

MEMORANDUM

TO: NEPOOL Participants Committee Members and Alternates
FROM: Dave Doot, Sebastian Lombardi and Pat Gerity, NEPOOL Counsel
DATE: November 15, 2013
RE: ISO Proposed Exigent Circumstances Changes to Market Rule § 13.2

At the request of ISO-NE last week and based on discussions with the Markets Committee and the officers, a special Participants Committee meeting has been scheduled for November 22, 2013. The ISO indicated yesterday, November 14, both in a formal written notice and orally at the Markets Committee, that it plans to file unilaterally under the Exigent Circumstances provisions of the Participants Agreement changes to Market Rule § 13.2 to revise the FCM administrative pricing provisions. As of this time, though, ISO-NE has not identified those changes and, accordingly, there is not sufficient information to permit the notice of a vote on this matter. Accordingly, the Participants Committee will not be a position to vote on ISO-NE's proposed filing.

We anticipate that it may be appropriate for a portion of this meeting to be in Executive Session so that confidential discussions can take place between NEPOOL counsel and the Committee. Further, at least some have suggested that they would only discuss certain provisions that are the subject of pending litigation at the FERC if there is agreement that those discussions are to be maintained in confidence and not be used in contested proceedings. If that circumstance does arise and there is a broad willingness to allow for such confidential discussions, we will work with the Committee to permit that to occur.

As background for the November 22 meeting, in addition to this memorandum, we have posted the following background materials to help inform discussions:

- (i) the ISO's November 9 memo, previously circulated and posted, that provides its perspective on the pending NEPGA Complaint and identifies an additional problem with the Insufficient Competition Rule;
- (ii) the ISO's November 13 presentation to the Markets Committee addressing administrative pricing rules for the eighth Forward Capacity Auction (FCA8);
- (iii) the ISO's November 14 notice of its intent to make an Exigent Circumstances filing to correct identified flaws in Market Rule 1 § 13.2 dealing with administrative pricing in the Forward Capacity Market; and
- (iv) the October 31 NEPGA Complaint challenging the Market Rule provisions that set prices during times of Insufficient Competition and Inadequate Supply and the Capacity Carry Forward Rule (a full version of the Complaint is available at: <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=13386322>).

We will circulate and post additional materials prior to the special meeting if and as they become available. We provide below some additional information that may assist you in preparing for the meeting.

NEPGA Complaint

As discussed at the November 8 Participants Committee meeting, NEPGA filed a complaint on October 31 asking the FERC (i) to determine that the Market Rule provisions that set capacity prices during Insufficient Competition and Inadequate Supply and the Capacity Carry Forward Rule are creating unreasonable and unduly discriminatory price disparities between new and existing capacity resources; and (ii) to direct that the revisions to the Market Rule it proposed in the Complaint be implemented. The Market Rule revisions (the Exelon Proposal) were considered, but not supported, at the October 4, 2013 Participants Committee meeting. NEPGA requested that the proposed Market Rule revisions be made effective so that they are in place prior to FCA8 (or February 3, 2014). The ISO requested a one week extension of time for its answer to and any comments on the Complaint. That request is pending before the FERC. Absent the requested extension, responses and comments to the NEPGA Complaint (including anything NEPOOL files) will be due on or before November 20, 2013.

Exigent Circumstances Filing to Address, Minimally, the IC Gap

As more fully explained in the ISO's November 9 memo, the ISO has identified an outcome that can occur in certain circumstances that ISO-NE believes is not properly covered by the rules. It has called this the "IC Gap" and indicated that it "needs to be addressed along with any response to the [NEPGA] Complaint". The ISO indicated also that "a resolution of these issues supported by a reasonable number of Participants and state representatives is preferable to a heavily contested litigation at FERC. After going through the stakeholder process and understanding everyone's views, the ISO will make appropriate filings to address the issues presented here and in the NEPGA complaint."

Yesterday, the ISO provided written notice that it "intends to make an Exigent Circumstances filing to correct flaws in Section III.13.2 of the ISO Tariff dealing with administrative pricing in the Forward Capacity Market." According to the ISO, "Exigent Circumstances exist in this situation because the eighth Forward Capacity Auction will be run in early February and the flaws in the Tariff need to be addressed prior to this auction. Given this situation, there is insufficient time for completion of the processes set forth in Section 11.1 of the Participants Agreement."



To: NEPOOL Participants Committee and New England State Regulators

From: Vamsi Chadalavada, Ray Hepper & Anne George

Date: November 9, 2013

Subject: ISO Perspective on the NEPGA Complaint on Administrative Pricing Rules; Identification of Additional Problem with Insufficient Competition Rule

This memo provides the ISO's perspective on the NEPGA Complaint and describes an additional problem with the rules governing Insufficient Competition. While the NEPGA Complaint describes a problem with the administrative price established under the Insufficient Competition provisions of the FCM rules, the ISO has also identified a gap in trigger for the Insufficient Competition rule (the "IC Gap") which needs to be addressed along with any response to the Complaint. This memo will first detail the IC Gap and then discuss the ISO response to the Complaint.

When the FCM Settlement Agreement was negotiated, one of the concerns was seller market power. There were three provisions included in the agreement to address this concern. First, the Inadequate Supply provision was intended to address the situation where the total of existing and all new resources was less than the Installed Capacity Requirement ("ICR"). The second provision, and the primary focus of this memo, was the Insufficient Competition provision intended to address the situation where there were less Existing Resources than ICR and not enough eligible new resources to assure competition in the auction (although when combined, the eligible existing and new resources exceeded ICR). The third provision was intended to address the Carry Forward situation where a large resource met a zonal need, but eliminated any need for new resources in the subsequent auction. Each of these Settlement Agreement provisions was incorporated into the FCM rules supported by stakeholders and approved by FERC.

Simply put, the IC Gap exists when there are more than 300MW of New Generation and New Demand resources (new Import resources are excluded from this calculation), but less than the amount of new capacity required, defined as the shortfall in Existing Capacity (the difference between ICR and existing Capacity). To explain the IC Gap both verbally and numerically, assume the hypothetical megawatt values for a Forward Capacity Auction ("FCA") shown in the table below.

	Case 1 (MW)	Case 2 (MW)
1 Existing Capacity Resources	9,500	9,500
2 ICR	10,000	10,000
3 Shortfall in Existing Capacity Resources (i.e., New Capacity Required) (1-2)	-500	-500
4 New generation	200	300
5 New demand response	200	300
6 New imports	500	300
7 Total new resources (4+5+6)	900	900
8 Total eligible resources for FCA (1+7)	10,400	10,400
9 Surplus entering FCA (8-2)	400	400

The provisions of the Insufficient Competition rule are provided below with numbers from Cases 1 and 2 in the table above illustrating the IC Gap.

III.13.2.8.2. Insufficient Competition.

The Forward Capacity Auction shall be considered to have Insufficient Competition system-wide or in any import-constrained Capacity Zone if the following two conditions are both satisfied:

- (a) at the Forward Capacity Auction Starting Price, the amount of capacity offered from Existing Generating Capacity Resources, Existing Import Capacity Resources, and Existing Demand Resources is less than the Installed Capacity Requirement; [In both Cases 1 and 2, Line 3 = 500MW short] and
- (b) at the Forward Capacity Auction Starting Price:
 - (i) less than 300 MW of capacity is offered from New Generating Capacity Resources and New Demand Resources; [this provision is not triggered in either Case 1 or Case 2, because there is 400MW currently remaining]
 - (ii) the amount of capacity offered from New Generating Capacity Resources and New Demand Resources is more than the amount of New Capacity Required but less than twice the amount of New Capacity Required; [In Case 1 this provision is not triggered]

because there is 400MW offered, which is not more than the 500MW of new capacity required][In Case 2 this provision is triggered because the 600 MW of new generation and new demand resources is more than the New Capacity Required (500 MW) but less than twice the amount of New Capacity Required (1000 MW)]; or

(iii) any Market Participant’s total capacity from New Generating Capacity Resources, New Import Capacity Resources, and New Demand Resources is pivotal. A Market Participant shall be considered pivotal if, at the Forward Capacity Auction Starting Price, some capacity from that Market Participant’s potential New Generating Capacity Resources, New Import Capacity Resources, or New Demand Resources is required to satisfy the Installed Capacity Requirement [this provision is not triggered in this hypothetical]

If the Forward Capacity Auction has Insufficient Competition, New Generating Capacity Resources, New Import Capacity Resources, and New Demand Resources shall be paid the Capacity Clearing Price during the associated Capacity Commitment Period, and Existing Generating Capacity Resources, Existing Import Capacity Resources, and Existing Demand Resources shall be paid the lower of: (1) the Capacity Clearing Price; or (2) 1.1 times the Capacity Clearing Price for the most recent Forward Capacity Auction not having Insufficient Competition during the associated Capacity Commitment Period.

So, using the numbers from case 1, Insufficient Competition would not be triggered because none of the provisions under subsection (b) are true. However, using the numbers from case 2 (increasing the 400MW of New Generation and New Demand Resources to 600MW), then Insufficient Competition *would* be triggered because the 600MW is between the 500MW shortfall and twice that shortfall – provision (b)(2) would be true. In short, the “IC Gap” indicates that (using these examples) Insufficient Competition would *not* be triggered if the auction is 300 to 500 MW long, but *is* triggered if the auction is 500 to 1000 MW long.

The consequences of the IC Gap are not logical or consistent with the overall intent of the Insufficient Competition rules. Again, examples best illustrate this point. Continuing with the hypothetical numbers above, there are two outcomes under the two illustrative cases. First, assume that of the 400MW of excess resources in case 1, 300MW drop out of the auction at the starting price and the next 150MW seek to drop out at \$12/kW-month. Since allowing the 150MW to leave the FCA would drop the system below ICR, the auction would stop at a price of \$12/kW-month. Case 1 demonstrates the IC Gap where Insufficient Competition is *not* triggered, and so all resources would receive \$12/kW-month. Using case 2, and the same auction prices, the auction would still stop at \$12/kW-month. However, since Insufficient Competition *is* triggered, new resources will receive the \$12/kW-month price, but Existing Resources will receive the administrative price associated with the Insufficient Competition rule.

The IC Gap is truly a gap in the rule; it is not justified by any economic principles and undermines the effectiveness of the insufficient competition provisions. Therefore, the ISO believes it should be fixed.

We have also recognized that the administrative price setting mechanism under the rules governing Insufficient Competition – one subject of the NEPGA Complaint – also needs to be fixed. As we have previously discussed with stakeholders, we did not undertake this change

because of other work priorities and because few, if any, observers expected the volume of retirements very recently seen. Now, however, without assessing the relative probabilities of any potential outcomes, and without discussing any actual input values into FCA 8, it is nonetheless clear that the range of possible scenarios includes: (i) a competitive outcome from the auction, (ii) a triggering of the Insufficient Competition rule, or (iii) competition is insufficient but the existence of the IC Gap means that the Insufficient Competition rule is not triggered.

From the ISO's perspective, a resolution of these issues supported by a reasonable number of Participants and state representatives is preferable to a heavily contested litigation at FERC. After going through the stakeholder process and understanding everyone's views, the ISO will make appropriate filings to address the issues presented here and in the NEPGA complaint.

We look forward to working with the states and NEPOOL Participants in an effort to resolve these issues.

NOVEMBER 13-14, 2013 | WESTBOROUGH, MA



Administrative Pricing Rules for Forward Capacity Auction #8



What is causing the gap in the trigger for Insufficient Competition?

III.13.2.8.2. *Insufficient Competition*

“...(b) *at the Forward Capacity Auction Starting Price:*

- (i) *less than 300 MW of capacity is offered from New Generating Capacity Resources and New Demand Resources (the ISO shall revisit the appropriateness of the 300 MW threshold in the case of an import-constrained Capacity Zone having a Local Sourcing Requirement of less than 5000 MW);*
- (ii) *the amount of capacity offered from New Generating Capacity Resources and New Demand Resources is more than the amount of New Capacity Required but less than twice the amount of New Capacity Required; or*

...“

The underlined phrase creates the ‘gap’ if the amount of New Capacity Required is greater than 300MW. In the memo, the New Capacity Required amount is 500MW.

- The 400MW offered in Case 1 does not trigger the condition; the amount is greater than 300MW, but is not more than the amount of New Capacity Required (500MW).
- The 600MW offered in Case 2 does trigger the condition; the amount is greater than 300MW and is more than the amount of New Capacity Required (500MW) .



How is New Capacity Required calculated when evaluating system-wide Insufficient Competition?

- For purposes of Section III.13.2.8.2(b)(ii) on the prior slide, *New Capacity Required* is calculated as:
 - The Installed Capacity Requirement (net of HQICCs) minus the amount of capacity offered from Existing Generating Capacity Resources, Existing Import Capacity Resources, and Existing Demand Resources
- This is essentially the same as the value described in Section III.13.2.8.2(a)
 - *“the amount of capacity offered from Existing Generating Capacity Resources, Existing Import Capacity Resources, and Existing Demand Resources is less than the Installed Capacity Requirement (net of HQICCs) or the Local Sourcing Requirement, as applicable; and...”*



How do the system-level administrative rules work with the zonal Capacity Carry Forward Rule?

- Where there is either system-wide Inadequate Supply or Insufficient Competition (III.13.2.8) and the Capacity Carry Forward Rule (III.13.2.7.9) is also triggered, the Capacity Carry Forward Rule price will be used in the import-constrained capacity zone
- The carry forward price will not lower the price paid to any resource in the import-constrained zone if the Carry Forward price is lower than the price applicable under system-wide Inadequate Supply or Insufficient Competition
 - This is because the administrative price would apply to the Rest-of-Pool capacity zone, and Section III.13.2.7.1 states that the clearing price in an import-constrained capacity zone shall not be lower than the clearing price in the Rest-of-Pool capacity zone
- The effect of applying the Capacity Carry Forward Rule may raise the price paid to both new and existing resources if the Carry Forward price is higher than the price applicable under system-wide Inadequate Supply or Insufficient Competition.



What happens with de-list bids when there is administrative pricing?

III.13.2.5.2.7. Treatment of De-List and Export Bids When the Capacity Clearing Price is Set Administratively.

“Where the Capacity Clearing Price is set pursuant to Section III.13.2.8 (Inadequate Supply and Insufficient Competition), and as a result a Permanent De-List Bid, Static De-List Bid, or Export Bid clears that would not otherwise have cleared, then the de-listed or exported capacity will not be replaced in the current Forward Capacity Auction (that is, the amount of capacity procured in the Forward Capacity Auction shall be the Installed Capacity Requirement (net of HQICCs) or Local Sourcing Requirement, as appropriate, minus the amount of the de-listed or exported capacity that results from the application of administratively determined prices) and shall be included in subsequent annual reconfiguration auctions (that is, the amount of capacity procured in subsequent annual reconfiguration auctions shall be increased by the amount of the de-listed or exported capacity).”

- A de-list bid that cleared in the auction but is priced less than the administrative rate will not be awarded a CSO
- A de-list bid that did not clear in the auction but is priced greater than the administrative rate will not be awarded a CSO



How is the pivotal supplier calculation in the Insufficient Competition rules done?

III.13.2.8.2.b.iii “...A Market Participant shall be considered pivotal if, at the Forward Capacity Auction Starting Price, some capacity from that Market Participant’s potential New Generating Capacity Resources, New Import Capacity Resources, or New Demand Resources is required to satisfy the Installed Capacity Requirement (net of HQICCs) or the Local Sourcing Requirement, as applicable.”

- The calculation is done by excluding the amount of a Market Participant's new capacity resources from the total of new capacity resources to determine if there is enough capacity without ANY of their new capacity resources to meet NICR. If there is not, then that resource is pivotal.



Is the capacity from Non-Priced Retirement Requests (NPRRs) included in the existing amount?

- Capacity from accepted/approved NPRRs are not included in the existing amount
 - The capacity is retired and does not go into the auction
- Capacity from rejected NPRRs may be included in the existing amount
 - The capacity will be included in the existing amount if the capacity from the NPRR is not retired, or the participant does not inform the ISO of the intention to retire in time to remove the capacity from the existing amount prior to conducting the auction



Questions



Notice of ISO's Intention to Make an Exigent Circumstances Filing

From: Hepper, Raymond [<mailto:rhepper@iso-ne.com>]
Sent: Thursday, November 14, 2013 3:38 PM
To: Doot, David T.
Cc: van Welie, Gordon; Chadalavada, Vamsi
Subject: Notice of Exigent Circumstances filing

Pursuant to Section 11.2 of the Participants Agreement, notice is hereby given that the ISO intends to make an Exigent Circumstances filing to correct flaws in Section III.13.2 of the ISO Tariff dealing with administrative pricing in the Forward Capacity Market. Exigent Circumstances exist in this situation because the eighth Forward Capacity Auction will be run in early February and the flaws in the Tariff need to be addressed prior to this auction. Given this situation, there is insufficient time for completion of the processes set forth in Section 11.1 of the Participants Agreement.

We look forward to working with the Participants on these issues and, as always, please give me a call to further discuss this matter.

Raymond Hepper
Vice President, General Counsel & Corporate Secretary
ISO New England Inc.
One Sullivan Road
Holyoke, MA 01040
Tel: 413-540-4592
Cell: 413-335-0944
E-mail rhepper@iso-ne.com

The preceding E-mail message contains information that is confidential, may be protected by the attorney/client or other applicable privileges, and may constitute non-public information. It is intended to be conveyed only to the designated recipient(s). If you are not an intended recipient of this message, please delete the message and notify the sender at the above telephone number. Unauthorized use, dissemination, distribution, or reproduction of this message is strictly prohibited and may be unlawful.

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

New England Power Generators
Association, Inc.

v.

ISO New England Inc.

)
)
)
)
)
)

Docket No. EL14-__-000

**COMPLAINT OF THE NEW ENGLAND POWER
GENERATORS ASSOCIATION, INC.
AND REQUEST FOR FAST TRACK PROCESSING**

October 31, 2013

TABLE OF CONTENTS

	Page
I. EXECUTIVE SUMMARY	2
II. DESCRIPTION OF COMPLAINANT AND RESPONDENT.....	7
A. New England Power Generators Association, Inc	7
B. ISO New England, Inc	8
III. BACKGROUND	8
A. ISO-NE Tariff Provisions that are the Subject of this Complaint	8
1. Inadequate Supply and Insufficient Competition	9
2. Capacity Carry Forward Rule	11
3. New Entry Pricing Rule	12
B. The Tariff Provisions Concerning Inadequate Supply and Insufficient Competition and the Capacity Carry Forward Rule Received Only Brief Review in the ISO-NE Stakeholder Process.....	13
IV. COMPLAINT	17
A. The Pricing Provisions Applicable in the Event of Inadequate Supply and Insufficient Competition Suppress Capacity Prices and are Unjust, Unreasonable and Unduly Discriminatory.....	18
B. The Capacity Carry-Forward Rule Produces Capacity Prices that are Well Below Competitive Levels and which are Unjust, Unreasonable and Unduly Discriminatory	23
1. The prices at which carry-forward capacity is offered into the FCA and the method used to determine prices paid to existing capacity suppliers pursuant to the Capacity Carry Forward Rule produce capacity prices for existing suppliers that are far below competitive levels	23
2. The pricing provisions applicable pursuant to the Capacity Carry Forward Rule are contrary to Commission precedent and policy and will produce adverse market outcomes	28
C. The Inadequate Supply and Insufficient Competition Pricing Rules and the Capacity Carry Forward Rule Produce Substantial and Extended Price Disparities Between New and Existing Capacity that are Unjust, Unreasonable and Unduly Discriminatory.....	32
D. Specific Revisions to the Capacity Carry Forward Rule and the Tariff Provisions Concerning Insufficient Competition and Inadequate Supply are Required in Order for the Tariff to be Just and Reasonable	35
E. Fast Track Processing is Required.....	40

TABLE OF CONTENTS
(continued)

	Page
V. OTHER MATTERS AND COMPLAINT REQUIREMENTS.....	41
A. Description of Alleged Violation and Quantification of Impacts – 18 C.F.R. § § 385.206(b)(1)-(5).....	41
B. Other Pending Proceedings – 18 C.F.R. § 385.206(b)(6).....	41
C. Specific Relief or Remedy Requested – 18 C.F.R. § 385.206(b)(7)	41
D. Supporting Documents – 18 C.F.R. § 385.206(b)(8).....	41
E. Use of Alternative Dispute Resolution Procedures – 18 C.F.R. § 385.206(b)(9)	41
F. Form of Notice – 18 C.F.R. § 385.206(b)(10).....	42
G. Request for Fast Track Processing.....	42
VI. CORRESPONDENCE AND COMMUNICATIONS.....	42
VII. CONCLUSION.....	43

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

New England Power Generators)	
Association, Inc.)	
)	
v.)	Docket No. EL14-__-000
)	
ISO New England Inc.)	

**COMPLAINT OF THE NEW ENGLAND POWER
GENERATORS ASSOCIATION, INC.
AND REQUEST FOR FAST TRACK PROCESSING**

Pursuant to Sections 206 and 306 of the Federal Power Act¹ and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission² (“FERC” or the “Commission”), the New England Power Generators Association, Inc. (“NEPGA”) hereby submits this Complaint requesting that the Commission determine that the provisions of the ISO New England, Inc. (“ISO-NE” or the “ISO”) Tariff that set capacity prices during circumstances termed Insufficient Competition and Inadequate Supply and the tariff rules known as the Capacity Carry Forward Rule, each of which is a component of the Forward Capacity Market (“FCM”) administered by ISO-NE, are creating unreasonable and unduly discriminatory price disparities between new and existing capacity resources. The prices determined pursuant to these provisions do not approximate competitive market outcomes and are wholly at odds with Commission policy. NEPGA also requests that the Commission find that the revisions to the ISO-NE Tariff recommended herein to remedy these flaws are just and reasonable.

¹ 16 U.S.C. §§ 824e, 825e (2012).

² 18 C.F.R. § 385.206 (2013).

NEPGA respectfully requests Fast-Track processing for this Complaint in order to have the needed revisions to the ISO-NE Tariff in place in advance of the next Forward Capacity Auction (“FCA”) which will take place beginning February 3, 2014 (“FCA 8”). Adopting these critical changes to the ISO-NE Tariff is vital in order to ensure that the flaws in the current market rules do not further compound the damage already done to the New England market. The FCA 8 is the first FCA to be run without an administratively-set price floor, and it is critical to the future of this market that capacity prices be determined by fundamental supply and demand. Action in advance of the FCA 8 is essential because there is no opportunity for a *post hoc* remedy absent the extraordinary and unprecedented action of directing ISO-NE to re-run the FCA. In addition, Exelon Corporation (“Exelon”), an NEPGA member company, has pursued the concerns raised in this Complaint through the stakeholder process, so ISO-NE and other stakeholders are familiar with the issues discussed herein. Accordingly, NEPGA requests that the Commission establish a 20 day notice period and that the Commission issue an order on this Complaint no later than **January 21, 2014**.

I. EXECUTIVE SUMMARY

The New England capacity market is in distress. After years of excess capacity, new entry response is now tepid and roughly ten percent of the existing capacity resources have recently announced their intent to exit the market prior to FCA 8. This flight from the market is likely to leave New England short of resources to meet the one-year-in-ten loss of load expectation. Despite this impending reliability crisis, absent immediate Commission action, prices in FCA 8 are likely to be set administratively at “business as usual” levels that do nothing to address the reliability shortfall facing the pool.

The problem at the root of this crisis is an unprecedented level of price discrimination between new and existing resources. The consequences of the flaws in the current market rules,

which prevent prices paid to incumbent capacity resources from having any chance of rising to the level of prices paid to new entrants – even during times of scarcity – are ever more evident as capacity prices increasingly are incapable of attracting sufficient new entry or retaining existing resources. What is unmistakably clear is that pricing rules that favored short-term cost savings over long-term investment signals needed for efficient and reliable markets have created the current crisis and that the time to end this two-tiered, discriminatory pricing system is now, before the current problems escalate further and the solutions that are available now become far more difficult.

The immediate problems are rooted squarely in the market rules. ISO-NE relies on wholesale markets to obtain the capacity needed to ensure reliability and relies on wholesale market prices to retain existing economic resources and to incent new entry when needed. However, when ISO-NE determines that an FCA is not sufficiently competitive, circumstances termed “Insufficient Competition” and “Inadequate Supply,” or when ISO-NE acquires capacity from a new resource that significantly exceeds the amount of capacity required in a zone (*i.e.*, a “lumpy” resource), the market rules direct ISO-NE to set prices *administratively* pursuant to tariff-based mechanisms that operate outside of the normal auction process.

These market rules are completely broken. They do not work as intended, and the administrative prices paid to existing capacity resources under these provisions are far below the prices paid to new entrants (and possibly well below uncleared, mitigated Static De-List Bid levels) and do not come close to the price levels ISO-NE has determined are needed to support new entry. Based on conditions present in the market today:

- there is an expected shortfall of over 1,500 MW of existing resources compared to the capacity requirements in FCA 8;
- new generator entrants in FCA 8 will be paid up to \$15.82/kW-month for capacity;

- the benchmark price for a combustion turbine, the price level ISO-NE believes is the best estimate of the revenues that a new peaking resource would need to recover from the capacity market, is \$10.00/kW-month; and
- the prices expected to be paid to existing capacity suppliers in FCA 8 under the provisions of the ISO-NE Tariff at issue in this Complaint are in the range of \$1.50/kW-month - \$3.50/kW-month.

These dramatic price disparities and the suppressed prices paid to existing resources are entirely inconsistent with the Commission's policies and with any rational economic theory of wholesale price formation. Accordingly, if not remedied prior to FCA 8, they will lead to the continuing retirement of economic resources, erosion of critical fuel diversity in the region, higher long-term costs to consumers, and to difficulties attracting needed new entry in the future.

These problems – and their solutions – are not new. The pricing flaws in the ISO-NE Tariff, as well as the appropriate remedies, have been addressed by the Commission in other proceedings involving other regional capacity markets, most notably PJM. The pricing reforms NEPGA recommends follow the example of these prior cases and mirror tariff changes the Commission has previously found to be just and reasonable. While many of the pricing flaws in the ISO-NE capacity market may be addressed by longer term solutions, such as the introduction of a downward sloping demand curve, the Commission must act before FCA 8 to fix the extreme price suppression and price discrimination that threatens the integrity of the New England capacity market.

Convincing evidence of these flawed market rules may be found in the announcements earlier this month that over 3,000 MW of existing capacity resources, including approximately 500 MW of demand response resources, plan to exit the ISO-NE market in advance of FCA 8. If (as expected) ISO-NE needs significant quantities of new capacity in FCA 8 but there is “Insufficient Competition,” the administrative price for existing capacity resources will be based

on the result of FCA 7, which enjoyed substantial excess capacity and cleared at the administratively-determined price floor. As a result, when faced with a substantial supply shortage in FCA 8, the ISO-NE Tariff will likely pay existing generation roughly one-third of the \$10.00/kW-month benchmark price for a combustion turbine, and less than one-quarter of the price paid to new entrants. This dramatic and unjustified price discrimination between new and existing resources, in contravention of Commission policy and the design of FCM and other regional capacity markets which operate based on a single clearing price, is a clear recipe for further premature retirements of existing economic capacity resources, and threatens to further degrade the ability of New England to ensure an adequate reserve margin.

This Complaint requests action in two areas. *First*, in cases of Inadequate Supply or Insufficient Competition, the tariff provides for existing capacity suppliers to be paid 1.1 times the last competitive capacity auction's clearing price. This mechanism, however, results in prices that are far below both (a) the prices paid to new entrants, and (b) the prices needed to support new entry and to retain existing economic resources (*e.g.*, uncleared Static De-List Bids). Further, the prices set by ISO-NE in these circumstances have no relation to the clearing price that would have been produced in the current environment of supply and demand.

In this instance, the just and reasonable remedy is one proposed by ISO-NE itself in its December 3, 2012 FCM compliance filing, in which it stated that capacity prices in these circumstances should be 1.1 times the Offer Review Trigger Price for a combustion turbine, the value that best approximates the cost of new entry.³ This change will also provide for a

³ Forward Capacity Market Redesign Compliance Filing and Request for Waiver of Compliance Obligation, or, In the Alternative, Limited Filing Pursuant to Section 205 of the Federal Power Act at 44, ISO New England Inc., Docket No. ER12-953-001 (Dec. 3, 2012) ("December 3, 2012 FCM compliance filing"). NEPGA is not seeking to change other aspects of the Insufficient Competition Rule and, in the event the new capacity price needed to satisfy the new capacity need is below the combustion turbine Offer Review Trigger Price, existing resources would be paid the clearing price established new entrants.

reasonable nexus between the mitigated prices paid to existing capacity resources and the supply/demand balance and other features of the FCA in which that price is determined.

Second, as detailed below, when ISO-NE acquires capacity from a new resource that significantly exceeds the amount of capacity required in a zone (i.e., a “lumpy” resource) the Capacity Carry Forward Rule is triggered to protect the market in subsequent years from the price suppression that will result from the newly-acquired excess capacity. (In FCA 8, this rule is expected to apply in the NEMA/Boston Zone as a result of ISO-NE’s purchase of substantial excess capacity in FCA 7.) When the Capacity Carry Forward Rule is triggered, the price to be paid to existing capacity suppliers is the lesser of (a) \$0.01 below the price at which the last New Capacity Resource withdrew from the FCA, or (b) the Offer Review Trigger Price for a combustion turbine. In practice, however, the Capacity Carry Forward Rule fails to mitigate the price suppression associated with the requirement that new entrants (who alone have the opportunity to receive a new entry price for five years if they clear) offer their capacity at a \$0 bid in the FCA in years two through five of a multi-year Capacity Commitment election. Indeed, as demonstrated below, the “lesser of” pricing rules applicable in these circumstances actually reflects – rather than mitigates – the price suppression associated with these \$0 bids.

The impact of the current ISO-NE Tariff rules is that prices for existing capacity are suppressed to levels well below the level associated with a competitive market outcome, a price level needed to retain existing economic capacity resources and to support new entry when needed. As a result, existing capacity resources may be forced into premature uneconomic retirements, which is inefficient and will ultimately increase costs to consumers as such departures create a need for additional, higher cost new entry earlier than it would otherwise be needed. These uneconomic retirements will likely come from non-gas resources, including

demand response resources, which will erode critical fuel diversity in a region heavily reliant on natural gas. Further, the current Capacity Carry Forward Rule's pricing provisions, which apply only to existing capacity resources, establish and perpetuate undue price discrimination between new and existing capacity resources, a result that is at odds with well-established Commission policy that capacity markets should not unduly discriminate in favor of new entry and that all capacity suppliers should receive the same price for their capacity.

Here again, the problem and its solution are well-known. This issue previously was addressed in the context of the PJM capacity market, where the Commission stated that it would be unjust and unreasonable for capacity suppliers receiving multi-year capacity price commitments to submit \$0 bids. Moreover, the remedy requested herein is the remedy approved by the Commission in that instance – that capacity suppliers submit offers that are no less than the clearing price applicable to the new capacity resource or the benchmark price for new entry (in this case for a combustion turbine) for the duration of their price commitment after initially clearing. This approach will not affect the price paid to new entrants, but will adequately protect existing suppliers from the price suppression that would otherwise result from the acceptance of more new entry than is needed to meet the capacity requirement due to the lumpiness of the new resource.

Accordingly, NEPGA requests that the Commission find the existing ISO-NE pricing mechanisms described herein to be unjust, unreasonable and unduly discriminatory and NEPGA's proposed replacement mechanisms to be just and reasonable. NEPGA also requests that the Commission act expeditiously so that the flaws contained in the current market rules do not undermine the upcoming FCA 8, and so that the capacity prices determined in that auction are just and reasonable and not unduly discriminatory.

II. DESCRIPTION OF COMPLAINANT AND RESPONDENT

A. New England Power Generators Association, Inc.

NEPGA, a non-profit entity duly organized and existing under the laws of the Commonwealth of Massachusetts, is a trade organization that advocates for the business interests of non-utility electric power generators in New England. NEPGA's member companies represent approximately 28,000 megawatts of electrical generating capacity throughout the New England region.

B. ISO New England, Inc.

ISO-NE is the private, non-profit entity that serves as the regional transmission organization ("RTO") for New England. The ISO operates the New England bulk power system and administers New England's organized wholesale electricity market pursuant to the ISO New England Inc. Transmission, Markets and Services Tariff ("ISO-NE Tariff"). As an RTO, ISO-NE has the responsibility to protect the short-term reliability of the New England Control Area and to operate the system according to reliability standards established by the Northeast Power Coordinating Council, Inc. and the North American Electric Reliability Corporation.

III. BACKGROUND

ISO-NE administers the FCM, which authorizes capacity suppliers to participate in annual FCAs to provide capacity on a three-year forward basis. Suppliers that clear in the FCA are awarded Capacity Supply Obligations ("CSOs")⁴ and are paid a Capacity Clearing Price determined in a descending clock auction. The FCM was initially implemented in 2007, with the

⁴ ISO-NE Tariff § III.13. provides that: "A Capacity Supply Obligation is an obligation to provide capacity from a resource, or a portion thereof, that is acquired through a Forward Capacity Auction in accordance with Section III.13.2, a reconfiguration auction in accordance with Section III.13.4, or a Capacity Supply Obligation Bilateral in accordance with Section III.13.5."

first FCA conducted in 2008. ISO-NE will conduct FCA 8 beginning on February 3, 2014 for the delivery year June 2017-May 2018.

A. ISO-NE Tariff Provisions that are the Subject of this Complaint

In certain circumstances, an FCA may produce prices that are inconsistent with the FCM market design, which relies on competitive market outcomes to send price signals sufficient to incent new entry and to retain existing resources, and in such cases the ISO-NE Tariff provides for capacity prices to be administratively set by the ISO at a level *intended* to reflect prices that would have resulted from a competitive market. As relevant here, these circumstances are (a) when an FCA is deemed to be insufficiently competitive, *e.g.*, when offers for generator or demand resource capacity are less than two times the incremental new capacity required to meet the capacity needs (this trigger level of new capacity could require the minimum competitive level of new entry at even higher multiples of new capacity as the trigger excludes all new capacity imports) or too little supply being offered in the auction, (b) when excess capacity (capacity above the quantity required to satisfy the Net Installed Capacity Requirement⁵ or the Local Sourcing Requirement⁶) associated with offers from so-called “lumpy” resources is purchased in an FCA and that excess capacity is carried forward into subsequent auctions, and (c) when new capacity resources offer into the FCM for the first time and elect to be paid the initial clearing price for up to five successive annual Capacity Commitment Periods.

This Complaint does not seek to change the circumstances in which the pricing provisions of the tariff for Inadequate Supply and Insufficient Competition would apply, or the application of the Capacity Carry Forward Rule to excess capacity, but is focused solely on the

⁵ The Installed Capacity Requirement (“ICR”) is the level of capacity required to meet the reliability requirements defined for the New England Control Area, as described in ISO-NE Tariff § III.12.

⁶ The Local Sourcing Requirement (“LSR”) is the minimum amount of capacity that must be located within an import-constrained Load Zone, calculated as described in ISO-NE Tariff § III.12.2.

tariff provisions that determine the prices to be paid to existing capacity resources in these instances. As NEPGA will show, those tariff rules, and the prices calculated pursuant to those tariff provisions, are unjust and unreasonable and unduly discriminatory.

1. Inadequate Supply and Insufficient Competition

Section III.13.2.8.1 of the ISO-NE Tariff addresses circumstances termed Inadequate Supply, which are present when there is less new capacity offered at the beginning of an FCA than the amount of new capacity required to satisfy the needs of that zone.⁷ Section III.13.2.8.2 of the ISO-NE Tariff, captioned Insufficient Competition, is applicable when the amount of capacity offered by existing resources at the beginning of an FCA is less than the Net ICR or the LSR and (a) the amount of capacity offered by new resources is below certain thresholds, or (b) a market participant's total capacity from new resources is pivotal.⁸ The Inadequate Supply and

⁷ ISO-NE Tariff § III.13.2.8.1.1 provides that:

An import-constrained Capacity Zone will be considered to have Inadequate Supply if at the Forward Capacity Auction Starting Price the amount of capacity offered in the import-constrained Capacity Zone through New Capacity Offers is less than the amount of New Capacity Required in that Capacity Zone. In an import-constrained Capacity Zone, "New Capacity Required" shall mean the Capacity Zone's Local Sourcing Requirement, minus the total amount of capacity of Existing Generating Capacity Resources, Existing Import Capacity Resources, and Existing Demand Resources in the Capacity Zone (that is not permanently de-listed for the Capacity Commitment Period), minus capacity otherwise obligated in the Capacity Zone for the Capacity Commitment Period; in the Rest-of-Pool Capacity Zone, "New Capacity Required" shall mean the Installed Capacity Requirement (net of HQICCs), minus the Local Sourcing Requirement of each modeled import-constrained Capacity Zone, minus, for each modeled export-constrained Capacity Zone, the lesser of the Capacity Zone's Maximum Capacity Limit or the total amount of capacity of Existing Generating Capacity Resources, Existing Import Capacity Resources, and Existing Demand Resources in the Capacity Zone (that is not permanently de-listed for the Capacity Commitment Period), minus the total amount of capacity of Existing Generating Capacity Resources, Existing Import Capacity Resources, and Existing Demand Resources in the Rest-of-Pool Capacity Zone (that is not permanently de-listed for the Capacity Commitment Period), minus capacity otherwise obligated in the Rest-of-Pool Capacity Zone for the Capacity Commitment Period.

⁸ ISO-NE Tariff § III.13.2.8.2. provides that:

The Forward Capacity Auction shall be considered to have Insufficient Competition system-wide or in any import-constrained Capacity Zone if the following two conditions are both satisfied:

(a) at the Forward Capacity Auction Starting Price, the amount of capacity offered from Existing Generating Capacity Resources, Existing Import Capacity Resources, and Existing Demand Resources is

Insufficient Competition pricing mechanisms, which can apply in any year in which new entry is required, are designed to pay existing resources a price reflecting the competitive cost of new entry in that year, while protecting against the potential exercise of market power.⁹

In cases of Inadequate Supply, existing capacity suppliers are paid a price equal to 1.1 times the Capacity Clearing Price for the most recent FCA not having Inadequate Supply during the associated Capacity Commitment Period. When the Insufficient Competition provisions are triggered, existing capacity resources are paid the lower of (a) the Capacity Clearing Price, or (b) 1.1 times the Capacity Clearing Price for the most recent FCA not having Insufficient Competition during the associated Capacity Commitment Period. Notably, these pricing provisions apply only to existing generation resources. New capacity resources receive either the Capacity Clearing Price, in the case of Insufficient Competition, or the FCA Starting Price, in the case of Inadequate Supply.¹⁰

less than the Installed Capacity Requirement (net of HQICCs) or the Local Sourcing Requirement, as applicable; and

(b) at the Forward Capacity Auction Starting Price:

(i) less than 300 MW of capacity is offered from New Generating Capacity Resources and New Demand Resources (the ISO shall revisit the appropriateness of the 300 MW threshold in the case of an import-constrained Capacity Zone having a Local Sourcing Requirement of less than 5000 MW);

(ii) the amount of capacity offered from New Generating Capacity Resources and New Demand Resources is more than the amount of New Capacity Required but less than twice the amount of New Capacity Required; or

(iii) any Market Participant's total capacity from New Generating Capacity Resources, New Import Capacity Resources, and New Demand Resources is pivotal. A Market Participant shall be considered pivotal if, at the Forward Capacity Auction Starting Price, some capacity from that Market Participant's potential New Generating Capacity Resources, New Import Capacity Resources, or New Demand Resources is required to satisfy the Installed Capacity Requirement (net of HQICCs) or the Local Sourcing Requirement, as applicable.

⁹ Prepared Direct Testimony of Michael M. Schnitzer ("Schnitzer Testimony"), attached hereto as Exhibit 1, at p. 4, ll. 6-19 and p. 11, ll. 5-18.

¹⁰ The FCA Starting Price is the highest price at which capacity may be offered in the FCA and is the starting point for the descending clock auction. The FCA Starting Price is currently \$15/kW-month. ISO-NE Tariff § III.13.2.4.

2. Capacity Carry Forward Rule

The Capacity Carry Forward Rule is triggered when excess capacity is acquired in an earlier FCA because a “lumpy” resource did not agree to rationing in that FCA and the excess capacity is carried forward into subsequent auctions.¹¹ For example, if ISO-NE needs to obtain 178 MW of capacity in a zone, and a capacity supplier offers 674 MW of new capacity into the FCA and does not agree to rationing, as was recently the case in the Northeast Massachusetts/Boston (“NEMA/Boston”) zone, and, if that resource clears in the FCA, ISO-NE will clear all 674 MW and the 496 MW above the capacity requirement in the current year will be “carried forward” into the next FCA. The Capacity Carry Forward Rule is designed to mitigate the effect of the excess capacity in the subsequent FCAs in order to avoid suppressing capacity prices. Absent such intervention, the excess capacity participating in subsequent auctions would cause the prices in those auctions to collapse to levels that are well below competitive market outcomes.

When the Capacity Carry Forward Rule is applied, the price to be paid to existing capacity suppliers is the lesser of (a) \$0.01 below the price at which the last New Generating Capacity Resources, New Import Capacity Resources, or New Demand Resource in the Capacity Zone to withdraw withdrew from the FCA, or (b) the Offer Review Trigger Price for a combustion turbine, which is currently \$10.00/kW-month.¹² The Capacity Carry Forward Rule applies only to the wholesale rate paid to existing capacity suppliers and does not determine the rate paid to new entrants.

¹¹ In ISO-NE, capacity offers must clear or not clear in whole, unless the capacity resource agrees to offer its capacity in smaller increments, termed “rationing.” ISO-NE Tariff § III.13.2.6.

¹² The ISO-NE Tariff also provides, however, “that if in the Capacity Zone there is Insufficient Competition and no capacity offered from New Generating Capacity Resources, New Import Capacity Resources, and New Demand Resources has been withdrawn from the Forward Capacity Auction, then the Capacity Clearing Price shall equal the Offer Review Trigger Price for a combustion turbine, as set forth in Section III.A.21.1.1.” ISO-NE Tariff § III.13.2.7.9.2.

3. New Entry Pricing Rule

Section III.13.1.1.2.2.4. of the ISO-NE Tariff, the Capacity Commitment Period Election, authorizes the sponsor of a new generating resource¹³ that clears in an FCA to choose to receive the price at which the new resource clears for up to five consecutive annual Capacity Commitment Periods, and thereby lock-in a capacity price for up to five years without regard to the clearing price of any subsequent auctions (“New Entry Pricing”). The New Entry Pricing rules are intended to ensure that capacity prices received by a new entrant do not collapse as a result of the addition of the new supplier’s resource into the market, thereby removing a disincentive for new capacity additions. The ability for a new entrant to lock-in a price applies to all capacity offered by the resource in the FCA, even if the amount of capacity that clears in the FCA exceeds the actual need for new capacity in the zone and the excess capacity is carried forward into subsequent auctions. When a new entrant elects New Entry Pricing, it is prohibited from offering any type of de-list or export bid in subsequent FCAs for the term of the price guarantee.¹⁴ As a result, the new entrant is deemed to be a price taker for the subsequent FCAs.

B. The Tariff Provisions Concerning Inadequate Supply and Insufficient Competition and the Capacity Carry Forward Rule Received Only Brief Review in the ISO-NE Stakeholder Process

The Inadequate Supply and Insufficient Competition pricing rules and the Capacity Carry Forward Rule were each raised initially in 2012 at the very end of a larger stakeholder process concerning various FCM market design issues and, at that time, were offered only as interim provisions to be reviewed further in subsequent stakeholder meetings. Certain NEPGA members recognized flaws in the rules and were prepared to offer (and in one case did offer) amendments

¹³ A New Capacity Offer is an offer in the Forward Capacity Auction to provide capacity from a New Generating Capacity Resource, New Import Capacity Resource, or New Demand Resource, as described in ISO-NE Tariff § III.13.2.3.2.

¹⁴ ISO-NE Tariff, § III.13.1.1.2.2.4.

at the NEPOOL Participants' Committee in November 2012 when the ISO's FCA 8 compliance filing was voted on by the NEPOOL Participants Committee, but a discussion of these concerns was deferred in anticipation that they would be addressed in a subsequent stakeholder process and that revisions to the ISO-NE Tariff could be implemented prior to FCA 8. However, as this ISO-initiated additional stakeholder process ultimately did not take place, the current versions of the Inadequate Supply and Insufficient Competition pricing rules and the Capacity Carry Forward Rule, which were previously offered as temporary measures, will now be in effect for FCA 8 and for an indefinite period thereafter unless changed by action of the Commission.

Prior to 2012, for a variety of reasons, the Inadequate Supply and Insufficient Competition Rules and the Capacity Carry Forward Rule had been in flux. As detailed in an October 19, 2012 memorandum from ISO-NE to the NEPOOL Participants Committee, appended hereto as Attachment 1, ISO-NE proposed changes to the long-settled version of the Inadequate Supply and Insufficient Competition provisions and recommended a Capacity Carry Forward Rule for the first time at the very end of the stakeholder process.¹⁵ At that time, ISO-NE acknowledged that the Inadequate Supply and Insufficient Competition provisions and the Capacity Carry Forward Rule required further review and reform and explained that it intended to revisit these aspects of the tariff in a subsequent stakeholder process in time to make needed changes in advance of FCA 8.¹⁶ With regard to further revisions to the Inadequate Supply and

¹⁵ See Memorandum from Andy Gillespie and Robert Ethier, ISO-NE Market Development, to NEPOOL Participants Committee, Retaining the Capacity Carry Forward Provisions and Other Rule Changes Since MC Vote (Oct. 19, 2012) (appended hereto as Attachment 1).

¹⁶ See Minutes of November 2, 2012 NEPOOL Participants Committee Meeting, appended hereto as Attachment 2, at p. 2875 (describing issues identified during review of revisions to the market rules for FCA 8, but not addressed during that review, including the administrative price paid to resources in the event of Inadequate Supply or Insufficient Competition and enhancements to the Capacity Carry Forward Rule.).

Insufficient Competition pricing provisions, ISO-NE stated in the December 3, 2012 compliance filing:

In the Inadequate Supply and Insufficient Competition provisions, as indicated in the ISO's July 1, 2010 filing and as approved by the Commission, references to "1.1 times CONE" are being revised to refer instead to 1.1 times the Capacity Clearing Price for the most recent FCA not having Inadequate Supply (or Insufficient Competition, as applicable). When the ISO proposed this change, the Commission had not yet directed the ISO to implement an offer-floor mitigation mechanism with benchmark prices for different resource types. At that time, the clearing price from the most recent successful auction appeared to be the most appropriate replacement for CONE in the Inadequate Supply and Insufficient Competition provisions. Now that the Offer Review Trigger Price mechanism has been developed and is poised to be implemented, however, the ISO believes that the new Offer Review Trigger Price for a combustion turbine would be a far better estimate of the revenues that a new peaking resource would need to recover from the capacity market. Hence, while the instant filing replaces CONE with the Capacity Clearing Price from the most recent competitive FCA, as directed by the Commission, the ISO believes that the Inadequate Supply and Insufficient Competition pricing provisions for existing resources should instead refer to 1.1 times the Offer Review Trigger Price for a combustion turbine. The ISO intends to initiate a stakeholder process to make this change in the near future, preferably in time to be effective for the eighth FCA.¹⁷

In their comments to this compliance filing, market participants largely indicated their reliance on ISO-NE's statements that it would address these parties' concerns in a subsequent stakeholder process. With regard to the Capacity Carry Forward Rule, Exelon stated in its Comments that "Exelon understands that ISO also intends to work with its stakeholders to further improve certain aspects of the Capacity Carry-Forward Rule and looks forward to working with ISO and its stakeholders on this process."¹⁸ Exelon also noted that it "supports the ISO's plan to reassess, through a stakeholder process, the administrative pricing referenced in the

¹⁷ December 3, 2012 FCM compliance filing at 44 (footnotes omitted) (emphasis added).

¹⁸ Comments of Exelon Corporation at 5, ISO New England Inc., Docket No. ER12-953-001 (Dec. 28, 2012) (appended hereto as Attachment 3).

Inadequate Supply and Insufficient Competition provisions.”¹⁹ The NEPOOL Participants Committee’s comments similarly referred to ISO-NE’s “commit[ment] to address the Capacity Carry Forward Rule provisions in subsequent stakeholder committee discussions and to target implementation of changes to those provisions for FCA8.”²⁰

On February 12, 2013, the Commission issued an order on the December 3 filing.²¹ In that order, the Commission accepted ISO-NE’s proposals with regard to Inadequate Supply and Insufficient Competition and the Capacity Carry Forward Rule, but offered no substantive discussion or analysis of either proposal.²²

The stakeholder process that ISO-NE proposed as the vehicle for further review and revisions to the Capacity Carry Forward Rule and the Inadequate Supply and Insufficient Competition pricing rules did not progress. In a March 12, 2013 memorandum to the NEPOOL Markets Committee, Andrew Gillespie of ISO-NE re-affirmed ISO-NE’s intent to take up these issues, stating that

At the November 2, 2012 Participants Committee meeting the ISO pledged to stakeholders that the following issues would be brought through the stakeholder process before FCA 8.

- 1) Proposed changes to the FCA objective function to maximize social welfare.
- 2) Proposed changes to the administrative rate under Inadequate Supply and Insufficient Competition.

¹⁹ *Id.* at 3; *see also id.* at 4-5 (noting ISO-NE’s intent to initiate a stakeholder process and that “Exelon believes the stakeholder process suggested by ISO is important to addressing this concern and looks forward to working with the ISO and other stakeholders on making this change.”).

²⁰ Comments of the New England Power Pool Participants Committee at 11, ISO New England Inc., Docket No. ER12-953-001 (Dec. 21, 2012) (appended hereto as Attachment 4).

²¹ *ISO New England Inc.*, 142 FERC ¶ 61,107 (2013).

²² *Id.* at PP 127-29.

- 3) Review of, and possible proposed changes to, the Capacity Carry Forward provision.²³

However, these issues were not raised by ISO-NE at subsequent Markets Committee meetings. ISO-NE ultimately abandoned this stakeholder process and, at the August 2013 Markets Committee meeting, stated that it had decided not to propose any modifications to the current pricing rules for Inadequate Supply and Insufficient Competition and the Capacity Carry Forward Rule.

Following ISO-NE's statement in August of this year that it did not intend to address these issues further, Exelon proposed specific modifications to the Capacity Carry Forward Rule and to current pricing rules for Inadequate Supply and Insufficient Competition at the September 24, 2013 Markets Committee meeting. The generation, supplier and alternative resources sectors supported Exelon's proposal, a copy of which is included as Attachment 6 to this Complaint. This proposal was also considered at the October 4, 2013 Participants Committee meeting, but did not achieve a sufficient majority needed for approval.

IV. COMPLAINT

Simply stated, the pricing rules for Inadequate Supply and Insufficient Competition and the Capacity Carry Forward Rule are unjust and unreasonable and unduly discriminatory because they result in artificially low capacity prices that are far below the price paid to new entrants²⁴ and that do not reflect the outcome of a competitive market. Given that the FCM market design is based on competitive market outcomes and a single clearing price, it is axiomatic that tariff-imposed capacity prices for all vintages of resources should be the same and should be sufficient

²³ Memorandum from Andrew Gillespie to NEPOOL Markets Committee, FCM Forward Capacity Auction #8 Modifications (Mar. 12, 2013) (appended hereto at Attachment 5).

²⁴ Under the ISO-NE Tariff, new entrant pricing extends not only to new resources located inside ISO-NE but also applies to both new and existing resources located outside ISO-NE (*i.e.*, imported resources). Thus, the pricing discrimination described in this Complaint also includes discrimination between existing resources within ISO-NE and ALL imported resources (regardless of whether they are new or existing).

to support existing economic resources and to provide for new entry when needed.²⁵ However, an analysis of the current tariff rules demonstrates clearly that the ISO-NE Tariff does not meet this standard. As Mr. Michael M. Schnitzer explains in his prepared testimony supporting this Complaint, appended hereto as Exhibit 1, “existing ISO-NE market rules promote, rather than prevent, structural price discrimination between new and existing resources – with results that are neither efficient nor sustainable.”²⁶ The result is a two-tiered rate structure in which new resources are paid a high price to incent new entry while existing resources are mitigated to an artificially low level well below the level needed to retain existing resources or to incent new entry. These market rules, and the resulting prices, are unjust and unreasonable and unduly discriminatory.²⁷ Without reformation of these rules, it appears unlikely that the FCM will be

²⁵ The “law of one price” is an essential component of FCM and other similar markets. As the Commission explained with regard to PJM’s RPM market:

In a competitive market, prices do not differ for new and old plants or for efficient and inefficient plants; commodity markets clear at prices based on location and timing of delivery, not the vintage of the production plants used to produce the commodity. . . . This market result benefits consumers, because over time it results in an industry with more efficient sellers and lower prices.

PJM Interconnection, L.L.C., 117 FERC ¶ 61,331 at P 141 (2006), *reh’g granted in part*, 119 FERC ¶ 61,318, *reh’g denied*, 121 FERC ¶ 61,173 (2007), *review denied sub nom. Public Service Electric & Gas Co. v. FERC*, 324 Fed. Appx. 1 (D.C. Cir. 2009). *See, e.g. PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275 at P 149, *clarified*, 127 FERC ¶ 61,104, *on reh’g*, 128 FERC ¶ 61,157 at PP 101-102 (2009); *New York Independent System Operator, Inc.*, 103 FERC ¶ 61,201 at P 81 (2003) (“all capacity suppliers, regardless of the age of their resources, are entitled to the same treatment in the ICAP market”).

The Commission later re-affirmed this fundamental principle, stating that:

In order to assure reliability, PJM needs to attract new entry when needed, but also assure that prices are sufficient to retain existing efficient capacity. Both new entry and retention of existing efficient capacity are necessary to ensure reliability and both should receive the same price so that price signals are not skewed in favor of new entry.

PJM Interconnection, L.L.C., 128 FERC ¶ 61,157 at P 102.

²⁶ Schnitzer Testimony at p. 3, ll. 4-6.

²⁷ Pursuant to FPA section 206, the party seeking to change an existing rate, term or condition has the burden to demonstrate that the existing provision results in rates that are unjust and unreasonable, unduly discriminatory and/or preferential. Further, the party advocating a new rate has the burden to demonstrate that the new rate is just and reasonable. The arguments and evidence set forth in this Complaint satisfy fully these burdens. A tariff provision implementing a particular rate or practice that was found reasonable at one time does not preclude the Commission from later reviewing the provision to determine whether it continues to be just and reasonable. *See*,

able to attract a sufficient quantity of new resources (and existing resources) to meet its reserve margin in future years.²⁸

A. The Pricing Provisions Applicable in the Event of Inadequate Supply and Insufficient Competition Suppress Capacity Prices and are Unjust, Unreasonable and Unduly Discriminatory

In their current form, the ISO-NE Tariff provisions used for setting the prices to be paid to existing capacity resources when circumstances in an FCA constitute Inadequate Supply and Insufficient Competition result in capacity prices that are well below any reasonable approximation of a competitive market outcome and which do not begin to approach the prices paid to new entrants. The ISO-NE Tariff provides that in cases of Inadequate Supply and Insufficient Competition, capacity prices for existing generation resources will generally be set at 1.1 times the Capacity Clearing Price for the most recent FCA not having Inadequate Supply (or Insufficient Competition, as applicable). These provisions can apply in any year in which new entry is required, but do not apply to new resources and do not apply to existing resources subject to the New Entry Price rule or to capacity subject to the Capacity Carry Forward Rule.

The tariff provisions concerning Inadequate Supply and Insufficient Competition are most likely to be invoked in circumstances in which the capacity market is short, *e.g.*, as the result of the retirement of a large quantity of existing capacity. Such circumstances appear likely to be present in New England for FCA 8. On October 17, 2013, ISO-NE issued a memorandum to its Reliability Committee explaining that it had recently received a number of Non-Price Retirements requests from generation and demand response resources for FCA 8, totaling 3,135

e.g., *Ameren Services Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 121 FERC ¶ 61,205, at P 33 (2007), *on reh'g and clarification*, 125 FERC ¶ 61,162 (2008).

²⁸ Schnitzer Testimony at p. 22, l. 7 - p. 24, l. 10.

MW of capacity.²⁹ According to the ISO, assuming all such retirements are accepted, the amount of existing capacity for FCA 8 will be 1,547 MW below the Net Installed Capacity Requirement.³⁰ Such circumstances would likely trigger the tariff provisions concerning Insufficient Competition.

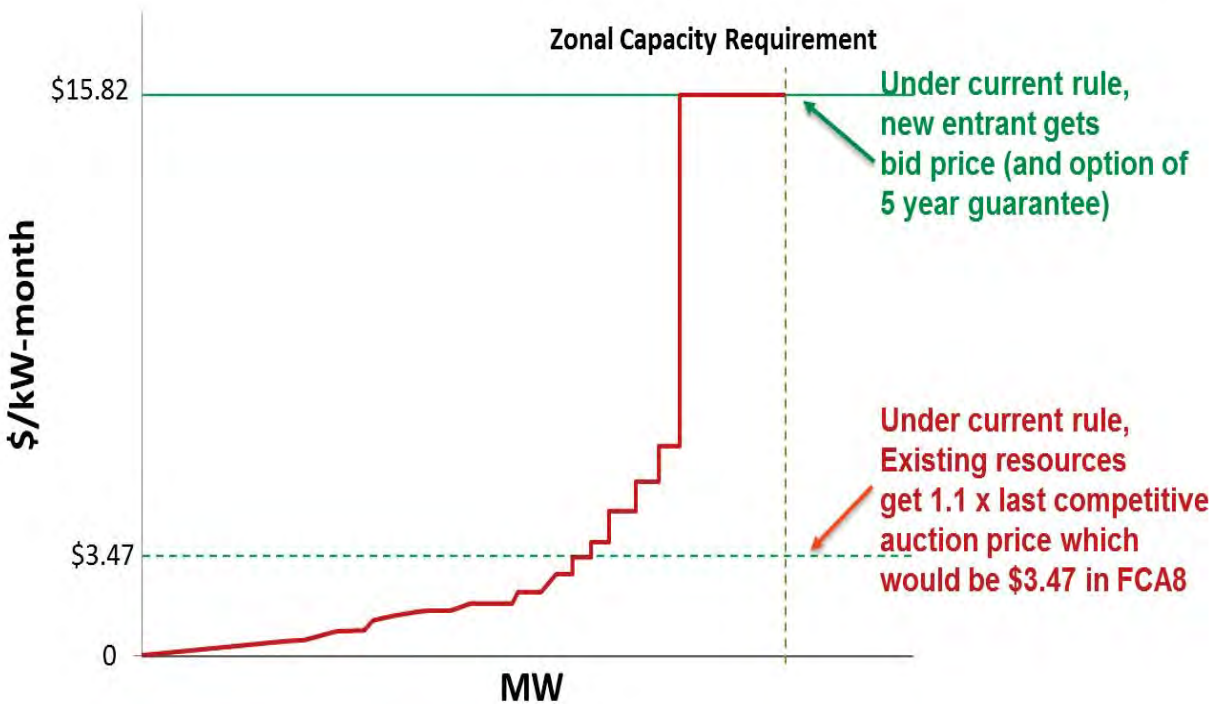
The dramatic differential between the price paid to a new entrant and the prices paid to existing capacity resources that are mitigated in accordance with the Inadequate Supply or Insufficient Competition provisions of the ISO-NE Tariff are described by Mr. Schnitzer in his testimony and illustrated below.³¹ In this example, if the Insufficient Competition Rule is implicated in FCA 8, the capacity clearing price for the most recent FCA not having Insufficient Competition would be \$3.15/kW-month, the “Rest of Pool” clearing price in FCA 7. Under the existing rule, the price paid to existing generators would be \$3.47/kW-month (1.1 x \$3.15), while the new entrant could receive a price of up to \$15.82/kW-month, a difference of approximately 500%:

²⁹ See Memorandum from Stephen J. Rourke to Reliability Committee Members and Alternates, Updates on Resource Conditions for FCA #8 – 2017/2018 (Oct. 17, 2013) (appended hereto at Attachment 7).

³⁰ See *id.* at p. 1.

³¹ As noted above, these provisions of the ISO-NE tariff do not apply to new capacity, even when such capacity is purchased in an auction that triggers the Inadequate Supply and Insufficient Competition pricing provisions.

Illustrative



There are two principal reasons for this extreme and arbitrary outcome. First, when new entry is needed, the price paid to existing resources is not mitigated to the price that would result from competitive new entry, but to a price from a prior FCA where there may have been no need for new entry.³² As Mr. Schnitzer explains, there is no requirement in the ISO-NE Tariff that the price from a prior FCA that is used to set the price for all existing capacity suppliers be the result of an auction in which new entry was needed and, as a result, there is no nexus between the mitigated price and what a competitive price for new entry would be.³³ Indeed, if the rest of the market zone is determined to have Insufficient Competition for FCA 8, the ISO will set prices based on the result of FCA 7 for that zone, an auction in which there was substantial excess

³² Schnitzer Testimony at p. 6, ll. 16-22.

³³ *Id.* at p. 11, ll. 21-23.

capacity and where the eventual clearing price, \$3.15/kW-month, was constrained only by the applicable price floor. The profound flaws in this approach are obvious. It makes little sense to look to a prior auction for competitive price guidance because the prior auction will not reflect the significant change in the capacity supply/demand balance that led to the imposition of the Inadequate Supply and Insufficient Competition pricing provisions. Moreover, this approach prevents capacity prices for existing resources from reflecting scarcity value in the capacity market.³⁴

As Mr. Schnitzer explains, the prices determined in accordance with the ISO-NE Tariff are not a reasonable proxy for the competitive cost of new entry, are a fraction of the prices paid to new entrants and do not begin to approach the benchmark prices designed to reflect the cost of new entry.³⁵ In order to protect against price suppression from buyer-side market power, ISO-NE has adopted the Offer Review Trigger Prices (“ORTPs”) based on estimates of the 20 year levelized cost of new entry for various technologies, which values are an estimate of the competitive cost of new entry under long term equilibrium assumptions. For FCA 8, the ISO’s ORTP values are \$10.00/kW-month and \$11.00/kW-month for combustion turbines and combined cycle gas turbines, respectively – roughly three times the price that would be paid to existing capacity resources under the current rules governing Insufficient Competition and Inadequate Supply. Thus, in these circumstances, the ISO-NE Tariff would result in mitigation – at a time when new entry is required – to a price level 65% to 70% below the ISO’s own estimate

³⁴ *Id.* at p. 6, ll. 10-12.

³⁵ *Id.* at p. 13, l. 2 – p. 14, l. 2.

of the competitive cost of new entry. Not only is this is unjust, unreasonable, and unduly discriminatory, it also skews the market and fails to incent new entry.³⁶

The ISO itself has recognized the flaw in the current tariff and, as noted above, proposed in its December 3, 2012 compliance filing that the reference to a prior FCA be replaced with the ORTP for a combustion turbine, which it believed “would be a far better estimate of the revenues that a new peaking resource would need to recover from the capacity market.”³⁷ While ISO-NE was unable to implement this change in the stakeholder process, the merit of its position is self-evident. The Commission has previously explained that “[t]he purpose of the New England FCM is to attract and retain sufficient capacity to maintain ISO-NE’s Installed Capacity Requirement, and to do so, FCM capacity prices will need to average out over time to the cost of new entry.”³⁸

Where, as is the case here, capacity prices fail to meet this standard by a wide margin, the ISO-NE Tariff provisions that produce this result are plainly unjust and unreasonable and unduly discriminatory. Capacity prices at levels far below the level needed to sustain new entry, which ISO-NE has determined to be the benchmark cost of a combustion turbine, will fail to retain existing capacity resources and will lead to the premature retirement of otherwise economic resources. The existing capacity resources leaving the market will likely be non-gas resources,

³⁶ The pricing provisions applicable in cases of Insufficient Competition and Inadequate Supply also produce arbitrary and paradoxical results that are inconsistent and incompatible with other provisions of the ISO-NE Tariff. For example, as Mr. Schnitzer explains, if in the example above a new and/or existing units with delist bids above \$3.47 kW-month – the resources with bids represented in the “steps” in the supply curve that are above \$3.47/kW-month but below the bid of the new unit that ultimately sets the auction clearing price – clear the auction, those resources would receive a CSO, but be paid a price – \$3.47 kW-month – that is below their delist bid. This result is contrary to the purpose of a delist bid, which is to allow a resource to avoid a CSO unless they receive a price at least equal to their delist bid, and is directly at odds with the tariff requirement that a resource cannot be forced to accept a CSO at a price below its delist bid. The rule is silent on how this inconsistency would be resolved. Schnitzer Testimony at p. 14, ll. 8-18.

³⁷ See December 3, 2012 FCM compliance filing at 44.

³⁸ *ISO New England Inc.*, 125 FERC ¶ 61,102, at P 43 (2008), *reh’g denied*, 130 FERC ¶ 61,089 (2010).

including demand response resources, that provide needed fuel diversity to a region heavily reliant on natural gas to produce electricity. Further, the ISO-NE Tariff provisions that establish and maintain such substantial price discrimination between new and existing resources violate Commission policy, and are inconsistent with the FCM market design, which calls for a single clearing price to support existing economic resources and new entry when needed. As the Commission explained in addressing similar issues in the PJM market: “A market should be designed correctly so that the contribution to reliability from both new entrants and existing suppliers is compensated comparably.”³⁹ Market rules that fail to meet this standard, including the aspects of ISO-NE’s FCM at issue in this Complaint, must be changed in order to comply with these foundational policies.

B. The Capacity Carry-Forward Rule Produces Capacity Prices that are Well Below Competitive Levels and which are Unjust, Unreasonable and Unduly Discriminatory

1. The prices at which carry-forward capacity is offered into the FCA and the method used to determine prices paid to existing capacity suppliers pursuant to the Capacity Carry Forward Rule produce capacity prices for existing suppliers that are far below competitive levels

When the Capacity Carry Forward Rule is triggered, and prices paid to existing capacity suppliers are administratively set by the ISO rather than through the auction, the resulting prices are far below competitive levels. Two principal factors contribute to this result.

First, the Capacity Carry Forward Rule leads to price suppression and price discrimination when a new entrant elects New Entry Pricing and is required to be a price taker – *i.e.* submits \$0 bids – into subsequent FCAs. When new capacity exceeds the capacity need in the FCA, *i.e.*, when the new investment is “lumpy,” the ISO-NE Tariff provides for the carry-

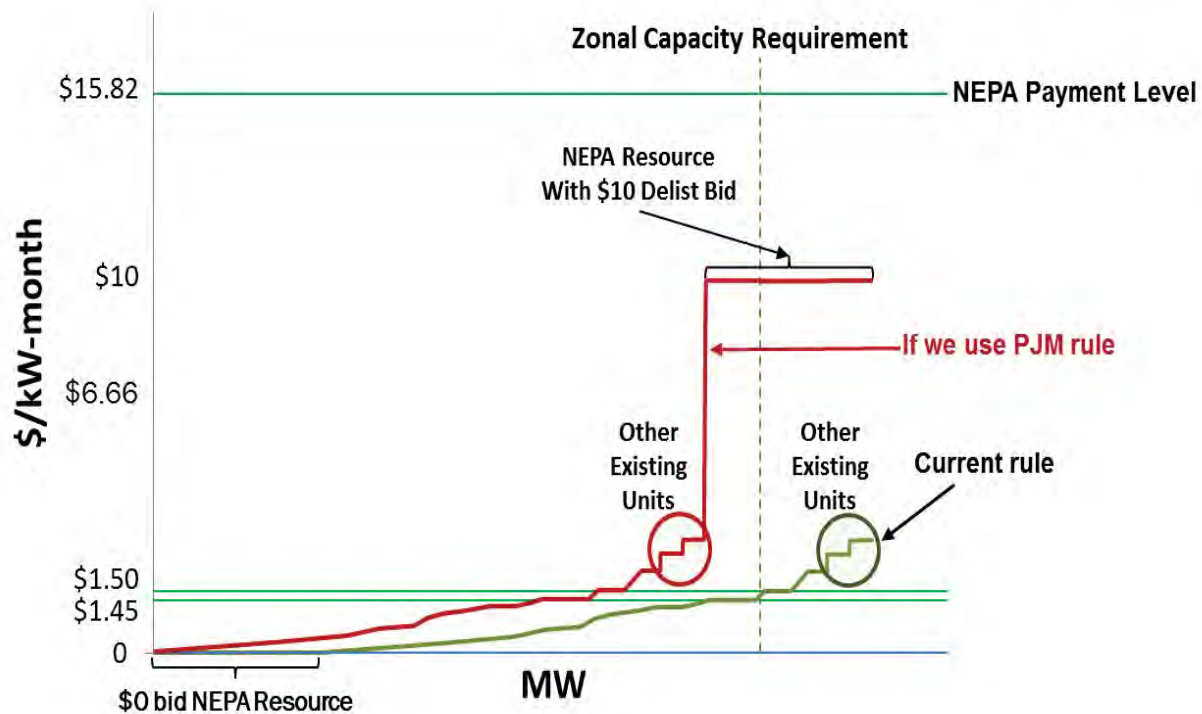
³⁹ *PJM Interconnection, L.L.C.*, 128 FERC ¶ 61,157 at P 103.

forward of excess capacity into subsequent FCAs. Under the current tariff, new entry that clears in the FCA may elect to receive the Capacity Clearing Price from that FCA for up to five years, during which time the resource may not offer a de-list bid or an export bid – meaning it must be a price taker.⁴⁰ As Mr. Schnitzer explains in his testimony, when the five year payment option is invoked by the new entrant, its first year offer price does not fully reflect the cost of new entry – it is more appropriately viewed as a five year installment purchase by the ISO. Thus having the new entrant bid \$0 in the last four years of the installment purchase deprives existing resources of the opportunity to fully realize the competitive cost of new entry. Instead, this practice shifts the entire supply curve and will have the effect of both lowering the market clearing price and causing some existing resources not to clear.⁴¹ This effect is particularly evident in markets with a vertical demand curve, such as FCM, where ISO-NE will acquire a specific quantity of capacity based on the Net ICR and/or the LSR. The following graph illustrates this effect:

⁴⁰ ISO-NE Tariff § III.13.1.1.2.2.4.

⁴¹ Schnitzer Testimony at p. 17, ll. 1-4.

Illustrative



This problem is present today in ISO-NE's NEMA/Boston zone. A recent example is Footprint Power, a new entrant in the NEMA/Boston Zone, which cleared in the last auction, FCA 7, at \$14.99/kW-month⁴² and which elected to receive that price for the five-year lock-in period. Footprint Power did not agree to ration its capacity, and ISO-NE cleared 674 MW of capacity associated with the new facility even though ISO-NE only needed to obtain 178 MW of capacity in NEMA/Boston in FCA 7. The excess capacity – 496 MW – will be carried forward into the subsequent auctions and the entire 674 MW is expected to be offered at a \$0 price-taker bid. At 674 MW, Footprint Power reflects approximately 20% of the LSR for the

⁴² In subsequent Capacity Commitment Periods, the price paid to new capacity resources that elect to have the Capacity Supply Obligation apply for more than one Capacity Commitment Period is adjusted for inflation using the Handy-Whitman Index of Public Utility Construction Costs in effect as of December 31 of the year preceding the Capacity Commitment Period. See ISO-NE Tariff, § III.13.7.2.1.1(a). As a result, Footprint will receive \$15.82/kW-month for the FCA 8 Capacity Commitment Period.

NEMA/Boston Zone and this amount of capacity offered as a price-taker is likely to have a material effect on capacity prices in the NEMA/Boston zone.

Second, the method set out in the Capacity Carry Forward Rule for administratively setting capacity prices does not include any means to ensure that the resulting price approximates the price that would have resulted but for the excess capacity. When the Capacity Carry Forward Rule is in effect, existing capacity suppliers are not paid prices determined by the FCA, but receive capacity clearing prices that are equal to the lesser of (a) the ORTP⁴³ for a combustion turbine (currently \$10.00/kW-month), or (b) \$0.01 below the price at which the last new capacity resource withdrew from the FCA. In most instances, however, the last “new” capacity offer that is withdrawn in the FCA is not a reasonable proxy for a competitive market outcome and offers little of value in determining the appropriate capacity price. Accordingly, the “lesser of” component of the Capacity Carry Forward Rule operates in a manner that effectively fails to establish any reasonable price floor for a constrained zone and the prices paid to existing capacity suppliers in accordance with the ISO-NE Tariff are far below the price paid to a new entrant and fail to approximate in any measure the prices that would be produced by a competitive market.⁴⁴

This approach, moreover, does nothing to mitigate the price suppression resulting from the new entrant’s \$0 bid. As noted above, the practice of new entrants submitting price taker bids for resources subject to New Entry Pricing shifts the supply curve and displaces other capacity suppliers that would otherwise clear in the FCA. The price distortion resulting from the \$0 bids impacts both the price at which the market clears and the price at which the last new

⁴³ As noted previously, the ORTP is based on estimates of the 20 year levelized cost of new entry for both combustion turbines and Combined Cycle Gas Turbines, which values are an estimate of the competitive cost of new entry under long term equilibrium assumptions.

⁴⁴ Schnitzer Testimony at p. 18, l. 16 – p. 22, l. 2.

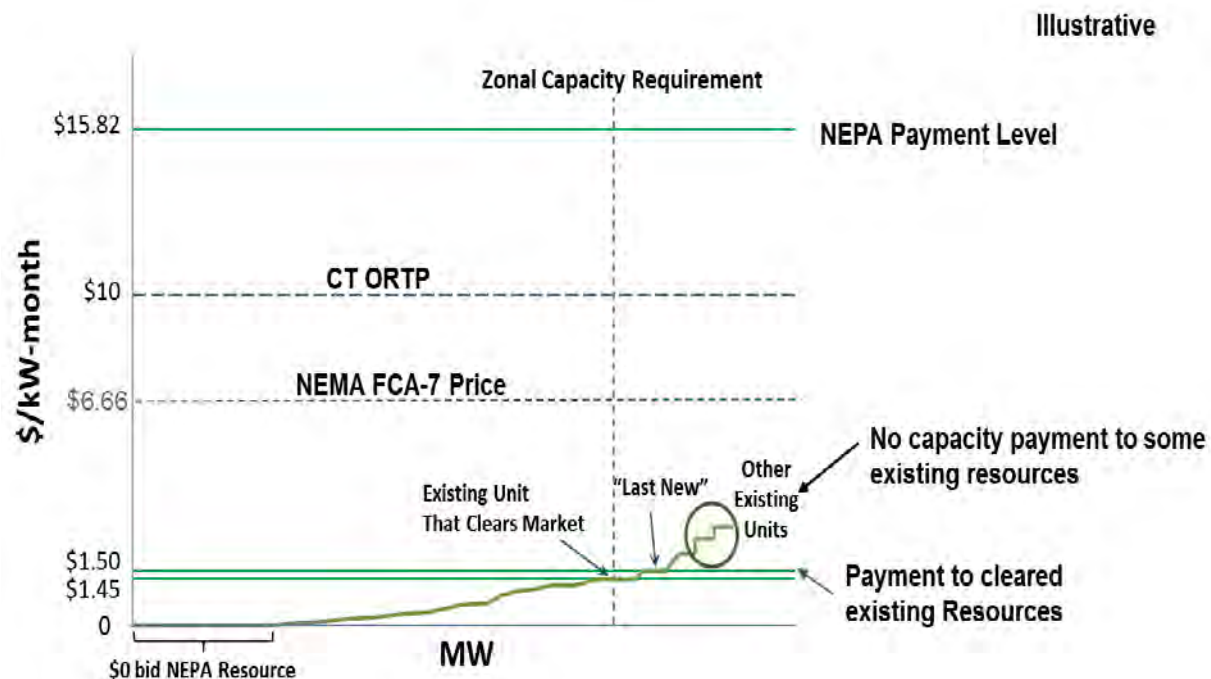
resource withdraws from the auction, each of which will be suppressed as a result of the \$0 capacity bids. Thus, rather than mitigate the price suppression associated with capacity offered at a \$0 price, the Capacity Carry Forward Rule's pricing provisions actually reflect this price suppression and produce capacity prices for existing capacity resources that are artificially low.

Further, ISO-NE's reliance on the "last new" offer to withdraw to set the price for all existing capacity resources does not take into account the type of resource or the size (in MW) of the last new offer that withdrew when using that offer price to set the capacity price paid to all existing capacity resources. The lack of any nexus between the "last new" offer and the resources that are paid for their capacity based on that offer price produces unjust and unreasonable prices. As Mr. Schnitzer explains, small amounts of new energy efficiency or demand response with very low offer prices could represent the last "new" capacity offer that failed to clear in the FCA and thereby set the capacity price for all existing generation resources supplying capacity in the zone.⁴⁵ Offer prices for such resource types may be as low as \$1.00/kW-month for Demand Response or \$0/kW-month for energy efficiency pursuant to the Offer Review Trigger Prices for those technology types. If there had been no lumpy resource and competitive market conditions prevailed, then such a small increment of capacity would not be sufficient to satisfy the capacity shortfall. Plainly, it is not reasonable to rely on such resource to establish the proxy clearing price under the Capacity Carry Forward Rule.

The capacity prices that result from the application of the ISO-NE Tariff rules plainly fail to mitigate the price suppression resulting from the introduction of excess capacity into the FCA process and are so low as to be unjust and unreasonable and unduly discriminatory. Mr.

⁴⁵ *Id.* at p. 18, ll. 16-19.

Schnitzer discusses the impact of this design flaw in his testimony. The following graph illustrates this effect:



As Mr. Schnitzer notes, in this example, a “new” energy efficiency or demand response bid of \$1.50/kW-month would be the “last new” capacity offer to withdraw from the FCA and would set the price for all existing capacity resources in the zone.⁴⁶ At \$1.49/kW-month, existing capacity resources would be paid a rate that is 85% below the benchmark price for a combustion turbine (\$10.00/kW-month), and more than 90% less than the price at which 674 MW of new capacity cleared in FCA 7 in the NEMA/Boston zone (\$14.99/kW-month).⁴⁷

The use of the “last new” bid can also lead to arbitrary and counter-intuitive results. As Mr. Schnitzer notes, under some circumstances the capacity market may clear at a price that is above the delist bids of existing resources in the zone, but that those resources will not receive a

⁴⁶ *Id.* at p. 19, l. 9 - p. 21, l. 3.

⁴⁷ *Id.* at p. 21, ll. 4-6.

CSO or a capacity payment.⁴⁸ In Mr. Schnitzer’s example, if the above illustration is changed so that the de-list bid of the “last new” resource is \$3.50/kW-month, the price set by the Capacity Carry Forward Rule will be \$3.49/kW-month, well below the new entry levels but above the “other existing units” shown in the example. In these circumstances, however, these existing units that fall in between the price of the existing unit that clears the capacity market at the zonal capacity requirement and the price paid offered by the “last new” offer that withdraws from the FCA are excluded because they fall outside of the auction quantity needed to satisfy the zonal capacity requirement. In this illustration, ISO-NE uses one price to clear the auction and uses a different price to pay existing capacity resources that receive a CSO. This outcome is inefficient and nonsensical.

2. The pricing provisions applicable pursuant to the Capacity Carry Forward Rule are contrary to Commission precedent and policy and will produce adverse market outcomes

The issues presented in this Complaint are issues the Commission has previously addressed in other proceedings concerning regional capacity markets and the provisions of the ISO-NE Tariff that NEPGA challenges in this Complaint are substantially similar to provisions that the Commission has found to be unjust and unreasonable and rejected in these prior proceedings. The Commission should follow this clear precedent and determine that the Capacity Carry Forward Rule is unjust and unreasonable and unduly discriminatory.

The policy underlying the FCM market design is well-established. In order for FCM to operate as intended, capacity prices must retain existing economic generation and attract new entry. In 2008, the Commission stated that “[t]he purpose of the New England FCM is to attract and retain sufficient capacity to maintain ISO-NE’s Installed Capacity Requirement, and to do so,

⁴⁸ *Id.* at p. 24, ll. 13-15.

FCM capacity prices will need to average out over time to the cost of new entry.”⁴⁹ If capacity prices are too low, the market design will not produce the intended outcomes and will send price signals that neither incent new entry nor serve to retain economic existing capacity resources.⁵⁰

The Commission stated this point clearly: “properly constructed capacity markets can . . . encourage reliable and efficient levels of investment only if market participants can expect prices that provide a reasonable opportunity to recover the costs of needed investment.”⁵¹

Requiring NEPA capacity suppliers to offer at \$0 undermines the design and function of the capacity market. The Commission has recognized the suppressive and discriminatory effect of such bidding practices and has specifically rejected such practices. In *PJM Interconnection, L.L.C.*, certain parties proposed to allow capacity suppliers that had elected new entry pricing to offer their capacity into subsequent auctions at a \$0 bid in order to guarantee that the capacity would clear. The Commission found that such bidding practices would suppress capacity prices and would create unjustified price discrimination between new and existing resources:

The original purpose of including the bidding limitations was to ensure that a new entrant in a small LDA will not reduce prices to the existing resources by submitting a \$0 bid in Years 2 and 3, knowing that it is guaranteed to be paid its first year bid price no matter what it bids. We continue to find that PJM and NRG have not explained why a bid floor is not necessary to protect against such bidding behavior and the resulting discriminatory pricing. That is, the new resource would receive its first-year price for all of the years in which it receives NEPA treatment, while existing resources in the LDA would receive a lower price (reflecting the LDA’s surplus of capacity).⁵²

⁴⁹ *ISO New England Inc.*, 125 FERC ¶ 61,102 at P 43.

⁵⁰ *See Blumenthal v. ISO New England Inc.*, 117 FERC ¶ 61,038, at P 83 (2006), *reh’g denied* 118 FERC ¶ 61,205 (2007), *review denied sub nom. Blumenthal v. FERC*, 552 F.3d 875 (D.C. Cir. 2009).

⁵¹ *New York Independent System Operator*, 122 FERC ¶ 61,211, at P 105, *on reh’g*, 124 FERC ¶ 61,301 (2008), *on reh’g and clarification*, 131 FERC ¶ 61,170 (2010).

⁵² *PJM Interconnection, L.L.C.*, 128 FERC ¶ 61,157 at P 112. The Commission recently reaffirmed this principle in the context of the California ISO market. *See California Independent System Operator Corporation*,

If this approach were applied in New England, new resources receiving New Entry Pricing would be required to bid at the ORTP for a combustion turbine.

In this regard, the current version of the Capacity Carry Forward Rule suffers from the same flaws as the version proposed by PJM in the case cited above and by ISO-NE in 2010, both of which the Commission found to be unjust and unreasonable. In reviewing and rejecting the ISO-NE Alternative Capacity Price Rule, the Commission held the ISO-NE Tariff provisions at issue to be unjust and unreasonable because they did not result in competitive market proxy prices that reflected the outcome of a fully competitive market environment.⁵³ In that instance, the Commission directed ISO-NE to address the price suppression resulting from low capacity offer prices attributable to uneconomic entry by establishing benchmark prices that reflect the cost of new entry and using such benchmarks to set offer floors for FCAs.⁵⁴ The current Capacity Carry Forward Rule, which follows closely on the tariff language originally included in the Alternative Capacity Price Rule, does not address this concern, nor does it reflect any material changes designed to protect against price suppression resulting from the carry forward of excess capacity that can bid \$0 in the ensuing capacity auctions.

The Commission's policy determinations and precedent holding that bidding practices and pricing rules that suppress capacity prices are unjust, unreasonable and unduly discriminatory reflect the Commission's recognition that capacity prices that are below competitive levels will lead to the inefficient retirement of existing resources. As the Commission noted in 2009 in *PJM Interconnection, L.L.C.*, "[i]f retention of existing capacity is

142 FERC ¶ 61,191, at P 28 (2013) ("the use of zero-price bids could have the unintended effect of depressing the market clearing prices in the CASIO markets, thus adversely affecting other market participants.").

⁵³ *ISO New England, Inc.*, 135 FERC ¶ 61,029, at PP 60, 62 (2011), *on reh'g and clarification*, 138 FERC ¶ 61,027 (2012).

⁵⁴ *Id.* at P 169.

less costly than new entry, in the long run, extending NEPA could lead to higher overall costs if existing capacity exits and has to be replaced by new entry.”⁵⁵ In the current ISO-NE market, the price suppression resulting from the lack of an effective bid floor and the use of low-price, price-taker bids will similarly result in uneconomic retirements as existing economic resources are displaced by the new, higher cost entrants. As Mr. Schnitzer explains in his testimony, where price suppression associated with the application of the Capacity Carry Forward Rule results in prices paid to existing resources being far below the prices paid to new entrants, existing capacity resources with going forward costs well below the price paid to new entrants are displaced by the new entrant’s \$0 bid and do not receive a CSO or revenues from the capacity market.⁵⁶ This outcome accelerates the exit of existing resources from the market and increases the need for new entry at higher prices.⁵⁷

Plainly, the Capacity Carry Forward Rule does not function as it was intended and fails to respond effectively to the price suppression caused by the entry of a new resource with excess, carry-forward capacity. The resulting prices paid to existing resources do not begin to approximate the result of a competitive market and are far below the level needed to meet the FCM’s intended market design, *i.e.*, a single clearing price that is sufficient to retain existing resources while providing for new entry when needed. Instead, the scenario evident in New England under the current ISO-NE Tariff is one where \$0 bids from new entrants that receive a much higher market clearing price displace less expensive existing capacity resources, leading to inefficient retirement of such economic resources and the need for additional new entry, at much

⁵⁵ *PJM Interconnection, L.L.C.*, 128 FERC ¶ 61,157 at P 103 n.61.

⁵⁶ Schnitzer Testimony at p. 19, l. 9 - p. 20, l. 1.

⁵⁷ *Id.* at p. 20, ll. 3-6.

higher prices. This outcome is inefficient, increases long-term costs to consumers, and is unjust, unreasonable and unduly discriminatory.

C. The Inadequate Supply and Insufficient Competition Pricing Rules and the Capacity Carry Forward Rule Produce Substantial and Extended Price Disparities Between New and Existing Capacity that are Unjust, Unreasonable and Unduly Discriminatory

While the Inadequate Supply and Insufficient Competition Pricing Rules and the Capacity Carry Forward Rule apply in different circumstances, the common feature of these tariff provisions are dramatic and persistent price discrimination between new and existing resources, as detailed above. This price discrimination is not the result of market anomalies, but is grounded in the express terms of the ISO-NE Tariff itself. Moreover, the terms of the ISO-NE Tariff make it extremely unlikely that prices for new and existing capacity resources will ever converge into a true single-price market. As Mr. Schnitzer explains, under the current market rules there is no assurance that capacity prices for incumbents will ever approach new entry price levels, even when new entry is required.⁵⁸ This is the case because even if retirements or load growth create a continuing need for new entry, under the tariff existing generation does not receive the capacity clearing price paid to new entrants but is instead relegated to prices set under flawed tariff rules that by design do not begin to approach competitive levels or the prices actually paid to new entrants. The recent spike in retirements by existing capacity resources illustrates clearly the impact of this structural price suppression.

While the Commission has, in certain cases, found certain price differentials for new entrants to be reasonable if limited in scope, it has rejected proposals to extend the term of discriminatory pricing that favors new entry beyond limited transitional periods. In PJM, which allows new entrants to lock-in capacity prices for up to a three-year period, the Commission

⁵⁸ *Id.* at p. 22, ll. 20-22.

rejected proposals to extend the time period for which new entry may receive a different price than exiting capacity.⁵⁹ In this instance, the greater length of time afforded new capacity in ISO-NE to be insulated from actual capacity prices – 5 years vs. the 3-year period in PJM – further justifies greater scrutiny of the dramatic price differentials that result.⁶⁰ While rate differentials by themselves are not evidence of undue discrimination,⁶¹ the factual differences that underlie the rate difference must be reasonably related to the rate differentials.⁶² As the court noted in *Public Service Company of Indiana*, the Commission must show not only that factual differences justify some rate differences, but also that the factual differences justify the specific rate differences at issue.⁶³

There is no colorable basis to justify the extraordinary price discrimination resulting from the Capacity Carry Forward Rule and the pricing provisions applicable in cases of Insufficient Competition and Inadequate Supply. In this Complaint, NEPGA does not challenge the ISO-NE Tariff provisions authorizing a new entrant to elect to receive the initial Capacity Clearing Price, as adjusted, for five years. However, the suppressed prices paid to existing capacity resources do little, if anything, to support new entry and the extended term of the new entry protections afforded capacity suppliers in New England serve to highlight the degree to which the ISO-NE

⁵⁹ *PJM Interconnection, L.L.C.*, 128 FERC ¶ 61,157 at P 102.

⁶⁰ With regard to the five year rate lock in ISO-NE, the Commission has specifically noted that the current ISO-NE Tariff has not been found to be just and reasonable in its own right, but was approved only as part of a larger settlement. *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275 at P 150 n.65 (“this provision was approved as part of an overall settlement, not as an individual provision that was found to be just and reasonable in its own right.”).

⁶¹ See, e.g., *Cities of Bethany, Illinois v. FERC*, 727 F.2d 1131, 1140 (D.C. Cir. 1984); *St. Michaels Utilities Comm’n v. FPC*, 377 F.2d 912, 915 (4th Cir. 1967).

⁶² See, e.g., *Sacramento Municipal Utility District v. FERC*, 474 F.3d 797, 802-4 (D.C. Cir. 2007).

⁶³ *Public Serv. Co. of Indiana, v. FERC*, 575 F.2d 1204, 1212 (7th Cir. 1978).

Tariff leads to unjust, unreasonable and unduly discriminatory prices for existing capacity resources.

The structural nature of the price discrimination between new and existing resources serves to accelerate the retirement of efficient capacity resources. As Mr. Schnitzer notes,

owners of capacity resources make decisions based on a multi-year view of capacity prices – not just prices in a single year. If there is a reasonable prospect of clearing prices for capacity recovering when new entry is required, existing resources may opt to “stay the course” during a trough in capacity prices. However, when the capacity market rules limit the opportunity for capacity prices to existing resources to approach new entry levels when new entry is required, existing resources will be less likely to wait for recovery, and will instead exit the market.⁶⁴

Moreover, this bifurcated pricing scheme is likely to undermine the ability of the ISO-NE capacity market to attract new entry, even at higher prices. When making investment decisions, new entrants will assess the expected revenues over the life of the resources, including capacity revenues during the NEPA period, and also the expected capacity revenues *after* the NEPA period at which time the resource will be an “existing” resource and as such will be compensated at the lower levels applicable to existing capacity resources. As a result, under the current market rules, potential new entrants are likely to conclude that they must recover a very high percentage of their total costs in the first five years because of the high likelihood that capacity revenues will drop precipitously at the end of the New Entry Pricing period. If a potential resource determines that these risks are too great, concluding that it cannot recover its costs and earn a reasonable return if its revenues drop to as little as 10-20% of the initial Capacity Clearing Price after five years, it may choose to invest in other markets.

Mr. Schnitzer illustrates this point in his testimony:

⁶⁴ Schnitzer Testimony at p. 21, ll. 14-21.

For example, under the ISO's assumptions with respect to the costs and required return for a new CT, a new entrant must expect to realize capacity revenues over a 20 year period of \$10/kW-month. However, if a new entrant in FCA 8 determined that expected capacity revenues in years 6-20 would average 75 percent of the ORTP, or \$7.5/kW-month, then an NEPA price of \$15 per kW-month in the first five years would be required to make the investment economic. A new entrant with an expectation of lower than 75 percent average revenues in years 6 through 20 would require a higher price during the NEPA period – perhaps in excess of the auction cap. In that event, even with the 5 year NEPA guarantee, new entry from that supplier would not be forthcoming.⁶⁵

The systemic price discrimination that is rooted in the different treatment of existing capacity resources and new entrants is unjust and unreasonable and unduly discriminatory and ultimately threatens to undermine the entire FCM. Changes to the market rules to remedy this undue discrimination must be implemented now in order to protect against further loss of economic resources and the associated impacts on reliability.

D. Specific Revisions to the Capacity Carry Forward Rule and the Tariff Provisions Concerning Insufficient Competition and Inadequate Supply are Required in Order for the Tariff to be Just and Reasonable

The remedies for ISO-NE's flawed market design are straightforward and may be implemented promptly and without disruption to the market. These provisions, which are detailed below, generally reflect elements of capacity market design that have been approved by the Commission in connection with other regional capacity markets, are just and reasonable, and will provide for capacity prices to better reflect the outcome of a competitive market. These provisions will remedy the price discrimination and price suppression that occurs under the current market rules, will prevent uneconomic retirement, and will support new entry when

⁶⁵ *Id.* at pp. 23, l. 10 - p. 24, l. 10.

needed.⁶⁶ Specific revisions to the ISO-NE Tariff needed to implement these changes are set out at Attachment 8. NEPGA respectfully requests that the Commission act promptly to grant this Complaint and to direct ISO-NE to implement these changes in advance of FCA 8 which begins on February 3, 2014.

First, ISO-NE Tariff Sections III.13.2.8.1.1 (a) and (d) should be revised to strike the reference to “the Capacity Clearing Price for the most recent Forward Capacity Auction not having Inadequate Supply during the associated Capacity Commitment Period” and ISO-NE Tariff Sections III.13.2.8.2(a) and (c) should be revised to strike the reference to “the Capacity Clearing Price for the most recent Forward Capacity Auction not having Insufficient Competition during the associated Capacity Commitment Period.” In the place of this language, the ISO-NE Tariff should be revised to add “the Offer Review Trigger Price for a combustion turbine, as set forth is Section III.A.21.1.1.”

These revisions provide for the price applicable in circumstances of Insufficient Competition or Inadequate Supply to better reflect the result of an appropriately competitive market. This change will provide for a reasonable nexus between the mitigated prices paid to existing capacity resources and the FCA in which that price is determined.⁶⁷ This change is also consistent with ISO-NE’s prior recommendation, as set out in the December 3, 2012 Compliance Filing, where it stated: “the ISO believes that the new Offer Review Trigger Price for a combustion turbine would be a far better estimate of the revenues that a new peaking resource would need to recover from the capacity market.”

Second, ISO-NE Tariff §§ III.13.1.1.2.2.4, III.13.2.7.9.1 and III.13.2.7.9.2 should be revised to specify that if the Capacity Carry Forward Rule is triggered by a New Capacity

⁶⁶ *Id.* at p. 5, ll. 17-22.

⁶⁷ *Id.* at p. 30, l. 12 - p. 31, l. 1-2.

Resource that does not elect a multi-year price commitment, then the current pricing rules set forth at ISO-NE Tariff § III.13.2.7.9.2 will apply, but that if the Capacity Carry Forward Rule is triggered by a New Capacity Resource that does elect a multi-year price commitment, new pricing provisions would apply. Those provisions would require ISO-NE to establish a shadow de-list bid for such resource at the lower of (i) the Offer Review Trigger Price for a combustion turbine, as specified at ISO-NE Tariff § III.A.21.1.1; or (ii) the Capacity Clearing Price in the Capacity Zone for the FCA in which the New Capacity Resource electing a multi-year commitment initially cleared. The shadow de-list will be applicable to the full amount of capacity that is subject to the multi-years commitment in subsequent FCAs for the full term of that commitment.

This approach will protect against the substantial adverse impact of new capacity on zonal capacity prices by preventing new entrants from collapsing the price for existing generation by offering the full amount of new capacity, including quantities of capacity that exceed the zonal requirements, at a \$0 bid. A New Resource that elects New Entry Pricing would continue to be paid the FCA clearing price at which the resource initially cleared, adjusted for inflation as provided in the tariff, and would continue to have its CSO whether or not it would clear based on its shadow price in the subsequent FCAs.⁶⁸ This is the approach adopted in PJM, in which capacity suppliers electing new entry pricing are required to bid their capacity at

⁶⁸ While the PJM-based approach may result in bids for capacity from resources receiving New Entry Pricing that exceed the resources' going-forward costs, it is important to note that the price paid to the new entrant for the New Entry Pricing period, which is capped, does not necessarily reflect the actual cost of new entry but is, as Mr. Schnitzer explains, an "installment purchase" of new capacity over a five-year period. Schnitzer Testimony at p. 6, l. 23 – p. 8, l. 3. This approach, which the Commission has found to be just and reasonable, is designed to strike a reasonable balance between the need to incent new entry while avoiding discrimination against existing resources. Mr. Schnitzer explains that while it is possible that under this approach the ISO may clear more capacity than the ICR or LSR (as happens with lumpy resources under the current market rules) the solution is for ISO-NE to pro-rate existing capacity resources so that the total CSOs in the zone would be equal to the total CSOs in the zone for the Capacity Commitment Period in which the new resource first cleared. Schnitzer Testimony at p. 33, l. 22 – p. 34, l. 16.

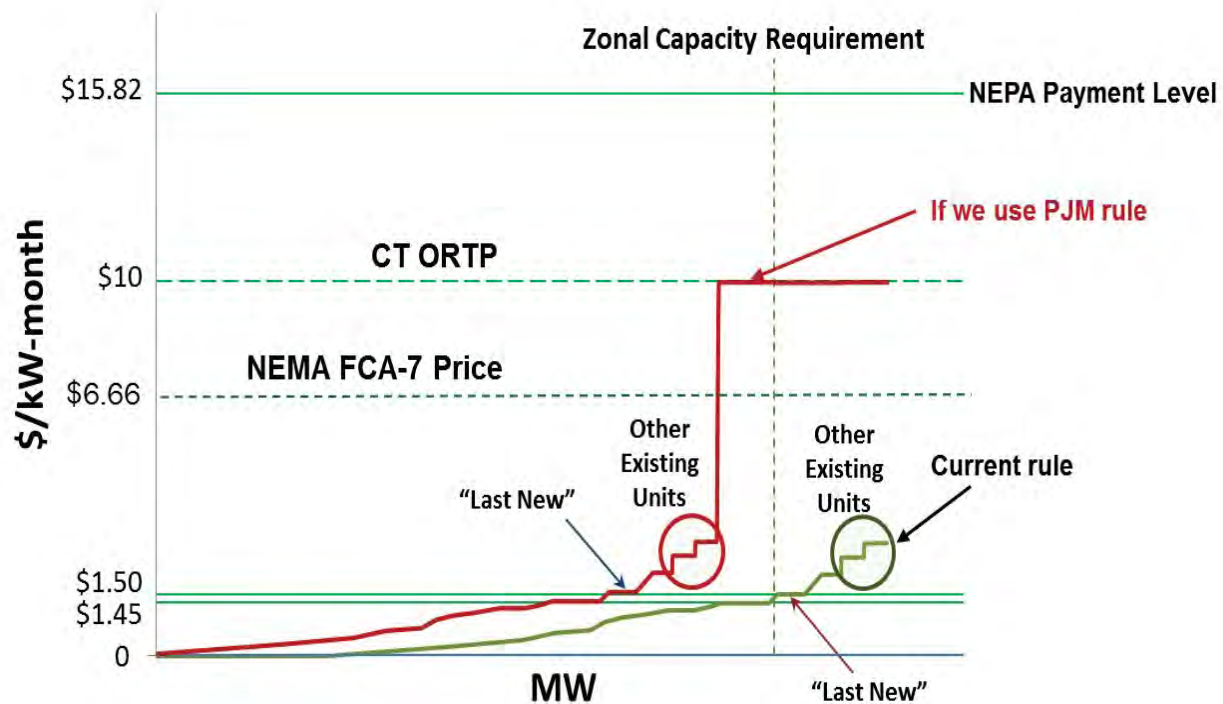
100% of the cost of new entry in order to prevent new entrants from significantly suppressing capacity prices by offering at a lower price level.⁶⁹

As Mr. Schnitzer explains, the NEPGA proposal, which follows the PJM example, will reduce substantially the price discrimination between new and existing resources and will result in the prices paid for capacity to more closely approximate the cost of new entry, consistent with Commission policy.⁷⁰ Under the PJM approach (and the approach recommended here), if even a single MW of the carry-forward capacity is needed to meet the zonal reliability requirement during the New Entry Pricing period, then existing resources will receive a price approximating the cost of new entry. This difference is illustrated in the Figure below. The lower supply curve illustrates the effect of the Capacity Carry Forward Rule with a \$0 bid from the NEPA resource, an existing resource that clears the zone at \$1.45/kW-month, and the “last new” which sets the price for the zone at \$1.50/kW-month. The upper supply curve illustrates the results under the PJM rule where the NEPA resource offers in at \$10/kW-month. As the figure shows, the PJM approach results in much less price suppression – the \$10 delist bid sets the price for existing resources instead of a “last new” price of \$1.50, and all existing resources with a delist bid less than \$10 receive a CSO. The combination of the higher price and a CSO for all existing economic resources dramatically reduces the resulting price discrimination and the risk of premature retirement of efficient existing resources.

⁶⁹ *PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090, at PP 195-98 (2013).

⁷⁰ Schnitzer Testimony at p. 30, l. 9 – p. 36, l. 4.

Illustrative



Requiring new capacity resources to submit at the clearing price or at the ORTP for a combustion turbine will reduce substantially the price discrimination between new and existing resources and will result in the prices paid for capacity to more closely approximate the cost of new entry, consistent with Commission policy. This tariff change will also reduce substantially the risk of uneconomic retirements due to existing generation being displaced by \$0 bids from capacity resources receiving the higher NEPA price.

Further, this remedy also has the advantage of relying on market mechanisms, rather than prices set outside of the FCA based on tariff-based formulae, to determine capacity prices. As is the case in PJM, eliminating the bidding practices that resulted in price discrimination and price suppression enables the market to utilize market outcomes, rather than administratively-determined proxy prices.

Each of these revisions is just and reasonable and will not interfere with the functioning of other aspects of the FCM market design. It is important to note that implementation of these reforms will not alter a new resource's ability to set the clearing price in the initial FCA, nor will it change a new resource's ability to lock in a capacity price for up to five years. Indeed, none of the tariff changes requested in this Complaint will alter the current market rules governing the prices paid to new capacity resources. These needed reforms will simply protect the market from unreasonable price suppression and will ensure that prices paid to all capacity suppliers are just and reasonable and not unduly discriminatory.

E. Fast Track Processing is Required

Pursuant to 18 C.F.R §385.206(h), NEPGA respectfully requests Fast-Track processing for this Complaint so that the needed revisions to the ISO-NE Tariff may be in place in advance of the next FCA which will take place on February 3, 2014. Expeditious resolution of this Complaint is necessary and appropriate so that the critical changes to the ISO-NE Tariff detailed herein are implemented in a timely manner so that the flaws contained in the current market rules do not undermine the upcoming auction and that the procedures applicable to FCA 8, and the capacity prices determined in that auction, are just and reasonable and not unduly discriminatory. Action in advance of FCA 8 is essential because there is no opportunity for a post hoc remedy absent the extraordinary and unprecedented remedy of directing ISO-NE to re-run the FCA. Accordingly, NEPGA requests that the Commission establish a 20 day notice period and that the Commission issue an order on this Complaint no later than **January 21, 2014**.

V. OTHER MATTERS AND COMPLAINT REQUIREMENTS.**A. Description of Alleged Violation and Quantification of Impacts – 18 C.F.R. § 385.206(b)(1)-(5)**

As addressed in Part IV of this Complaint, the Capacity Carry Forward Rule and the pricing rules applicable in instances of Inadequate Supply and Insufficient Competition are unjust, unreasonable and unduly discriminatory. The financial and operational impacts of these aspects of the ISO-NE Tariff are addressed in Part IV of this Complaint and in the accompanying testimony of Mr. Michael M. Schnitzer.

B. Other Pending Proceedings – 18 C.F.R. § 385.206(b)(6)

To the best of NEPGA's knowledge, the issues presented herein are not presently before the Commission or in any other forum in which NEPGA is a party.

C. Specific Relief or Remedy Requested – 18 C.F.R. § 385.206(b)(7)

The specific relief NEPGA requests is set forth in Part IV of this Complaint.

D. Supporting Documents – 18 C.F.R. § 385.206(b)(8)

Documents provided in support of this Complaint are identified in the body of the Complaint and are attached hereto.

E. Use of Alternative Dispute Resolution Procedures – 18 C.F.R. § 385.206(b)(9)

As noted in this Complaint, NEPGA and certain of its members have attempted to address the issues raised herein through the ISO-NE stakeholder process. However, those efforts have been unsuccessful to date. Given that FCA 8 is scheduled to take place beginning on February 3, 2014, immediate resolution of the issues raised in this Complaint is necessary. Thus, NEPGA believes this Complaint presents the most appropriate avenue for resolving the issues raised herein and is necessary to protect the rights of its members. NEPGA does not believe

ADR under the Commission's supervision would successfully resolve the complaint in a timely fashion.

F. Form of Notice – 18 C.F.R. § 385.206(b)(10)

A form of notice of this Complaint suitable for publication in the Federal Register is appended hereto as Attachment 9.

G. Request for Fast Track Processing

See Part IV.D of this Complaint.

H. Rule 206(c): Service on Respondent

Pursuant to Rule 206(c), concurrent with its filing with the Commission, NEPGA has served copies of this Complaint on the contacts for ISO-NE as listed on the Commission's list of Corporate Officials:

Raymond Hepper
Vice President and General Counsel
ISO New England Inc.
One Sullivan Road
Holyoke, MA 01040-2841
Telephone: (413) 540-4592
Fax: (413) 535-4379
Email: rhepper@iso-ne.com

Maria Gulluni
Assistant General Counsel – Corporate
ISO New England Inc.
One Sullivan Road
Holyoke, MA 01040-2841
Telephone: (413) 540-4473
Fax: (413) 535-4379
Email: mgulluni@iso-ne.com

VI. CORRESPONDENCE AND COMMUNICATIONS

All correspondence and communications concerning the above-captioned proceeding should be addressed to the following persons. NEPGA respectfully requests waiver of 18 C.F.R. § 385.203(b)(3) to the extent necessary to include each of these persons on the official service list in this proceeding.

Christopher A. Wilson
Director
Federal Regulatory Strategy and Affairs
Exelon Corporation
101 Constitution Avenue, NW
Suite 400 East
Washington, DC 20001
(202) 347-7507
Christopher.Wilson@exeloncorp.com

David O. Dardis
Vice President & Deputy
General Counsel – Regulatory
Exelon Corporation
111 Market Pl, Suite 500
Baltimore, MD 21202
(410) 470-3416
David.Dardis@constellation.com

Jeanne J. Dworetzky
Assistant General Counsel
Exelon Corporation
101 Constitution Ave., N.W., Suite 400 East
Washington, DC 20001
(202) 347-7500
jeanne.dworetzky2@exeloncorp.com

James C. Beh
Jonathan F. Christian
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
(202) 879-3939
jcbeh@jonesday.com
jchristian@jonesday.com

Dan Dolan
President
New England Power Generators Association
141 Tremont St.
Boston, MA 02111
(617) 516-5355
ddolan@nepga.org

Bruce F. Anderson, Esq.
Director of Market & Regulatory Affairs
New England Power Generators Association
141 Tremont St.
Boston, MA 02111
(617) 902-2354
banderson@nepga.org

VII. CONCLUSION

WHEREFORE, for the foregoing reasons, NEPGA respectfully requests that the Commission find that the provisions of the ISO-NE Tariff addressed herein are unjust and unreasonable and unduly discriminatory, and that the proposed tariff changes sponsored by NEPGA are just and reasonable. NEPGA also requests that the Commission direct ISO-NE to implement these tariff changes in advance of FCA 8, to be conducted on February 3, 2014.

Respectfully submitted,

Jeanne J. Dworetzky

Christopher A. Wilson
Director
Federal Regulatory Strategy and Affairs
Exelon Corporation
101 Constitution Avenue, NW
Suite 400 East
Washington, DC 20001
(202) 347-7507
Christopher.Wilson@exeloncorp.com

Jeanne J. Dworetzky
Assistant General Counsel
Exelon Corporation
101 Constitution Avenue, NW
Suite 400 East
Washington, DC 20001
(202) 347-7500
jeanne.dworetzky2@exeloncorp.com

Dan Dolan
President
New England Power Generators
Association
141 Tremont St.
Boston, MA 02111
(617) 516-5355
ddolan@nepga.org

David O. Dardis
Vice President & Deputy
General Counsel – Regulatory
Exelon Corporation
111 Market Pl, Suite 500
Baltimore, MD 21202
(410) 470-3416
David.Dardis@constellation.com

Bruce F. Anderson, Esq.
Director of Market & Regulatory Affairs
New England Power Generators
Association
141 Tremont St.
Boston, MA 02111
(617) 902-2354
banderson@nepga.org

James C. Beh
Jonathan F. Christian
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
(202) 879-3939
jcbeh@jonesday.com
jchristian@jonesday.com

*Counsel for Exelon Corporation and on behalf of
the New England Power Generators Association*

October 31, 2013



**THE CHARLES HOTEL
ONE BENNETT STREET, CAMBRIDGE, MA
1-800-882-1818**

Driving Directions

From Logan Airport:

- Departing Logan Airport, follow signs for Route 90 (Mass Pike) West
- Take Route 90 (Mass Pike) to Exit 20 (Brighton/Cambridge)
- Bear right after the tollbooth and follow the sign for Cambridge
- At the bottom of the ramp, turn left at the second traffic light on onto Soldiers Field Road. This is just before the Charles River and there is no street sign.
- Follow Soldiers Field Road approximately 1/2 mile and take the "Harvard Square" exit.
- Turn right off of the exit ramp and proceed over the bridge.
- Continue straight across Memorial Drive past the first light onto J.F.Kennedy Street and turn left at the second light onto Eliot Street. Bear left at the next intersection onto Bennett Street and The Charles Hotel is immediately on your left.

From the North (I-93 South)

- Heading south on Route 93, exit onto Storrow Drive West.
- Continue on Storrow Drive West to the "Harvard Square/Cambridge" exit.
- Turn right off of the exit ramp and proceed over the bridge.
- Continue straight across Memorial Drive past the first light onto J.F. Kennedy Street and turn left at the second light onto Eliot Street.
- Bear left at the next intersection onto Bennett Street and The Charles Hotel is immediately on your left.

notify ISO in writing of its election to retire and the date of retirement. The interconnection rights for the resource will terminate and the status of the resource will be converted to retired on the date on retirement.

(c) A resource that has never been counted as a capacity resource may retire the asset by notifying the ISO in writing of its election to retire and the date of retirement. The date specified for retirement is subject to the limit for resource inactivity set out in Section III.13.2.5.2.5.3(d). The interconnection rights for the resource will terminate and the status of the resource will be converted to retired on the date of retirement.

(d) A resource that does not operate commercially for a period of three calendar years will be deemed by the ISO to be retired. The interconnection rights for the unit will terminate and the status of the unit will be converted to retired on the date of retirement. Where a generator has submitted an application to repower under Schedule 22 or 23 of the OATT, the current interconnection space will be maintained beyond the three years unless the application under Schedule 22 or 23 is withdrawn voluntarily or by the operation of those provisions. Where an application is withdrawn under Schedule 22 or 23, the three year period will be calculated from the last day of commercial operation of the resource.

III.13.2.5.2.6. [Reserved.]

III.13.2.5.2.7. Treatment of De-List and Export Bids When the Capacity Clearing Price is Set Administratively.

Where the Capacity Clearing Price is set pursuant to Section III.13.2.7.9 (Capacity Carry Forward Rule), or where payments are set pursuant to Section III.13.2.8 (Inadequate Supply and Insufficient Competition), and as a result a Permanent De-List Bid, Static De-List Bid, or Export Bid clears that would not otherwise have cleared, then the de-listed or exported capacity will not be replaced in the current Forward Capacity Auction (that is, the amount of capacity procured in the Forward Capacity Auction shall be the Installed Capacity Requirement (net of HQICCs) or Local Sourcing Requirement, as appropriate, minus the amount of the de-listed or exported capacity that results from the application of administratively determined prices) and shall be included in subsequent annual reconfiguration auctions (that is, the amount of capacity procured in subsequent annual reconfiguration auctions shall be increased by the amount of the de-listed or exported capacity).

III.13.2.6. Capacity Rationing Rule.

Except for Dynamic De-List Bids, Export Bids, and offers from New Import Capacity Resources and Existing Import Capacity Resources, offers and bids in the Forward Capacity Auction must clear or not clear in whole, unless the offer or bid specifically indicates that it may be rationed. A resource may elect to be rationed to either its Economic Minimum Limit or a level above its Economic Minimum Limit. These levels are submitted pursuant to Section III.13.1.1.2.2.3. Offers from New Import Capacity Resources and Existing Import Capacity Resources are subject to rationing, except where such rationing would violate any applicable physical minimum flow requirements on the associated interface. Export Bids may elect to be rationed generally, but regardless of such election will always be subject to potential rationing where the associated external interface binds. If more Dynamic De-List Bids are submitted at a price than are needed to clear the market, the bids shall be cleared pro-rata, subject to honoring the Economic Minimum Limit of the resources. Where an offer or bid may be rationed, such rationing may not result in procuring an amount of capacity that is below the associated resource's Economic Minimum Limit.

III.13.2.7. Determination of Capacity Clearing Prices.

The Capacity Clearing Price in each Capacity Zone shall be the price established by the descending clock Forward Capacity Auction as described in Section III.13.2.3, subject to the other provisions of this Section III.13.2.

III.13.2.7.1. Import-Constrained Capacity Zone Capacity Clearing Price Floor.

The Capacity Clearing Price in an import-constrained Capacity Zone shall not be lower than the Capacity Clearing Price in the Rest-of-Pool Capacity Zone. If after the Forward Capacity Auction is conducted, the Capacity Clearing Price in an import-constrained Capacity Zone is less than the Capacity Clearing Price in the Rest-of-Pool Capacity Zone, all resources clearing in the import-constrained Capacity Zone shall be paid based on the Capacity Clearing Price in the Rest-of-Pool Capacity Zone during the associated Capacity Commitment Period.

III.13.2.7.2. Export-Constrained Capacity Zone Capacity Clearing Price Ceiling.

The Capacity Clearing Price in an export-constrained Capacity Zone shall not be higher than the Capacity Clearing Price in the Rest-of-Pool Capacity Zone. If after the Forward Capacity Auction is conducted, the Capacity Clearing Price in an export-constrained Capacity Zone is higher than the Capacity Clearing Price in the Rest-of-Pool Capacity Zone, all resources clearing in the export-constrained Capacity Zone

shall be paid based on the Capacity Clearing Price in the Rest-of-Pool Capacity Zone during the associated Capacity Commitment Period.

III.13.2.7.3. Capacity Clearing Price Floor.

In the Forward Capacity Auctions for the Capacity Commitment Periods beginning on June 1, 2013, June 1, 2014, June 1, 2015, and June 1, 2016 only, the following additional provisions regarding the Capacity Clearing Price shall apply in all Capacity Zones (and in the application of Section III.13.2.3.3(d)(iii)):

(a) [Reserved.]

(b) The Capacity Clearing Price shall not fall below 0.6 times CONE (or in the case of the Forward Capacity Auction for the Capacity Commitment Period beginning June 1, 2016 below \$3.15). Where the Capacity Clearing Price reaches 0.6 times CONE (or in the case of the Forward Capacity Auction for the Capacity Commitment Period beginning June 1, 2016 reaches \$3.15), offers shall be prorated such that no more than the Installed Capacity Requirement (net of HQICCs) is procured in the Forward Capacity Auction, as follows:

(i) The total payment to all listed capacity resources during the associated Capacity Commitment Period shall be equal to 0.6 times CONE (or in the case of the Forward Capacity Auction for the Capacity Commitment Period beginning June 1, 2016 shall be equal to \$3.15) times the Installed Capacity Requirement (net of HQICCs) applicable in the Forward Capacity Auction.

(ii) Payments to individual listed resources shall be prorated based on the total number of MWs of capacity clearing in the Forward Capacity Auction (receiving a Capacity Supply Obligation for the associated Capacity Commitment Period).

(iii) Suppliers may instead prorate their bid MWs of participation in the Forward Capacity Market by partially de-listing one or more resources. Regardless of any such proration, the full amount of capacity that cleared in the Forward Capacity Auction will be ineligible for treatment as new capacity in subsequent Forward Capacity Auctions (except as provided under Section III.13.1.1.1.2).

(iv) Any proration shall be subject to reliability review. Where proration is rejected for reliability reasons, the resource's payment shall not be prorated as described in subsection (ii) above, and 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 shall be allocated to Regional Network Load within the affected Reliability Region. In this case, the total payment described in subsection (i) above will increase accordingly.

(v) Any election to prorate bid MWs associated with a New Capacity Offer that clears in the Forward Capacity Auction shall also apply in subsequent Forward Capacity Auctions for Capacity Commitment Periods for which the Project Sponsor elected to have the Capacity Supply Obligation and Capacity Clearing Price continue to apply pursuant to Section III.13.1.1.2.2.4 or Section III.13.1.4.2.2.5.

III.13.2.7.3A Treatment of Imports.

At the Capacity Clearing Price, if the amount of capacity offered from New Import Capacity Resources and Existing Import Capacity Resources over an interface between an external Control Area and the New England Control Area is greater than that interface's approved capacity transfer limit (net of tie benefits, or net of HQICC in the case of the Phase I/II HVDC-TF):

(a) the full amount of capacity offered at that price from Existing Import Capacity Resources associated with contracts listed in Section III.13.1.3.3(c) shall clear, unless that amount of capacity is greater than the interface's approved capacity transfer limit (net of tie benefits, or net of HQICC in the case of the Phase I/II HVDC-TF), in which case the capacity offered at that price from Existing Import Capacity Resources associated with contracts listed in Section III.13.1.3.3(c) shall be rationed such that the interface's approved capacity transfer limit (net of tie benefits, or net of HQICC in the case of the Phase I/II HVDC-TF) is not exceeded; and

(b) if there is space remaining over the interface after the allocation described in subsection (a) above, then the capacity offered at that price from New Import Capacity Resources and Existing Import Capacity Resources other than Existing Import Capacity Resources associated with the contracts listed in Section III.13.1.3.3(c) will be rationed such that the interface's approved capacity transfer limit (net of tie benefits, or net of HQICC in the case of the Phase I/II HVDC-TF) is not exceeded. If the capacity offered at that price by any single New Import

Capacity Resource or Existing Import Capacity Resource that is not associated with the contracts listed in Section III.13.1.3.3(c) is greater than the interface's approved capacity transfer limit (net of tie benefits, or net of HQICC in the case of the Phase I/II HVDC-TF), then the capacity offered by that resource that is above the interface's approved capacity transfer limit (net of tie benefits, or net of HQICC in the case of the Phase I/II HVDC-TF) shall not be included in the rationing.

III.13.2.7.4. Effect of Capacity Rationing Rule on Capacity Clearing Price.

Where the requirement that offers and bids clear or not clear in whole (Section III.13.2.6) prohibits the descending clock auction in its normal progression from clearing a Capacity Zone at the precise amount of capacity required, then the auctioneer shall analyze the aggregate supply curve to determine cleared capacity offers and Capacity Clearing Prices that result in procuring at least the amount of capacity required while seeking to maximize social surplus for the associated Capacity Commitment Period. In an import-constrained Capacity Zone, the clearing algorithm will not consider blocks of capacity not needed to meet the import-constrained Capacity Zone's Local Sourcing Requirement when price separation occurs between the import-constrained Capacity Zone and the Rest-of-Pool Capacity Zone. The clearing algorithm may result in offers below the Capacity Clearing Price not clearing, and in de-list bids below the Capacity Clearing Price clearing.

III.13.2.7.5. Effect of Decremental Repowerings on the Capacity Clearing Price.

Where the effect of accounting for certain repowering offers and bids (as described in Section III.13.2.3.2(e)) results in the auction not clearing at the lowest price for the required quantity of capacity, then the auctioneer will conduct additional auction rounds of the Forward Capacity Auction as necessary to minimize capacity costs.

III.13.2.7.6. Minimum Capacity Award.

Each offer (excluding offers from Conditional Qualified New Generating Capacity Resources that do not satisfy the conditions specified in Sections III.13.2.5.1(i)-(iii)) clearing in the Forward Capacity Auction shall be awarded a Capacity Supply Obligation at least as great as the amount of capacity offered at the End-of-Round Price in the final round of the Forward Capacity Auction. For Intermittent Power Resources and Intermittent Settlement Only Resources, the Capacity Supply Obligation for months in the winter period (as described in Section III.13.1.5) shall be adjusted based on its winter Qualified Capacity as determined pursuant to Section III.13.1.1.2.2.6 and Section III.13.1.2.2.2.

III.13.2.7.7. Tie-Breaking Rules.

Where the provisions in this Section III.13.2 for clearing the Forward Capacity Auction (system-wide or in a single Capacity Zone) result in a tie – that is, where two or more resources offer sufficient capacity at prices that would clear the auction at the same minimum costs – the auctioneer shall apply the following rules (in sequence, as necessary) to determine clearing:

- (a) The auctioneer shall clear the resources in such a manner as to maximize the total amount of capacity procured.
- (b) If multiple projects may be rationed, they will be rationed proportionately.
- (c) Where clearing either the offer associated with a resource with a higher queue priority at a Conditional Qualified New Generating Capacity Resource’s location or the offer associated with the Conditional Qualified New Generating Capacity Resource would result in equal costs, the offer associated with the resource with the higher queue priority shall clear.
- (d) The offer associated with the Project Sponsor having the lower market share in the capacity auction (including Existing Generating Capacity Resources, Existing Import Capacity Resources, and Existing Demand Resources) shall be cleared.

III.13.2.7.8. [Reserved.]

III.13.2.7.9 Capacity Carry Forward Rule.

III.13.2.7.9.1. Trigger.

The capacity carry forward rule shall be triggered in an import-constrained Capacity Zone if all of the following conditions are met:

- (a) the sum of the amount of New Capacity Required plus the amount of Permanent De-List Bids clearing in the Forward Capacity Auction in the Capacity Zone is less than or equal to zero;
- (b) there is not Inadequate Supply in the Forward Capacity Auction in the Capacity Zone; and

- (c) at the Capacity Clearing Price, the sum of the amount of New Capacity Required plus the amount of Permanent De-List Bids clearing in the Forward Capacity Auction plus the amount of capacity carried forward due to rationing is greater than zero. The amount of capacity carried forward due to rationing shall equal the amount of capacity above the Local Sourcing Requirement procured in that Capacity Zone in the previous Forward Capacity Auction as a result of the Capacity Rationing Rule.

III.13.2.7.9.2. Pricing.

If the capacity carry forward rule is triggered, then the Capacity Clearing Price for the Capacity Zone shall be the lesser of: (1) \$0.01 below the price at which the last New Generating Capacity Resource, New Import Capacity Resource, or New Demand Resource in the Capacity Zone to withdraw withdrew from the Forward Capacity Auction; or (2) the Offer Review Trigger Price for a combustion turbine, as set forth in Section III.A.21.1.1; provided, however, that if in the Capacity Zone there is Insufficient Competition and no capacity offered from New Generating Capacity Resources, New Import Capacity Resources, and New Demand Resources has been withdrawn from the Forward Capacity Auction, then the Capacity Clearing Price shall equal the Offer Review Trigger Price for a combustion turbine, as set forth in Section III.A.21.1.1.

III.13.2.8. Inadequate Supply and Insufficient Competition.

In the case of either Inadequate Supply or Insufficient Competition, as defined in this Section III.13.2.8, the Forward Capacity Auction shall still be used to the extent possible; that is, the remedy for Inadequate Supply or Insufficient Competition shall be limited to the Capacity Zones having Inadequate Supply or Insufficient Competition.

III.13.2.8.1. Inadequate Supply.

III.13.2.8.1.1. Inadequate Supply in an Import-Constrained Capacity Zone.

An import-constrained Capacity Zone will be considered to have Inadequate Supply if at the Forward Capacity Auction Starting Price the amount of capacity offered in the import-constrained Capacity Zone through New Capacity Offers is less than the amount of New Capacity Required in that Capacity Zone. In an import-constrained Capacity Zone, "New Capacity Required" shall mean the Capacity Zone's Local Sourcing Requirement, minus the total amount of capacity of Existing Generating Capacity Resources, Existing Import Capacity Resources, and Existing Demand Resources in the Capacity Zone (that is not

permanently de-listed for the Capacity Commitment Period), minus capacity otherwise obligated in the Capacity Zone for the Capacity Commitment Period; ~~in the Rest of Pool Capacity Zones system-wide, “New Capacity Required” shall mean the Installed Capacity Requirement (net of HQICCs), minus the Local Sourcing Requirement of each modeled import constrained Capacity Zone, minus, for each modeled export constrained Capacity Zone, the lesser of the Capacity Zone’s Maximum Capacity Limit or the total amount of capacity of Existing Generating Capacity Resources, Existing Import Capacity Resources, and Existing Demand Resources in the Capacity Zone (that is not permanently de-listed for the Capacity Commitment Period),~~ minus the total amount of capacity of Existing Generating Capacity Resources, Existing Import Capacity Resources, and Existing Demand Resources ~~in the Rest of Pool Capacity Zone~~ (that is not permanently de-listed for the Capacity Commitment Period), minus capacity otherwise obligated ~~in the Rest of Pool Capacity Zone~~ for the Capacity Commitment Period.

- (a) Where an import-constrained Capacity Zone has Inadequate Supply, Existing Generating Capacity Resources, Existing Import Capacity Resources, and Existing Demand Resources (other than those still subject to a multi-year Capacity Commitment Period election as described in Sections III.13.1.1.2.2.4 and III.13.1.4.2.2.5) in that Capacity Zone, other than such resources, or portions thereof, that have no Capacity Supply Obligation or are designated as Self-Supplied FCA Resources for the Capacity Commitment Period, shall be paid 1.1 times the Capacity Clearing Price for the most recent Forward Capacity Auction not having Inadequate Supply during the associated Capacity Commitment Period, and New Generating Capacity Resources, New Import Capacity Resources, and New Demand Resources in the Forward Capacity Auction in that Capacity Zone shall be paid the Forward Capacity Auction Starting Price during the associated Capacity Commitment Period (and subsequent Capacity Commitment Periods, as elected pursuant to Section III.13.1.1.2.2.4 or Section III.13.1.4.2.2.5).
- (b) In an import-constrained Capacity Zone having Inadequate Supply, the difference between the amount of capacity offered in the Capacity Zone through New Capacity Offers and the amount of New Capacity Required in that Capacity Zone shall be included in subsequent annual reconfiguration auctions.
- (c) Inadequate Supply in one or more import-constrained Capacity Zones shall not affect Capacity Zones having adequate supply.
- (d) Any availability penalty assessed during the associated Capacity Commitment Period pursuant to Section III.13.7.2.7.1.2 on a resource in an import-constrained Capacity Zone having Inadequate Supply

will be assessed at a rate equal to 1.1 times the Capacity Clearing Price for the most recent Forward Capacity Auction not having Inadequate Supply.

III.13.2.8.1.2. System-Wide Inadequate Supply.

The New England Control Area will be considered to have system-wide Inadequate Supply if at the Forward Capacity Auction Starting Prices, the total amount of capacity offered in the Forward Capacity Auction is less than the Installed Capacity Requirement (net of HQICCs).

(a) In the case of system-wide Inadequate Supply, Existing Generating Capacity Resources, Existing Import Capacity Resources, and Existing Demand Resources other than such resources, or portions thereof, that have no Capacity Supply Obligation or are designated as Self-Supplied FCA Resources for the Capacity Commitment Period, shall be paid 1.1 times the Capacity Clearing Price for the most recent Forward Capacity Auction not having Inadequate Supply during the associated Capacity Commitment Period, and New Generating Capacity Resources, New Import Capacity Resources, and New Demand Resources in the Forward Capacity Auction shall be paid the Forward Capacity Auction Starting Price during the associated Capacity Commitment Period (and subsequent Capacity Commitment Periods, as elected pursuant to Section III.13.1.1.2.2.4 or Section III.13.1.4.2.2.5).

(b) In the case of system-wide Inadequate Supply, the difference between the total amount of capacity offered in the Forward Capacity Auction and the Installed Capacity Requirement (net of HQICCs) shall be included in subsequent annual reconfiguration auctions.

(c) System-wide Inadequate Supply will not affect the Forward Capacity Auction in Capacity Zones having adequate supply, except that in those Capacity Zones having adequate supply, New Generating Capacity Resources, New Import Capacity Resources, and New Demand Resources shall be paid the Capacity Clearing Price, and Existing Generating Capacity Resources, Existing Import Capacity Resources, and Existing Demand Resources other than such resources, or portions thereof, that have no Capacity Supply Obligation or are designated as Self-Supplied FCA Resources for the Capacity Commitment Period, will be paid the lower of: (1) the Capacity Clearing Price; or (2) 1.1 times the Capacity Clearing Price for the most recent Forward Capacity Auction not having Inadequate Supply.

(d) If there is system-wide Inadequate Supply, but the amount of capacity offered in an export-constrained Capacity Zone, including imports as appropriate, is greater than the Maximum Capacity Limit

in that export-constrained Capacity Zone, the Forward Capacity Auction in the export-constrained Capacity Zone shall be unaffected, and in that case the price paid to Existing Generating Capacity Resources, Existing Import Capacity Resources, and Existing Demand Resources in the Rest-of-Pool Capacity Zone shall be the higher of: (1) 1.1 times the Capacity Clearing Price for the most recent Forward Capacity Auction not having Inadequate Supply; or (2) the price in the export-constrained Capacity Zone.

III.13.2.8.2. Insufficient Competition.

The Forward Capacity Auction shall be considered to have Insufficient Competition system-wide or in any import-constrained Capacity Zone if the following two conditions are both satisfied:

(a) at the Forward Capacity Auction Starting Price, the amount of capacity offered from Existing Generating Capacity Resources, Existing Import Capacity Resources, and Existing Demand Resources **(that is not permanently de-listed for the Capacity Commitment Period), minus capacity otherwise obligated for the Capacity Commitment Period** is less than the Installed Capacity Requirement (net of HQICCs) or the Local Sourcing Requirement, as applicable; and

(b) at the Forward Capacity Auction Starting Price:

(i) less than 300 MW of capacity is offered from New Generating Capacity Resources and New Demand Resources (the ISO shall revisit the appropriateness of the 300 MW threshold in the case of an import-constrained Capacity Zone having a Local Sourcing Requirement of less than 5000 MW);

(ii) the amount of capacity offered from New Generating Capacity Resources and New Demand Resources is **more than the amount of New Capacity Required but** less than twice the amount of New Capacity Required; or

(iii) any Market Participant's total capacity from New Generating Capacity Resources, New Import Capacity Resources, and New Demand Resources is pivotal. A Market Participant shall be considered pivotal if, at the Forward Capacity Auction Starting Price, some capacity from that Market Participant's potential New Generating Capacity Resources, New Import Capacity

Resources, or New Demand Resources is required to satisfy the Installed Capacity Requirement (net of HQICCs) or the Local Sourcing Requirement, as applicable.

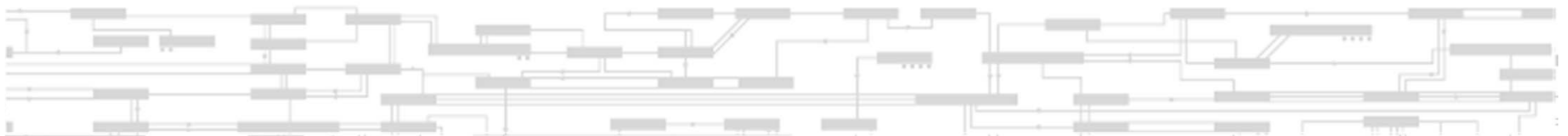
If the Forward Capacity Auction has Insufficient Competition, New Generating Capacity Resources, New Import Capacity Resources, and New Demand Resources shall be paid the Capacity Clearing Price during the associated Capacity Commitment Period, and Existing Generating Capacity Resources, Existing Import Capacity Resources, and Existing Demand Resources (other than those still subject to a multi-year Capacity Commitment Period election as described in Sections III.13.1.1.2.2.4 and III.13.1.4.2.2.5) shall be paid the lower of: (1) the Capacity Clearing Price; or (2) 1.1 times the Capacity Clearing Price for the most recent Forward Capacity Auction not having Insufficient Competition during the associated Capacity Commitment Period. Any availability penalty assessed during the associated Capacity Commitment Period pursuant to Section III.13.7.2.7.1.2 on a resource in an import-constrained Capacity Zone having Insufficient Competition will be assessed at a rate equal to the lower of: (1) the Capacity Clearing Price; or (2) 1.1 times the Capacity Clearing Price for the most recent Forward Capacity Auction not having Insufficient Competition.

III.13.2.9. **[Reserved.]**

NOVEMBER 18, 2013 | WESTBOROUGH, MA



Administrative Pricing Rules for Forward Capacity Auction #8



Topics

- ISO fix to the gap in the trigger for Insufficient Competition
- A clarification to New Capacity Required as it applies to the system, and what this means for export- and import-constrained zones
- A clarification to the treatment of de-list bids when there is administrative pricing



ISO fix to the gap in the trigger for Insufficient Competition

III.13.2.8.2. *Insufficient Competition*

“...(b) *at the Forward Capacity Auction Starting Price:*

- (i) *Less than 300 MW of capacity is offered from New Generating Capacity Resources and New Demand Resources (the ISO shall revisit the appropriateness of the 300 MW threshold in the case of an import-constrained Capacity Zone having a Local Sourcing Requirement of less than 5000 MW);*
- (ii) *the amount of capacity offered from New Generating Capacity Resources and New Demand Resources is ~~more than the amount of New Capacity Required~~ but less than twice the amount of New Capacity Required; or ... “*

- Deleting this phrase eliminates the ‘gap’ created when the amount of *New Capacity Required* is greater than 300MW
- If the amount of new capacity offered is less than or equal to 300MW or less than two times the amount of *New Capacity Required*, then subsection (b) of III.13.2.8.2.8 is true



Clarification of New Capacity Required as it applies to the system

New Capacity Required is currently defined in Section III.13.2.8.1.1 for an import-constrained zone and for the Rest-of-Pool zone, however, Inadequate Supply and Insufficient Competition at the system level apply to *all* zones

- The description of New Capacity Required for Rest-of-Pool does not apply – *all zones are part of the system*
- The Rest-of-Pool zone has no zone minimum requirement, so by itself the Rest-of-Pool zone cannot have Inadequate Supply or Insufficient Competition



The clarification to New Capacity Required

Clarification: Substitute the definition of Rest-of-Pool Capacity Zone *New Capacity Required* in Section III.13.2.8.1.1 with the following:

“; system-wide, “New Capacity Required” shall mean the Installed Capacity Requirement (net of HQICCs) minus the total amount of capacity of Existing Generating Capacity Resources, Existing Import Capacity Resources, and Existing Demand Resources (that is not permanently de-listed for the Capacity Commitment Period), minus capacity otherwise obligated for the Capacity Commitment Period.”

And add the underlined phrase to Section III.13.2.8.2(a)

“the amount of capacity offered from Existing Generating Capacity Resources, Existing Import Capacity Resources, and Existing Demand Resources (that is not permanently de-listed for the Capacity Commitment Period), minus capacity otherwise obligated for the Capacity Commitment Period) is less than the Installed Capacity Requirement (net of HQICCs) or the Local Sourcing Requirement, as applicable; and...”



What does this mean for an export-constrained zone?

Inadequate Supply and Insufficient Competition at the system level apply to all zones - *all zones are part of the system*

- The auction may continue in an export-constrained zone and produce a lower clearing price than the Rest-of-Pool zone
- Under Inadequate Supply and Insufficient Competition, cleared new resources are paid the capacity clearing price, cleared existing resources are paid the lower of either the clearing price or the specified administrative rate

Thus, if there is system Inadequate Supply or Insufficient Competition and the auction is run for an export-constrained zone, resources in the export-constrained zone are subject to the Inadequate Supply and Insufficient Competition pricing provisions



Export-constrained zone - *example*

2 zones in the system, Rest-of-Pool and an export-constrained zone, and there is system Insufficient Competition

- The auction is run and the clearing price is \$8 in Rest-of-Pool and the clearing price in the export-constrained zone is \$4
- Insufficient Competition pricing for new resources is the capacity clearing price; for existing resources it is the lower of the clearing price or the administrative rate specified in the Tariff. For purposes of this example, we'll use \$5 as the administrative rate

Because the system has Insufficient Competition, all resources in the system are subject to the Insufficient Competition pricing provisions

- In Rest-of-Pool all cleared new resources will get the Rest-of-Pool clearing price, \$8; all cleared existing resources will get the administrative rate, \$5
- In the export-constrained zone all cleared new resources and all cleared existing resources will get the zonal clearing price, \$4



What happens when there is system Insufficient Competition and the Carry Forward rule is triggered in an import-constrained zone?

- If there is system Insufficient Competition, and in an import-constrained zone the carry-forward provision is triggered, the carry-forward provisions will be utilized, subject to the constraints in Section III.13.2.7.1.

III.13.2.7.1. Import-Constrained Capacity Zone Capacity Clearing Price Floor.

“The Capacity Clearing Price in an import-constrained Capacity Zone shall not be lower than the Capacity Clearing Price in the Rest-of-Pool Capacity Zone. If after the Forward Capacity Auction is conducted, the Capacity Clearing Price in an import-constrained Capacity Zone is less than the Capacity Clearing Price in the Rest-of-Pool Capacity Zone, all resources clearing in the import-constrained Capacity Zone shall be paid based on the Capacity Clearing Price in the Rest-of-Pool Capacity Zone during the associated Capacity Commitment Period.”



An example of what this means for the import-constrained zone

2 zones in the system, Rest-of-Pool and an import-constrained zone; and there is system Insufficient Competition and the carry-forward rule is triggered in the import-constrained zone

- Insufficient Competition pricing for new resources is the capacity clearing price; for existing resources it is the lower of the clearing price or the administrative rate specified in the Tariff
- For purposes of this example, we'll use \$5 as the administrative rate under Insufficient Competition and \$10 as the administrative rate under the carry-forward provisions

Case 1: The auction is run and the clearing price is **\$8** in both Rest-of-Pool and in the import-constrained zone

- Because the system has Insufficient Competition, all resources in the system are subject to the Insufficient Competition pricing provisions; all cleared new resources will get the clearing price, **\$8**; all cleared existing resources will get the Insufficient Competition administrative rate, \$5
- Due to the subsequent application of the carry-forward provisions, however, the clearing price in the import-constrained zone is changed to \$10. In this case, all resources with a Capacity Supply Obligation in the import-constrained zone, both new and existing, are paid \$10.

NOTE: This outcome is the same as the case wherein the system Insufficient Competition provision was not triggered



Another example of what this means for the import-constrained zone

2 zones in the system, Rest-of-Pool and an import-constrained zone; and there is system Insufficient Competition and the carry-forward rule is triggered in the import-constrained zone

- Insufficient Competition pricing for new resources is the capacity clearing price; for existing resources it is the lower of the clearing price or the administrative rate specified in the Tariff
- For purposes of this example, we'll use \$5 as the administrative rate under Insufficient Competition and \$10 as the administrative rate under the carry-forward provisions

Case 2: The auction is run and the clearing price is **\$12** in both Rest-of-Pool and in the import-constrained zone

- Because the system has Insufficient Competition, all resources in the system are subject to the Insufficient Competition pricing provisions; all cleared new resources will get the clearing price, **\$12**; all cleared existing resources will get the Insufficient Competition administrative rate, \$5
- The subsequent application of the carry-forward provisions would lower the price to \$10 in the import-constrained zone, however, this is prevented by the requirement that the price in an import-constrained zone cannot be less than the price in the Rest-of-Pool zone. In this case, all resources with a Capacity Supply Obligation in the import-constrained zone, both new and existing, are paid the clearing price, \$12.



The clarification to the treatment of de-list bids when there is administrative pricing

Clarification: Add the underlined phrase to Section III.13.2.5.2.7

III.13.2.5.2.7. Treatment of De-List and Export Bids When the Capacity Clearing Price is Set Administratively.

“Where the Capacity Clearing Price is set pursuant to Section III.13.2.7.9 (Capacity Carry Forward Rule), or where payments are set pursuant to Section III.13.2.8 (Inadequate Supply and Insufficient Competition), and as a result a Permanent De-List Bid, Static De-List Bid, or Export Bid clears that would not otherwise have cleared, then the de-listed or exported capacity will not be replaced in the current Forward Capacity Auction (that is, the amount of capacity procured in the Forward Capacity Auction shall be the Installed Capacity Requirement (net of HQICCs) or Local Sourcing Requirement, as appropriate, minus the amount of the de-listed or exported capacity that results from the application of administratively determined prices) and shall be included in subsequent annual reconfiguration auctions (that is, the amount of capacity procured in subsequent annual reconfiguration auctions shall be increased by the amount of the de-listed or exported capacity).”



What does this mean for de-list bids?

A de-list bid would not get a Capacity Supply Obligation if priced higher than the clearing price or the administrative rate

NOTE: The 'auction' includes the descending clock portion, the clearing engine, and any post-processing (e.g., administrative pricing mechanics). The final results of the auction after all steps have been completed are reflected in the MIS reports issued to participants approximately five days after the conclusion of the descending clock portion of the auction, and in the informational filing made to the FERC as soon as practicable.

Examples:

Case 1: The clearing price is \$4, the administrative rate is \$10, and the de-list bid is \$7

- The \$7 de-list bid will not get a Capacity Supply Obligation
- De-list bids below \$4 would get a Capacity Supply Obligation

Case 2: The clearing price is \$14, the administrative rate is \$5, and the de-list bid is \$7

- The \$7 de-list bid will not get a Capacity Supply Obligation
- De-list bids below \$5 would get a Capacity Supply Obligation



Questions



New Capacity “Gap” in Insufficient Competition Rule:

Section III.13.2.8.2(b) currently excludes single year capacity imports from both consideration as existing capacity and from new capacity resources and, in so doing, understates the true extent of competition. GDF SUEZ Energy Marketing North America, Inc. proposes that the provisions below correct for this gap in the Insufficient Competition evaluation by reflecting single year capacity imports and restating the yellow highlighted phrases below as “New Generating Capacity Resources, New Demand Resources and New Import Capacity Resources”.

(b) at the Forward Capacity Auction Starting Price:

(i) less than 300 MW of capacity is offered from **New Generating Capacity Resources and New Demand Resources** (the ISO shall revisit the appropriateness of the 300 MW threshold in the case of an import-constrained Capacity Zone having a Local Sourcing Requirement of less than 5000 MW);

(ii) the amount of capacity offered from **New Generating Capacity Resources and New Demand Resources** is more than the amount of New Capacity Required but less than twice the amount of New Capacity Required; or

From the South (I-93 North)

- Heading north on Route 93, exit onto Route 90 (The Mass Pike), follow The Mass Pike to Exit 20 (Brighton/Cambridge).
- Bear right after the tollbooth and follow the sign for Cambridge.
- At the bottom of the ramp, turn left at the second traffic light onto Soldiers Field Road. This is just before the Charles River and there is no street sign.
- Follow Soldiers Field Road approximately 1/2 mile and take the "Harvard Square" exit.
- Turn right off of the exit ramp and proceed over the bridge.
- Continue straight across Memorial Drive past the first light onto J.F. Kennedy Street and turn left at the second light onto Eliot Street. Bear left at the next intersection onto Bennett Street and The Charles Hotel is immediately on your left.

From the West

- Take the Mass Pike/Route 90 East towards Boston to Exit 18 (Brighton/Cambridge).
- Bear right after the tollbooth and follow the sign for Cambridge.
- Continue straight over the River Street Bridge.
- At the bottom of the bridge, take an immediate left onto Memorial Drive.
- At the third traffic light, turn right onto J.F. Kennedy Street and then turn left at the first light onto Eliot Street.
- Bear left at the next intersection onto Bennett Street and The Charles Hotel is immediately on your left.

From MBTA (Red Line)

- Follow the signs inside the station to the Harvard Square exit.
- Once on the street level, proceed down Brattle Street, Brattle Street will fork to the Right, but you should stay straight.
- Turn right onto Bennett Street and The Charles Hotel is immediately on your left.