



May 12, 2010

VIA HAND DELIVERY

The Honorable Kimberly D. Bose, Secretary
The Honorable Nathaniel J. Davis, Sr., Deputy 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. ER07-397-___, Compliance Filing of ISO New England Inc.*

The Filing Parties Request Waiver of 60-Day Notice Period; Shortened Comment Period Requested

Dear Secretary Bose and Deputy Secretary Davis:

Pursuant to Rule 1907 of the Federal Energy Regulatory Commission's ("FERC" or "Commission")¹ Rules of Practice and Procedure,² ISO New England Inc. (the "ISO") and the New England Power Pool Participants Committee ("NEPOOL") (collectively, the "Filing Parties")³ hereby submit an original and five copies of this transmittal letter and the revision to Section III.13 of the ISO Tariff in response to the compliance requirement in the Commission's order issued on February 28, 2007,⁴ in Docket No. ER07-397-000 ("Compliance Filing"). The

¹ 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. Section II of the ISO Tariff contains the Open Access Transmission Tariff ("ISO OATT"). Section III of the ISO Tariff contains Market Rule 1.

² 18 C.F.R. § 1907 (2009).

³ The Filing Parties note that the rights under Section 205 of the Federal Power Act to modify terms, conditions and rates in the ISO Tariff are held and exercised by the ISO. NEPOOL does not hold Section 205 rights over the ISO Tariff, but rather provides advisory input through sector voting on those parts of the ISO Tariff over which the ISO has Section 205 filing rights.

⁴ *ISO New England Inc.*, 118 FERC ¶ 61,163 at P 30 (2007) ("February 28, 2007 Order") (requiring the ISO to implement tariff provisions prior to the first Forward Capacity Commitment period (*i.e.*, 2010) to prevent double

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Filing Parties submit that the Compliance Filing addresses the Commission's directive in the February 28, 2007 Order.

The February 28, 2007 Order, as discussed further in Section III of this transmittal letter, directed the ISO to file, prior to the commencement of the first Forward Capacity Auction ("FCA") commitment period (*i.e.*, June 1, 2010), tariff language that ensures against double compensation of costs associated with the capability to provide reactive service: that is, through the receipt of compensation from both (1) Capacity Cost payments made to Qualified Generator Reactive Resources (*i.e.*, a generator eligible to receive Capacity Cost rate payments) under Schedule 2 of the ISO OATT for their capability to provide reactive service, and (2) the FCA-derived capacity payments received by resources that clear in the FCA.⁵ This directive was consistent with the ISO's commitment to examine the interaction between the Schedule 2 Capacity Cost rate and the Capacity Clearing Price received in an FCA by a Qualified Generator Reactive Resource to determine whether these separate payments result in double compensation.⁶ Since the February 28, 2007 Order, as discussed further in Section III, the ISO has completed its analyses considering the potential for double compensation, and the Commission has issued various orders regarding this very issue. The results of the ISO's analyses⁷ and the Commission's determinations subsequent to the February 28, 2007 Order provided the foundation for the tariff provisions submitted in this Compliance Filing.⁸

As described in Section IV, with its own analyses and the Commission's determinations as a foundation, the ISO developed tariff language that provides further assurance that resources that are eligible to receive Schedule 2 Capacity Cost payments do not receive double compensation by prohibiting the resource setting the FCA clearing price – consistent with competitive market behavior – from including in its FCA offer expected revenues from the Capacity Cost rate component. This provides certainty that the FCA clearing price will not

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recovery by resources that are eligible to receive Capacity Cost payment under Schedule 2 of the ISO OATT), *order on reh'g*, 130 FERC ¶ 61,005 (2009) ("March 9, 2009 Order"), *order on reh'g*, 130 FERC ¶ 61,005 (2010) ("January 5, 2010 Order").

⁵ *Id.*

⁶ *Id.*

⁷ See Answer of ISO New England Inc., *Maine Public Utilities Commission v. ISO New England Inc.*, Docket No. EL07-38-000 (filed Oct. 14, 2008) ("ISO Answer") (demonstrating Qualified Generator Reactive Resources have an incentive to formulate their bids to account for revenues from the Schedule 2 Capacity Cost payment, in light of the fact that resources which do not provide reactive service do not need to recover the costs of such service).

⁸ See March 9, 2009 Order at P 16 (ruling when the FCA clearing price is less than the "agreed-to full (or gross) cost of new entry" double recovery is not a concern); *Maine Public Utilities Commission v. ISO New England Inc.*, 126 FERC ¶ 61,090 at P 45 (2009) (concurring double recovery is not a concern when an FCA is competitive) ("February 3, 2009 Order"); *id.* at P 47 (acknowledging double recovery is not a concern when the clearing price is set by a resource without VAR capability).

include any anticipated revenues from the Schedule 2 Capacity Cost payment and eliminates any potential for double compensation.

For the reasons explained in Section VI, the Filing Parties request a waiver of the sixty-day prior notice requirement in order to allow the revision to Section III.13 of the ISO Tariff to become effective **June 1, 2010**, consistent with the February 28, 2007 Order's directive that the ISO file tariff provisions prior to the commencement of the first FCA. To facilitate this schedule, the Filing Parties also request a shortened comment period, with comments due within seven days of this filing, or by May 19, 2009.

I. DESCRIPTION OF THE FILING PARTIES AND COMMUNICATIONS

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

NEPOOL is a voluntary association organized in 1971 pursuant to the New England Power Pool Agreement, and it has grown to include more than 420 members. The Participants include all of the electric utilities rendering or receiving service under the Tariff, as well as independent power generators, marketers, load aggregators, brokers, consumer-owned utility systems, end users, demand resource providers, developers and a merchant transmission provider. Pursuant to revised governance provisions accepted by the Commission,⁹ the Participants act through the NEPOOL Participants Committee. The Participants Committee is authorized by Section 6.1 of the Second Restated NEPOOL Agreement and Section 8.1.3(c) of the Participants Agreement to represent NEPOOL in proceedings before the Commission. Pursuant to Section 2.2 of the Participants Agreement, "NEPOOL provide[s] the sole Participant Processes for advisory voting on ISO matters and the selection of ISO Board members, except for input from state regulatory authorities and as otherwise may be provided in the Tariff, TOA and the Market Participant Services Agreement included in the Tariff."

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⁹ *ISO New England Inc., et al.*, 109 FERC ¶ 61,147 (2005).

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II. HISTORICAL BACKGROUND

A. The February 28, 2007 Order Directing ISO to Address Concerns with Potential Double Compensation Between the Schedule 2 Capacity Cost Payments and FCA Capacity Payments

The Filing Parties submit this Compliance Filing in response to the Commission's directive in the February 28, 2007 Order. In that Order, the Commission addressed a December 29, 2006 joint filing by the ISO and NEPOOL of a comprehensive set of amendments to Schedule 2 of the ISO OATT, including, in relevant part, a proposal to update the Schedule 2 Capacity Cost rate to account for the addition of new generation to the mix of dynamic reactive resources in New England since 1998.¹¹ By protest filed on January 19, 2007, the Maine Public Utilities Commission ("MPUC") challenged the Schedule 2 Amendments, claiming, among other things, that the Schedule 2 Capacity Cost payments resulted in double compensation of the

¹⁰ Due to the joint nature of this filing, the Filing Parties respectfully request a waiver of Section 385.203 of the Commission's regulations to allow the inclusion of more than two persons on the service list in this proceeding.

¹¹ ISO New England Inc. and NEPOOL Participants Committee, Amendments to Schedule 2 – Reactive Power Supply and Voltage Control of the ISO New England Inc. Open Access Transmission Tariff, *ISO New England Inc. and New England Power Pool*, Docket No. ER07-397-000 (filed Dec. 29, 2006) ("Schedule 2 Amendments").

capital costs associated with generators' equipment to provide reactive service in light of the payments to generators under the FCM Settlement Agreement.¹² In response to this concern, the Filing Parties demonstrated that the Transition Payments¹³ under the FCM Settlement Agreement did not create any double compensation concerns, because those payments were less than the cost of new entry.¹⁴ With respect to the FCA capacity payments, the Filing Parties stated that they would "consider the potential for double compensation prior to when the FCA is fully implemented for the first FCA commitment year (*i.e.*, 2010)."¹⁵ In addition, the ISO committed to propose:

Tariff provisions to ensure that Resources eligible for CC payments under Schedule 2 for providing reactive supply and voltage control do not receive double compensation.¹⁶

The Commission ruled on the Schedule 2 Amendments in its February 28, 2007 Order. In pertinent part, the Commission agreed with the Filing Parties that the FCM Transition Payments do not result in double recovery because these payments are at rates below the agreed-to full cost of new entry.¹⁷ In the February 28, 2007 Order, the Commission also shared the Filing Parties' concern with a potential for double compensation to result from the FCA capacity payments and, consistent with the ISO's commitment, directed the ISO to propose tariff provisions that would address that concern.¹⁸ As the February 28, 2007 Order specifically states in Paragraph 30:

(t)he Commission agrees with ISO-NE that transition payments do not compensate resources for their reactive power capabilities since they are below the cost of new entry; however the Commission is concerned that double recovery can occur during the first FCA since the payments equal the cost of new entry. The ISO commits to proposing, for implementation prior to the first FCA commitment year, Tariff provisions to ensure that Resources eligible for CC payments under Schedule 2 for providing reactive supply and voltage control do not receive double compensation. Accordingly, the Commission will require ISO-

¹² The FCM Settlement payments at issue were (1) the Commission-approved payments ("Transition Payments") to generators during the transition period of the FCM – *i.e.*, December 1, 2006 to June 1, 2010 (the "Transition Period") and (2) the Forward Capacity Auction-derived capacity payments in accordance with the FCM Settlement Agreement.

¹³ See Motion for Leave to Answer and Answer of ISO New England Inc. and the New England Power Pool at 12, *ISO New England Inc.*, Docket No. ER07-297-000 (Feb. 5, 2007) ("ISO/NEPOOL Answer").

¹⁴ *Id.*

¹⁵ *Id.* at 13.

¹⁶ *Id.*

¹⁷ See February 28, 2007 Order at P 30.

¹⁸ *Id.*

NE to implement, prior to the commencement of the first FCA commitment year beginning June 1, 2010, tariff provisions to ensure that resources eligible for CC payments under Schedule 2 that provide reactive supply and voltage control do not receive double compensation.¹⁹

In fulfillment of the commitment reflected in Paragraph 30 of the February 28, 2007 Order, the ISO performed analyses of the interaction between the Schedule 2 Capacity Cost rate and the Capacity Clearing Price received in an FCA by a Qualified Generator Reactive Resource to assess whether these separate payments result in double recovery.²⁰ The second set of analyses, which relied upon the actual results of the first FCA, demonstrated the absence of a double compensation issue in a competitive FCA.²¹ Specifically, the ISO's analyses demonstrated that the costs of reactive power capability of Qualified Generator Reactive Resources will *not* be reflected in the resource's FCA offers.²² The ISO's analyses revealed that Qualified Generator Reactive Resources have an incentive to formulate their bids to account for revenues from the Capacity Cost payment, in light of the fact that resources which do not provide reactive service (*e.g.*, demand resources and imports) do not need to recover the costs of such service.

The Commission accepted the ISO's analyses in an Order issued on February 3, 2009, in Docket No. EL07-38-000,²³ denying a September 25, 2008 Revised Amended Complaint filed by the MPUC against the ISO.²⁴ The Commission's conclusions in the February 3, 2009 Order

¹⁹ *Id.* (emphasis added). The MPUC, the New Hampshire Public Utilities Commission ("NHPUC") and Central Maine Power Company ("CMP") filed a request for rehearing of the Commission's February 28, 2007 Order, challenging the Commission's ruling that the Schedule 2 Capacity Cost rate payments in addition to the Transition Payments do not result in double compensation ("Request for Rehearing"). The Commission denied the Request for Rehearing in the March 9, 2009 Order. The March 9, 2009 Order also recognized the ISO's commitment to address any concerns with double compensation between the Capacity Cost rate payment and the FCM capacity payment. See March 9, 2009 Order at P 9 ("ISO-NE and NEPOOL stated that they recognized that there may be an issue of double payment between the CC Rate and the FCM in the future, but that resolution of this issue would occur *in the final FCM rules.*") (emphasis added).

²⁰ See ISO Answer. The results of the ISO's examination of the double compensation concern were discussed with and presented to stakeholders at the NEPOOL Markets Committee meetings held on November 13, 2007, March 11, 2008, and May 13, 2008, and are available at: http://www.iso-ne.com/committees/comm_wkgrps/mrks_comm/mrks/index.html.

²¹ See ISO Answer at 9-10; 13-21. See also Motion for Leave to Answer and Response of ISO New England Inc. at 5-8, *Maine Public Utilities Commission v. ISO New England Inc.*, Docket No. EL07-38-000 (filed Nov. 13, 2008).

²² See ISO Answer and supporting Testimony of Marc D. Montalvo and Affidavit of Jinye Zhao, Ph.D.

²³ See February 3, 2009 Order at P 38.

²⁴ See Revised Amended Complaint of the Maine Public Utilities Commission Against ISO New England Inc., Motion for Affirmation of Extension of Time and Expedited Consideration at 5-6, *Maine Public Utilities Commission v. ISO New England Inc.*, Docket No. EL07-38-000 (filed Sept. 25, 2008) ("Revised Amended Complaint") (arguing that the Schedule 2 Capacity Cost rate results in double compensation of capital costs by generators when combined with the payments provided to generators under the FCM Settlement Agreement).

are discussed below, as they shaped the changes to Section III.13 of the ISO Tariff filed herein to address the compliance requirement in the Commission's February 28, 2007 Order.²⁵

B. The February 3, 2009 Order Concurring that Sellers in a Competitive FCA Have Incentive to Submit Bids Accounting for Other Revenue Streams and, as a Result, Double Compensation is Not a Concern

As briefly discussed above, in the February 3, 2009 Order, the Commission dismissed the MPUC's Revised Amended Complaint advancing the same arguments as those raised by the MPUC against the Schedule 2 Amendments in the above-referenced docket.²⁶ In relevant part, the Commission's February 3, 2009 Order concluded that payments under both Schedule 2 and the FCM Settlement Agreement (both Transition Payments and FCM capacity payments) do not result in double compensation for the following key reasons.

First, the Commission ruled that the Capacity Cost payment under Schedule 2 and the payments under the FCM Settlement Agreement are for separate services. As the February 3, 2009 Order specifically states:

First, we emphasize that, these are two distinct services, designed to achieve different purposes. As the Commission has explained in an earlier order, under the FCM construct, the Forward Capacity Auction procures sufficient capacity to meet the Installed Capacity Requirements for the given Capacity Commitment Period . . . Capacity resources, regardless of type (and whether they are capable of providing reactive service or not), will receive the same Forward Capacity Auction clearing price. In short, the Forward Capacity payments are designed to ensure resource adequacy and . . . the Forward Capacity Market itself is designed so that new capacity resources that seek to clear in the market have an incentive to bid a price which reflects the minimum revenue requirement needed to support their investment costs, net of other anticipated revenue streams . . . [R]eactive service is a unique service the compensation of which is not covered by capacity payments, whether transition payment or auction revenues . . . The CC Rate component . . . is a negotiated New England-wide rate for all VAR-capable resources that is designed to compensate qualified resources for their VAR capability to provide reactive service, but not for the costs associated with the equipment of a particular generator . . . [N]either the FCM payments nor the payments under the CC Rate component arise from a traditional cost-of-service

²⁵ See February 3, 2009 Order at P 39 (finding "ISO-NE and its supporting parties have demonstrated to our satisfaction that capacity payments under the FCM settlement agreement (both during the transition and from the Forward Capacity Auctions) and capability payments for reactive service under Schedule 2 do not result in double recovery of capital costs.").

²⁶ See *id.* at P 38.

methodology, under which specific costs are allocated to a service class to produce a set rate.²⁷

The Commission further concluded that “treating these two payment methodologies as if they were derived from a cost-of-service basis results in misleading, if not inaccurate, conclusions.”²⁸

Second, in the February 3, 2009 Order, the Commission reached a similar conclusion to that of the ISO’s game-theoretic analysis. Specifically, the Commission concluded that, under the FCM design, bidders have an incentive to bid a price which reflects the minimum revenue needed to support investment costs net of expected revenues from other revenue streams, as bidding at prices above this level would result in the resource pricing itself out of the market.²⁹ As the Order specifically states:

ISO-NE’s analysis, based on the data from the first Forward Capacity Auction, describes the likely bidding behavior of sellers in the Forward Capacity Auction process with respect to compensation from the CC Rate component. We agree with ISO-NE that any potential for double recovery is sufficiently reduced to ensure that the CC Rate component is just and reasonable. That is, qualified, VAR-capable generating resources have an incentive to reduce their FCM bids by the amount of their net revenues from the CC Rate component, given that resources which do not provide reactive service (e.g., demand resources and imports) do not need to recover the costs of such reactive service . . .

Given this, the Commission agreed that “sellers in a competitive Forward Capacity Auction will have an incentive to submit bids that take into account revenues from the CC Rate component and, as a result, double recovery is not a concern.”³⁰ That is, there is no double recovery concern in a competitive FCA.

Finally, the February 3, 2009 Order also dismisses the concern of double compensation if a resource without VAR capability sets the auction clearing price. As the Commission acknowledged:

if a capacity resource without VAR capability (e.g. a demand response resource) sets the auction clearing price, a new VAR-capable resource would not recover its VAR-related capital costs without the CC Rate component of Schedule 2 and, therefore, would not receive double recovery.³¹

²⁷ *Id.* at PP 39, 41-43.

²⁸ *Id.* at P 43.

²⁹ *See id.* at P 44.

³⁰ February 3, 2009 Order at PP 44-45.

³¹ *Id.* at P 47.

That is, if a resource without VAR capability sets the auction clearing price, there is no concern with double compensation.

C. The March 9, 2009 and January 5, 2010 Orders Reiterating the February 28, 2007 Order’s Requirement that the ISO File Tariff Language Addressing the Potential for Double Compensation Out of an Abundance of Caution

On March 9, 2009, the Commission issued an Order denying a request for rehearing of the Commission’s determination of no double recovery concerns between the Schedule 2 VAR Capacity Cost rate payment and the FCM Transition Payments.³² In the March 9, 2009 Order, the Commission reaffirmed its findings in the February 3, 2009 Order that the Schedule 2 VAR Capacity Cost rate payment does not result in double compensation when combined with either the FCM Transition Payments or the FCA capacity payments.³³ The Commission, however, reiterated its February 28, 2007 directive that the ISO file “tariff provisions to ensure that resources eligible for CC payments under Schedule 2 do not receive double compensation.”³⁴ On April 6, 2009, the ISO filed a Motion for Clarification, requesting that the Commission clarify whether the addition of tariff revisions was still required in light of the Commission’s findings in the February 3, 2009 Order.³⁵ In response to the Motion for Clarification, the Commission issued the January 5, 2010 Order, explaining that “[a]lthough our previous analyses have found that bidding incentives in the Forward Capacity Auctions make double recovery ‘highly unlikely,’” “ISO-NE was nevertheless required to propose tariff language out of ‘an abundance of caution.’”³⁶

D. Development of the Compliance Filing

To address the Commission’s directive, and consistent with its prior commitment to modify the FCM market rules, the ISO engaged in discussions with stakeholders in February 2010, following the January 5, 2010 Order. In developing a proposal to comply with the Commission’s directive, the ISO considered the Commission’s determinations in the orders discussed above, providing that double recovery is *not* a concern: (i) during the FCM Transition Period,³⁷ (ii) when the FCA clearing price is less than “the agreed-to full (or gross) cost of new entry”,³⁸ (iii) when an FCA is competitive,³⁹ and (iv) when the FCA clearing price is set by a

³² See March 9, 2009 Order at P 15.

³³ See *id.*

³⁴ *Id.* at P 18.

³⁵ See Motion for Clarification of ISO New England Inc., *ISO New England Inc. and New England Power Pool*, Docket No. ER07-397-000 (April 6, 2009) (“Motion for Clarification”).

³⁶ January 5, 2010 Order at P 8.

³⁷ See March 9, 2009 Order at P 16; February 28, 2007 Order at P 30.

³⁸ March 9, 2009 Order at P 16.

³⁹ See February 3, 2009 Order at P 45.

resource without VAR capability (*i.e.*, a non-VAR capable resource).⁴⁰ With this as a foundation, the ISO developed tariff language to be included in the FCM rules (Section III.13 of the ISO Tariff) that provides additional certainty against double compensation by requiring a certification from VAR-capable generating resources that they will reduce their offers into the FCA by the amount of their expected revenues from the Schedule 2 VAR Capacity Cost rate. As described in Section V, the revised tariff language received the support of the NEPOOL Markets Committee and Participants Committee.

III. DESCRIPTION OF AND JUSTIFICATION FOR THE COMPLIANCE CHANGES

A. Description of the Tariff Revision

Under the existing FCM design, as a matter of construct, resources that seek to clear in the FCA already have an incentive to offer a price that reflects the minimum revenue needed to support investment costs net of other expected revenues. To comply with the February 28, 2007 Order, the ISO has revised Section III.13 of the ISO Tariff to provide that by submitting a New Capacity Qualification Package, a Project Sponsor certifies that it will not include in an offer any anticipated Capacity Cost revenues that it expects to receive as a Qualified Generator Reactive Resource under Schedule 2 of the ISO OATT. This effectively prohibits a resource capable of setting the FCA clearing price from including in its FCA offer Schedule 2 Capacity Cost revenues that it expects to receive for its capability to provide reactive service and, thereby, ensures that the FCA clearing price – a uniform clearing price, which forms the basis of the price to be paid to all resources whether or not they are VAR-capable resources⁴¹ – does not reflect such revenues. This provides certainty that the FCA clearing price does not include any anticipated revenues from the Schedule 2 Capacity Cost payment and assurance that the FCA capacity payment does not create “double recovery” of costs associated with the capability to provide reactive service.

Specifically, the ISO has revised Section III.13.1.1.2.2.3 (Offer Information) of the ISO Tariff to add the following language:

(c) By submitting a New Capacity Qualification Package, the Project Sponsor certifies that an offer from the New Generating Capacity Resource will not include any anticipated revenues the resource is expected to receive for its capacity costs as a Qualified Reactive Resource pursuant to Schedule 2 of Section II of this Tariff.

⁴⁰ *See id.* at P 47.

⁴¹ *See id.* at P 39 (recognizing the foundation of the FCM as a uniform clearing price construct and not a unit-by-unit pay-as-bid construct, stating that all “[c]apacity resources, regardless of type (and whether they are capable of providing reactive service or not), will receive the same Forward Capacity Auction clearing price.”).

This tariff language addresses the Commission's requirements by prohibiting a New Generating Capacity Resource⁴² – *i.e.*, the resource capable of setting the FCA clearing price – from including in its FCA offer anticipated revenues that it expects to receive as Qualified Generator Reactive Resource under Schedule 2, consistent with the expected competitive market behavior.⁴³ This provides further assurance that the FCA clearing price paid to all capacity resources that clear in a FCA receive FCA capacity payments that do not reflect expected revenues recouped through the VAR Capacity Cost negotiated rate under Schedule 2.⁴⁴

B. Application of the Tariff Revision

The tariff language developed by the ISO to comply with the February 28, 2007 Order prevents a resource from including in its FCA offer the anticipated revenue for Capacity Cost payments under Schedule 2 for the capability to provide reactive service. By precluding a resource eligible to set the FCA clearing price from including those anticipated revenues in its offer, the concerns about the possibility of double compensation are addressed.

The application of the new subsection III.13.1.1.2.3(c), however, applies only to New Generating Capacity Resources. It specifically prohibits a New Generating Capacity Resource from including anticipated VAR Capacity Cost revenues that it expects to receive as a Qualified Generator Reactive Resource under Schedule 2. This provision does not apply to Existing Generating Capacity Resources.⁴⁵ However, the provision need not apply, for the FCM design already has protections in place that address this. For clarity, the FCM, by design, provides limited opportunities for Existing Generating Capacity Resources to impact the FCA capacity clearing price. In the FCA, all Existing Generating Capacity Resources will receive an FCM obligation unless they take certain actions to withdraw from the FCA. Although Existing Generating Capacity Resources are assumed to participate in the FCA and receive FCA capacity payments,⁴⁶ they *do not* participate in setting (and therefore cannot influence) the FCA clearing price unless the Existing Generating Capacity Resource requests to be removed from the FCA by submitting a de-list bid to the ISO in advance of the FCA (*i.e.*, during the qualification process) for review by the ISO's Market Monitor⁴⁷ or during a round of the FCA when the price falls

⁴² See ISO Tariff, Section III.13.1.1 (defining New Generating Capacity Resource).

⁴³ See February 3, 2009 Order at PP 44-45. A New Generating Capacity Resources certification that it will not include anticipated revenues from the Capacity Cost component under Schedule 2 of the ISO OATT is evidenced by the submittal of a New Capacity Show of Interest Form. While the language does not require an affidavit executed by a corporate officer, the ISO notes that resources are prohibited from providing false or misleading information to the ISO. See *e.g.*, 18 C.F.R. §§ 35.41(b), 35.41(c).

⁴⁴ See February 3, 2009 Order at P 42.

⁴⁵ See ISO Tariff, Section III.13.1.2.1 (defining Existing Generating Capacity Resource).

⁴⁶ See *id.* at § III.13.1.2.3.

⁴⁷ See *id.*

below 0.8 times CONE.⁴⁸ In reviewing an Existing Generating Capacity Resource's de-list bid, the ISO's Market Monitor determines whether the bid is consistent with the resource's net risk-adjusted going forward costs, among other things.⁴⁹ The ISO's Market Monitor determines this by calculating, pursuant to the methodology prescribed in the FCM rules, the resource's net risk-adjusted going forward costs, which reflect a netting of infra-marginal revenues component, including the expected Capacity Cost revenues under Schedule 2.⁵⁰ Additional tariff language to address the limited circumstance under which an Existing Generating Capacity Resource has the ability to influence the FCA clearing price, therefore, is not necessary.

The Filing Parties are requesting that the new subsection III.13.1.1.2.2.3(c) of the ISO Tariff become effective June 1, 2010. Because the new language applies in the FCA qualification process, its application will start with the qualification process associated with the sixth FCA, for the 2015-2016 Capacity Commitment Period. This is because the submittal window for the New Capacity Qualification Packages for the FCAs one through five have or will have been completed by the time the subsection III.13.1.1.2.2.3(c) becomes effective. Given the prospective application of the rule changes, which is consistent with well-established Commission precedent,⁵¹ the revised rules will first apply to New Capacity Qualification Packages submitted for the sixth FCA in early 2011.

As demonstrated herein, the ISO's revision to Section III.13 of the ISO Tariff submitted in this Compliance Filing addresses the Commission's directive in the February 28, 2007 Order. This revision provides a market-based approach to resolve the concern with a potential for double compensation in a manner that respects the FCM market design, recognizing that neither the Schedule 2 Capacity Cost negotiated-rate nor the FCM capacity payment arises from a traditional cost-of-service methodology based on the costs of equipment associated with any particular generator. The ISO's revision to Section III.13 provides further assurance that resources eligible to receive the Capacity Cost payment under Schedule 2 do not receive double

⁴⁸ See *id.* at § III.13.2.3.2(d). Dynamic De-List Bids are not reviewed by the ISO's Market Monitor, but do not present a concern with double compensation as they are below the cost of new entry.

⁴⁹ See *id.* at § III.13.1.2.3.2.1.2.

⁵⁰ See *id.* (the "resource's total ISO market revenues used in this calculation shall be calculated by the ISO and available to the Lead Market Participant upon request.").

⁵¹ See, e.g., *ISO New England Inc. and New England Power Pool*, 131 FERC ¶ 61,065 at P 152 (2010) ("...we will not require ISO-NE to implement the inflation adjustment with FCA # 4 as NEPGA and EPSA request, because the qualification process has already begun for the fourth FCA and it would not be reasonable to change the expected CONE in the middle of that process."); *ISO New England Inc.*, 119 FERC ¶ 61,045 at P 68 (2007) ("...the rules governing capacity resource qualification . . . should be transparent to all participants – existing and new – prior to the beginning of the qualification process."). See also *New York Independent System Operator, Inc.*, 122 FERC ¶ 61,211 at PP 130, 147 (2008) (accepting new mitigation measures prospectively, without refunds "as market participants can neither revisit economic decisions nor retroactively alter their conduct"); *New England Power Pool*, 87 FERC ¶ 61,045, at p.61,198 (1999) (agreeing with NEPOOL that modifications to market rules should be applied prospectively, "so that market participants will know the rules that will apply at the time they make their market decisions.").

compensation by effectively prohibiting the resource setting the FCA clearing price – consistent with competitive market behavior – from including in its FCA offer expected revenues from the Capacity Cost rate component under Schedule 2.

IV. STAKEHOLDER PROCESS

The ISO discussed its efforts and proposals for complying with the February 28, 2007 Order with the NEPOOL Markets Committee at the meetings held on February 9, March 10, and April 14, 2010. On April 14, 2010, the Markets Committee reviewed and voted in support of the revision to Section III.13 of the ISO Tariff filed herein. The motion passed with 73.59% in favor.⁵² The NEPOOL Participants Committee voted to support the revision to Section III.13 of the ISO Tariff filed herein at its May 7, 2010 meeting as part of its Consent Agenda, with four oppositions and one abstention.⁵³ An alternative proposal was offered by the MPUC, which was considered by the Transmission Committee at its April 28, 2010 meeting. That failed to receive the requisite level of support, with only 20% in favor, 80% opposed and 4 abstentions.

V. REQUESTED EFFECTIVE DATE

Pursuant to Section 35.11 of the Commission's rules and regulations, 18 C.F.R. § 35.11, the Filing Parties respectfully request waiver of the sixty-day notice requirement, so that the instant revision to Section III.13 of the ISO Tariff may become effective on **June 1, 2010**, consistent with the February 28, 2007 Order. Good cause exists to grant this request. The ISO's consideration and development of proposed tariff language to address the Commission's directive were dependent on further clarification from the Commission, which the Commission provided on January 5, 2010. Accordingly, the development of the changes to the Tariff did not commence until January, and stakeholder discussions did not commence until February. In light of the extensive history associated with the Commission's directive in the February 28, 2007 Order, the ISO wanted to provide for the compliance efforts to be fully vetted through the stakeholder process, which culminated in May. Moreover, no party will be adversely affected by the waiver requested in these circumstances. As explained above, application of the new subsection III.13.1.2.3.2.1.2(c) will begin on a going-forward basis with the qualification process

⁵² The individual Sector votes were Generation (17.3% in favor, 0% opposed), Transmission (8.65% in favor, 8.65% opposed, 3 abstentions), Supplier (17.3% in favor, 0% opposed), Alternative Resources (6.75% in favor, 6.75% opposed, 7 abstentions), Publicly Owned Entity (17.3% in favor, 0% opposed), and End User (6.29% in favor, 11.01% opposed, 3 abstentions).

⁵³ The Consent Agenda for a Participants Committee meeting, similar to the Consent Agenda for a Commission open meeting, is a group of actions (each recommended by a Technical Committee or subgroup established by the Participants Committee) to be taken by the Participants Committee through approval of a single motion at a meeting. All recommendations voted on as part of the Consent Agenda are deemed to have been voted on individually and independently. The Participants Committee's approval of the May 7, 2010 Consent Agenda included its support for the revision filed herein. The four oppositions and one abstention to the Consent Agenda, notably, were attributed to this revision. The oppositions were registered by the Massachusetts Attorney General, Bangor Hydro, Central Maine Power, and the Connecticut Office of the Consumer Counsel. The abstention was registered by the New Hampshire Office of the Consumer Advocate.

associated with the sixth FCA. The revision submitted herein also was broadly supported by Market Participants following consideration in the stakeholder process.

VI. 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 change submitted herewith does 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.⁵⁴ 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 tariff sheets reflecting the market rule revision;
- Attachment 2: Clean tariff sheet reflecting the market rule revision;
- 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 is being sent electronically.

35.13(b)(2) – As set forth in the introduction above, the ISO requests that the revision to Section III.13 become effective as of June 1, 2010.

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_ptcpnts_eserved.pdf. An electronic copy of this transmittal letter and the accompanying materials has 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.

⁵⁴ 18 C.F.R. § 35.13 (2009).

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

35.13(b)(5) – The reasons for this filing are discussed in this transmittal letter.

35.13(b)(6) – As explained above, the revision to Section III.13 of the ISO Tariff reflects the results of the Participant Processes required by the Participants Agreement and reflect the support of the Participants Committee.

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 change herein does 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 ISO Tariff.

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

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VII. CONCLUSION


For the reasons stated herein, the Filing Parties ask the Commission to grant the requested waivers and accept the Compliance Filing, without modification or condition, to become effective June 1, 2010.

Please acknowledge receipt of the foregoing by date-stamping the enclosed extra copies of this filing and returning them to the courier delivering the filing.


Respectfully submitted,



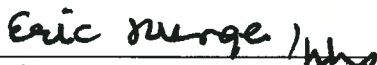
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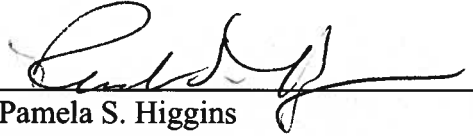


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CERTIFICATE OF SERVICE

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

Dated at Washington, DC this 12th day of May, 2010.

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

Pamela S. Higgins
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202.661.2258

Attachment 1

- (b) The Project Sponsor for a New Generating Capacity Resource must indicate in the New Capacity Qualification Package if an offer from the New Generating Capacity Resource may be rationed. A Project Sponsor may specify a single MW quantity at or above the Economic Minimum Limit to which offers may be rationed. Without such indication, offers will only be accepted or rejected in whole. This rationing election shall apply for the entire Forward Capacity Auction.
- (c) By submitting a New Capacity Qualification Package, the Project Sponsor certifies that an offer from the New Generating Capacity Resource will not include any anticipated revenues the resource is expected to receive for its capacity cost as a Qualified Reactive Resource pursuant to Schedule 2 of Section II of this Tariff.

III.13.1.1.2.2.4. Capacity Commitment Period

Election. In the New Capacity Qualification Package, the Project Sponsor must specify whether, if its New Capacity Offer clears in the Forward Capacity Auction, the associated Capacity Supply Obligation and Capacity Clearing Price (indexed for inflation) shall continue to apply after the Capacity Commitment Period associated with the Forward Capacity Auction in which the offer clears, for up to four additional and consecutive Capacity Commitment Periods, in whole Capacity Commitment Period increments only. If no such election is made in the New Capacity

Attachment 2

- (b) The Project Sponsor for a New Generating Capacity Resource must indicate in the New Capacity Qualification Package if an offer from the New Generating Capacity Resource may be rationed. A Project Sponsor may specify a single MW quantity at or above the Economic Minimum Limit to which offers may be rationed. Without such indication, offers will only be accepted or rejected in whole. This rationing election shall apply for the entire Forward Capacity Auction.
- (c) By submitting a New Capacity Qualification Package, the Project Sponsor certifies that an offer from the New Generating Capacity Resource will not include any anticipated revenues the resource is expected to receive for its capacity cost as a Qualified Reactive Resource pursuant to Schedule 2 of Section II of this Tariff.

III.13.1.1.2.2.4. Capacity Commitment Period

Election. In the New Capacity Qualification Package, the Project Sponsor must specify whether, if its New Capacity Offer clears in the Forward Capacity Auction, the associated Capacity Supply Obligation and Capacity Clearing Price (indexed for inflation) shall continue to apply after the Capacity Commitment Period associated with the Forward Capacity Auction in which the offer clears, for up to four additional and consecutive Capacity Commitment Periods, in whole Capacity Commitment Period increments only. If no such election is made in the New Capacity

Attachment 3

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