



October 30, 2009

The Honorable Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, D.C. 20426

Re: *ISO New England Inc. and New England Power Pool,*  
Docket No. ER09-1546- , Compliance Filing of ISO New England Inc.

Dear Secretary Bose:

In compliance with the Order issued by the Federal Energy Regulatory Commission (“FERC” or “Commission”) on October 2, 2009 in Docket No. ER09-1546-000 (the “RCM Order”), ISO New England Inc. (the “ISO”) hereby submits an original and five copies of this transmittal letter to provide: (1) a revised tariff sheet for Section III.A.10 of Appendix A to Market Rule 1 and (2) additional support for the \$80/MW-day threshold cap that is part of the Financial Offer Test of Reliability Commitment Mitigation in Section III.A.5.8 of Appendix A.<sup>1</sup> The New England Power Pool Participants Committee (“NEPOOL”) joins its support to this filing for the change to Section III.A.10.<sup>2</sup> The ISO also submits herewith the supporting affidavit of David

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<sup>1</sup> Capitalized terms used but not defined herein are intended to have the meaning given to such terms in the ISO New England Inc. Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3 (“ISO Tariff”), the Second Restated New England Power Pool Agreement, and the Participants Agreement. Market Rule 1 is Section III of the ISO Tariff. The Open Access Transmission Tariff is Section II of the ISO Tariff (the “ISO OATT”).

<sup>2</sup> Please note that NEPOOL has noted its support for the rule change in this filing based on the recommendation of support from the NEPOOL Markets Committee at its October 15, 2009 meeting, which support was indicated with 3 abstentions, due to the timing required for this compliance filing and the fact that the NEPOOL Participants Committee does not meet until November 19, 2009. In recognition of the fact that under the Participants Agreement, only the NEPOOL Participants Committee can make filings on behalf of NEPOOL Participants before the Commission, NEPOOL has indicated that it will update the record in this proceeding following any formal action taken by the NEPOOL Participants Committee on the rule change to the extent that such action does not adopt the recommendation of the NEPOOL Markets Committee.

LaPlante and Mario S. DePillis, Jr. (the “LaPlante-DePillis Affidavit”).<sup>3</sup> The revisions are being filed in accordance with Section 385.1907 of the Commission’s rules and regulations.<sup>4</sup>

On August 5, 2009, the ISO and NEPOOL (collectively, the “Filing Parties”) jointly filed with the Commission (the “RCM Filing”) proposed revisions to Appendix A of Market Rule 1 to address the market power mitigation of offers for resources that are committed to satisfy local and system-wide reliability needs, as well as other supporting revisions to the ISO’s mitigation rules (the “RCM Revisions”).<sup>5</sup> The RCM Revisions create a new category of mitigation, called Reliability Commitment Mitigation, for the Supply Offers of resources committed to address local reliability needs. Reliability Commitment Mitigation replaces the existing Appendix A mitigation thresholds for Net Commitment Period Compensation with a threshold that calls for mitigation when the low load cost of operating a resource, as reflected in its Supply Offer, exceeds the low load cost of the resource calculated based on its Reference Levels by more than the lesser of 10% or \$80/MW-day. Among the related changes, a new Section III.A.10 of Appendix A permits a Market Participant that believes it will not recover the fuel and variable O&M costs of a resource as the result of mitigation applied to the resource to submit a filing with the Commission seeking recovery of those costs pursuant to Section 205 of the Federal Power Act.

On October 2, 2009, the Commission issued an order accepting all Appendix A revisions proposed in the RCM Filing, subject to the condition that the Filing Parties submit a compliance filing within thirty days of the order to address two aspects of the RCM Revisions.<sup>6</sup>

- The Commission directed the ISO to extend the deadline by which a Market Participant must submit a Section 205 filing under Section III.A.10 of Appendix A. As filed, Section III.A.10 requires that the filing be submitted within thirty days from the date the Market Participant receives the first invoice for payments that the Market Participant is challenging. The Commission ordered the ISO to extend the thirty-day deadline to sixty days to “provide parties with adequate time to make the appropriate filing while limiting settlement amounts.”<sup>7</sup>

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<sup>3</sup> Mr. LaPlante is the Vice President of Market Monitoring for the ISO and is in charge of Internal Market Monitoring for the ISO. Mr. DePillis is a Supervisor of Market Assessment for the Internal Market Monitor.

<sup>4</sup> 18 C.F.R. § 385.1907 (2009).

<sup>5</sup> Market Rule 1 Revisions Relating to the Mitigation of Supply Offers for Resources Committed to Satisfy Reliability Needs, *ISO New England Inc. and New England Power Pool*, Docket No. ER09-1546-000 (filed August 5, 2009) (“RCM Filing”).

<sup>6</sup> *ISO New England Inc. and New England Power Pool*, 129 FERC ¶ 61,008 (2009) (“RCM Order”), at Ordering Paragraphs A and B.

<sup>7</sup> RCM Order at P 34.

- The Commission directed the ISO to submit additional support for the use of the \$80/MW-day threshold cap that makes up one of the two “lower of” prongs in the Reliability Commitment Mitigation “Financial Offer Test.” Specifically, the Commission stated: “Filing Parties have justified the 10 percent threshold by explaining that this threshold was determined to reflect a reasonable bound of measurement error based on the Internal Market Monitor’s analysis of inter-day fuel price variations. However, Filing Parties have not demonstrated why \$80/MW-day is an appropriate value to trigger mitigation under the ‘lower of’ proposal. Accordingly, our acceptance of the instant filing is subject to the condition that Filing Parties submit a compliance filing within thirty days to justify why the \$80/MW-day threshold is appropriate.”<sup>8</sup>

The ISO is filing herewith: (1) a clean and redlined tariff sheet that reflects the change in filing deadline under Section III.A.10 from thirty to sixty days; and (2) the LaPlante-DePillis Affidavit to further explain the justification for the \$80/MW-day prong of the Financial Offer Test for Reliability Commitment Mitigation. Section II of this transmittal letter addresses why the \$80/MW-day threshold is just and reasonable in light of the analyses detailed in the LaPlante-DePillis Affidavit.

## I. COMMUNICATIONS

All correspondence and communications in this proceeding should be addressed to the undersigned for the ISO as follows:

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## II. THE \$80/MW-DAY THRESHOLD IS JUST AND REASONABLE

Section III.A.5.8.6 of the new Reliability Commitment Mitigation rules implement a Financial Offer Test that evaluates whether the low load cost of a resource calculated based on its actual Supply Offer parameters (the low load cost “as offered”)<sup>9</sup> exceeds the resource’s low load cost calculated based on its Reference Level offer

<sup>8</sup> RCM Order at P 27.

<sup>9</sup> The low load cost of a resource is the cost of operating the resource at its minimum load for its minimum run time, as reflected in its Supply Offer.

parameters (the low load cost “at Reference Level”) by more than the lesser of 10% or \$80/MW-day.<sup>10</sup> The use of the \$80/MW-day test functions as an upper bound or cap on the 10% threshold. Should the low load cost of a resource, calculated based upon its Supply Offer, exceed the low load cost calculated based on the resource’s Reference Level by more than \$80/MW-day, the resource’s Supply Offer will be subject to mitigation regardless of whether the low load cost calculated based upon the Supply Offer exceeds 10% of the resource’s Reference Levels.

In support of the \$80/MW-day threshold cap, the ISO is filing herewith the affidavit of David LaPlante and Mario S. DePillis, Jr., which explains the rationale for the \$80/MW-day cap. The LaPlante-DePillis Affidavit explains that the cap is an important part of the Financial Offer Test because it eliminates the incentive to offer high low-load cost resources with over-stated supply offer parameters in order to increase out-of-market revenues. This offer strategy cannot be adequately addressed solely through the use of the 10% of low load cost threshold that makes up the other prong of the Financial Offer Test.

The LaPlante-DePillis Affidavit describes the analysis performed by the ISO’s Internal Market Monitor to demonstrate the appropriateness of the \$80/MW-day cap as a means to curtailing the effectiveness of a hypothetical two-part offer strategy<sup>11</sup> for a large oil-fired unit of the type that frequently would be committed to address local reliability needs in New England.<sup>12</sup> The hypothetical strategy entails marking up the fuel cost for the resource by 10% and increasing the Economic Minimum Level of the resource. The test demonstrates that a Market Participant can earn significant out-of-market revenues using this strategy but will not trigger the 10% of low load cost threshold because a 10% fuel-price mark-up translates into a relatively minor increase in total low load cost for such a resource.<sup>13</sup> The test also demonstrates, however, that at current and increased fuel prices the use of this strategy will trigger the \$80/MW-day threshold cap, which under the Reliability Commitment Mitigation framework will result in the mitigation of the resource’s Supply Offer, thereby removing the net revenues to be gained from the strategy.<sup>14</sup>

The LaPlante-DePillis Affidavit also explains the analysis performed by the Internal Market Monitor to demonstrate that a Market Participant that appropriately offers its resource into the market with offer parameters that accurately reflect the costs and physical operating characteristics of the resource does not face significant risk of triggering the \$80/MW-day cap.<sup>15</sup> The Internal Market Monitor performed an analysis

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<sup>10</sup> See the transmittal letter for the RCM Filing at pp. 15-18.

<sup>11</sup> LaPlante-DePillis Affidavit at PP 10-20.

<sup>12</sup> LaPlante-DePillis Affidavit at PP 11 and 13.

<sup>13</sup> LaPlante-DePillis Affidavit at PP 14-20.

<sup>14</sup> LaPlante-DePillis Affidavit at PP 19-20.

<sup>15</sup> LaPlante-DePillis Affidavit at PP 21-31.

similar to the one it performed to demonstrate the efficacy of the 10% of low load cost threshold, which was explained in the LaPlante-DePillis Testimony included with the RCM Filing. The analysis performed for the \$80/MW-day cap entailed assessing the impacts of day-to-day fuel price fluctuations when resources are offered with offer parameters that accurately reflect the costs and operating characteristics of the resource in question. The analysis demonstrates that fuel prices and fuel price fluctuations would need to be significantly higher than they have been during the past ten years before fuel price fluctuations would trigger the \$80/MW-day cap despite the fact that the Market Participant did not over-state the resource's offer parameters.<sup>16</sup>

The additional support for the \$80/MW-day cap provided in the LaPlante-DePillis Affidavit demonstrates that the threshold cap is a just and reasonable market power mitigation mechanism. The \$80/MW-day cap is an effective tool to curtailing the effectiveness of offer strategies, if pursued, that would involve over-stating supply offer parameters for resources with high low load costs, but does not create a significant risk of being triggered when these resources are offered in a manner that accurately reflects their costs and physical operating characteristics. Furthermore, as explained in the RCM Filing, to address the limited potential for the \$80/MW-day cap to mitigate supply offers despite the fact that those offers are not over-stated, the RCM Revisions contain a mechanism to permit Market Participants to make a Section 205 filing with the Commission to request additional cost recovery.<sup>17</sup> Accordingly, for the reasons stated herein, in the RCM Filing and in the LaPlante-DePillis Affidavit, the Commission should accept the \$80/MW-day cap as a just and reasonable part of the Reliability Commitment Mitigation framework.

### **III. REQUESTED EFFECTIVE DATE**

In the RCM Filing, the Filing Parties requested an effective date for Section III.A.10 of Appendix A of on or after January 1, 2010, with two weeks' prior notice of the actual effective date to be provided by the ISO. The ISO is requesting the same effective date for the revision to Section III.A.10 filed herewith to comply with the RCM Order. Pursuant to Section 35.3(a) of the Commission's rules and regulations, all rate schedules or any part thereof must be filed with the Commission and posted not "more than one hundred-twenty days prior to the date on which the electric service is to commence and become effective." In the event the revisions to Section III.A.10 of Appendix A become effective more than one hundred-twenty days from the date of this filing, the ISO requests waiver of the provisions of Section 35.3(a)(1) to permit this requested effective date for the Phase II revisions. For the reasons set forth in the RCM Filing,<sup>18</sup> the ISO believes that good cause exists to permit this waiver.

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<sup>16</sup> LaPlante-DePillis Affidavit at P 31.

<sup>17</sup> See the transmittal letter for the RCM Filing at pp. 22-23.

<sup>18</sup> See RCM Filing at pp. 3-4.

#### IV. STAKEHOLDER PROCESS

On October 15, 2009, the NEPOOL Markets Committee voted unanimously to recommend that the Participants Committee support the revision to Section III.A.10 for compliance with the RCM Order. NEPOOL, accordingly, supports the ISO's filing here for the purpose of that change and does not take a position on the ISO's explanation of the \$80/MW-day threshold. However, given the timing of the issuance of the RCM Order, the compliance filing deadline and the time frames required for stakeholder review under the applicable provisions of the Participants Agreement, the Participants Committee was not able, prior to the submission of this filing, to take action on the change at its regularly scheduled meetings. The Participants Committee is scheduled to take action on this change at its November 19, 2009 meeting.

#### V. ADDITIONAL SUPPORTING INFORMATION

Section 35.13 of the Commission's regulations generally requires public utilities to file certain cost and other information related to an examination of traditional cost-of-service rates. However, the market rule changes do not modify a traditional "rate" and the ISO is not a traditional investor-owned utility. Therefore, to the extent necessary, the ISO requests waiver of Section 35.13 of the Commission's regulations.<sup>19</sup> Notwithstanding its request for waiver, the ISO submits the following additional information in substantial compliance with relevant provisions of Section 35.13 of the Commission's regulations:

35.13(b)(1) – Materials included herewith are as follows:

- ◆ This transmittal letter;
- ◆ Attachment 1: Redlined and Clean Tariff Sheets reflecting the market rule revision that is to become effective on or after January 1, 2010, with two weeks prior notice to be provided by the ISO;
- ◆ Attachment 2: The Affidavit of David LaPlante and Mario S. DePillis, Jr.; and
- ◆ Attachment 3: List of governors and utility regulatory agencies in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont to which a copy of this filing has been sent.

35.13(b)(2) – As set forth in Section III above, the ISO requests that the revision to Section III.A.10 become effective on or after January 1, 2010, with two weeks prior notice to be provided by the ISO.

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<sup>19</sup> 18 C.F.R. § 35.13 (2009).

35.13(b)(3) – Pursuant to Section 17.11(e) of the Participants Agreement, Governance Participants are being served electronically rather than by paper copy. The names and addresses of the Governance Participants are posted on the ISO's website at [http://www.iso-ne.com/regulatory/ferc/nepool/gov\\_prtcpts\\_eserved.pdf](http://www.iso-ne.com/regulatory/ferc/nepool/gov_prtcpts_eserved.pdf). A paper copy of this transmittal letter and the accompanying materials have also been sent to the governors and electric utility regulatory agencies for the six New England states that comprise the New England Control Area, and to NECPUC. The names and addresses of these governors and regulatory agencies are shown in Attachment 3. In accordance with Commission rules and practice, there is no need for the Governance Participants or the entities identified on Attachment 3 to be included on the Commission's official service list in the captioned proceeding unless such entities become intervenors in this proceeding.

35.13(b)(4) – A description of the materials submitted pursuant to this filing is contained in Section V of this transmittal letter.

35.13(b)(5) – The reasons for this filing are discussed in the introduction and in Section II of this transmittal letter.

35.13(b)(6) – The ISO's approval of these changes is evidenced by this filing. These changes reflect the results of the Participant Processes that could be completed within the timeframe required by the Commission for this compliance filing. These changes were unanimously supported by the Markets Committee. As noted above, the Participants Committee is scheduled to take action on this change at its next regularly scheduled meeting on November 19, 2009, and will supplement the record in this proceeding if and to the extent such action does not result in unanimous Participant Committee support for this change.

35.13(b)(7) – The ISO has no knowledge of any relevant expenses or costs of service that have been alleged or judged in any administrative or judicial proceeding to be illegal, duplicative, or unnecessary costs that are demonstrably the product of discriminatory employment practices.

35.13(b)(8) – A form of notice and electronic media are no longer required for filings in light of the Commission's Combined Notice of Filings notice methodology.

35.13(c)(1) – The market rule changes herein do not modify a traditional "rate." The statement required under this Commission regulation is not applicable to this filing.

35.13(c)(2) – The ISO does not provide services under other rate schedules that are similar to the wholesale, resale and transmission services it provides under the Tariff.

35.13(c)(3) – No specifically assignable facilities have been or will be installed or modified in connection with the revisions proposed herein.

**VI. CONCLUSION**

For the foregoing reasons, the ISO respectfully requests that the Commission accept the attached Market Rule 1 revision and the additional justification filed herewith in support of the RCM Revisions, as described above and in compliance with the Commission's RCM Order.

Please acknowledge receipt of the foregoing by date-stamping and returning to our messenger the enclosed extra copies of this filing.

Respectfully submitted,

**ISO NEW ENGLAND INC.**

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**Attachments**

cc : Governance Participants (electronically) and entities listed in Attachment 3

**ATTACHMENT 1**

**Redlined And Clean Tariff Sheets**

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**III.A.9.5. Imposition of Sanctions.** *Appendix B* of Market Rule 1 sets forth the procedures and standards under which sanctions may be imposed for certain violations of Market Participants' obligations under the ISO New England Filed Documents and other ISO New England System Rules. The Internal Market Monitor shall administer *Appendix B* in accordance with the provisions thereof.

**III.A.10. Request for Additional Cost Recovery.**

**III.A.10.1. Filing Right.** If, as a result of mitigation applied to a Resource under this *Appendix A* for all or part of one or more Operating Days, a Market Participant believes that it will not recover the fuel and variable operating and maintenance costs of the Resource for those Operating Days, the Market Participant may, within ~~sixty~~<sup>sixtythree</sup> days of the receipt of the first Invoice issued containing credits or charges for the applicable Operating Day, submit a filing to the Commission seeking recovery of those costs pursuant to Section 205 of the Federal Power Act.

**III.A.10.2. Contents of Filing.** Any Section 205 filing made pursuant to this Section III.A.10 shall include: (i) the actual fuel and variable operating and maintenance costs for the Resource for the applicable Operating Days, with supporting data and calculations for those costs; and (ii) an explanation of why the actual costs of operating the Resource for the Operating Days exceeded the Reference Level costs.

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**III.A.9.5. Imposition of Sanctions.** *Appendix B* of Market Rule 1 sets forth the procedures and standards under which sanctions may be imposed for certain violations of Market Participants' obligations under the ISO New England Filed Documents and other ISO New England System Rules. The Internal Market Monitor shall administer *Appendix B* in accordance with the provisions thereof.

**III.A.10. Request for Additional Cost Recovery.**

**III.A.10.1. Filing Right.** If, as a result of mitigation applied to a Resource under this *Appendix A* for all or part of one or more Operating Days, a Market Participant believes that it will not recover the fuel and variable operating and maintenance costs of the Resource for those Operating Days, the Market Participant may, within **sixty** days of the receipt of the first Invoice issued containing credits or charges for the applicable Operating Day, submit a filing to the Commission seeking recovery of those costs pursuant to Section 205 of the Federal Power Act.

**III.A.10.2. Contents of Filing.** Any Section 205 filing made pursuant to this Section III.A.10 shall include: (i) the actual fuel and variable operating and maintenance costs for the Resource for the applicable Operating Days, with supporting data and calculations for those costs; and (ii) an explanation of why the actual costs of operating the Resource for the Operating Days exceeded the Reference Level costs.

**ATTACHMENT 2**

**Affidavit of David LaPlante and Mario S. DePillis, Jr.**

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

**ISO New England Inc.  
and  
New England Power Pool**

**Docket No. ER09-1546-\_\_\_**

**AFFIDAVIT OF DAVID LAPLANTE AND MARIO S. DEPILLIS, JR.**

**I. Qualifications and Purpose**

**David LaPlante**

1. My name is David LaPlante. I am the Vice President of Market Monitoring for ISO New England Inc. (the "ISO"), One Sullivan Road, Holyoke, Massachusetts 01040-2841.
2. I currently serve as Vice President of Market Monitoring for ISO New England Inc. In this role I am responsible for overseeing and managing all aspects of the Internal Market Monitoring Unit of the ISO.
3. I have over 22 years of experience in the energy and utility industry. Between 1989 and 1994, I spent five years supervising and conducting power system reliability studies at the New England Power Pool. I have been working on the deregulation of the wholesale electric industry in New England since 1994. When serious discussions about deregulation of the wholesale electricity market in New

England began, I was part of the team that negotiated the contract between the ISO and the New England Power Pool that led to the creation of the ISO in 1997. I then led the ISO team that worked with NEPOOL to develop and implement the region's first set of wholesale markets in 1999.

4. Following my work on the development and implementation of the wholesale markets, I was responsible for the market design portion of the Standard Market Design implemented by the ISO in March 2003. I was integrally involved in the Forward Capacity Market settlement agreement and in the development of the capacity market rules that implement the settlement agreement. In July 2008, I was promoted to Vice President of the Internal Market Monitoring Unit at the ISO. I have a Bachelor's degree in statistics from Princeton University and a Master's Degree in City and Regional Planning from Harvard University.

**Mario S. DePillis, Jr.**

5. My name is Mario S. DePillis Jr. I am a Supervisor of Market Assessment in the Internal Market Monitoring Unit at the ISO.
6. In my role as Supervisor of Market Assessment, I am responsible for assessing all aspects of long-run market performance, with an emphasis on competition. My work includes focusing on the long-run trends of the market, such as supervising the annual market review, and evaluating new or existing market rules for changes that could improve market efficiency or the competitiveness of the market. I also help develop new market monitoring and mitigation rules and supervise the implementation of the new market monitoring and mitigation rules.

7. I have more than 12 years experience in the electric energy industry. Prior to 1999 I was employed at the Public Utility Commission of Texas where I was an expert witness on competitive issues and rate cases. Since 1999, I have worked at the ISO in various capacities as Economist, Principal Analyst, and now as Supervisor of Market Assessment. I have a Bachelor of Arts in Philosophy from Carleton College and a Ph.D. in Economics from the University of Texas at Austin.

**Purpose**

8. The ISO has filed with the Commission revisions to the market rules that address the market power mitigation of Supply Offers for resources that are committed to address reliability needs in New England. These revisions are being made to Appendix A of Market Rule 1. Section III.A.5.8 of the revised rules contains a new Reliability Commitment Mitigation procedure to address the mitigation of Supply Offers for resources committed to address local reliability needs. Section III.A.5.8.6 of the new Reliability Commitment Mitigation rules implements a Financial Offer Test that evaluates whether the low load cost of a resource calculated based on its actual Supply Offer parameters (the low load cost “as offered”) exceeds the resource’s low load cost calculated based on its Reference Level offer parameters (the low load cost “at Reference Level”) by more than the lesser of 10% or \$80/MW-day. The use of the \$80/MW-day test functions as an upper bound or cap on the 10% threshold. Should the low load cost of a resource, calculated based upon its Supply Offer, exceed the low load cost calculated based on the resource’s Reference Level by more than \$80/MW-day, the resource’s

Supply Offer will be subject to mitigation regardless of whether the low load cost calculated based upon the Supply Offer exceeds 10% of the resource's Reference Levels.

9. The purpose of this affidavit is to provide additional support for the \$80/MW-day prong of the Financial Offer Test. Section II of this affidavit explains why the \$80/MW-day threshold cap is an appropriate and important part of the Financial Offer Test to curb certain offer strategies for larger, more expensive units that cannot be adequately addressed solely through the use of the 10% low load cost threshold. Section III of this affidavit explains that the \$80/MW-day threshold cap does not pose a significant threat of mitigation for Market Participants that accurately reflect the costs and physical operating characteristics in the Supply Offer for a Resource.

**II. Why the \$80/MW-Day Threshold Cap is Appropriate as Part of the Financial Offer Test for the Mitigation of Resources Committed to Address Local Reliability Needs**

10. The \$80/MW-day threshold cap is an appropriate part of the Financial Offer Test because it reduces the incentives of Market Participants with resources that have high low load costs to over-state offer parameters and increase Net Commitment Period Compensation ("NCPC") revenues. For example, one possible strategy available to a Market Participant is to generate additional NCPC revenues by marking up fuel costs and increasing the Economic Minimum Limit of a resource while not exceeding the 10% low load cost threshold. The more expensive the unit, the greater the incentive to change physical operating parameters to increase

NCPC revenues. Ten percent of the low load costs of a resource with a 400 MW Economic Minimum Limit is twice as much as ten percent of the low load cost of a resource with a 200 MW Economic Minimum Limit. By placing an \$80/MW-day threshold cap on the amount above Reference Levels a Market Participant can offer (as reflected in the resource's low load cost), the Financial Offer Test limits the gain that can be obtained from offering resources with increased offer parameters.

11. To support the use of the \$80/MW-day cap, the Internal Market Monitor examined a hypothetical strategy that might be used by Market Participants with larger, more expensive resources committed for local reliability needs. This strategy involves offering the resource (a) with physical operating parameters that would require the ISO to run the resource out of merit more than necessary to address the reliability need and (b) with a fuel price (or other financial offer parameter) mark-up that will not trigger the 10% low load cost threshold. Using this hypothetical strategy, a Market Participant can earn significant revenues via NCPC, even with only minor fuel price mark-ups. Without the \$80/MW-Day threshold cap, this strategy could be used to earn excessive NCPC payments.
12. While the new mitigation rule in Section III.A.5.8.7(a) of Appendix A for physical operating characteristics would address over-stating time-based physical offer parameters (such as minimum run time), it does not do so for quantity-based physical operating parameters (such as the Economic Minimum Limit). The \$80/MW-day threshold cap is designed to serve as a mitigation tool for offer strategies that involve the quantity-based physical operating parameters.

13. The Internal Market Monitor analyzed the impact of utilizing this two-part hypothetical strategy on the revenues of a large oil-fired steam boiler that is representative of the type of larger, more expensive units in New England that are most able to effectively take advantage of the strategy to earn excess NCPC. This representative unit is a steam boiler with a capacity greater than 400 MW that utilizes No. 6 Oil for fuel. This representative unit has an Economic Minimum Limit of 200 MW and a 24 hour minimum run time. Since January 2005, over 80 percent of all NCPC payments made for local reliability need commitments were made for the commitment of resources with characteristics that are very similar or identical to the characteristics of the representative unit.
14. The Internal Market Monitor analyzed the use of the hypothetical strategy by a) raising the Economic Minimum Limit to the maximum amount permitted by the mitigation threshold of 100% (section III.A.5.3.1(d) of Appendix A), and b) “marking-up” the fuel price by 10%. The strategy was tested for sensitivity to fuel prices because higher fuel prices increase the attractiveness of the strategy. The \$80/MW-day threshold cap limits the effectiveness of this strategy by limiting the total net revenue a resource can earn.
15. The following table lists the No. 6 Oil prices used for the sensitivity study. The second column lists the frequency with which the prices were observed in New England’s market during the 10-year period from 1999 through 2008.
16. **Table 1: No. 6 Oil (1% Sulfur) Price Levels and Historical Frequency 1999-2008**

Price	Percent of Time Fuel
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(\$/mmBTU)	Price was Observed
4	65.30%
6	35.51%
8	18.06%
10	9.85%
14	3.34%
18	0.35%
22	0.00%
26	0.00%

17. Table 2 below presents the results of using the two-stage strategy at each fuel price level. The table presents three columns of data. The first column provides the price of the fuel. The second column represents the net revenue expressed in \$/mw-day, indicating whether the value exceeds the \$80/MW-day threshold cap. The third column represents the dollar amount of net revenues the Market Participant receives for the period of the commitment, based on the unit's minimum run time of 24 hours.

18. **Table 2: Results of Two-Stage Strategy for Representative No. 6 Oil-Fired Unit**

No. 6 Oil Price Level (\$/mmBTU)	Large No. 6 Oil-Fired Unit	
	\$/MW-Day	Net Daily Revenues from Strategy
4	<b>\$80.29</b>	\$44,161.41
6	<b>\$118.78</b>	\$65,327.50
8	<b>\$157.26</b>	\$86,493.60
10	<b>\$195.74</b>	\$107,659.69
14	<b>\$234.23</b>	\$128,825.79
18	<b>\$272.71</b>	\$149,991.89
22	<b>\$349.68</b>	\$192,324.08
26	<b>\$426.65</b>	\$234,656.27

19. As the results in column two of Table 2 demonstrate, when using this strategy a Market Participant will trigger the \$80/MW-day criterion at a wide range of likely fuel prices. However, these offers will not trigger the 10% low load cost threshold, because a 10% increase in fuel cost increases the low load cost by just under 1%. Therefore, without the \$80/MW-day threshold cap, the hypothetical Market Participant could earn significant NCPC revenues that reflect overstated physical operating characteristics. The incentive to pursue the strategy is evident in the last column, which lists the dollar return for the period of commitment.
20. In summary, the analysis described above demonstrates that a Market Participant with a resource committed for local reliability would have the incentive to follow the two-stage strategy of representing the unit as inflexible and having an elevated Economic Minimum Limit, and then marking up the fuel cost by 10%. The Market Participant is able to earn a return of approximately 10% of the cost of operating the unit because of fuel cost mark-up. The elevated Economic Minimum Limit allows the participant to multiply the mark-up dollars. The cap is necessary to reduce the incentive to utilize this type of strategy and to improve operational efficiency.

**III. Why the \$80/MW-Day Threshold Cap Does Not Create Significant Risk of Mitigation for Market Participants that Accurately Reflect the Costs and Physical Operating Characteristics in the Supply Offer for a Resource.**

21. The \$80/MW-day threshold cap is sufficiently high to avoid any significant risk of mitigation when Market Participants offer their resources with offer parameters that accurately reflect the costs and operating characteristics of the resource.

Based on historical fuel price data, Supply Offers for resources with historically higher low load costs will rarely reach the \$80/MW-day cap when those resources are offered with offer parameters that approximate their actual costs and operating characteristics. When Supply Offers for such resources reach the \$80/MW-day cap, the chance of mitigation below actual costs is very low.

22. This conclusion is supported by an analysis performed by the Internal Market Monitor on the impacts of day-to-day fuel price fluctuations when resources are offered with offer parameters that accurately reflect the costs and operating characteristics of the resource in question. This analysis is similar to the analysis performed by the Internal Market Monitor and presented in the August 4, 2009 transmittal letter for the Reliability Commitment Mitigation rules in support of the 10% low load cost threshold that constitutes the other “prong” of the Financial Offer Test.
23. The Internal Market Monitor utilizes a published fuel index price that represents an average of prices of trades that take place during a day to establish a resource’s cost or Reference Level. In contrast, a Market Participant is required to purchase fuel at a single market price, which may be higher (or lower) than the average of trades used to construct the fuel price index. The difference between index price and the Market Participant’s actual purchase price may result in mitigation of a resource, even when it is offered with actual characteristics and costs, if the mitigation test is not structured in a way that accounts for potential price fluctuations. Fuel price fluctuations of this type are the most likely source of mitigation below actual costs, because a Market Participant is able to keep the

Internal Market Monitor informed of changes in the resource's more static costs through the consultation provisions in Section III.A.3 of Appendix A.

24. The Internal Market Monitor has performed a second fuel-price fluctuation analysis for the \$80/MW-day threshold cap to demonstrate that this threshold value does not create undue risk of mitigation due to fuel price variation. The analysis utilized day-to-day fuel price fluctuations that were at or below 95% of all the day-to-day fuel price fluctuations for the last ten years. These inter-day fuel price variations were used as a proxy for variations within a day, but are likely to be higher than the intra-day variations.
25. In the case of No. 6 Oil, day-to-day price increases were below 2.75% in 95% of all cases. In other words, historically there has been a 95% chance that tomorrow's oil price will increase no more than 2.75% from today's price. In the case of natural gas, day-to-day price increases were below 9.77% in 95% of all cases. In other words, historically there has been a 95% chance that tomorrow's gas price will increase no more than 9.77% from today's price.<sup>1</sup>
26. To address the remaining 5% of fuel price fluctuations, the Internal Market Monitor's analysis assumed that the market price paid by the hypothetical Market Participant was 3% higher (for oil) and 10% higher (for gas) than the index-based fuel price used by the Internal Market Monitor.

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<sup>1</sup> For purposes of the simulations, we rounded up the oil price volatility to 3% and the gas price volatility to 10%.

27. The analysis was performed using four representative units, which represent the types of resources that are typically committed to address reliability needs in New England. Since January 2005, 90 percent of all NCPD payments made for local reliability need commitments were made for the commitment of resources with characteristics that are very similar to the characteristics of the four resources analyzed by the Internal Market Monitor. The four representative units analyzed are:

- i) Large oil-fired steam boiler. A steam boiler with a capacity greater than 400 MW that utilizes No. 6 Oil for fuel. This representative unit has an Economic Minimum Limit of approximately one-third the total capacity of the unit and a 24 hour minimum run time.
- ii) Large “2 x 1” combined cycle unit: A combined cycle unit with a capacity greater than 400 MW with two combustion turbines and one steam turbine (“2 x 1”). This representative unit has an Economic Minimum Limit that is less than 40 percent of its total capacity and a 12 hour minimum run time.
- iii) Small “3 x 1” combined cycle unit: A combined cycle unit with a capacity less than 200 MW with two combustion turbines and one steam turbine (“2 x 1”). This representative unit has an Economic Minimum Limit of about 31% of its total capacity and a minimum run time of 6 hours.
- iv) Medium “1 x 1” combined cycle unit: A combined cycle unit with a capacity between 200 and 400 MW with one combustion turbine and one steam turbine (“1 x 1”). This representative unit has an Economic Minimum Limit of approximately 60% of its total capacity and a minimum run time of 14 hours.

28. The results of the analysis are presented below.

29. **Table 3: No. 6 Oil-Fired Unit Test Results, Assuming 3% Increase in Fuel Price**

No. 6 Oil Price Level (\$/mmBTU)	Probability Prices will exceed this level	Large No. 6 Oil-Fired Unit	
		% LLC	\$/MW-Day
10	13.65%	2.6%	\$33.95

14	6.48%	2.9%	\$50.85
18	2.03%	2.9%	\$64.43
22	0.00%	2.9%	\$78.01
<b>26</b>	<b>0.00%</b>	<b>2.9%</b>	<b>\$91.59</b>

30. **Table 4: Gas-Fired Combined Cycle Generator Test Results, Assuming 10% Increase in Fuel Price**

Gas Price Level (\$/mmBTU)	Probability Prices will exceed this level	Large 2x1		Small 3x1		Medium Sized 1x1	
		% LLC	\$/MW-Day	% LLC	\$/MW-Day	% LLC	\$/MW-Day
4	76.10%	7.9%	\$16.81	7.6%	\$10.38	7.6%	\$28.39
6	54.34%	8.5%	\$25.21	8.3%	\$15.57	8.3%	\$42.58
8	24.57%	8.8%	\$33.61	8.6%	\$20.76	8.7%	\$56.77
10	12.05%	9.0%	\$42.02	8.9%	\$25.95	8.9%	\$70.96
<b>12</b>	<b>6.10%</b>	<b>9.2%</b>	<b>\$50.42</b>	<b>9.1%</b>	<b>\$31.14</b>	<b>9.1%</b>	<b>\$85.16</b>
<b>14</b>	<b>2.38%</b>	<b>9.3%</b>	<b>\$58.82</b>	<b>9.2%</b>	<b>\$36.33</b>	<b>9.2%</b>	<b>\$99.35</b>
<b>16</b>	<b>0.63%</b>	<b>9.4%</b>	<b>\$67.23</b>	<b>9.3%</b>	<b>\$41.52</b>	<b>9.3%</b>	<b>\$113.54</b>

31. As the results demonstrate, the oil fired steam boiler generator did not trip the \$80/MW-day threshold cap criterion (as indicated by the boldfaced row of figures) until the fuel price index reached a price of \$26/mmBTU. For comparison, the price for No. 6 Oil has never exceeded \$26/mmBTU since 1999. Thus, the \$80/MW-day threshold cap criterion is unlikely to cause mitigation for Market Participants that accurately reflect the costs and physical operating characteristics in the Supply Offer for a resource. For the gas-fired combined cycle units, the use of the \$80/MW-day threshold cap criterion would not result in mitigation until the fuel price exceeded \$12/mmBTU (as indicated by the

boldfaced rows of figures). For comparison, the price of fuel has reached \$12/mmBTU only 6.1% of the time since 1999. For both types of units, the price of the fuel must exceed the index-based price utilized by the Internal Market Monitor by 3% or more for oil and by 10% or more for gas. Statistically, this happens only five percent of the time. When this factor is combined with the fact that the probability of the fuel prices in question reaching the levels that would result in mitigation (\$26/mmBTU for oil and \$12/mmBTU for gas) is also very low, the likelihood of mitigation for either the oil unit or the gas units is extremely low. The analysis demonstrates that fuel price fluctuations would need to be significantly higher than historical fuel price fluctuations for both gas and oil before the application of the \$80/MW-day cap would result in mitigation for Market Participants that accurately reflect the costs and physical operating characteristics in the Supply Offer for a Resource. To summarize, this is a result of three primary factors:

- (i) Fuel prices have historically been much lower than the fuel price level that is required to trigger the \$80/MW-day cap given the characteristics of the representative resources analyzed by the Internal Market Monitor;
- (ii) Day-to-day oil price fluctuations have been very low (in the range of less than 3% for No. 6 oil for 95% of prices since 1999), so that the price of oil would need to be much higher (and much higher than historically is the case) before a difference between the index price and the Market Participant's actual purchase price would result in the \$80/MW-day threshold cap being triggered;
- (iii) While gas price fluctuations are historically higher than oil price fluctuations, gas-fired units have more flexible operating parameters; this translates into much lower low load costs than the typical oil-fired units. Accordingly, even with the gas price fluctuations between the

market price paid by the supplier and the index price that is used for purposes of establishing Reference Levels, the gas-fired units would reach the \$80/MW-day cap only if gas prices exceeded historical prices observed only 6.10% of the time. This holds true even if it is assumed that fuel prices fluctuate by 10%, which in fact has historically occurred only 5% of the time.

32. This concludes our affidavit.

Dated: October 29, 2009

ATTESTATION

I am the witness identified as David LaPlante in the foregoing Affidavit of David LaPlante and Mario S. DePillis, Jr. dated October 29, 2009 (the "Affidavit"). I have read the Affidavit and am familiar with its contents. The facts set forth therein are true to the best of my knowledge, information, and belief.

*David LaPlante*

David LaPlante

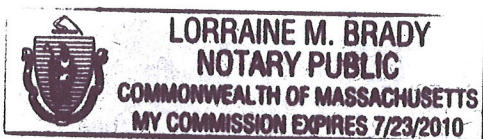
October 29, 2009

Subscribed and sworn to before me  
this 29th day of October, 2009

*Lorraine M. Brady*

Notary Public

My commission expires: July 23, 2010



ATTESTATION

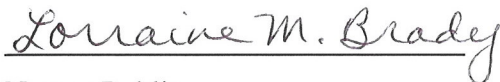
I am the witness identified as Mario S. DePillis, Jr. in the foregoing Affidavit of David LaPlante and Mario S. DePillis, Jr. dated October 29, 2009 (the "Affidavit"). I have read the Affidavit and am familiar with its contents. The facts set forth therein are true to the best of my knowledge, information, and belief.



Mario S. DePillis, Jr.

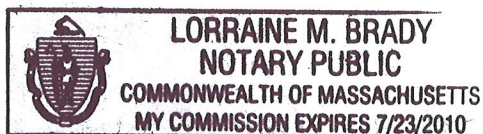
October 30, 2009

Subscribed and sworn to before me  
this 30th day of October, 2009



Notary Public

My commission expires: July 23, 2010



**ATTACHMENT 3**

**List Of Governors And Utility Regulatory Agencies In New England**

**New England Governors  
and Utility Regulatory  
and Related Agencies**

**October 21, 2009**

Connecticut

The Honorable M. Jodi Rell  
State Capitol  
210 Capitol Ave.  
Hartford, CT 06106

Connecticut Department of Public Utility Control  
10 Franklin Square  
New Britain, CT 06051-2605

Maine

The Honorable John E. Baldacci  
One State House Station  
Rm. 236  
Augusta, ME 04333-0001

Maine Public Utilities Commission  
State House, Station 18  
242 State Street  
Augusta, ME 04333-0018

Massachusetts

The Honorable Deval Patrick  
Office of the Governor  
Rm. 360 State House  
Boston, MA 02133

Massachusetts Department of Public Utilities  
One South Station  
Boston, MA 02110

New Hampshire

The Honorable John H. Lynch  
State House  
25 Capitol Street  
Concord, NH 03301

New Hampshire Public Utilities Commission  
21 South Fruit Street  
Suite 10  
Concord, NH 03301-2429

Rhode Island

The Honorable Donald L. Carcieri  
State House Room 115  
Providence, RI 02903

Rhode Island Public Utilities Commission  
89 Jefferson Boulevard  
Warwick, RI 02888

Vermont

The Honorable James H. Douglas  
109 State Street, Pavilion  
Montpelier, VT 05609

Vermont Public Service Board  
112 State Street, Drawer 20  
Montpelier, VT 05620-2701

**New England Governors  
and Utility Regulatory  
and Related Agencies**

**October 21, 2009**

Elia Germani, President  
New England Conference of  
Public Utilities Commissioners, Inc.  
c/o RI Public Utilities Commission  
89 Jefferson Boulevard  
Warwick, RI 02888

William M. Nugent  
Executive Director  
New England Conference of  
Public Utilities Commissioners, Inc.  
50 Forest Falls Drive, Suite 6  
Yarmouth, ME 04096-6937

Harvey L. Reiter, Esq.  
Counsel for New England Conference  
of Public Utilities Commissioners, Inc.  
c/o Stinson Morrison Hecker LLP  
1150 18th Street, NW, Suite 800  
Washington, DC 20036-3816

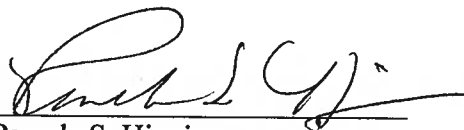
Power Planning Committee  
New England Governors' Conference, Inc.  
76 Summer Street, 2nd Floor  
Boston, MA 02110-1226

Heather Hunt  
Executive Director  
New England States Committee on Electricity  
[HeatherHunt@NESCOE.com](mailto:HeatherHunt@NESCOE.com)

**CERTIFICATE OF SERVICE**

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

Dated at Washington, D.C., this 30th day of October, 2009.

A handwritten signature in black ink, appearing to read "Pamela S. Higgins", written over a horizontal line.

Pamela S. Higgins