

154 FERC ¶ 61,008  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Cheryl A. LaFleur, Tony Clark,  
and Colette D. Honorable.

ISO New England Inc.

Docket No. ER16-307-000

ORDER ACCEPTING FILING

(Issued January 8, 2016)

1. On November 10, 2015, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> ISO New England Inc. (ISO-NE) filed proposed values for the Installed Capacity Requirement (ICR), Local Sourcing Requirement, Hydro Quebec Interconnection Capability Credits (HQICCs),<sup>2</sup> and related values needed to develop the demand curve for the 2019/2020 Capacity Commitment Period. The values will be used for the tenth Forward Capacity Auction (FCA 10), which is scheduled to be held in February 2016. As discussed below, we will accept the proposed values, effective January 9, 2016, as requested.

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> HQICCs are capacity credits that are allocated to entities that hold certain rights over the Hydro Quebec Phase I/II HVDC Transmission Facilities (HQ Interconnection). ISO-NE Transmittal, Docket No. ER16-307-000 (Transmittal) at 13 (citing Tariff sections I.2.2 and III.12.9.7). ISO-NE also states that the tie benefit value (*i.e.*, an estimation of the likelihood that being interconnected with another control area will expand the New England Control Area's capacity) for the HQ Interconnection was established using the results of a probabilistic calculation of tie benefits with Quebec. Transmittal at 13 (citing Tariff sections III.12.9.5 and III.12.9.7).

## **I. Background and Summary of Filing**

2. ISO-NE administers the Forward Capacity Market (FCM), in which eligible resources compete in an annual Forward Capacity Auction (FCA), to provide capacity three years in advance of the relevant delivery year.<sup>3</sup> In FCA 10, ISO-NE will procure capacity for the 2019/2020 Capacity Commitment Period.<sup>4</sup>

3. Prior to each FCA, ISO-NE makes determinations as to the values it will use each year for certain parameters used in the FCA, including the ICR, HQICCs, Local Sourcing Requirement, and capacity requirement values needed to develop the demand curve (collectively, ICR-Related Values). The ICR is the minimum level of capacity required to meet the reliability requirements defined for the New England Control Area.<sup>5</sup> In each FCA, ISO-NE seeks to procure net ICR – the amount of capacity remaining after subtracting the HQICC values.<sup>6</sup>

4. In its November 10, 2015 filing, ISO-NE submitted proposed values for the ICR, HQICCs, Local Sourcing Requirements and the import or export constrained Capacity Zones for FCA 10. With regard to the ICR, ISO-NE states that, consistent with prior years, the value is based on three essential components: the load forecast, resource availability, and tie benefits. ISO-NE states that the forecast published in the 2015 – 2024 Forecast Report of Capacity, Energy, Loads, and Transmission, dated May 1, 2015 (2015 CELT Report), was used to determine the load forecast, and forecasted resource availability was calculated by ISO-NE using the methods and procedures that were previously employed for calculating resource capacity ratings. ISO-NE explains that the methodology used to calculate the ICR-Related Values remains the same as the methodology utilized in previous years, but there is a change to the assumptions used. ISO-NE explains that the ICR now includes behind-the-meter solar photovoltaic (PV) resources that are forecasted to be installed, or that have been installed and are not yet

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<sup>3</sup> See, e.g., ISO-NE Transmission, Markets and Services Tariff (Tariff) section I.2.2 (50.0.0).

<sup>4</sup> The 2019/2020 Capacity Commitment Period starts on June 1, 2019 and ends on May 31, 2020.

<sup>5</sup> ISO-NE Transmittal at 4 (“the Installed Capacity Requirement is the amount of resources needed to meet the reliability requirements defined for the New England Control Area of disconnecting non-interruptible customers (a loss of load expectation or ‘LOLE’) no more than once every ten years (a LOLE of 0.1 days per year)”).

<sup>6</sup> See Tariff section III.13.2.2 (28.0.0).

reflected in historical loads, as a reduction in the load forecast. ISO-NE states that these upcoming and recently-installed behind-the-meter solar PV resources constitute a category of resources that is referred to as “behind-the-meter not embedded in load” (BTMNEL) solar PV resources<sup>7</sup> (referred to here as Non-Embedded Solar Resources).

5. ISO-NE states that, in its order accepting the ICR-Related Values for FCA 9, the Commission directed ISO-NE to fully explore the incorporation of distributed generation into the ICR calculation in the stakeholder process, and also stated that it expected ISO-NE to do so on a schedule that would allow these factors to be reflected, as appropriate, in the ICR calculation for FCA 10.<sup>8</sup> ISO-NE states that it worked with stakeholders through its Distributed Generation Working Group for over 10 months to develop its 2015 solar PV forecast. ISO-NE divided solar PV resources into four categories, the first three of which are not at issue here,<sup>9</sup> and adjusted the load forecast by the forecasted Non-Embedded Solar Resources.<sup>10</sup> This adjustment resulted in a 367-390 MW reduction

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<sup>7</sup> Transmittal at 2-3.

<sup>8</sup> *Id.* at 6; *see ISO New England Inc.*, 150 FERC ¶ 61,003, at P 20 (2015) (2015 ICR Order). In the 2015 ICR Order, the Commission also noted that the New England Power Pool Participants Committee (NEPOOL) and the New England States Committee on Electricity (NESCOE) had urged the Commission to require ISO-NE to provide a schedule for addressing the issue of how and when it would consider changes in the manner and extent to which it would include distributed solar photovoltaic generation in its ICR calculation, and ISO-NE in response stated that it recognized parties’ desire to resolve this issue expeditiously, and had committed to work with stakeholders on this issue. *Id.* PP 9-10, 14.

<sup>9</sup> Those first three types are (1) PV resources that already participate in the FCM, (2) PV resources that do not participate in the FCM but participate in the energy market as non-dispatchable Settlement Only Resources, and (3) behind-the-meter PV resources embedded in load (PV resources that have been installed with enough time for their historical output to become part of the model estimation period of historical load used to forecast future load). Transmittal at 7.

<sup>10</sup> ISO-NE arrived at its Non-Embedded Solar Resources proposal by working with state agencies and developing forecasts of future nameplate ratings of PV installations anticipated over the 10-year planning horizon. These forecasts are created for each state based on policy drivers, recent PV growth trends, and discount adjustments designed to represent a degree of uncertainty in future PV commercialization. To estimate the expected output from these future installations during summer peak load conditions, ISO-NE used state PV profiles from three years of historical data

(continued...)

in the ICR for the 2019-2020 Capacity Commitment Period.<sup>11</sup> ISO-NE asserts that, although behind-the-meter solar PV resources do not report their energy output to the ISO, their output directly reduces load. ISO-NE states that, although some behind-the-meter solar PV resources had been in service long enough to be captured in historical loads, the “rapid growth and installation” of solar PV resources led ISO-NE to develop a forecast that also reflected the amount of recently installed solar PV resources and solar PV resources expected to be installed within the forecast horizon (*i.e.*, Non-Embedded Solar Resources) in order to forecast the potential future peak loads as accurately as possible.<sup>12</sup>

6. ISO-NE proposes that the ICR for the 2019/2020 Capacity Commitment Period be 35,126 MW. ISO-NE states that, after deducting the HQICC value of 975 MW per month, the net ICR is 34,151 MW.<sup>13</sup>

7. ISO-NE states that, by vote on September 15, 2015, the NEPOOL Reliability Committee supported the ICR and the ICR-related values. ISO-NE further states that, by vote on October 2, 2015, NEPOOL supported the proposed HQICC values, but did not

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(2012 – 2014) that were developed from production data available from 665 currently installed individual PV sites throughout New England. Testimony of Stephen Rourke and Peter Wong, Attachment to Transmittal (Rourke-Wong Testimony), at 14-18. In order to avoid double-counting, ISO-NE separated the PV forecast into four distinct market participation categories, which parted market-facing from behind-the-meter resources. “The PV forecast values used in the ICR-Related Values reflect only PV resources that are forecasted to be behind-the-meter.” *Id.* at 17. Pursuant to Section III.12.7.2 of the Tariff, Settlement Only Resources, which are not behind-the-meter, are not modeled in the ICR-Related Values calculations. Transmittal at 7.

<sup>11</sup> From May through September of the 2019/2020 Capacity Commitment Period, the recognition of Non-Embedded Solar Resources is anticipated to reduce ICR between 367 and 390 MW. The recognition of Non-Embedded Solar Resources is not anticipated to reduce ICR from October through April. Rourke-Wong Testimony at 18.

<sup>12</sup> *Id.* at 12-13. ISO-NE states that it developed its forecast of solar PV resources, including BTMNEL (*i.e.*, Non-Embedded Solar Resources), together with stakeholders and representatives of the six New England states’ public utilities regulatory commissions, and ISO-NE’s Power Supply Planning Committee. *Id.* at 7.

<sup>13</sup> Transmittal at 4-5.

support the ICR, Local Sourcing Requirement for the southeastern New England (SENE) Capacity Zone and the Demand Curve Values, with a vote of only 53.08 percent in favor.<sup>14</sup>

## II. Notice of Filing and Responsive Pleadings

8. Notice of ISO-NE's filing was published in the *Federal Register*, 80 Fed. Reg. 72,431 (2015), with interventions and protests due on or before December 1, 2015. Timely-filed motions to intervene were submitted by Exelon Corporation, Entergy Nuclear Power Marketing, National Grid, GDF Suez Energy North America, Eversource Energy Service Company, and Emera Energy Services Inc. NEPOOL and the New England States Committee on Electricity (NESCOE) each filed a timely motion to intervene and comments. Dominion, NRG Power Marketing LLC (NRG) and New England Power Generators Association (NEPGA) each filed a timely motion to intervene and protest. On December 16, 2015, ISO-NE filed an answer to the protests submitted by NRG, Dominion, and NEPGA, and on December 30, 2015, NEPGA filed an answer to ISO-NE's answer.

### A. Comments Supporting ISO-NE's Proposal

9. NESCOE states that in 2014, ISO-NE began applying its first solar PV forecast to transmission planning studies to ensure that the planning for transmission infrastructure needs properly recognized reductions in system demand attributed to the growth of solar PV installations across the region. NESCOE and other market participants also urged ISO-NE to account for the growth of solar PV in developing the ICR, so as to avoid overstating the region's power needs and exposing customers to potentially hundreds of millions of dollars in unnecessary costs.<sup>15</sup> NESCOE further states that NEPOOL did not support the ICR value for FCA 9 because that value failed to reflect load reduction effects from increased distributed generation penetration.<sup>16</sup> NESCOE states that, in response to a Commission order on the ICR value for FCA 9,<sup>17</sup> ISO-NE developed a

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<sup>14</sup> *Id.* at 14.

<sup>15</sup> NESCOE Comments at 2-3.

<sup>16</sup> *Id.* at 3.

<sup>17</sup> *See* 2015 ICR Order, 150 FERC ¶ 61,003 at P 20.

2015 solar PV forecast through the stakeholder process, and developed an appropriate analysis of potential market and operational issues.<sup>18</sup>

10. NESCOE states that the resources captured in ISO-NE's solar PV forecast are five MW or less, and will eventually be reflected in historical load calculations used to calculate the ICR value.<sup>19</sup> NESCOE states that utilizing the solar PV forecast in the ICR calculation removes the lag between when resources are placed in service and when load calculations catch the resource's output, thus avoiding over-procurement of FCM resources.<sup>20</sup> NESCOE states that it anticipates that other parties will seek to link an ICR calculation that incorporates the solar PV forecast with the Renewable Technology Resource Exemption from buyer-side market power mitigation. NESCOE asserts that this linkage is inapposite, however, because Non-Embedded Solar Resources do not participate in the ISO-NE markets as supply-side resources, as ISO-NE has demonstrated, and because the inclusion of Non-Embedded Solar Resources does not alter the requirements for the Renewable Technology Resource Exemption set forth in the Tariff and relevant Commission orders.<sup>21</sup> NESCOE also argues that that Non-Embedded Solar Resources will continue to have an impact on demand whether or not they are used in the ICR value calculation, which could force consumers to purchase unnecessary capacity, thereby impacting consumers and the overall market.<sup>22</sup>

## **B. Protests**

### **1. Tariff Argument**

11. Dominion, NRG, and NEPGA argue that ISO-NE should submit the change to the calculation of ICR to the Commission through a section 205 filing to change the ISO-NE Tariff. They assert that ISO-NE and NEPOOL stakeholders have yet to fully consider the potential market and operational effects of ISO-NE's proposed change to the methodology of calculating ICR, and that the proposal constitutes a material change to rates, terms and conditions that should be filed for Commission review via a section 205

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<sup>18</sup> NESCOE Comments at 9.

<sup>19</sup> *Id.* at 6-7.

<sup>20</sup> *Id.* at 7.

<sup>21</sup> *Id.* at 9.

<sup>22</sup> *Id.* at 10.

filing.<sup>23</sup> NRG also expresses concern that ISO-NE's current Tariff provisions do not address new distributed resources and their incorporation into the long-term load forecast that is the basis for ICR, and states that while ISO-NE has some flexibility in how to conduct its load forecast, there appears to be no limiting principle to the changes ISO-NE has applied to the ICR calculation for FCA 10.<sup>24</sup>

12. NEPGA states that, though not all practices potentially affecting wholesale rates must be on file, those that “affect rates and service significantly, that are reasonably susceptible of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous” must be included in a Commission-approved Tariff,<sup>25</sup> and that the Commission determines what practices fit this definition through a “rule of reason,” balancing the benefits of notice and full disclosure against any potential burden to the public utility of filing terms that do not so affect rates and services.<sup>26</sup> NEPGA refers to two recent Commission decisions that required ISO-NE to revise its Tariff to include the Winter Reliability Program payment rate<sup>27</sup> and the automatic reduction in the Offer Review Trigger Price for wind resources.<sup>28</sup> NEPGA argues these cases presented circumstances similar to those here, and therefore, the Commission should require tariff changes to be filed under section 205.<sup>29</sup> Dominion argues the inclusion of Non-Embedded Solar Resources in the ICR calculation resulted in

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<sup>23</sup> Dominion Protest at 4, NRG Protest at 3, and NEPGA Protest at 2. NEPOOL also notes that one representative argued that the change in the load forecast methodology was substantial and should require an ISO filing of a change to rates, terms and conditions of service (NEPOOL Comments at 4-5).

<sup>24</sup> NRG Protest at 3-5.

<sup>25</sup> NEPGA Protest at 11 (citing *City of Cleveland, Ohio v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985)). NEPGA also cites to *Energy Spectrum, Inc. v. New York Indep. Sys. Operator, Inc.*, 141 FERC ¶ 61,197, at P 51 n.25 (2012) (*Energy Spectrum*).

<sup>26</sup> NEPGA Protest at 11 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 152 FERC ¶ 61,073 (2015) (*MISO*) (citing *PacifiCorp*, 127 FERC ¶ 61,144, at P 11 (2009))).

<sup>27</sup> NEPGA Protest at 12 (citing *ISO New England Inc.*, 152 FERC ¶ 61,190, at P 51 (2015) (Winter Reliability Order)).

<sup>28</sup> NEPGA Protest at 12 (citing *ISO New England Inc.*, 147 FERC ¶ 61,109, at P 22 (2014) (Wind Price Order)).

<sup>29</sup> NEPGA Protest at 12.

the reduction of the ICR for the 2019-2020 Capacity Commitment Period by 390 MW, the approximate size of a new generation facility, and therefore the inclusion of Non-Embedded Solar Resources represents a significant change in the rates, terms and conditions, and is therefore subject to a section 205 filing with the Commission.<sup>30</sup>

13. NRG states that incorporating future load forecasts of new solar PV resources is a departure from how ISO-NE has previously treated the load impact of emerging technologies. NRG states that ISO-NE's practice has been to wait for unaccounted energy efficiency to appear in customer consumption patterns before utilizing it to reduce the ICR value, and a tariff filing would enable ISO-NE's different treatment of Non-Embedded Solar Resources to be more fully evaluated.<sup>31</sup> Dominion and NEPGA argue the methodology to incorporate Non-Embedded Solar Resources into the ICR calculation should be treated similarly to demand response resources in ISO-NE's Tariff. Dominion states that load modeling assumptions in ISO-NE's Tariff delineate factors for including demand response resources in the ICR, such as when expected reductions from demand response resources not qualifying or participating in the FCA are reflected in the ICR.<sup>32</sup> NEPGA argues that requiring ISO-NE to file tariff language to reflect a change in the calculation of ICR to include Non-Embedded Solar Resources reductions is consistent with Tariff provisions on how demand response resources from the load forecast are incorporated into the ICR.<sup>33</sup>

14. Finally, NRG argues that the current method of incorporating the Non-Embedded Solar Resources forecast in the ICR calculation is unreliable because it is subject to state legislatures and local politics, which change. NRG explains that, in ISO-NE's filing of proposed values for the ICR for FCA 9, ISO-NE stated that values forecasting future performance of capacity resources in the two-settlement market design "would be purely speculative,"<sup>34</sup> and the Commission agreed in its order, stating that there is "no basis to

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<sup>30</sup> Dominion Protest at 5.

<sup>31</sup> NRG Protest at 5-6.

<sup>32</sup> Dominion Protest at 5.

<sup>33</sup> NEPGA Protest at 13.

<sup>34</sup> NRG Protest at 7 (citing ISO-NE, Answer, Docket No. ER15-325-000, at 7 (filed December 10, 2015)).



use forecasted performance data in the absence of actual historical performance under this nascent two-settlement market design.”<sup>35</sup>

## 2. Price Formation and Accuracy of Load Forecast

15. NRG argues that incorporating distributed generation resources into the long-term load forecast and calculations of the ICR, combined with the Renewable Technology Resource Exemption from buyer-side market power mitigation, undermines FCA price formation and will prevent the emergence of the appropriate price signals needed to attract new entry. Thus, NRG states, the combined inclusion of Non-Embedded Solar Resources in the load forecast, and the Renewable Technology Resource Exemption to buyer-side market power mitigation, will result in early retirements and an inability to attract new entry, thereby impacting reliability.<sup>36</sup>

16. NEPGA similarly argues that market issues surrounding ISO-NE’s proposed calculation of the ICR include price suppression effects and the elimination of the load growth that was projected to displace the uneconomic entry permitted by the Renewable Technology Resource Exemption. NEPGA states ISO-NE should continue to base its ICR value calculation on historical, observed changes in load rather than forecasts, because the methodology to develop the ICR directly affects the demand curve parameters.<sup>37</sup> NEPGA states that the Commission determined that the new sloped demand curve could mitigate the price-suppressing impact of the Renewable Technology Resource Exemption.<sup>38</sup> NEPGA contends that including an additional 390 MW reduction in the ICR, combined with the Renewable Technology Resource Exemption,

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<sup>35</sup> NRG Protest at 7 (citing 2015 ICR Order, 150 FERC ¶ 61,003 at P 19).

<sup>36</sup> NRG Protest at 3-4. NRG argues that the unused Renewable Technology Resource Exemption allocation from FCA 9 could provide as much as 384 MW of Renewable Technology Resource Exemption resources, which alongside the ICR reduction, represent approximately 776 MW of “zero priced supply” in FCA 10. NEPOOL also states that some of its members take the view that the incorporation of Non-Embedded Solar Resources in the load forecast will ultimately result in reduced future capacity prices that would accelerate the retirements of existing capacity resources, and challenge reliability (NEPOOL Comments at 4-5).

<sup>37</sup> NEPGA Protest at 4. NEPOOL similarly notes that some members raised the concern that the treatment of Non-Embedded Solar Resources in the load forecast would undermine progress in defining a sloped demand curve (NEPOOL Comments at 4-5).

<sup>38</sup> *Id.* at 8, citing *ISO New England Inc.*, 147 FERC ¶ 61,173 at P 83.

will “compromise if not eliminate the ability of load growth to displace the uneconomic entry allowed in the [FCA].”<sup>39</sup> NEPGA argues that this will create a new market design with flat or declining growth, without subjecting the new generation to buyer-side market power mitigation review under ISO-NE’s Minimum Offer Price Rule.<sup>40</sup> NEPGA asserts that the ISO-NE proposal also raises potential consequences for long-term system reliability and ISO-NE operations, in that the decrease in the FCA clearing price that will result from a lower ICR could result in an FCM design that decreases confidence in the market and, over time, prices capacity below the Net Cost of New Entry and the level necessary to enable resources to recover their costs on average and over time. NEPGA argues that the decreased prices will fail to procure the resources needed to maintain resource adequacy which will in turn cause system reliability problems.<sup>41</sup> NEPGA states that, in addition, distributed generation will have a disincentive to participate in the FCA because credit will be given to load that does not have performance obligations required of capacity resources, and the potential for double counting exists for forecasted Non-Embedded Solar Resources that actually participate in the FCM.<sup>42</sup>

17. NEPOOL states that some of its members opposed the ICR value because they believed it did not sufficiently account for Non-Embedded Solar Resources in the load forecast, in some cases because ISO-NE did not account for Settlement-Only Resources in the ICR calculation, and in others because those members believed that the solar PV forecast was set too high and reflected a flawed peak load forecast that did not properly account for Non-Embedded Solar Resources and demand response resources, or contained presumptions as to the performance of solar resources without any operational history.<sup>43</sup>

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<sup>39</sup> NEPGA Protest at 8.

<sup>40</sup> *Id.* NEPOOL similarly states that some members also had concerns that there could be a contradiction between the Renewable Technology Exemption, which was based on an expected average amount of peak load growth which would offset permitted out-of-market new entry, and that treating behind-the-meter solar PV as a load reducer would further reduce peak demand to yield flat or declining peak demand (NEPOOL Comments at 4-5).

<sup>41</sup> NEPGA Protest at 9-10.

<sup>42</sup> *Id.*

<sup>43</sup> NEPOOL Comments at 4-5.

### 3. Stakeholder Process

18. Dominion argues that, in the stakeholder process, ISO-NE solely focused on developing a solar PV forecast in the Distributed Generation Forecast Working Group and then included that forecast into the calculations of the ICR without any further discussion with stakeholders on the methods used to do this.<sup>44</sup> NEPGA also states that the stakeholder discussions on ICR methodology did not include consideration of issues beyond details of the peak load forecast for solar PV.<sup>45</sup> NEPGA clarifies that NEPOOL's discussion of ISO-NE's proposal focused on assumptions, projections, and data in the peak load forecast, but not the market and operational issues which NEPGA states "the Commission deemed critical to a proper evaluation of the proposal."<sup>46</sup>

#### C. ISO-NE's Answer

19. ISO-NE states that the reduction in the load forecast to account for Non-Embedded Solar Resources was fully vetted in the stakeholder process. ISO-NE adds that the development of the 2015 solar PV forecast by the ISO and the Distributed Generation Forecast Working Group, which is made up of stakeholders that include representatives of the six New England states' public utilities regulatory commissions, took place from December 2014 to April 2015,<sup>47</sup> and ISO-NE gave a presentation on the subject to the Reliability Committee on February 17, 2015. In addition, ISO-NE states that NEPGA presented the market issues described in their protests to the Markets Committee on three occasions, and that NEPGA's argument that the proposal to include Non-Embedded Solar as a reduction in the ICR conflicts with other features of the FCM was not substantiated. ISO-NE states that several of the issues that NEPGA raises, such as the Renewable Technology Resource exemption from buyer-side market power mitigation and the design of the system-wide demand curve, are outside the scope of this proceeding and, accordingly, should be dismissed by the Commission.<sup>48</sup>

20. ISO-NE states that the methodology to account for Non-Embedded Solar Resources does not need to be included in the Tariff. ISO-NE states that each year it

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<sup>44</sup> Dominion Protest at 4.

<sup>45</sup> NEPGA Protest at 6.

<sup>46</sup> *Id.*

<sup>47</sup> ISO-NE Answer at 4.

<sup>48</sup> *Id.* at 5

develops the load forecast for the ISO New England Reliability Coordinator area, and that the load forecast methodology has been in place for over thirty years. ISO-NE states the load forecast methodology, like other methodologies that it uses to calculate the ICR, has not been incorporated in the Tariff. ISO-NE states that the only Tariff filing relating to the methodology for calculating ICR was made in 2006, the advent of the FCM. ISO-NE states that the 2006 filing explained that, by design, the details of calculating the ICR-Related Values are to be reflected in ISO-NE's annual filing of the ICR as part of the FCM process. ISO-NE further explains that these Tariff provisions anticipate that the assumptions underlying ICR calculations will evolve over time and thus be reflected in the annual ICR filing. ISO-NE further states that, in its order accepting the FCM, the Commission rejected claims that certain aspects of the ICR calculations must be filed with the Commission under section 205.<sup>49</sup> ISO-NE states that the Commission found that the combination of the annual ICR filing under section 205 and the opportunity for stakeholders to participate in the process affords stakeholders sufficient opportunity to address any issues, and thus, a separate section 205 filing of the calculations underlying the ICR values was not required.<sup>50</sup>

21. ISO-NE points to the enactment of federal appliance energy efficiency standards, which were incorporated into the load forecast in 2009, as an example of how the load forecast has evolved in the ICR calculation without tariff revisions. ISO-NE states that:

This change was presented and explained to stakeholders and there was no suggestion that the inclusion of the effect of the federal appliance efficiency standards as a reduction in the load forecast required explicit Tariff language. Hence, [ISO-NE] reflected this change in consumer behavior in the load forecast that was used as an assumption in the ICR values.<sup>51</sup>

22. ISO-NE asserts that, similarly here, its reduction in the load forecast to account for Non-Embedded Solar Resources is another instance of evolution of the load forecast, on the basis that customers are altering their behavior by installing solar panels and, accordingly, those installations are resulting in a reduction to the load forecast. ISO-NE

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<sup>49</sup> *Id.* at 6-7 (citing *ISO New England Inc.*, 118 FERC ¶ 61,157, at PP 65-68 (2007) (ICR Rules Order).

<sup>50</sup> *Id.*

<sup>51</sup> ISO-NE Answer at 7.

states that it must account for this evolution, and that, as no change to the Tariff was required regarding the 2009 change discussed above, no change to the Tariff is required here.<sup>52</sup>

**D. NEPGA's Answer to ISO-NE's Answer**

23. NEPGA states, in response to ISO-NE's answer, that, although NEPGA was able to raise its concerns with ISO-NE's proposal at the NEPOOL Markets Committee, this does not discharge ISO-NE from its obligation to thoroughly consider and vet with NEPOOL stakeholders the potential market and operational consequences of its ICR proposal. NEPGA states ISO-NE's argument is a red herring, in that it avoids the question of whether ISO-NE satisfied the Commission's mandate that "ISO-NE must examine the market and operational issues associated with incorporating distributed generation into the ICR calculation."<sup>53</sup> NEPGA states ISO-NE has yet to fully explore and vet with NEPOOL stakeholders the potential market and operational consequences of its proposed change in ICR methodology. NEPGA further states the Commission rejected calls to order ISO-NE to make this same change in ICR methodology in effect for FCA 10 because the record before it was incomplete.<sup>54</sup> NEPGA requests that the Commission maintain its mandate that ISO-NE thoroughly vet the potential consequences of its proposal prior to filing it with the Commission. NEPGA further asks the Commission to reject the application of ISO-NE's proposed ICR value for FCA 10; and exercise its authority under section 206 of the FPA to order ISO-NE to file its proposed Tariff changes defining its new ICR methodology under section 205, or show cause why it should not.<sup>55</sup>

**III. Commission Determination**

**A. Procedural Matters**

24. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely-filed unopposed motions to intervene serve to make the entities filing them parties to this proceeding.

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<sup>52</sup> ISO-NE Answer at 8.

<sup>53</sup> NEPGA Answer at 3 (citing 2015 ICR Order, 150 FERC ¶ 61,003 at P 20).

<sup>54</sup> NEPGA Answer at 3.

<sup>55</sup> *Id.* at 4.

25. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept the answers filed by ISO-NE and NEPGA because they have provided information that has assisted us in our decision-making process.

**B. Substantive Matters**

26. As discussed further below, we accept the proposed ICR-related values, effective January 9, 2016, as requested. The purpose of the instant filing is for ISO-NE to propose values for the ICR, Local Sourcing Requirements, and the HQICCs to be used in FCA 10, and we find that ISO-NE followed its Commission-approved Tariff in calculating these values. In making this determination, we note that challenges to ISO-NE's filing are limited to incorporation of Non-Embedded Solar Resources into the ICR calculation.<sup>56</sup>

27. Regarding that change, we first note that ISO-NE followed the Commission's expectation that ISO-NE would work with its stakeholders to address the incorporation of solar PV forecasts into the ICR calculation for FCA 10. Specifically, when the Commission was considering the ICR values that ISO-NE filed for use in FCA 9, the Commission noted parties' concerns that ISO-NE's load forecast did not reflect the extensive distributed generation, particularly solar PV, being developed in the region.<sup>57</sup> To address the concern, the Commission stated:

While we acknowledge concerns about excluding distributed generation from the ICR calculation, we also agree with ISO-NE and various stakeholders that ISO-NE must examine the market and operational issues associated with incorporating distributed generation into the ICR calculation. Accordingly . . . we expect ISO-NE to fully explore the incorporation of

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<sup>56</sup> ISO-NE Transmittal at 3, 5.

<sup>57</sup> See NESCOE Comments, Docket No. ER15-325-000 (filed Nov. 25, 2014). NESCOE noted that ISO-NE's own forecast estimated that close to 500 MW of solar PV would be installed by 2018, but ISO-NE's calculation of the ICR for the 2018-2019 Capacity Commitment Period "wholly disregards the very forecast it developed, ignoring hundreds of MW of solar resources required by state policies, which ISO-NE itself tracked and verified will come online over the next three years," (*id.* at 8-9), but "[i]n failing to account for these increased levels of DG resources . . . the region's power needs are overstated and consumers are exposed to potentially hundreds of millions of dollars in unnecessary costs" (*id.* at 2, footnote omitted).

distributed generation into the ICR calculation in the stakeholder process . . . if determined appropriate, in the ICR calculation for FCA 10.<sup>58</sup>

28. Consistent with previous years, ISO-NE incorporated the load forecast published in the 2015 CELT Report in the determination of the ICR for FCA 10.<sup>59</sup> With respect to the quantity of Non-Embedded Solar Resources that it seeks to reflect in the determination of the ICR, ISO-NE states that annually, in conjunction with the Distributed Generation Forecast Working Group, it develops forecasts of future nameplate ratings of PV installations anticipated over the 10-year planning horizon. ISO-NE states that it used state PV profiles from three years of historical data (2012 – 2014), developed from production data available from 665 currently installed individual PV sites throughout New England as a basis for determining the seasonal claimed capability rating for these resources.<sup>60</sup>

29. ISO-NE further states that, to ensure that Non-Embedded Solar Resources are properly accounted for in the ICR-Related Values, and in order to avoid double-counting (*i.e.*, considering particular solar PV resources as both a generation resource and a load), it separated the types of solar PV resources into categories, and ensured that it would only consider as BTMNEL generation “in-service behind-the-meter PV resources that have not been captured in the historical load and behind-the-meter PV resources forecasted to be installed prior to the Capacity Commitment Period of interest.”<sup>61</sup>

30. We find that ISO-NE has properly incorporated Non-Embedded Solar Resources into its ICR calculation, and has supported that action. We dismiss the arguments made by protesters to the contrary, as follows.

### 1. Tariff Argument

31. As an initial matter, we disagree with protesters’ argument that the use of a forward-looking estimate of the penetration of Non-Embedded Solar Resources is a sufficiently “significant and material” change to ISO-NE’s current method of calculating

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<sup>58</sup> 2015 ICR Order, 150 FERC ¶ 61,003 at P 20 (footnote omitted).

<sup>59</sup> ISO-NE Transmittal at 5.

<sup>60</sup> Rourke-Wong Testimony at 16-17.

<sup>61</sup> *Id.* at 16.

the ICR that requires ISO-NE to submit tariff revisions under FPA section 205. As ISO-NE notes, the Commission has not previously required tariff revisions under section 205 each time ISO-NE revised the methodology used to calculate the ICR, and the existing tariff provisions recognize that those revisions may require ISO-NE to have sufficient flexibility to update its assumptions as necessary.<sup>62</sup> In 2006, ISO-NE and NEPOOL filed tariff provisions to govern the way in which ISO-NE would calculate the ICR so as to anticipate the region's needs three years into the future. The filing parties stated that the calculation of the ICR "will require assumptions to be made regarding the resources that will be available . . . and the forecasted load for the relevant time period."<sup>63</sup> Thus, to accommodate such changing assumptions, ISO-NE and NEPOOL stated that "by design, some details of calculating ICR and local sourcing requirements will be reflected in the ISO's annual filing of ICR values as part of the FCM process,"<sup>64</sup> rather than in a filing to change ISO-NE's Tariff. The ICR rules will "*define the process for calculating ICR*, whereas the annual filings will *identify the assumptions used to calculate the ICR* for a given period and identify the resulting numerical values."<sup>65</sup> The Commission accepted the filing, stating that "insofar as ISO-NE and stakeholders continue to develop and file with the Commission annual ICR values," parties could challenge ISO-NE's inputs into the ICR in those annual filings, and thus "the combination of the annual ICR filing and

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<sup>62</sup> See Tariff sections III.12.1 ("Prior to each Forward Capacity Auction, the ISO shall calculate the Installed Capacity Requirement for the New England Control Area for each upcoming Capacity Commitment Period . . . . If the Installed Capacity Requirement shows a consistent bias over time, either high or low, the ISO shall make adjustments to the modeling assumptions and/or methodology through the stakeholder process to eliminate the bias in the Installed Capacity Requirement") and III.12.8 ("[F]or each Load Zone within the New England Control Area . . . . Each year, the load forecasts and underlying methodologies, inputs and assumptions shall be reviewed with Governance Participants, the state utility regulatory agencies in New England and, as appropriate, other state agencies. If the load forecast shows a consistent bias over time, either high or low, the ISO shall propose adjustments to the load modeling methodology to the Governance Participants, the state utility regulatory agencies in New England and, as appropriate, other state agencies to eliminate the bias").

<sup>63</sup> Transmittal, Docket No. ER07-365-000 at 2 (filed December 22, 2006).

<sup>64</sup> *Id.* at 11.

<sup>65</sup> *Id.* (emphasis added).



the opportunity for state regulatory agencies to participate in the process” afforded parties sufficient opportunity to address their concerns.<sup>66</sup>

32. As the Commission has stated on several occasions, “the determination of what agreements ‘affect or relate to’ electric service . . . must be judged by the rule of reason.”<sup>67</sup> NEPGA notes in its protest<sup>68</sup> that the Commission employs a “rule of reason” to determine what practices, terms or conditions must be filed as part of a tariff, and balances the “real benefits” of notice and full disclosure against any potential burden to the public utility of filing terms that do not so affect rates and services.<sup>69</sup> Under the rule of reason, the Commission has previously determined that it is not “appropriate to deprive utilities of the flexibility to manage their operations by introducing delay and layered decision-making,”<sup>70</sup> and the arguments here do not justify a burden of filing with the Commission the ICR methodology to incorporate Non-Embedded Solar Resources.<sup>71</sup>

33. Furthermore, the cases cited by NEPGA are factually distinguishable from this case and are therefore inapposite. NEPGA points to two Commission orders, one requiring ISO-NE to include the ISO-NE Winter Reliability Program payment rate formula in its Tariff,<sup>72</sup> and the second requiring ISO-NE to file in its Tariff reductions in the Offer Review Trigger Price for certain resources based on potential new Federal tax

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<sup>66</sup> ICR Rules Order, 118 FERC ¶ 61,157 at P 68.

<sup>67</sup> See *PacifiCorp*, 127 FERC ¶ 61,144 at P 11.

<sup>68</sup> NEPGA Protest at 10-11.

<sup>69</sup> *MISO*, 152 FERC ¶ 61,073 at P 22 (citing *PacifiCorp*, 127 FERC ¶ 61,144 at P 11).

<sup>70</sup> *PacifiCorp*, 127 FERC ¶ 61,144 at P 11 (citing *Town of Easton, Maryland v. Delmarva Power & Light Co.*, 24 FERC ¶ 61,251 at 61,531 (1983)).

<sup>71</sup> With regard to protesters’ arguments that ISO-NE is improperly treating Non-Embedded Solar resources differently from energy efficiency and demand response, as the Commission has often stated, there can be more than one just and reasonable rate or rate design, and, as we note above at PP 31-32, the filing at issue here is just and reasonable. Nothing that protesters argue about the treatment of new solar PV resources, as compared to the treatment of other types of resources, justifies a finding that the proposed treatment at issue here is not just and reasonable.

<sup>72</sup> NEPGA Protest at 12 n.32.

law.<sup>73</sup> Regarding the Commission's order addressing the Winter Reliability Program, ISO-NE simply provided its payment formula for the Winter Reliability Program on its website with no corresponding tariff provisions,<sup>74</sup> whereas Tariff sections III.12.1, III.12.7, and III.12.8 already contain extensive guidance and parameters for the calculation of ICR.<sup>75</sup> With regard to Offer Review Trigger Price changes, the Commission required stakeholder and Commission review of tax credit changes in order to avoid the Internal Market Monitor subjectively interpreting federal tax law, given the uncertainties regarding the parameters and applicability of any future tax credits.<sup>76</sup> Here, unlike the Offer Review Trigger Price changes, the proposed treatment of Non-Embedded Solar Resources does not require ISO-NE to interpret laws or regulations before arriving at a value. Additionally, in *MISO* and *PacifiCorp*, the Commission found that not all rate agreements had to be filed with the Commission under section 205, emphasizing that "the rule of reason allows the Commission to exercise its discretion to allow utilities to forego filing particular contracts or practices."<sup>77</sup>

34. We note that, with regard to the ICR, ISO-NE has previously stated that it uses a mix of assumptions as to future occurrences to develop the ICR.<sup>78</sup> We find that ISO-NE

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<sup>73</sup> NEPGA Protest at 12 nn.33-25.

<sup>74</sup> Winter Reliability Order, 152 FERC ¶ 61,190 at P 51 n.89.

<sup>75</sup> In *Energy Spectrum*, 141 FERC ¶ 61,197 at P 51 n.25, the Commission similarly found that the New York Independent System Operator, Inc. had erred in using a technical bulletin to clarify existing tariff provisions regarding behind-the-meter generation that were ambiguous.

<sup>76</sup> Wind Price Order, 147 FERC ¶ 61,109 at P 22.

<sup>77</sup> *PacifiCorp*, 127 FERC ¶ 61,144 at P 10 nn.12, 14 (*citing Public Service Company of Colorado*, 67 FERC ¶ 61,371, at 62,267 (1994)); *see also MISO*, 152 FERC ¶ 61,073 at P 22.

<sup>78</sup> *See ISO New England Inc.*, 130 FERC ¶ 61,105, at PP 8-9 (2010) (2010 ICR Order). With respect to the basis for the proposed 2010/2011 Installed Capacity Requirement, ISO-NE states that "no resource additions or attritions are assumed because there is no certainty that new resource additions or existing resource attritions will clear the auction." ISO-NE further states that, with respect to the proposed Installed Capacity Requirement for the 2010/2011 final annual reconfiguration auction, "individual generating unit forced outage assumptions are based on the unit's historical forced outage data or NERC average data for the same class of unit. Performance assumptions for demand response resources are based on *presumed* or actual responses during all

(continued...)

has appropriately utilized the annual filing to provide relevant information on the underlying assumptions for the calculation of the ICR values,<sup>79</sup> and we reject NEPGA's request in its answer that we act under section 206 to require ISO-NE to file the change to its method of calculating ICR under section 205.

## 2. Price Formation

35. We disagree with the argument that the incorporation of Non-Embedded Solar Resources in the load forecast necessarily undermines the process of price formation and prevents appropriate price signals. ISO-NE's choice to adjust its load forecast to account for Non-Embedded Solar Resources is one way to establish an accurate ICR. While ISO-NE has previously based its forecasts on historical, observed changes in load, that does not prevent ISO-NE from adding Non-Embedded Solar Resources to its load forecast, and we find that it has supported its method of doing so.<sup>80</sup> Additionally, NEPGA's concern that Non-Embedded Solar Resources should be subject to buyer-side price mitigation is irrelevant: ISO-NE has demonstrated that the Non-Embedded Solar Resources that it is adding to the load forecast do not participate in ISO-NE's capacity markets;<sup>81</sup> thus, the incorporation of those resources into the load forecast more accurately defines the state of the system and prevents ISO-NE from over-procuring capacity resources.

36. Further, although certain protestors contend that the reflection of these resources in the load forecast will likely have an impact on the clearing price in the FCA due to the reduced ICR value, that argument is inapposite in the context of this proceeding. The purpose of the ICR – and this particular filing - is to ensure that ISO-NE procures sufficient resources to meet a reliability requirement of disconnecting non-interruptible customers no more than once every ten years. The ICR value is not intended to establish a particular price in the FCA. In addition, we find speculative NRG's argument that the incorporation of these resources in the load forecast in conjunction with the Renewable Technology Resource Exemption will lead to early retirements.

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historical OP-4 (emergency) events and performance audits" (footnotes omitted, emphasis added).

<sup>79</sup> ISO-NE Answer at 7; *see ISO New England Inc.*, 123 FERC ¶ 61,129, at P 29 (2008).

<sup>80</sup> *See* Rourke-Wong Testimony at 16-18.

<sup>81</sup> *Id.* at 17.

### 3. Stakeholder Process

37. Finally, we are not persuaded by arguments that ISO-NE failed to hold an appropriate stakeholder process to discuss the changes to the calculation of the ICR. ISO-NE developed the method by which it would incorporate Non-Embedded Solar Resources into the ICR with its Distributed Generation Forecast Working Group over several months, and also worked with its Power Supply Planning Committee on this issue. NEPGA was able to present its concerns as to the market consequences of ISO-NE's proposal to the Markets Committee. As discussed in NEPOOL's comments, the Reliability Committee supported ISO-NE's inclusion of Non-Embedded Solar Resources in the ICR, and other issues relating to inclusion of Non-Embedded Solar Resources were discussed extensively at ISO-NE's Participants Committee.<sup>82</sup> While those discussions did not result in NEPOOL's support of ISO-NE's proposed ICR, we find the stakeholder process conducted by ISO-NE has provided sufficient process, and, contrary to NEPGA's assertion in its answer, considered the operational and market consequences of its change to its method of calculating the ICR.<sup>83</sup>

#### The Commission orders:

ISO-NE's proposed ICR values for the 2019/2020 Capacity Commitment Period are hereby accepted, effective January 9, 2016, as requested.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>82</sup> See NEPOOL Comments at 3-5. ISO-NE's stakeholder process included discussions in the Distributed Generation Working Group, Reliability Committee and the Participants Committee.

<sup>83</sup> We also reiterate, in this context, that ISO-NE uses, and has previously stated that it uses, a mix of assumptions as to future occurrences to develop the ICR. See *2010 ICR Order*, 130 FERC ¶ 61,105 at PP 8-9.