its Allocated LFTR for one 12-month period to no longer be able to renew its Allocated LFTRs. We find that the Filing Parties' proposal, regarding the 12-month renewal option, is similar to where an entity does not execute its transmission rollover rights or when an entity declines its right of first refusal. Under such scenario, an entity that decides to refuse its transmission service rollover rights or decides to decline its right of first refusal does not retain an option to use those rights in a subsequent period.

34. Lastly, NEPS contend that LSEs seeking to acquire an Allocated LFTR associated with the planned development of a new resource would face even more difficult choices with less information. We disagree. As mentioned above, LSEs will know the price of both the five-year LFTRs and the one-year LFTRs before they enter a binding commitment for the Allocated LFTRs. As the Filing Parties note in their answer, nothing in Order No. 681, 681-A or the February 25 Order forbid the pricing for LTTRs from being responsive to future market expectations.

C. <u>Other Issues</u>

35. In addition to Guidelines 4 and 7, the Commission directed the Filing Parties to revise their proposal to: (1) post information on ISO-NE's OASIS website regarding changes to the list of radial generator lines; (2) post information on ISO-NE's OASIS website regarding Allocated LFTRs available for potential transfers; and (3) inform the Commission on the status of stakeholder progress in developing detailed revisions to ISO-NE's Financial Assurance Policy as part of the quarterly report ISO-NE commits to file for informational purposes.

36. Filing Parties' proposal also contains conforming changes to the ISO-NE Tariff that include: (1) changes to Attachment K (Regional System Planning Process) to incorporate the LTTR-related changes;[29] (2) changes to section II.19.6(c)(iv) of the ISO-

[29] For example, Section 4.1(a)(iii) (Triggers for Needs Assessments) of Section II Attachment K (Regional System Planning Process) of ISO-NE's Tariff states, in part:

> "constraints or available transfer capability limitations<u>, including but not limited to, available transfer capacity diminishment that prevents the ongoing feasibility of LFTRs,</u> that are identified possibly as a result of generation additions or retirements, evaluation of load forecasts or proposals for the addition of transmission facilities in the New England Control Area;…"

NE Tariff regarding clustering of regional network services studies;[30] and (3) corresponding changes to the definitions sections and table of contents of the ISO-NE Tariff.

37. The Commission finds that Filing Parties' proposed modifications comply with the directives of the February 25 Order. Filing Parties include language to section III.7.7.3(b) (Network Capability Available for Allocated LFTRs) providing that within 30 days of adding or removing a radial facility where a generator is connected to the list of radial facilities, ISO-NE will post the addition or removal of the facility to the ISO-NE OASIS. Filing Parties also revise section III.7.7.8 (LFTR Allocation Results) the ISO-NE's Market Rule 1 to provide that ISO-NE will post information on its OASIS website regarding Allocated LFTRs available for potential transfer. Additionally, Filing Parties confirm that they will include updates on the status of the specified stakeholder process in the quarterly reports on LTTR implementation that they will begin filing once the ISO-NE Tariff changes reflected in the instant docket are accepted by the Commission. They also note that a credit working group has been convened to discuss and recommend actions the group deems necessary to adequately mitigate FTR and LTTR credit risk consistent with the risk tolerances defined by the group. They explain that the working group has been established as part of the NEPOOL Budget & Finance Subcommittee which advises the Financial Assurance Policies and Billing Policy.[31]

38. With respect to the Filing Parties' proposed revisions to Attachment K (Regional System Planning Process) and the ISO-NE Tariff regarding clustering of regional network services studies, we accept the conforming changes subject to the outcome of ISO-NE's pending proceedings in Docket Nos. OA08-58-000 and ER08-54-000 respectively.[32]

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[30] Section II.19.6(c)(iv) of the ISO-NE Tariff states, in part:

> "At the request of a Transmission Customer whose Regional Network Service request was studied as part of a cluster, the ISO shall provide a non-binding estimate of the Incremental ARRs, if any, resulting from the construction of new facilities based on the Transmission Customer's share of the costs of the new facilities. The Transmission Customer shall be responsible for the cost of any Facilities Study or Elective Transmission Upgrade Study required to determine the Incremental ARRs." We note that in ISO-NE's Docket No. ER08-54-0002, at Section II.19.6(c)(iv) of the Tariff "Qualified Upgrade Award" is used instead of "Incremental ARRs."

[31] Filing Parties May 27, 2008 Filing at 3.

[32] *See ISO New England Inc.*, 123 FERC ¶ 61,161 (2008) and *ISO New England Inc.*, 123 FERC ¶ 61,133, at P 21 (2008).

39. As to the modification excluding radial facilities from network capability available in the LTTR auctions, given that Allocated LFTRs will no longer be nominated and included in the auction, we find it reasonable to reserve capacity to ensure that it is available for allocation. With regard to the revision making 25 percent of network capability available, rather that 50 percent, in the first year of the relevant LTTR auction period, we find that the proposal preserves the existing availability of a full 25 percent share of network capability for Allocated LFTR and is consistent with the proposal accepted in the February 25 Order.[33] Therefore, the Commission accepts Filing Parties' language revising Tariff provisions for radial facilities and network capability.

40. In addition, consistent with the Commission's directive in *New York Independent System Operator, Inc*.,[34] to permit a minimum price of zero to be applied to fixed price Transmission Congestion Contracts in order to avoid a negative price, we approve Filing Parties' revisions to its Tariff to assign a price of zero to any nominated LTTR for which the auction based price is negative.

<u>The Commission orders</u>:

(A) Filing Parties' proposed revisions to the ISO-NE Open Access Transmission Tariff are hereby accepted for filing, effective August 29, 2008, as requested.

(B) Filing Parties are directed to file a revised proposal which provides customers with the option of obtaining a new five-year term after the initial five-year term if they have more than five years remaining in their power purchase contract, as discussed in the body of this order, within 90 days of the date of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

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[33] *See ISO New England Inc.*, 122 FERC ¶ 61,173, at P 92-94 (2008).

[34] 123 FERC ¶ 61,044, at P 129 (2008).