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VIA ELECTRONIC FILING

The Honorable Kimberly D. Bose, Secretary
The Honorable Nathaniel J. Davis, Sr., Deputy Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Connecticut Municipal Electric Energy Cooperative *et al.*
v. ISO New England Inc.
Docket No. EL09-60-000

Dear Secretary Bose and Deputy Secretary Davis:

Attached for electronic filing in the above-referenced docket is the *Answer of ISO New England Inc.* A copy of the foregoing has been served upon all parties included on the Commission's service list.

If you have any questions or concerns regarding this filing, please feel free to contact me. Thank you for your assistance in this matter.

Respectfully submitted,

/s/ Sherry A. Quirk
Sherry A. Quirk, Esq.

Counsel for ISO New England Inc.

Attachment

cc: Official Service List

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

Connecticut Municipal Electric Energy)
Cooperative, Massachusetts Municipal)
Wholesale Electric Company, Pascoag)
(RI) Utility District, and Vermont)
Department of Public Service,)
)
Complainants)
)
v.)
)
ISO New England Inc.,)
)
Respondent)

Docket No. EL09-60-000

ANSWER OF ISO NEW ENGLAND INC.

ISO New England Inc. (the “ISO” or “ISO-NE”),¹ in accordance with Rules 206(f) and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),² hereby files this answer (“Answer”) and the supporting testimony of Dr. Robert G. Ethier, Vice President of Market Developments for the ISO (“Ethier Testimony”) to the Complaint filed in this docket by the Connecticut Municipal Electric Energy Cooperative, Massachusetts Municipal Wholesale Electric Company, Pascoag (RI) Utility District, and Vermont Department of Public Service (collectively, “Complainants”) on June 11, 2009 (“Complaint”).

¹ Capitalized terms used but not otherwise defined in this filing have the meanings ascribed thereto in the ISO’s Transmission, Markets and Services Tariff (FERC Electric Tariff No. 3) (the “Tariff”). Section III of the Tariff is Market Rule 1.

² 18 C.F.R. §§ 385.206(f) and 213 (2008).

I. CORRESPONDENCE AND COMMUNICATIONS

All correspondence and communications concerning this Answer should be sent to the following persons, who should be added to the official service list, at the addresses shown:

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II. EXECUTIVE SUMMARY

The Complaint challenges as unjust and unreasonable the fact that a reserve margin gross-up has not been applied to the capacity associated with Complainants' New York Power Authority ("NYPA") imports for the Forward Capacity Auction ("FCA") for the 2012/2013 Power Year ("FCA#3"). As demonstrated in Section IV below, the Complaint is facially insufficient under Section 206 of the Federal Power Act ("FPA") and therefore must be dismissed.

The Complaint does not claim, identify or provide any evidence that the discontinuation of the preferential application of a reserve margin gross-up to the NYPA imports is in violation or contravention of any applicable statutory standard, regulatory requirement, transmission operating agreements, or the ISO Tariff. As shown below, the absence of any such evidence comes as no surprise given that the elimination of the NYPA gross-up is in fact consistent with the filed rate, as well as the Commission's recent findings regarding the elimination of the reserve margin gross-up practice.

Further, the Complainants fail to satisfy the burden of proof under Section 206 of the FPA. Substantively, there is no justification for applying preferential treatment to the NYPA imports. As shown below, the application of a reserve margin gross-up for the NYPA imports poses the same problems as the gross-up for Demand Resources, which was also eliminated during the qualification process for FCA#3 pursuant to the Commission’s determination in Docket No. ER09-209-000. Specifically, the preferential application of a reserve margin gross-up to the NYPA imports, contrary to the core requirements of the Forward Capacity Market (“FCM”) rules, results in the under-procurement of the New England region’s Installed Capacity Requirement (“ICR”) in the FCA by the gross-up amount. Its elimination resolves this problem by ensuring that the ICR that is purchased in the FCA better reflects the amount of capacity that is needed to meet the region’s need. The elimination of the preferential NYPA gross-up also provides a more comparable treatment for different resource types, while ensuring that New England’s consumers pay for no more capacity than required to meet the ICR. Thus, the discontinuation of the preferential application of a reserve margin gross-up to the NYPA imports is just and reasonable.

III. INTRODUCTION

A. Summary of Complaint

The Complaint challenges as unjust and unreasonable the fact that a reserve-margin gross-up has not been applied to the capacity associated with certain NYPA import contracts providing for the sale of hydropower and energy from the St. Lawrence-FDR and Niagara hydroelectric projects (collectively, the “NYPA imports”) for the FCA.³ The Complaint

³ Complaint at 7-14.

contends that the ISO's determination to discontinue the preferential treatment previously afforded to the NYPA imports is unjust and unreasonable, because of its inconsistency with:

- (a) decades of established practice with respect to New England's NYPA imports;
- (b) the ISO's representations to this Commission concerning the need to maintain their historical treatment; and
- (c) recent Commission pronouncements and ISO-NE statements regarding the need to preserve the NYPA imports' capacity value in the region's development of the FCM.⁴

The Complaint avers that there are "no new or emerging facts" that justify the ISO's determination to discontinue the preferential treatment of applying a reserve margin gross-up to the NYPA imports.⁵ In particular, it asserts that "[n]othing in the structure of FCM or its treatment of other resources compels or justifies ISO's elimination of the long-standing capacity value gross-up (or capacity-obligation reduction) previously accorded to the NYPA imports."⁶ The Complaint also argues that the FCM Settlement Agreement does not preclude the ISO from continuing the special gross-up treatment for the NYPA imports.⁷ Further, it argues that the reasoning underlying the Commission's recent elimination of the same gross-up treatment for Demand Resources is not applicable in the case of the NYPA imports because of their historical treatment.⁸

Based on these arguments, the Complaint requests that the Commission issue an order directing the ISO to apply a reserve margin gross-up for the NYPA imports or reinstate the load-

⁴ *Id.* at 3.

⁵ *Id.*

⁶ *Id.* at 19.

⁷ *Id.* at 19-20.

⁸ *Id.* at 21-29.

reduction treatment applied prior to the implementation of New England’s Standard Market Design (“SMD”).⁹

B. The NYPA Imports’ Reserve Margin Gross-up

The preferential treatment of applying a reserve margin gross-up to the capacity associated with the NYPA imports during the Installed Capacity (“ICAP”) Transition Period is contemplated in ISO New England Manual for Installed Capacity, Manual M-20 (“Manual 20”), establishing the procedures for the ICAP Transition Period administered by the ISO pursuant to Section III.8 of Market Rule 1.¹⁰ Specifically, Attachment A to Manual 20 states that, for purposes of calculating the Transition Period ICAP Payments, the “NYPA transactions are grossed up by the applicable reserve margin.”¹¹ This treatment, as Complainants concede, emerged from a compromise reached during the implementation of New England’s SMD in 2003.¹²

In 2006, the ISO, joined by numerous other Settling Parties, filed a settlement agreement that provided for the implementation of a Forward Capacity Market,¹³ which, *inter alia*, required the procurement of capacity through Forward Capacity Auctions to be held three years ahead of

⁹ *Id.* at 2, 30.

¹⁰ Manual 20 is available on the ISO’s website at http://www.iso-ne.com/rules_proceeds/isone_mnls/index.html.

¹¹ Manual 20, Attachment A (explaining that if the reserve margin is 18%, a 10 MW NYPA transaction would provide 11.8 MW of ICAP credit).

¹² Complaint at 15 (stating, “the NYPA power recipients agreed not to oppose the changes needed to accommodate ISO-NE’s SMD software implementation” for the application of a reserve margin gross-up).

¹³ See Explanatory Statement In Support of Settlement Agreement of the Settling Parties and Request for Expedited Consideration and Settlement Agreement Resolving All Issues, *Devon Power LLC, et al.*, Docket Nos. ER03-563-000, -030, and -055 (March 6, 2006) (“FCM Settlement Filing”). The Commission approved the FCM Settlement on June 16, 2006, in *Devon Power LLC*, 115 FERC ¶ 61,340, *order on reh’g*, 117 FERC ¶ 61,133 (2006) (“FCM Settlement Order”).

the Capacity Commitment Period. “The amount of capacity [to be] procured,” as the FCM Settlement Order explained, “w[ould] be that amount required to maintain the installed capacity requirement.”¹⁴ The FCM Settlement also provided for a transition period (*i.e.*, the ICAP Transition Period), during which fixed payments would be made to all installed capacity. This transition period was intended to serve as a “bridge to the implementation of the FCM.”¹⁵ In pertinent part, the Settlement Agreement provided that:

The current capacity treatment within NEPOOL of firm imports of New York Power Authority (“NYPA”) hydroelectric power, which is set forth in Section 3.4 and Appendix A of NEPOOL Manual No. 20 for Installed Capacity, shall be continued, such that the NYPA firm import allocation recipients will be able to continue to claim capacity credit for these firm imports *during the transition*, in as close as possible a manner to its treatment today.¹⁶

In accordance with the FCM Settlement, the preferential treatment of applying a reserve margin gross-up to the NYPA imports was maintained in Manual 20, Attachment A, when the manual was revised on November 3, 2006, to reflect the ICAP Transition Period provisions.¹⁷

The FCM Settlement did not address the continuation of the preferential treatment following the ICAP Transition Period. Consistent with the treatment provided during the ICAP Transition Period, the qualified capacity value for the NYPA imports nevertheless reflected a reserve margin gross-up for the FCA associated with the 2010/2011¹⁸ and 2011/2012 Capacity

¹⁴ FCM Settlement Order at P 20.

¹⁵ *Id.* at P 30. *See also id.* at P 89 (finding the ICAP Transition Period just and reasonable).

¹⁶ FCM Settlement at § 11, Part III.D.4.a (emphasis added).

¹⁷ By its own terms, Manual 20 does not apply to the post-ICAP Transition Period. As Revision 17, approved on November 3, 2006, states: “These FCM Transition Period revisions shall become effective December 1, 2006 and shall be replaced by provisions implementing the Forward Capacity Market on or about June 10, 2010 as provided in the FERC approved Settlement Agreement in Docket No. ER03-563.”

¹⁸ *See ISO New England Inc.*, Informational Filing for Qualification in the Forward Capacity Market at 12, Docket No. ER08-190-000 (Nov. 6, 2007).

Commitment Periods (“FCA#1” and “FCA#2,” respectively).¹⁹ This treatment was explicitly noted in the ISO’s informational filings for qualification in FCA#1 and FCA#2, which were accepted by the Commission on January 11, 2008,²⁰ and November 7, 2008, respectively.²¹

During the stakeholder process on the elimination of the reserve margin gross-up for Demand Resources, however, certain stakeholders questioned the appropriateness of continuing to apply a reserve margin gross-up to the NYPA imports following the ICAP Transition Period. In fact, in the course of that lengthy stakeholder process, and later in response to the filing of proposed tariff changes to eliminate the reserve margin gross-up for Demand Resources,²² proponents of the gross-up for Demand Resources argued that its elimination was “discriminatory and/or preferential” because a reserve margin gross-up was being applied to the NYPA imports.²³ Based on the ISO’s review and discussions during that stakeholder process, it became apparent that the application of a reserve margin gross-up for the NYPA imports posed the same problems as the application of a gross-up to Demand Resources and, for the same reasons, needed to be eliminated.²⁴ Accordingly, in November 2008, the ISO informed

¹⁹ See *ISO New England Inc.*, Informational Filing for Qualification in the Forward Capacity Market at 4, Docket No. ER08-1513-000 (Sept. 9, 2008).

²⁰ See *ISO New England Inc.*, 122 FERC ¶ 61,018 (2008).

²¹ See *ISO New England Inc.*, 125 FERC ¶ 61,155 (2008).

²² See *ISO New England Inc and New England Power Pool*, Tariff Revisions Regarding Elimination of the Reserve Margin Gross-Up for Demand Resources, Docket No. ER09-209-000 (Oct. 31, 2008) (“Elimination of DR Gross-up Filing”).

²³ See Motion for Leave to file Protest Out-of-Time, Protest and Request for Technical Conference of EnerNOC, Inc., at 10, Docket No. ER09-209-000 (Nov. 26, 2008).

²⁴ See meeting agenda and materials for agenda item 2.1, available at http://www.iso-ne.com/committees/comm_wkgrps/relblty_comm/pwrsuppln_comm/mins/2008/meeting_252_minutes_09-17-2008.pdf (responding to a Committee member’s question as to “why there was not an issue with the NYPA contracts’ Reserve Margin (RM) gross-up treatment, which the has (*sic*) same issues as those surrounding the treatment of Demand Resources (DR),” the ISO stated that “the NYPA RM gross-up treatment also contributes to the same under procurement of ICR” and that “this issue will be addressed with DR RM gross-up issues.”).

stakeholders, including Complainants, that it would discontinue the preferential application of a gross-up to the NYPA imports beginning with the qualification process for FCA#3.²⁵ The ISO completed the qualification process for FCA#3 reflecting the elimination of the NYPA gross-up.

IV. ANSWER

A. **The Complaint Fails to Demonstrate that the ISO’s Elimination of the Reserve Margin Gross-up for the NYPA Imports Violated Any Applicable Statutory Standard, Regulatory Requirement, or the Filed Rate**

The Complainants have not met the Rule 206 requirements for complaints. Rule 206(a) provides that “[a]ny person may file a complaint seeking Commission action against any other person alleged to be in contravention or violation of any statute, rule, order, or other law administered by the Commission.”²⁶ To that end, Rules 206(b)(1) and (2) require that all complaints “[c]learly identify the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements” and “[e]xplain how the action or inaction violates applicable statutory standards or regulatory requirements.”²⁷

The Complainants do not claim, or provide any evidence, that the ISO’s decision to discontinue the preferential application of a reserve margin gross-up to the NYPA imports is in violation or contravention of any applicable statutory standards, regulatory requirements, or the filed rate. The absence of any such evidence should come as no surprise because the ISO’s

²⁵ See Motion for Leave to Answer and Answer of ISO New England Inc. at 10; Docket No. ER09-209-000 (Dec. 8, 2008) (stating, “the ISO has discussed with Market Participants, through the stakeholder process, its intention to eliminate the so-called NYPA reserve margin gross-up starting with the qualification of resources for 2012/2013 Forward Capacity Auction. This plan was formally addressed with stakeholders at the NEPOOL Markets Committee Meeting . . . on November 13, 2008.”) See also the meeting agenda and materials for agenda item 11, available at http://www.iso-ne.com/committees/comm_wkgrps/mrks_comm/mrks/mins/2008/index.html. No action was taken by stakeholders because Manual 20, which is where the treatment of applying a reserve margin gross-up to the NYPA imports is contemplated, by its own terms does not apply following the ICAP Transition Period.

²⁶ 18 C.F.R. § 206(a).

²⁷ 18 C.F.R. § 206(b)(1)-(2).

determination is in fact consistent with the filed rate, as well as with the Commission's recent findings regarding the elimination of the reserve margin gross-up practice. Specifically, the elimination of the reserve margin gross-up for the NYPA imports is consistent with the requirements set forth in Section III.13 of Market Rule 1 (the "FCM Rules").²⁸ It is also consistent with the Commission's determination in its December 2008 Order, which found the elimination of the reserve margin gross-up for Demand Resources to be just and reasonable given, *inter alia*, the ISO's requirements under the FCM.²⁹

B. The Elimination of the Reserve Margin Gross-up is Consistent With the Requirements Set Forth in the FCM Rules

Pursuant to Section III.13 of the FCM Rules, the ISO is required to procure the *precise* amount of capacity that is needed by the region to meet the Installed Capacity Requirement ("ICR").³⁰

In pertinent part, that section provides:

[T]he ISO shall conduct a descending clock auction ("Forward Capacity Auction") . . . to procure the amount of capacity needed in the New England Control Area . . . as determined in accordance with the provisions of Section III.12.

Consistent with the FCM Settlement,³¹ the requirement that the ISO only procure an amount of capacity *equal* to the New England Control Area's ICR was a means to *decrease* costs to consumers while maintaining reliability.³²

²⁸ The FCM Rules implement the FCM Settlement, and were approved by the Commission on April 16, 2007, in *ISO New England Inc.*, 119 FERC ¶ 61,045 (2007) ("April 2007 Order"), *order on reh'g*, 120 FERC ¶ 61,087 (2007) ("Rehearing Order"), and on June 5, 2007, in *ISO New England Inc.*, 119 FERC ¶ 61,239 (2007).

²⁹ *ISO New England Inc. and New England Power Pool*, 125 FERC ¶ 61,355 (2008) ("December 2008 Order").

³⁰ With the exception of the need to procure complete, non-rationable blocks in the FCA. See Market Rule 1, §§ III.13.2.7.4 and III.13.2.7.9.

The application of the reserve margin gross-up to the capacity associated with the NYPA imports, contrary to the requirement set forth in the FCM Rules, results in the under-procurement of the ICR in the FCA. As explained in the Ethier Testimony, the application of the reserve margin gross-up when combined with an ICR calculation methodology that already accounts for resource availability results in the under-procurement of the ICR in the FCA.³³ The application of the reserve margin gross-up to the capacity associated with the NYPA imports effectively overstates that capacity by the gross-up amount, which in turn results in the under-procurement of ICR by that same amount. For example, if the NYPA imports represented 84 MW and received a reserve margin gross-up amount of 14 MW, and the NYPA imports resource cleared in the FCA, the New England region effectively would have under-procured the ICR by 14 MW.³⁴

(...continued)

³¹ See FCM Settlement at § 11, Part I.A (providing, “the ISO shall conduct an annual FCA to procure 100 percent of the ICR for the Power Year beginning three years later, with ICR calculated taking into account forecast error, as appropriate.”) See also *ISO New England Inc.*, 122 FERC ¶ 61,018 at P 4 (2008) (“The Settlement Agreement established that the amount of capacity to be procured would equal the Installed Capacity Requirement”); FCM Settlement Order at P 34 (“A critical input into the FCM will be the determination of the installed capacity requirement, which will determine how much capacity will be purchased through the auctions.”).

³² The requirement in the FCM Rules that the ISO procure an amount of capacity equal to the ICR addresses similar concerns of many Market Participants, including some of the Complainants, with what they considered as extraordinarily high costs of excess capacity that would have been purchased, but, in their view, may not have been needed for reliability. See e.g., *Devon Power, LLC*, Initial Post-Hearing Brief of Connecticut Municipal Electric Energy Cooperative (“CMEEC”) and Massachusetts Municipal Wholesale Electric Company (“MMWEC”) at 11; Docket No. ER03-563-030 (April 15, 2005) (“Brief”) (arguing that “additional purchases are not justified because they will result in New England exceeding the NPCC standard and the balance it strikes between surplus capacity resource costs and reliability”). See also *Devon Power, LLC*, Brief on Exceptions of the CMEEC and MMWEC, Docket No. ER03-563-030 (July 15, 2005) at 55-56 (opposing the requirement that consumers support more capacity than needed to maintain reliability); at 57 (“CMEEC and MMWEC share ISO’s objective of maintaining adequate resources, but also recognize that this goal must be balanced against the cost to consumers of achieving it.”)..

³³ Ethier Testimony at 3-5, 7.

³⁴ See *id.* at 3.

Complainants concede that the use of the reserve margin gross-up for the NYPA imports results in the under-procurement of resources in the FCA.³⁵ They, however, dismiss the under-procurement problem by noting that the gross-up applied to the NYPA imports contributes to the ICR by providing “much better than average availability to deliver scheduled energy,”³⁶ and the gross-up is only “a small amount” when measured against the ICR.³⁷ As the Ethier testimony describes, the relatively high level of availability for these resources is already taken into account in the ICR calculation – there is no “extra credit” to be had, nor is it deserved. There are also other types of high availability capacity suppliers that are comparable to the NYPA imports, but that are not eligible to receive a reserve margin gross-up.³⁸ The preferential application of a reserve margin gross-up to the NYPA imports would provide Complainants compensation that is not available to other capacity suppliers. Therefore, applying a reserve margin gross-up to the NYPA imports, but not to other resources that have similar or greater availability performance, would certainly not be comparable treatment and by no means addresses the under-procurement of ICR that was the ISO’s goal in eliminating the gross-up. To the contrary, continuation of this special treatment opens the door for other resources to seek a similar favorable result.

That the NYPA imports’ gross-up amount is “small” when compared to the total ICR that the ISO must procure is completely irrelevant and provides absolutely no rational basis for the

³⁵ See Complaint at 25 (admitting, “the application of a gross-up . . . produces (and always has produced) an ‘under-procurement’ of ICR”). See also, *id.* at Attach. 7 (recognizing, “ISO determination formula has not been updated with ‘Gross-Up’ treatment – Possibly resulting in the ISO ‘under contracting’ for needed capacity”).

³⁶ See *id.* at 26-27. But see *id.* at 13 (noting, “Scheduled deliveries from the hydro units have been interrupted by one or more of the ISOs only on rare occasions for transmission reliability or system operability reasons.”). Under FCM, what matters is whether the resource is available during “Shortage Events,” and not whether the resource performs better than other resources. See Market Rule 1, § III.13.7.1.2.

³⁷ See Complaint at 25-26.

³⁸ See Ethier Testimony at 7-8.

continuation of the preferential treatment for the NYPA imports.³⁹ The requirement in the Commission-approved FCM rules is clear – the ISO must procure the precise amount of ICR in the FCA. Complainants’ witness – Mr. Bruce W. McKinnon – even acknowledges this requirement in his November 13, 2008 presentation to the NEPOOL Markets Committee.⁴⁰ In it, Mr. McKinnon states that the ICR would need to be increased to accommodate Complainants’ requested reserve margin gross-up.⁴¹ That grossed-up amount is being under-procured and is potentially being replaced by “phantom” megawatts credited to the NYPA imports in the FCA.

C. The Elimination of the Reserve Margin Gross-up is Consistent with the Commission’s Recent Findings in the December 2008 Order

The recent findings by the Commission in the December 2008 Order, accepting the elimination of the reserve margin gross-up for Demand Resources, are equally applicable here and reinforce the conclusion that the ISO’s elimination of the NYPA gross-up is consistent with the FCM Rules.⁴² In pertinent part, the December 2008 Order found that:

the use of the current Reserve Margin Gross-Up has the *potential* to harm New England because it can lead to under-procurement of resources in the Forward Capacity Auction.

. . .

procuring the *correct* amount of capacity in the Forward Capacity Auction to maintain reliability is a critical requirement of ISO-NE’s management of the system, and . . . the use of the Reserve Margin Gross-Up *might* cause ISO-NE not to meet that requirement in the Forward Capacity Auction for each commitment period.⁴³

³⁹ See December 2008 Order at P 36 (rejecting Ameresco CT LLC’s (“Ameresco”) proposal to apply the reserve margin gross-up for energy efficiency resources, because, *inter alia*, it “simply prolong[ued]” the issues sought to be resolved by the proposed market rule changes, “*albeit on a reduced scale*”) (emphasis added).

⁴⁰ See Complaint at Attach. 7.

⁴¹ See *id.* (requesting “Continue Gross-up treatment of NYPA imports and modify ICR formula to recognize such treatment”).

⁴² See December 2008 Order at P 33.

⁴³ *Id.* at PP 33, 35 (emphasis added).

The discontinuation of the preferential treatment of applying a reserve margin gross-up to the NYPA imports is consistent with these findings. The application of the reserve margin gross-up to the capacity associated with the NYPA imports, albeit on a smaller scale than in the Demand Resources' case, results in the under-procurement of capacity, contrary to the requirements set forth in the FCM Rules, and its continued use could potentially lead to a failure to satisfy the reliability requirement. The reserve margin gross-up for the NYPA imports, as demonstrated in the Ethier Testimony, poses the same problems as the gross-up for Demand Resources, and its elimination will ensure that the ICR purchased in the FCA better reflects the full amount of capacity that is expected to be needed to meet the region's reliability requirement.⁴⁴

The elimination of the reserve margin gross-up for the NYPA imports also results in more comparable treatment of the different types of resources that possess similar availability characteristics that participate in the FCM (*e.g.*, import capacity resources, Demand Resources, generation resources), consistent with the Commission's determination in the December 2008 Order.⁴⁵ In support of their requested relief, however, the Complainants contend that the NYPA imports have "almost perfect availability"⁴⁶ and a "several decades-long track record of extremely reliable delivery of scheduled energy to support their treatment as firm demand reductions or the application of a capacity gross-up."⁴⁷ Like the Complainants, in response to the ISO's proposal to eliminate the Demand Resources' gross-up, Ameresco argued that:

unlike a dispatchable demand resource which may not operate when needed, an energy efficient resource can only return to its original energy usage by incurring

⁴⁴ See Ethier Testimony at 2-3.

⁴⁵ See December 2008 Order at P 36.

⁴⁶ Complaint at 26.

⁴⁷ *Id.* at 23.

costs. As such Ameresco contends that because energy efficiency resources reduce load and thus the reserve margin, they should retain the Reserve Margin Gross-up.⁴⁸

Unlike Complainants, Ameresco was able to point to a substantive difference – *i.e.*, load reduction is unlike a dispatchable resource. The Commission nevertheless rejected Ameresco’s proposal. Just as Ameresco’s energy efficiency resource is not entitled to a reserve margin gross-up, neither are the NYPA imports entitled to preferential treatment.

Further, Complainants, as the Commission found with Ameresco, do not “address the issue of treating resources with similar availability characteristics on a comparable basis.”⁴⁹ Under Complainants’ proposal, no other capacity resources that have similar or greater availability performance would “be eligible for equivalent compensation.”⁵⁰ The Complainants’ requested relief would also result in increased costs to consumers because the ISO would need to increase the ICR in order to generate sufficient revenue to pay Complainants.⁵¹ As the ISO explained in the Elimination of DR Gross-up Filing, and as is equally applicable here, the under-procurement problem could be resolved by increasing the ICR to reflect the gross-up amount and the corresponding amount of capacity purchased through the FCA. Doing so, however, will increase the amount of capacity purchased through the FCA by approximately 14 MWs, which will ultimately increase the costs charged to electricity consumers.⁵²

⁴⁸ December 2008 Order at P 36 (emphasis added).

⁴⁹ *Id.* at P 36.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Ethier Testimony at 4.

Complainants recognize that the relief requested in their Complaint will be subsidized by other electricity consumers in New England.⁵³ Straining for justification of this subsidy, they contend that *Congress* requires such a result:

Treating the NYPA imports as an FCM resource (as opposed to a firm load reduction) and failing to gross up the capacity value of those imports would deprive the recipients of at least some of the economic value of the firm capacity for which they have contracted. Doing so would violate Congress's intent in mandating the sale of preference power to neighboring states and would partially abrogate the NYPA recipients' long-term firm capacity contracts, contrary to Commission policy.⁵⁴

While the Congressional mandate that a portion of the power from the St. Lawrence-FDR and Niagara projects be allocated to Complainants is well-established,⁵⁵ the implication that the ISO must apply a special gross-up adder to the NYPA imports or reinstate the "load reduction" treatment is not required by any statute or justified on substantive grounds. The governing case law and policy, described at length in Paragraphs 14-20 and relied upon by the Complainants to establish "a basis for distinguishing" the instant case from the case involving the elimination of the Demand Resource gross-up,⁵⁶ addresses the issues of yardstick competition, the definition of public bodies, the amount of power that neighboring states should receive, and other related issues, but nowhere prescribes the specific type of crediting that NYPA power is entitled to. Moreover, it is a stretch of any reasonable interpretation of the governing law that in order to assure that the recipients do not lose the "economic value of the firm capacity for which they

⁵³ See Complaint, Attach. 7 (recognizing that to continue the gross-up treatment, "the ICR formula" will need to be modified "to recognize such treatment").

⁵⁴ Complaint at 28 and n.26.

⁵⁵ *N.Y. Power Auth.*, 105 FERC ¶ 61,102 at P 102 (2003).

⁵⁶ See Complaint at 28.

have contracted”⁵⁷ they must, in fact, receive an extra credit that no other resource in the market enjoys.⁵⁸ Complainants’ reliance on the fact that these are NYPA power allocations provides no basis for distinguishing the Demand Resources’ reserve margin gross-up elimination from the instant case or for continuing the favorable treatment they request.

The Complainants have clearly failed to support their Complaint with any evidence that the discontinuation of preferential treatment for the NYPA imports contravenes any applicable statutory standard or regulatory requirement, or any provision of the ISO Tariff. As demonstrated herein, the elimination of the reserve margin gross-up is consistent with the filed rate and supported by the same analysis that the Commission has already determined justified the elimination of the reserve margin gross-up for demand resources. Accordingly, the Commission should reject the Complainants proposal, and dismiss the Complaint.

D. Having Failed to Meet The Section 206 Burden, Complainants Unsuccessfully Attempt to Shift that Burden to the ISO By Calling the NYPA Reserve Margin Gross-up Treatment a Long-Standing Practice

The Complainants argue that the ISO should not be allowed to “sweep away decades of practice regarding the proper treatment of NYPA imports.”⁵⁹ They further argue that the ISO has not provided any reason “for abandoning these decades-long practices with respect to the NYPA firm capacity imports.”⁶⁰ With these blanket statements, Complainants seem to argue that the

⁵⁷ *See id.*

⁵⁸ In comparable circumstances involving preference clauses under other federal statutes, courts and power marketing agencies have routinely found that crediting arrangements, even those that do not provide full credit for a preference customer’s capacity allocation, do not violate the preference clause so long as they are “reasonable and consistent with the value of the services rendered the preference customer.” *Brazos Electric Power Cooperative v. Southwestern Power Administration*, 819 F.2d 537 (5th Cir. 1987). Here, as shown in this Answer, the treatment accorded the NYPA imports is reasonable.

⁵⁹ Complaint at 22.

⁶⁰ *Id.* at 23.

ISO is changing a long-standing practice without justification. Complainants, however, are incorrect. As shown above, the ISO is simply implementing the Commission-approved filed rate, which requires the ISO to procure the ICR.⁶¹

Furthermore, the preferential treatment of applying a reserve margin gross-up for the NYPA imports is not a long-standing or settled practice.⁶² As Complainants concede, that preferential treatment emerged from a compromise reached during the negotiations of SMD.⁶³ The fact that this preferential treatment has remained in place year after year, including the ICAP Transition Period, pursuant to the terms of the FCM Settlement, does not establish it as a settled practice.⁶⁴ Therefore, Complainants have the Section 206 burden to demonstrate that the ISO's action to discontinue the preferential treatment of applying a reserve margin gross-up to the NYPA imports is unjust and unreasonable. As evidenced in Section IV.B below, Complainants have also failed to meet that burden.

For the sake of argument, even if Complainants were able to show that the NYPA imports' gross-up treatment was in fact a settled practice, its discontinuation is well-justified. That the practice is *old*, as Complainants' argue, does not mean that it is *right*. As explained above, the application of a reserve margin gross-up to the NYPA imports results in the under-

⁶¹ See Market Rule 1, § III.13.

⁶² Compare to ISO Tariff, § II.44 (providing scheduling and curtailment priority to Real-Time External Transaction sales into the Real-Time Energy Market that are supported by the transmission arrangements listed in Attachment G-3 of the ISO OATT, which include the NYPA imports, after economic merit order has been considered); ISO Tariff, § III.13.1.3.3(c) (extending a limited treatment to the long-term import capacity contracts, which include the NYPA imports, to preserve scheduling priority made available to these agreements). These Commission-approved practices bear no relevance to, and do not justify, continuing the preferential application of a reserve margin gross-up to the NYPA imports.

⁶³ See Complaint at 15 (explaining that the NYPA "gross-up" was reached as a compromise in a settlement context; that is, in return for implementation of the gross-up, "the NYPA power recipients agreed not to oppose the changes needed to accommodate ISO-NE's SMD software implementation").

⁶⁴ See *Idaho Power Company*, 126 FERC ¶ 61,044 (2009).

procurement of ICR contrary to the requirements established in the FCM Rules. The consequences of under-procurement under the FCM are also more severe than under the previous ICAP market, because under the FCM only resources with a Capacity Supply Obligation are required to offer their resources into the market each day. Conversely, under the previous ICAP market, all resources had such a requirement, allowing the ISO to rely on non-capacity resources to meet reliability needs. The reduced FCM offer requirements increase the importance of ensuring that all resources are fully capable of delivering the megawatts for which they are committed.

The discontinuation of the preferential NYPA gross-up not only resolves the under-procurement problem, but it also provides a more comparable treatment for different resource types, while ensuring that New England's consumers pay for *no* more capacity than required to meet the ICR. The discontinuation of this preferential treatment is thus just and reasonable.

E. The Complaint Fails to Demonstrate that the ISO's Determination is Unjust, Unreasonable or Unduly Discriminatory, and that Complainants' Proposed Alternative is Just and Reasonable

Having failed to present any argument that the ISO failed to follow a particular statutory or regulatory requirement, or provision of the ISO Tariff, the Complainants similarly fail to demonstrate that the ISO's decision to eliminate the reserve margin gross-up for the NYPA imports is unjust, unreasonable and unduly discriminatory, or that the requested relief is just and reasonable.⁶⁵ These two fatal flaws reveal the inadequacy of the Complaint under Section 206 and require dismissal.⁶⁶

⁶⁵ 16 U.S.C. § 824e(a). Section 206 allows for challenges to any "rule, regulation, practice or contract" affecting a rate only upon a showing by the proponent of the Section 206 challenge that the existing provisions are unjust and unreasonable. *See Atlantic City Elec. Co. v. FERC*, 295 F.3d 1 at 10 (D.C. Cir. 2002). Application of Section 206 is a two-step process – the complainant must first show that the existing rate or practice is unjust and
(continued...)

The Complainants argue that the ISO's decision to discontinue providing special treatment to the NYPA imports by applying a reserve margin gross-up is unjust and unreasonable. In support, they assert that the NYPA imports "result in the import into New England of a resource that is almost perfectly-available to provide energy as scheduled."⁶⁷ However, as shown above, this fact does not warrant the special treatment sought by Complainants.

Complainants also contend that there are "no new or emerging facts" that justify the elimination of the NYPA imports' gross-up.⁶⁸ As the U.S. Court of Appeals for the D.C. Circuit recently stated, "[e]nter the Forward Capacity Market, which the Commission approved as part of a settlement agreement among New England power system stakeholders on June 16, 2006."⁶⁹ Complainants, however, argue that "[n]othing in the structure of the FCM or its treatment of other resources compels or justifies ISO's elimination of the long-standing capacity value gross-up (or capacity-obligation reduction) previously accorded to the NYPA imports."⁷⁰ Contrary to Complainants' arguments, the FCM Rules require the ISO to procure in the FCA the correct amount of capacity that is needed to meet the ICR. The continued application of a reserve

(...continued)

unreasonable and then must show that its proposed alternative is likewise just and reasonable. *See, e.g., Midwest Independent Transmission System Operator*, 104 FERC ¶ 61,012 at P 7 (2003).

⁶⁶ In any proceeding under Section 206(a), "the burden of proof to show that any rate, charge, classification, rule, regulation, practice, or contract is unjust, unreasonable, unduly discriminatory, or preferential shall be upon the Commission or the complainant." 16 U.S.C. § 824e(b); *see also Richard Blumenthal, Attorney General for the State of Connecticut., et al., v. ISO New England Inc.*, 117 FERC ¶ 61,038 (2006) (denying complaint because complainants did not meet their burden under Section 206 to establish that the ISO Tariff provisions at issue were unjust and unreasonable).

⁶⁷ Complaint at 14.

⁶⁸ *Id.* at 3.

⁶⁹ *Connecticut Department of Public Utility Control v. FERC*, Case No. 07-1375 slip op. at 6 (D.C. Cir. 2009).

⁷⁰ Complaint at 19.

margin gross-up for the NYPA imports, as Complainants' request, would result in the continued under-procurement of ICR in the FCA by the amount of "phantom" capacity that is in turn over-credited to Complainants.⁷¹ Accordingly, the application of a reserve margin gross-up for the NYPA imports is not justifiable under the FCM Rules.

Moreover, Complainants' have failed to offer a modicum of evidence that would justify the continuation of that preferential treatment. Likewise, Complainants have failed to provide any reason why the reinstatement of a treatment abandoned during the implementation of SMD in New England is in any way just and reasonable.

1. The Complaint Does Not Demonstrate that the ISO's Elimination of the Reserve Margin Gross-up is Unjust and Unreasonable

a. The ISO's Decision to Eliminate the Reserve Margin Gross-up for the NYPA Imports Results in More Comparable Treatment of Different Types of Resources Participating in the FCA, Consistent with the Existing FCM Framework

Complainants, like Ameresco in the elimination of the gross-up for Demand Resources proceeding, request that the Commission carve out a special treatment for their resource.⁷² They argue that the Commission "should not allow the ISO to sweep away decades of practice regarding *the proper treatment* of NYPA imports, which stand on substantially different footing than Demand Resources or any other resources participating in the FCM."⁷³ Contrary to Complainants' assertions, the elimination of the reserve margin gross-up for the NYPA imports

⁷¹ As explained in the Ethier Testimony supporting the Elimination of DR Gross-up Filing, the ISO recently eliminated the over-rating of capacity available from certain run-of-river hydro units. "[T]o offset the overly high ratings of the hydro units in order to assure that the appropriate amount of capacity was purchased to meet the resource adequacy reliability standard," Ethier explains, "the ICR was administratively increased." *See* Elimination of DR Gross-up Filing, Ethier Testimony at 18. The ISO's elimination of the hydro units high ratings helped ensure the accuracy of the ICR at a level that did not require consumers to pay more for capacity. *See id.*

⁷² Complaint at 22.

⁷³ *Id.*

is the proper treatment of this resource, which, as an Existing Import Capacity Resource, participates on equal footing with other types of resources in the FCA.⁷⁴ It not only resolves the problems with under-procurement by ensuring that the ICR that is purchased in the FCA better reflects the amount of capacity that is needed to meet the region's needs, but also addresses the issue of treating resources that have similar or greater availability characteristics on a comparable basis, without increasing costs to electricity consumers.

As the Commission correctly found in the December 28 Order with respect to Ameresco's proposal, applying the reserve margin gross-up to one resource type (*i.e.*, Demand Resources) while not applying the reserve margin gross-up to other resource types (*i.e.* generation resources or capacity imports) that have similar availabilities is not comparable treatment.⁷⁵ Complainants' attempt to argue that the NYPA imports resource is different from other types of resources and, therefore, a reserve margin gross-up should be applied. As discussed above, the Commission has already addressed and rejected similar arguments in the December 2008 Order, and Complainants provide no reason for which the Commission should vary from that determination. If anything, the Complaint, which was filed months after the December 2008 Order, is nothing more than a collateral attack of the December 2008 Order.

⁷⁴ See Market Rule 1, §§ III.13.1.3.3(c) and III.13.2.7.3(c) (extending a limited treatment to all the grandfathered ICAP agreements, which include the NYPA imports, as Existing Import Capacity Resources for their qualified amount). These FCM Rules preserve the scheduling priority made available to the existing grandfathered ICAP agreements identified in Section III.13.1.3.3(c). See *ISO New England Inc.*, Various Revisions to FCM Rules, Transmittal Letter at 8, Docket No. ER08-199-000 (Nov. 9, 2007) (explaining the limited treatment extended to the Existing Import Capacity Resources associated with the list of grandfathered ICAP agreements in FCM).

⁷⁵ December 2008 Order at P 36 (finding that "under Ameresco's proposal," as would be the case under the Complainants' proposal, "other non-energy efficiency capacity resources . . . with high availability would not be eligible for equivalent compensation"). See also Elimination of DR Gross-up Filing, Ethier Testimony at 19:17-21.

b. *The High Availability of A Resource Does Not Justify Continuing to Use the Reserve Margin Gross-up*

As previously discussed, Complainants concede that the application of the reserve margin gross-up to the capacity associated with the NYPA imports results in under-procurement of the capacity that is needed to be procured in the FCA. They, however, argue that “the nature of the NYPA firm imports and their almost perfect availability to provide energy as scheduled” justifies the continuation of the reserve margin gross-up for the NYPA import contracts.⁷⁶ It is their contention that the nature of this resource “breaks any connection between a technical ‘under-procurement’ of ICR and a resulting failure to satisfy the applicable LOLE standard.”⁷⁷ The high availability of the NYPA imports, however, provides no basis for distinguishing this case from the Demand Resources’ gross-up elimination case, nor continuing the preferential treatment just for the NYPA imports.

As an initial matter, applying the reserve margin gross-up for the NYPA imports, as the Commission determined was the case with Ameresco, “simply prolongs the issue (*albeit on a reduced scale*);”⁷⁸ that is, the systematic under-procurement of capacity by the reserve margin gross-up amount.⁷⁹ The problem with the reserve margin gross-up resulting in under-procurement of the capacity needed by the region, as explained in the Ethier Testimony supporting elimination of the Demand Resources’ gross-up, “exists whether or not Demand Resources are highly available, or even 100% available.”⁸⁰ This, as that testimony further explained, is because “the ICR calculation already reflects the availability of resources, and that

⁷⁶ Complaint at 26.

⁷⁷ *Id.*

⁷⁸ December 2008 Order at P 36 (emphasis added).

⁷⁹ See Elimination of DR Gross-up Filing.

⁸⁰ Elimination of DR Gross-up Filing, Ethier Testimony at 19.

any highly available resource (including not only Demand Resources, but also generation resources and capacity imports) already reduce the ICR when included” in the ICR statistical model.⁸¹ This inherent reflection of resource availability in the calculation of the ICR combined with the application of a reserve margin gross-up for the NYPA imports also results in the under-procurement of capacity by the amount by which the NYPA imports are grossed-up.⁸²

Complainants dismiss the ISO’s concerns with “under-procurement” that results from the application of the reserve margin gross-up for the NYPA imports as a mere “technical” issue that they believe will not cause any reliability problem.⁸³ They assert that “the much-greater-than-average availability of the 84 MW firm capacity imports makes up (or more than makes up) for the difference” resulting from the amount of capacity that is displaced by the gross-up amount.⁸⁴ This assertion is refuted by the reliability model results discussed in the Ethier Testimony supporting the Elimination of DR Gross-up Filing, which illustrate that the ICR would not be met if the reserve margin gross-up were applied, with the shortfall equal to the amount of the gross-up.⁸⁵ Moreover, that a resource’s high availability makes up for the difference in capacity, in addition to being incorrect as noted above, is not the standard that the ISO must comply with. The FCM Rules require the ISO to procure the precise ICR through the FCA⁸⁶ (*i.e.*, the amount of resources that are needed so that the probability of disconnecting firm load in the New

⁸¹ *Id.* at 19:6-10, 10-13, 20:11-21 to 21:1-4.

⁸² Ethier Testimony at 3.

⁸³ Complaint at 27.

⁸⁴ *Id.*

⁸⁵ See Elimination of DR Gross-up Filing, Ethier Testimony at 20 to 21.

⁸⁶ See Market Rule 1, § III.13.

England bulk power system for a given year will meet the applicable reliability standard).⁸⁷

Complainants concede that the application of the gross-up would result in the under-procurement of capacity, which, as the Commission found in the December 2008 Order, “*might* cause ISO-NE not to meet the requirement in the Forward Capacity Auction for each commitment period.”⁸⁸

c. The Problems With the Use of a Reserve Margin Gross-up Cannot Be Ignored Simply Because The Gross-up Amount is Small in Comparison to the Region’s ICR

While Complainants concede that under-procurement results from the use of the reserve margin gross-up for the NYPA imports, they contend that they are also different from Demand Resources because the amount of the NYPA import gross-up is small relative to the total ICR. That the NYPA gross-up amount is smaller provides no basis for distinguishing the Demand Resources’ reserve margin gross-up elimination for the instant case or for continuing the favorable treatment that Complainants request.

To ignore the under-procurement of capacity in the FCA, as Complainants would have it, simply because it is a small amount, would be inconsistent with the requirements established in the FCM Rules. Under those rules, as the Commission found in the December 2008 Order, the ISO must “procure the correct amount of capacity in the Forward Capacity Auction to maintain reliability.”⁸⁹ Moreover, the fact that the reserve margin gross-up for the NYPA imports is small

⁸⁷ See *id.*, § III.12.

⁸⁸ December 2008 Order at PP 33, 35 (emphasis added). It should be noted that the capacity product procured under the FCM Rules is committed and must be offered for a much longer period than is the case today under the ICAP Transition Period provisions, Section III.8. (*i.e.* a year-long capacity product versus a monthly capacity product), and that the capacity product must be available not only when it is regularly scheduled, but when the ISO needs it. This level of availability has yet to be demonstrated.

⁸⁹ December 2008 Order at P 35.

relative to the total ICR or smaller than the reserve margin gross-up for Demand Resources does not mean that the ISO can ignore it.⁹⁰

2. The Complaint Does Not Meet the Section 206 Requirement that a Complaint Demonstrate Its Alternative is Just and Reasonable, And Its Implementation Would Increase Costs for Electricity Consumers in New England

The Commission should reject the Complaint because it also fails to meet the Section 206 requirements, and its implementation would result in increased costs for electricity consumers in New England.

Although Complainants have failed to establish that the ISO's determination to discontinue the application of a reserve margin gross-up for the NYPA imports is unjust and unreasonable or unduly discriminatory, they nevertheless ask the Commission to direct the ISO to:

(a) continue its past practice of grossing-up by the applicable reserve margin the capacity value of the firm capacity imports under Complainants' existing NYPA contracts or (b) to return to New England's prior treatment of the firm NYPA imports as reductions in the Complainants' firm load (and hence, their load-ratio share of New England's capacity requirement, including any imputed reserve margin).⁹¹

As demonstrated above, there simply is no basis for continuing the application of a reserve margin gross-up or for reinstating the load reduction treatment for the NYPA imports under FCM. On the contrary, eliminating the reserve margin gross-up for the NYPA imports is just and reasonable because it would allow the New England region to purchase the ICR in the FCA

⁹⁰ See e.g., *Midwest Independent Transmission System Operator, Inc.*, 125 FERC ¶ 61,210 at P 16 (2008) (rejecting arguments that a new interconnection request is not required simply because the capacity increase is *de minimis*)

⁹¹ Complaint at 30. It should be noted that the relief that Complainants seek in the Complaint differs from the solution that they proposed to Market Participants at the November 13, 2008 meeting of the Markets Committee, wherein they specifically noted the need to modify the ICR calculation to accommodate the NYPA reserve margin gross up.

that better reflects the full amount of capacity that is expected to be needed to meet the region's reliability requirements, as required by the FCM Rules; it results in reasonable costs for electricity consumers; and it treats all resources participating in the FCA on a comparable basis. Accordingly, the Complaint must be rejected.

The implementation of the relief requested has significant implications. First, the application of a reserve margin gross-up for the NYPA imports would increase the total costs of capacity to New England. As the Commission found in the December 2008 Order, "in order to generate sufficient revenue to pay a gross-up to *any* resource type, the ICR would need to be increased, raising costs to consumers."⁹² Second, the FCM Rules establishing the methodology for determining the ICR would also need to be revised to allow for the ICR to be adjusted to compensate for the reserve margin gross-up. Third, because the ISO has completed the qualification process for FCA#3 reflecting the elimination of the NYPA gross-up, the reinstatement of that preferential treatment could be disruptive for the FCM process.⁹³

The reinstatement of the so-called "load reduction" treatment, as Complainants request, would unfairly increase costs to other load serving entities in New England. As explained in the Ethier Testimony,⁹⁴ each load serving entity in New England supports the regional installed capacity needs based on its proportionate share of the total peak load. Each load serving entity's responsibility is not a function of how its individual resources (*e.g.*, imports) perform, but of how the collective New England resources perform. This shared responsibility would be distorted by the modeling of the NYPA imports as an offset to load. In other words, modeling the NYPA

⁹² December 2008 Order at P 36 (emphasis added).

⁹³ Ethier Testimony at 10.

⁹⁴ *See* Ethier Testimony at 10.

imports as a load offset, as Complainants' request, would shift costs from Complainants to other New England load serving entities. Complainants have simply provided no basis for reinstating this favorable treatment at the expense of others in the region.

V. COMPLIANCE WITH RULE 213(c) OF THE COMMISSION'S RULES OF PRACTICE AND PROCEDURE

A. Disputed Material Factual Allegations

Pursuant to 18 C.F.R. §385.213(c)(2)(i), the ISO disputes a number of the material factual allegations raised in the Complaint. The ISO responds to these allegations as follows:

- **Complaint at pp. 2-3:** "The ISO's decision to eliminate the capacity gross-up for the NYPA imports, without reinstating the load reduction treatment accorded these resources pre-SMD, is unjust, unreasonable and should be reversed immediately."
 - **ISO Response:** See Answer at Section IV; Ethier Testimony at pp. 2-12.
- **Complaint at p. 19:** "Nothing in the structure of FCM or its treatment of other resources compels or justifies ISO's elimination of the long-standing capacity value gross-up (or capacity-obligation reduction) previously accorded to the NYPA imports."
 - **ISO Response:** See Answer at Section IV; Ethier Testimony at pp. 2-12.
- **Complaint at p. 22:** "Although the Commission accepted the elimination of the DR gross-up, *ISO New England Inc.*, 125 FERC ¶ 61,355 (2008), it should not allow ISO to sweep away decades of practice regarding the proper treatment of NYPA imports, which stand on substantially different footing than demand resources or other resources participating in the FCM."
 - **ISO Response:** See Answer at Section IV.C; Ethier Testimony at pp. 2-3.
- **Complaint at p. 23:** "The NYPA import gross-up presents no undue discrimination concerns because there are no comparable resources in the New England market."
 - **ISO Response:** See Answer at Section IV.E.1.a.; Ethier Testimony at pp. 7-8.
- **Complaint at p. 23:** "Nor would continuation of the NYPA import gross-up result in failure to meet applicable reliability requirements."

- **ISO Response:** See Answer at Section IV.B.; Ethier Testimony at pp. 3-9.
- **Complaint at p. 28:** “Moreover, the NYPA imports’ genesis and history – their embodiment in long-term contracts between NYPA and the neighboring states’ bargaining agents – provides another basis for distinguishing the DR gross-up case.”
 - **ISO Response:** See Answer at Section IV.C.

The ISO’s responses to other points raised by Complainants are reflected in the discussion in Sections IV.

B. Law on Which the Answer Relies

To support this Answer, the ISO relies on, *inter alia*:

- **The Complaint fails to demonstrate that the ISO’s determination is unjust, unreasonable or unduly discriminatory, and that Complainants’ proposed alternative is just and reasonable. Section 206 allows for challenges to any “rule, regulation, practice or contract” affecting a rate only upon a showing by the proponent of the Section 206 challenge that the existing provisions are unjust and unreasonable. Application of Section 206 is a two-step process – the complainant must first show that the existing rate or practice is unjust and unreasonable and then must show that its proposed alternative is likewise just and reasonable.** *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1 (D.C. Cir. 2002); *Richard Blumenthal, Attorney General for the State of Connecticut., et al., v. ISO New England Inc.*, 117 FERC ¶ 61,038 (2006); *Midwest Independent Transmission System Operator*, 104 FERC ¶ 61,012 (2003).
- **The Complainants have not met the Rule 206 requirements for complaints.** Rules 206(b)(1) and (2) require that all complaints “[c]learly identify the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements” and “[e]xplain how the action or inaction violates applicable statutory standards or regulatory requirements.” 18 C.F.R. § 206(b)(1)-(2).

VI. CONCLUSION

For the reasons set forth in this Answer, the ISO requests the Commission to deny the Complaint.

Respectfully submitted,

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

Connecticut Municipal Electric Energy)
Cooperative, Massachusetts Municipal)
Wholesale Electric Company, Pascoag)
(RI) Utility District, and Vermont)
Department of Public Service,)
)
Complainants)
)
v.)
ISO New England Inc.,)
)
Respondent)

Docket No. EL09-60-000

**PREPARED TESTIMONY OF
DR. ROBERT G. ETHIER
ON BEHALF OF ISO NEW ENGLAND INC.**

I. INTRODUCTION

Q: Please state your name, title, and business address.

A: My name is Robert G. Ethier. I am Vice President of Market Development for ISO New England Inc. (the "ISO"). My business address is One Sullivan Road, Holyoke, Massachusetts 01040-2841.

Q: Please summarize your experience and qualifications.

A: I have a Bachelor of Arts degree in Economics from Yale University, a Masters in Resource Economics from Cornell University, and a Ph.D. in Resource Economics from Cornell University. I have more than 10 years of experience in the energy and utility industry. Prior to 2000, I was Senior Associate at Stratus Consulting with the responsibility of energy market modeling. From 2000 on I

1 have worked for the ISO in various roles and was responsible for Market
2 Monitoring for nearly four years and Resource Adequacy¹ for more than two
3 years prior to becoming Vice President of Market Development.
4

5 **II. PURPOSE, SCOPE AND SUMMARY OF THE TESTIMONY**
6

7 **Q: What is the purpose of your testimony?**

8 A: The purpose of my testimony is to explain the decision of the ISO to eliminate the
9 application of a reserve margin gross-up to the capacity associated with certain
10 New York Power Authority (“NYPA”) imports currently qualified under the
11 ISO’s Forward Capacity Market (“FCM”) as Existing Import Capacity Resources.
12 This decision is the subject of the complaint filed by the Complainants² against
13 the ISO on June 11, 2009, in Docket No. EL09-60-000.

14 Specifically, my testimony explains the problems that warranted the elimination
15 of the reserve margin gross-up for the NYPA imports. As I discuss in detail
16 below, the preferential application of a reserve margin gross-up to the NYPA
17 imports poses the *same* problems identified in the case of the reserve margin
18 gross-up for Demand Resources, which was also discontinued during the
19 qualification process for the FCA associated with the 2012/2013 (“FCA#3”)
20 Capacity Commitment Period pursuant to the Commission’s findings in Docket
21 No. ER09-209-000.³ My testimony also addresses the factual differences that the
22 Complainants claim support the continuation of the reserve margin gross-up for
23 the NYPA imports, but not for other types of resources participating in the FCM.

¹ Capitalized terms used but not otherwise defined in this filing have the meanings ascribed thereto in the ISO’s Transmission, Markets and Services Tariff (FERC Electric Tariff No. 3) (the “Tariff”). Section III of the Tariff is Market Rule 1.

² The Complainants are the Connecticut Municipal Electric Energy Cooperative, Massachusetts Municipal Wholesale Electric Company, Pascoag (RI) Utility District, and Vermont Department of Public Service.

³ *ISO New England Inc.*, 125 FERC ¶ 61,355 (2008).

1 Finally, my testimony addresses the implications of the relief requested by the
2 Complainants.

3 **Q: Why was it necessary to discontinue the application of a reserve margin**
4 **gross-up to the NYPA imports?**

5 A: In the course of the lengthy stakeholder process concerning proposed changes to
6 the FCM Rules to eliminate the use of the reserve margin gross-up for Demand
7 Resources, it became apparent that the application of a reserve margin gross-up to
8 the NYPA imports posed the same problems as the Demand Resources gross-up.
9 That reason, in conjunction with the need for consistency in treatment of
10 resources in the FCM, warranted the elimination of the NYPA imports' gross-up.
11 The ISO discontinued the preferential application of a reserve margin gross-up for
12 the NYPA imports during the qualification process for the FCA3.

13 As I fully explain below, the application of the reserve margin gross-up to the
14 capacity associated with the NYPA imports when combined with the current
15 Installed Capacity Requirement ("ICR") calculation methodology, as defined in
16 Section III.8 of Market Rule 1, effectively results in the systematic under-
17 procurement of capacity in the FCA by the NYPA imports' gross-up amount.
18 This was also the case with the use of the reserve margin gross-up for Demand
19 Resources as I explained in my testimony supporting the Elimination of DR
20 Gross-up Filing.⁴ For example, if the NYPA imports represented 84 MW and
21 received a reserve margin gross-up amount of 14 MW, and the NYPA imports
22 resource cleared in the FCA, the New England region effectively would have
23 under-procured the ICR by 14 MW.

24 Elimination of the reserve margin gross-up for the NYPA imports resolves this
25 under-procurement problem. It also provides a more comparable treatment for

⁴ See *ISO New England Inc. and New England Power Pool*, Tariff Revisions Regarding the Elimination of the Reserve Margin Gross-Up for Demand Resources, Docket No. ER09-209-000 (Oct. 31, 2008) ("Elimination of DR Gross-up Filing"), Ethier Testimony at 19:4-10.

1 different resource types, while ensuring that New England’s consumers pay for *no*
2 more capacity than required to meet the ICR – as required by the FCM Rules.

3

4 **III. EXPLANATION OF HOW THE RESERVE MARGIN GROSS-UP FOR**
5 **THE NYPA IMPORTS RESULTS IN THE UNDER-PROCUREMENT OF**
6 **CAPACITY AND AN EXCESSIVE CAPACITY CREDIT FOR**
7 **COMPLAINANTS**

8 **Q: Please explain the “reserve margin gross-up.”**

9 A: The “reserve margin gross-up” is the increase of the capacity value of the NYPA
10 imports by a reserve-margin factor, which represents the ICR divided by expected
11 system peak load in New England. This preferential treatment is contemplated in
12 Attachment A of the ISO New England Manual for Installed Capacity, Manual
13 M-20 (“Manual 20”) for the ICAP Transition Period.

14

15 This factor varies modestly from year-to-year depending on the calculated ICR
16 and the system peak load forecast. The specific reserve-margin multipliers for the
17 2010/2011 (“FCA#1”) and 2011/2012 (“FCA#2”) Capacity Commitment Periods
18 are 1.143⁵ and 1.161.⁶ As applied to the NYPA imports, by example, the reserve
19 margin gross-up would increase the capacity value of the NYPA imports of
20 approximately 84 MW to approximately 96 MW applying the FCA#1 reserve
21 margin multiplier, and approximately 98 MW applying the FCA#2 reserve margin
22 multiplier.

⁵ See *ISO New England Inc.*, Informational Filing for Qualification in the Forward Capacity Market at 12, Docket No. ER08-190-000 (Nov. 6, 2007) (“FCA#1 Qualification Filing”). The Commission accepted the FCA#1 Qualification Filing in *ISO New England Inc.*, 122 FERC ¶ 61,018 (2008).

⁶ See *ISO New England Inc.*, Informational Filing for Qualification in the Forward Capacity Market at 4, Docket No. ER08-1513-000 (Sept. 9, 2008) (“FCA#2 Qualification Filing”). The Commission accepted the FCA#2 Qualification Filing in *ISO New England Inc.*, 125 FERC ¶ 61,155 (2008).

1 The reserve margin, as I explained in the Ethier Testimony supporting the
2 Elimination of the DR Gross-up Filing, is a function of the ICR, which is
3 calculated using complex reliability models and assumptions about the power
4 system in the future and the 50/50 summer system peak load forecast. The
5 reserve margin is not a determinant of the ICR. That is, the ICR in New England
6 is not calculated by multiplying the peak load by one plus the reserve margin.
7 Rather, the reserve margin is a product of the ICR calculation. This distinction is
8 important here, as it was in the case of the Demand Resources' gross-up, because
9 the heart of the problem with the reserve margin gross-up is the fact that the ICR
10 is calculated using the expected state of the power system for a given Capacity
11 Commitment Period and, thus, already reflects the availability ratings of resources
12 expected to provide capacity in that Capacity Commitment Period.⁷

13

14 **Q: Please briefly explain how the Installed Capacity Requirement is determined.**

15 A: The ICR is the measure of the capacity resources that are projected to be
16 necessary to meet reliability standards in light of total forecasted load
17 requirements for the New England Control Area and to maintain sufficient reserve
18 capacity to meet reliability standards. More specifically, it is the amount of
19 resources needed so that the probability of disconnecting firm load in the New
20 England bulk power system (*i.e.*, a loss of load expectation or LOLE) will meet
21 the applicable reliability standard (*i.e.*, no more than 0.1 disconnect per year).

22

23 The ICR is calculated each year using a statistical model of the New England
24 power system. The primary inputs to the model are the capacity values (size in
25 megawatts) of each resource (including generation resources, Demand Resources,
26 imports, and load, and/or capacity relief such as tie benefits that are assumed
27 obtainable from implementing OP4 actions⁸) expected to provide capacity in the
28 year being modeled, the expected availability of each resource, and a forecasted

⁷ See Ethier Testimony at 7.

⁸ "OP4 actions" are a series of actions taken by the system operators during a capacity deficiency situation pursuant to ISO New England Operating Procedure No. 4.

1 weekly load distribution for the years being modeled. Given those inputs, the
2 statistical model calculates the probability of disconnecting firm load in the New
3 England bulk power system in that year.

4 My testimony in the Elimination of DR Gross-up Filing provides a detailed
5 explanation of the statistical model.⁹

6

7 **Q: How does the availability of different resources affect ICR?**

8 A: All else being equal, the presence of resources with higher availability (*i.e.*, a unit
9 with better forced outage performance or lower forced outages) will result in a
10 lower ICR than will the presence of resources with lower availability. As
11 illustrated in my testimony supporting the Elimination of the DR Gross-up
12 Filing,¹⁰ increasing the availability of a specific resource in the reliability model
13 will lower the calculated ICR, and reducing the availability will increase the ICR.
14 While the scenarios discussed therein are not specific to an Existing Import
15 Capacity Resource, they are still highly relevant to the instant Complaint as the
16 type of resource modeled does not affect the result or the conclusion that the
17 reserve margin gross-up is inappropriate. Those scenarios demonstrate that by
18 substituting one set of resources with another set of resources of higher
19 availability, the ICR will decrease.

20

21 **Q: How does the application of a reserve margin gross-up to the NYPA imports
22 result in an under-procurement of capacity in the FCA?**

23 A: The reliability model examples discussed in my testimony supporting the
24 elimination of the Demand Resources' gross-up illustrate the under-procurement
25 problem that results from the application of a reserve margin gross-up to the
26 NYPA imports.¹¹ The effective under-procurement is due to the over-rating of the
27 NYPA imports that clear in the auction. The under-procurement problem is

⁹ See Ethier Testimony at 10 to 11.

¹⁰ See *id.* at 12-13.

¹¹ See *id.* at 20:-21 to 21:1-4.

1 relative to the amount that would have been procured if the gross-up has not been
2 applied.

3
4 **Q: Is it reasonable to continue the application of a reserve margin gross-up for**
5 **the NYPA imports on the basis that this resource has a “much better than**
6 **average availability to deliver scheduled energy” as Complainants claim?**

7 A: That the NYPA imports are a highly available resource does not justify the
8 application of the reserve margin gross-up for various reasons. First, the problem
9 with the reserve margin gross-up leading to under-procurement exists whether or
10 not the resource is highly available or even 100% available. The problem is a
11 function of the fact that the ICR calculation already reflects the availability of
12 resources, and that any highly available resource, including the NYPA imports,
13 already has reduced the ICR when it is included in the reliability model because
14 less reserves are needed to protect for the loss of these resources as compared
15 with the higher reserves needs to protect for the loss of other less available
16 resources.

17
18 Second, the ISO would need to increase the ICR and the corresponding amount of
19 capacity purchased through the FCA in order to generate sufficient revenue to pay
20 for the reserve margin gross-up amount, resulting in increased costs to electricity
21 consumers. Let me explain. As previously noted, the FCA procures capacity
22 equal to the ICR as calculated according to Market Rule 1. The ICR is reduced
23 by resources with high availability. Accordingly, the benefit of high availability
24 resources is already reflected in a lower ICR, which reduces the need for capacity
25 purchases by electricity consumers. Because the FCA only procures capacity
26 equal to ICR, if a gross-up is applied to the NYPA imports, the ICR would need
27 to be increased by the NYPA gross-up amount. This would increase the total
28 costs of capacity to New England.

29
30 Third, applying a reserve margin gross-up to the NYPA imports based on the
31 resource’s high availability, but not to other resources that can demonstrate

1 similar or greater availability (*e.g.*, other capacity imports, certain types of
2 generation, or energy efficiency), would result in disparate treatment. There is no
3 reason for such disparate treatment. As discussed above, the ability of a resource
4 to decrease ICR is a function of its availability, not the resource type (*e.g.*,
5 demand resource versus capacity imports). Applying a reserve margin gross-up to
6 the NYPA imports, but not to other resources that have similar or greater
7 availability characteristics would certainly not be comparable treatment, and by
8 no means resolves the under-procurement of ICR, which was the ISO's goal in
9 eliminating the gross-up.

10

11 Finally, the preferential application of a reserve margin to the NYPA imports on
12 the basis of high availability is not necessary under the FCM. The FCM Rules
13 already include a mechanism that rewards resources that achieve high availability.
14 Specifically, under the FCM structure, capacity resources (*e.g.*, generation
15 resources, capacity imports) need to perform in order to receive capacity
16 payments during each Capacity Commitment Period. Market Participants with
17 capacity imports, such as Complainants, must make their resources available
18 during Shortage Events in order to receive capacity payments. Market
19 Participants with resources that are not available during Shortage events would
20 experience a diminution of capacity revenues. Said differently, incentives are
21 already in place within the FCM Rules to reward high availability during each
22 Capacity Commitment Period.

23

24 **Q: Are there other resource types that are comparable to the NYPA imports in**
25 **New England?**

26 A: Yes, there are other resources in New England that are comparable to the NYPA
27 imports. Some examples that come to mind are base load generators, which are
28 not only able to produce large amounts of electricity, but also may have high
29 availability, energy efficiency projects which are typically assumed to have high
30 availability, and other import contracts that are backed by neighboring control
31 areas.

1 **Q: Is it reasonable to continue the application of a reserve margin gross-up to**
2 **the NYPA imports if the under-procurement that results from the NYPA**
3 **gross-up is a small amount relative to the ICR or when compared to the**
4 **Demand Resources' gross-up?**

5 A: No. The FCM Rules require the ISO to procure the correct amount of capacity in
6 the FCA to maintain reliability. The ISO is required to procure capacity equal to
7 the ICR in the FCA. It is irrelevant that the amount that would be under-procured
8 using the reserve margin gross-up is small. As the Complainants' witness – Mr.
9 Bruce McKinnon – acknowledged in his November 13, 2008 presentation to the
10 NEPOOL Markets Committee (Attachment 7 to the Complaint), it would be
11 appropriate and necessary to increase the ICR to compensate for the continued
12 application of the gross-up. Additionally, to the extent that the NYPA imports
13 receive a reserve margin gross-up, it should be expected that other resources in
14 New England will seek comparable treatment. Given that certain base load units
15 in the region have high availability, treating these other highly available units
16 comparably could grossly under-procure ICR for the region.

17
18 **IV. CONSEQUENCES OF CONTINUING TO USE THE RESERVE MARGIN**
19 **GROSS-UP FOR THE NYPA IMPORTS OR ALTERNATIVELY**
20 **REINSTATING THE LOAD REDUCTION TREATMENT**

21
22 **Q: What are some of the implications of continuing the application of a reserve**
23 **margin gross-up to the NYPA imports?**

24 A: As was the case for the Demand Resources' gross-up, the calculation of the ICR
25 would need to be modified to account for the NYPA imports' reserve margin
26 gross-up so that the FCM does not result in an under-procurement of capacity.
27 This, as previously noted, would increase the total costs of capacity to New
28 England. We would also need to modify the market rules to allow the ICR to be
29 adjusted to compensate for the reserve margin gross-up.

1 **Q: Would there be any market disruption associated with a requirement to**
2 **continue the application of a reserve margin gross-up for the NYPA imports?**

3 A: The ISO discontinued the preferential application of a reserve margin gross-up to
4 the NYPA imports during the qualification process for FCA#3. This is consistent
5 with the timing of the elimination of the reserve margin gross-up for Demand
6 Resources. Because the ISO has completed the qualification process for FCA#3,
7 the reinstatement of this treatment could be disruptive for the FCM process. The
8 concerns that I raised in my testimony supporting the elimination of the Demand
9 Resources' gross-up are equally applicable here. Specifically, changing the rules
10 mid-stream prior to FCA#3 would introduce uncertainty in the FCM. Such a
11 change would require changes to the database and participants' expectations prior
12 to the auction scheduled for October 5, 2009. It would also undermine the
13 transparency built into the auction process
14

15 **Q: As an alternative to the reserve margin gross-up, Complainants request that**
16 **the capacity associated with the NYPA imports be deducted from the**
17 **Complainants' load obligations. Is it reasonable to extend this "load**
18 **reduction" special treatment to Complainants?**

19 A: No. The so-called "load reduction" treatment requested, as Complainants
20 concede, ended with the implementation of New England's Standard Market
21 Design ("SMD") in 2003, and its reinstatement would result in increased costs to
22 other load serving entities in New England.

23 It is well-established that, in New England, each load serving entity supports the
24 regional installed capacity needs based on its proportionate share of the total peak
25 load. Each load serving entity's responsibility is not a function of how its
26 individual resources (*e.g.*, imports) perform; it is a function of how the collective
27 New England resources perform. This shared responsibility would be distorted by
28 modeling the NYPA imports as a load offset. In other words, modeling the
29 NYPA imports as a load offset, as Complainants' request, would shift costs from
30 Complainants to other New England load serving entities.

1 Further, like the reserve margin gross-up, the reinstatement of the “load
2 reduction” treatment for the NYPA imports, but not to any other resource type,
3 would not address the comparable treatment concerns raised earlier.

1 **V. CONCLUSIONS**

2 **Q: Do you wish to make any concluding remarks?**

3 A: Yes. Discontinuing the preferential application of a reserve margin gross-up to
4 the NYPA imports is just and reasonable because it would allow the New England
5 region to procure the right amount of capacity in the FCA to meet the ICR, as
6 required by the FCM Rules. Eliminating the reserve margin gross-up also results
7 in reasonable costs to consumers of electricity, and would treat all resources
8 participating in the FCA on a comparable basis. Conversely, as Complainants
9 concede, the application of the reserve margin gross-up to the NYPA imports
10 would require raising the ICR, which would increase costs to electricity
11 consumers, and/or result in disparate treatment for other resource types with
12 similar performance characteristics – *e.g.*, high-availability NYPA imports would
13 receive the gross-up whereas high-availability base load generation or energy-
14 efficiency resources would not. Similarly, the application of a “load reduction”
15 treatment, as Complainants request, would also extend a special treatment without
16 any basis and unfairly increase costs to other load serving entities in New England
17 and, therefore, is not just and reasonable.

18

19 **Q: Does this conclude your testimony?**

20 A: Yes, it does.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 1st day of July, 2009.

/s/ Sherry A. Quirk
Sherry A. Quirk, Esq.