

Summaries of the FERC's January 30, 2015 FCM-related orders

This past Friday, January 30, 2015, the FERC issued a series of orders related to the Forward Capacity Market (FCM). These orders were in response to two separate complaints and a number of pending requests for rehearing, aspects of which relate to the upcoming Forward Capacity Auction (FCA9). We have briefly summarized the orders and background below. Copies of the FERC orders and additional background information can be found on the NEPOOL website ([Litigation Updates & Reports](#)).

EL15-25: NEPGA Peak Energy Rent (PER) Complaint

- In its January 30 [order](#), the FERC denied NEPGA's complaint, finding that it had failed to meet its burden under section 206 of the Federal Power Act to demonstrate that the existing ISO Tariff provisions are unjust and unreasonable.
- NEPGA's December 3, 2014 complaint requested that the ISO be directed (i) to increase the daily PER Strike Price by \$250/MWh for Capacity Commitment Periods 5 through 8, and (ii) to eliminate the PER Adjustment for FCA9 and beyond, or, alternatively, to continue the \$250 per MWh increase in the PER Strike Price for FCA 9.
- In a separate concurrence, Commissioners Clark and Moeller stated that "NEPGA and other parties have raised valid concerns regarding the continued application of the existing PER Adjustment in light of the increases in the Reserve Constraint Penalty Factors in ISO-NE's energy market put in place in 2014." The Commissioners went on to "encourage ISO-NE and its stakeholders to continue to consider potential changes to the PER Adjustment mechanism," stressing that "if NEPGA or any other party is able to provide specific evidence [regarding NEPGA's original allegations in this complaint], the Commission will consider any such complaints at that time."

EL15-23: Exelon/Calpine New Entry Pricing Rule Complaint

- The FERC [denied](#) the New Entry Pricing Rule Complaint, finding that Exelon and Calpine had failed to show that the existing pricing rules governing lock-in capacity result in unjust, unreasonable or unduly discriminatory price suppression.¹
- Exelon and Calpine filed a formal complaint, on November 26, 2014, requesting that the FERC find the New Entry Pricing Rule² unjust, unreasonable and unduly discriminatory; and that the FERC remedy the New Entry Pricing Rule's "price suppression on other suppliers and the market ... consistent with the approach taken in PJM."

EL14-7: FCM Administrative Pricing Complaint

- The January 30 [order](#) in this proceeding denied NEPGA's request for rehearing and/or clarification of the Jan 24, 2014 FCM Administrative Pricing-related orders (which

¹ The FERC stated that much of the complainants' argument rested on the assertion that ISO-NE's lock-in resource requirements differ from PJM's. The FERC acknowledged that ISO-NE's and PJM's differing mechanics may yield different prices paid to existing resources, but the FERC was not persuaded that the difference itself renders ISO-NE's rules unjust and unreasonable. *Exelon Corp. and Calpine Corp. v. ISO New England Inc.*, 150 FERC ¶ 61,067 at P 35 (Jan. 30, 2015).

² ISO-NE Tariff § III.13.1.1.2.2. The New Entry Pricing Rule permits a new entrant to "lock in" the clearing price from its first FCA for up to seven years.

granted in part, and denied in part, NEPGA's complaint against the ISO, which alleged that certain aspects of the Inadequate Supply or Insufficient Competition rules in the ISO Tariff were unjust, unreasonable, and unduly discriminatory). The FERC (i) disagreed with NEPGA's assertion that the FERC did not justify its use of a balancing approach in rejecting NEPGA's proposal for ORTP-based administrative pricing; (ii) rejected NEPGA's arguments concerning the Capacity Carry Forward Rule and New Entrant Pricing; and (iii) found that NEPGA had not shown the ISO's new entrant pricing to be unjust and unreasonable (distinguishing ISO-NE's and PJM's new entrant pricing rules).

ER14-1639: Demand Curve Changes

- The January 30 [order](#) in this proceeding denied rehearing of the *Demand Curve Order*,³ but clarified (agreeing with Exelon and Entergy) that a resource that elects to utilize the renewables minimum offer price rule exemption should not also be allowed to utilize the new resource lock-in).⁴ Accordingly, the FERC directed the ISO to submit, on or before **March 2, 2015** a compliance filing clarifying that a resource may not utilize both the renewable resource exemption and the new resource price lock-in.
- The *Demand Curve Order* conditionally accepted, effective June 1, 2014 and for implementation prior to associated FCA9 deadlines, the revisions to the FCM rules jointly submitted by the ISO and NEPOOL that established a system-wide sloped demand curve.⁵ The requests for rehearing of the *Demand Curve Order* that were denied were filed by Exelon/Entergy, MMWEC/NHEC, NextEra, NEPGA, PSEG, and TransCanada.

ER14-463: Exigent Circumstances Filing

- The January 30 [order](#) in this proceeding denied NEPGA's request for rehearing of the *Exigent Circumstances Order*, emphasizing its expectation that "ISO-NE will submit the zonal demand curve changes in time to allow for review, approval, and implementation for FCA 10."⁶
- The "*Exigent Circumstances Order*"⁷ accepted revisions to the FCM administrative pricing rules that (i) addressed what the ISO identified as a "gap" in the Insufficient Competition rules; (ii) set an administrative rate of \$7.025/kW-month to be applied if there is Insufficient Competition (as the ISO proposed to redefine it) or Inadequate Supply in FCA8; and (iii) made additional clarifying changes to the FCM administrative pricing rules. NEPGA's request for clarification and rehearing of the *Exigent Circumstances Order* was filed on February 24, 2014.

³ *ISO New England Inc. and New England Power Pool Participants Comm.*, 147 FERC ¶ 61,173 (May 30, 2014) ("*Demand Curve Order*"), *reh'g denied but clarification granted*, 150 FERC ¶ 61,065 (2015).

⁴ *ISO New England Inc. and New England Power Pool Participants Comm.*, 150 FERC ¶ 61,065, at P 27 (Jan. 30, 2015).

⁵ As a condition to its acceptance, the FERC directed the ISO, in a 60-day compliance filing, to clarify how new resources could qualify for the Renewable Technology Resources MOPR exemption in future auctions. *Id.* at P 88.

⁶ *Id.* at P 12.

⁷ *ISO New England Inc.*, 146 FERC ¶ 61,038 (Jan. 24, 2014).