

162 FERC ¶ 61,175
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;
Cheryl A. LaFleur, Neil Chatterjee,
Robert F. Powelson, and Richard Glick.

ISO New England Inc.

Docket Nos. ER18-455-000
ER18-455-001

ORDER ACCEPTING TARIFF REVISIONS

(Issued February 28, 2018)

1. On December 15, 2017, as amended on December 20, 2017, ISO New England Inc. (ISO-NE) and the New England Power Pool Participants Committee (NEPOOL) (together, Filing Parties) filed, pursuant to section 205 of the Federal Power Act (FPA),¹ proposed revisions to the ISO-NE Transmission, Markets and Services Tariff (Tariff) to establish a new capacity market bilateral transaction known as an Annual Reconfiguration Transaction (ART), as well as other changes to the Forward Capacity Market. According to Filing Parties, the ART mechanism reflects an alternative means to accomplish the equivalent of a Capacity Supply Obligation (CSO) Bilateral, while also accounting for the impact of a resource's location on system reliability. In this order, we accept Filing Parties' proposed revisions, effective March 1, 2018 and June 1, 2018, as requested, as discussed below.

I. Background

2. As part of ISO-NE's Forward Capacity Market, ISO-NE holds an annual Forward Capacity Auction (FCA) in which capacity suppliers compete to provide capacity to the New England region for the relevant delivery year, three years in the future. Suppliers of capacity that receive a CSO in an FCA commit to, and receive payment for, providing capacity for that one-year period associated with that FCA (i.e., the capacity commitment period).

3. Following each FCA, but prior to the capacity commitment period, CSOs may be transferred between resources through Annual Reconfiguration Auctions (ARA) or bilateral transactions. ARAs are auctions for future capacity commitment periods

¹ 16 U.S.C. § 824d (2012).

wherein a CSO may be shed using a demand bid or acquired using a supply offer for the entire twelve months of the capacity commitment period. There are three ARAs for each capacity commitment period and they are held in the month of June that is approximately 24 months before the start of the capacity commitment period, the month of August that is approximately 10 months before the start of the capacity commitment period, and in the month of March that is approximately 3 months before the start of the capacity commitment period.² Prior to the third ARA for each capacity commitment period, ISO-NE evaluates whether any existing resource has experienced a significant decrease in capacity that could affect its ability to satisfy a CSO. If a resource is determined to have experienced a significant decrease, then ISO-NE will enter an appropriate demand bid for that resource in the third ARA. ISO-NE currently determines whether a decrease in capacity is significant by applying thresholds specified in the Tariff that compare a resource's qualified capacity to its CSO to determine if a resource's deficiency exceeds 20 percent of its CSO or 40 MW, whichever is lower.³

4. CSO Bilaterals, on the other hand, allow resources to shed or acquire a CSO at a mutually agreed price on a monthly, annual or seasonal basis. The CSO Bilateral works by transferring a capacity obligation from one resource to another on a kW-for-kW basis. CSOs may be transferred within zones and across zonal boundaries but are limited by fixed zonal requirements.⁴

5. On June 28, 2016, the Commission accepted ISO-NE's proposed sloped zonal demand curves for both the primary auction and ARAs.⁵ In its filing, ISO-NE noted that it may be appropriate to make additional conforming or other changes to the rules for ARAs and CSO Bilateral transactions based on the new demand curves.⁶

6. As discussed below, Filing Parties propose three distinct capacity market changes to accommodate CSO transfers when sloped zonal demand curves are utilized and other related Forward Capacity Market improvements.

² See Market Rule 1, Section III.13.4.5.1.

³ Market Rule 1, Sections III.13.1.2.2.4 and III.13.4.2.1.3.

⁴ See Market Rule 1, Section III.13.5.1.

⁵ *ISO New England Inc. and New England Power Pool Participants Committee, Order Accepting Filing*, 155 FERC ¶ 61,319 (2016).

⁶ *Id.* P 13.

II. Description of Filing

A. Annual Reconfiguration Transactions

7. As to the first set of changes, Filing Parties propose to replace the capacity market's existing bilateral contracting mechanism – the CSO Bilateral⁷ – with a new mechanism – the ART.⁸ ISO-NE states that annual CSO Bilaterals are limited by the fixed zonal requirement the same way ARAs were limited prior to the utilization of the Marginal Reliability Impact (MRI)-based demand curves⁹, and are allowed only when capacity is deemed fully substitutable.¹⁰ According to ISO-NE, there is no simple way to conform the annual CSO Bilateral construct to the new MRI-based curves because the construct would need to be modified in such a way that the exchange continues to provide price certainty for shedding and acquiring a specific CSO amount but also account for the impact on system reliability.¹¹ ISO-NE states that the new ART mechanism and approach will accommodate even or uneven capacity exchanges within the same zone or across constrained zone boundaries, even where exchanges were

⁷ ISO-NE states that CSO Bilaterals are private exchanges of CSOs that allow participants to shed or acquire a CSO for a resource at a negotiated price, which are processed before each ARA. Filing Parties Transmittal, Prepared Testimony of Andrew G. Gillespie on Behalf of ISO New England Inc. at 20-21 (Gillespie Test.). Although the Gillespie testimony was filed as an attachment to Filing Parties' filing, it was sponsored solely by ISO-NE, rather than both Filing Parties.

⁸ Filing Parties Transmittal at 1.

⁹ ISO-NE states that it previously used a system demand curve that was linear with a constant downward slope and had fixed requirements for constrained capacity zones. ISO-NE recently transitioned to new demand curves that are based on the expected improvement in reliability associated with adding incremental capacity, referred to as MRI-based curves. Under the previous framework, any capacity inside an import or export constrained zone was treated as fully substitutable to capacity located outside the zone (i.e., in the Rest-of-Pool Capacity Zone), when above or below the fixed zonal requirement, respectively. Conversely, on the other side of the fixed zonal requirement (below the fixed zonal requirement in the case of an import constrained zone), capacity in the zone was treated as completely non-substitutable with capacity located outside the zone. ISO-NE states that the new zonal MRI-based curves recognizes that reliability does not change abruptly when the amount in a zone varies from just above to just below some fixed capacity level. Gillespie Test. at 14-15, 21.

¹⁰ *Id.* at 20-21.

¹¹ *Id.* at 26.

previously prohibited, while accounting for the actual net impact on reliability. ISO-NE also states that the new mechanism is straightforward to negotiate and administer.¹²

8. ISO-NE states that the proposed ART is an accounting mechanism that, when settled, offsets any price difference between the negotiated fixed price of the bilateral agreement and the ARA clearing price. ISO-NE states that the two parties to an ART agree on a fixed price (\$/kW-month), a quantity (MW), and a location (capacity zone) and then, separately, each party enters a bid or offer in the ARA.¹³ ISO-NE states that after the auction, the ART is settled based on the difference between the ARA clearing price and the ART fixed price, multiplied by the quantity (the quantity of an ART is a notional amount only; it is not a CSO).¹⁴ ISO-NE states that, if the result is positive, the transferring party will receive this amount as a credit each month of the capacity commitment period and the acquiring party will be charged this amount each month. If the result is negative, the acquiring party will receive this amount as a credit each month and the transferring party will be charged this amount each month. ISO-NE states that the settlement of the ART will offset the settlement of the demand bid and supply offer such that the net settlement for each party is equivalent to the fixed price of the ART, in general.¹⁵ Generally speaking, ISO-NE states, when the ARA yields an improvement in

¹² *Id.* at 33.

¹³ *Id.* at 33-34.

¹⁴ ISO-NE states that an added feature of the ART mechanism is that this price assurance does not depend on the demand bid or supply offer clearing in the ARA. The ART settlement is based on the difference between the ARA clearing price and the ART fixed price. *Id.* at 48.

¹⁵ ISO-NE states that, as an example, suppose that a supply offer and demand bid of the same size (100 MW) exist in the same zone (the Rest-of-Pool Capacity Zone). Because neither party would know for certain what the ARA clearing price will be, but they would both rather have a price certain, they agree to an ART prior to the ARA at a negotiated fixed price of \$7.50/kW-month. Suppose that under this example, the ARA clearing price was \$7.70/kW-month and at that clearing price, both the demand bid and supply offer cleared. In the settlement of the ARA, the participant with the demand bid will be charged \$770,000/month during the capacity commitment period and the participant with the supply offer will be credited with \$770,000/month. But now with the ART there is an additional settlement item. Because the clearing price was higher than the fixed price, the participant with the demand bid will be credited \$20,000/month and the participant with the supply offer charged \$20,000/month ($[\$7.70 - \$7.50] \times 100,000$ kW). In effect, the ART's settlement provides an offset to the ARA clearing price, such that the net settlement to the two parties involves an exchange at precisely their negotiated (fixed) ART price. *Id.* at 35.

reliability there will be a charge to load (paid to suppliers) and conversely, when the ARA yields a worsening in reliability there will be a credit to load (paid by suppliers).¹⁶

9. ISO-NE explains that the ART mechanism accounts for partial substitutability, unlike a CSO Bilateral that would be denied by the ISO if the capacity was not deemed fully substitutable across the zone's boundaries. ISO-NE elaborates that the ART mechanism provides a means to achieve the equivalent of a private transfer across constrained zone boundaries, regardless of the zone's fixed requirement because the combined settlement of the ART and ARA bids and offers accounts for the impact on reliability.¹⁷ Thus, ISO-NE concludes that the ART mechanism, in combination with ARA participation, effectively provides price certainty to the extent the transfer is substitutable and the proper settlement with load to the extent the transfer is not fully substitutable.¹⁸

10. Filing Parties state that ARTs, like CSO Bilaterals, must be subject to financial assurance requirements to protect the overall market. Thus, ISO-NE's proposal includes changes to the ISO New England Financial Assurance Policy to ensure that appropriate levels of financial assurance are provided when parties enter into ARTs.¹⁹

B. Conforming Changes Related to the Use of MRI-Based Demand Curves

11. As to the second set of changes, Filing Parties also propose tariff revisions related to the use of the MRI-Based Demand Curves. ISO-NE states that these changes modify or eliminate elements of the existing capacity market rules that are incompatible with the use of MRI-based demand curves.²⁰ For instance, Filing Parties explain that the conforming changes eliminate several methods of transferring CSOs on a sub-annual basis, which will ensure that annual market activities are for annual CSOs. Going forward, ISO-NE proposes to limit monthly transfers of CSOs to transactions within the same zone, or if in different zones then based on the MRI-based demand curve truncation points. Additionally, ISO-NE proposes to only submit a demand bid in the third ARA on behalf of an existing resource if that resource has a significant decrease that applies to all twelve months of the capacity commitment period, and will submit a demand bid on behalf of a new resource if that resource will not be able achieve commercial operation

¹⁶ *Id.* at 16.

¹⁷ *Id.* at 37.

¹⁸ *Id.* at 42-43.

¹⁹ Filing Parties Transmittal at 5.

²⁰ *Id.* at 6.

during the capacity commitment period.²¹ According to Filing Parties, the general effect of the conforming changes will be to make the capacity market more consistent with the annual nature of the FCA and the ARA, which both use the MRI-based demand curves.²²

C. Significant Decrease Thresholds

12. As to the third set of changes, Filing Parties also seek to revise the materiality thresholds that ISO-NE uses to determine whether an existing resource is expected to be able to satisfy its CSO. Filing Parties explain that, prior to the third ARA, ISO-NE evaluates whether any existing resource has experienced a significant decrease in capacity that could affect its ability to satisfy a CSO. Filing Parties further explain that, if a resource is determined to have experienced a significant decrease, then ISO-NE will enter an appropriate demand bid for that resource in the third ARA.²³

13. ISO-NE explains that a deficiency is currently deemed significant if it exceeds 20 percent of the resource's CSO or 40 MW, whichever is lower. ISO-NE contends that the current thresholds are unbalanced, excessive and incongruent. ISO-NE contends that the thresholds are unbalanced because they produce outcomes that focus on the relatively small deficiencies and ignore the relatively large deficiencies.²⁴ ISO-NE states that the thresholds are excessive because approximately 12 percent of the 36,000 MW total CSO for each capacity commitment period could be deficient and would not be deemed significant. Finally, ISO-NE avers that the thresholds are incongruent because a smaller total from a larger number of resources is deemed a problem, while at the same time a larger total from a smaller number of resources is not deemed a problem.²⁵

²¹ Gillespie Test. at 57.

²² Filing Parties Transmittal at 6

²³ *Id.* at 7-8.

²⁴ For example, a resource with a 300 MW CSO could have a 35 MW deficiency and the current thresholds will not flag the deficiency as being significant. The 20 percent threshold applies to resources with a CSO less than 200 MW. For example, a resource with a 1.1 MW CSO could have a 0.231 MW deficiency and the current thresholds will flag the deficiency as being significant. Gillespie Test. at 60.

²⁵ ISO-NE shows that representative data from the last few third ARAs indicate that on average over 160 MW from 125 resources (an average deficiency of 1.3 MW per resource) are not deemed significant (i.e., below the 20 percent or 40 MW limit) while about 75 MW from 185 resources (an average of 0.4 MW per resource) are deemed significant. *Id.* at 61.

14. In its filing, Filing Parties propose to change the significant decrease thresholds to 10 MW, or 10 percent (but must be at least 2 MW), whichever is lower. Based on data from the last three third ARAs, ISO-NE states that, under the current thresholds, 248 resources had 632.5 MW of significant deficiency, while under the instant proposal 72 resources would have had 614.4 MW of significant deficiency.²⁶ Based on the same data, ISO-NE notes that, under the current threshold, 185 resources made up 75.9 MW of significant deficiencies (i.e., deficiencies greater than 20 percent, but less than 2 MW). ISO-NE further notes that, under the instant proposal, 212 resources would have made up 90.5 MW of insignificant deficiencies because they would have been greater than 10 percent, but less than 2 MW.²⁷

D. Effective Dates

15. Filing Parties request that the instant filing become effective in two stages. Filing Parties explain that almost all of the tariff changes are proposed to become effective on March 1, 2018.²⁸ Filing Parties further explain that, however, the changes to the ISO-NE Financial Assurance Policy are proposed to become effective on June 1, 2018, which corresponds with the date that other financial assurance changes related to the Pay for Performance mechanism are scheduled to become effective. With respect to the requested effective date for the financial assurance policy changes, Filing Parties request waiver of the requirement of section 35.3(a) of the Commission's regulations that all rate changes should be filed and posted not more than 120 days prior to the date on which they become effective.²⁹ Filing Parties contend that good cause exists to grant a waiver of the 120-day prior notice limitation because additional notice will provide market participants with more time to prepare for the implementation of the financial assurance changes.³⁰

III. Notice of Filing and Responsive Pleadings

16. Notice of the filing, as amended, was published in the *Federal Register*, 82 Fed. Reg. 61,285 (2017), with protests and interventions due on or before January 9, 2018.

²⁶ *Id.* at 62.

²⁷ *Id.*

²⁸ ISO-NE is proposing that the ART mechanism will be available for ARAs for capacity commitment periods beginning on or after June 1, 2020, except that ARTs are not available for the first ARA for the capacity commitment period beginning on June 1, 2020. *See* ISO-NE Tariff § III.13.5.4 (20.0.0).

²⁹ 18 C.F.R. § 35.3(a) (2017).

³⁰ Filing Parties Transmittal at 2.

The following parties submitted timely motions to intervene: Exelon Corporation, Brookfield Energy Marketing LP, Consolidated Edison Energy, Inc., National Grid, NRG Power Marketing LLC and GenON Energy Management, LLC, Eversource Energy Service Company, CPV Towantic, LLC, Dominion Energy Services, Inc., and New England States Committee on Electricity. An untimely motion to intervene was filed by PSEG Companies.³¹ FirstLight Power Resources, Inc. (FirstLight) filed a motion to intervene and a protest. Indicated New England Generators³² filed a protest. ISO-NE, NEPOOL, and FirstLight filed answers.

17. Indicated New England Generators state that they do not oppose the majority of Filing Parties' filing. Indicated New England Generators contend, however, that certain changes to the required demand bids should be implemented in the third ARA for the ninth FCA (FCA 9), rather than for the eleventh FCA (FCA 11), as proposed by Filing Parties. Indicated New England Generators contend that, at present, ISO-NE must submit a required demand bid in the third ARA for a capacity resource that has a significant decrease in capacity for one or more months of the capacity commitment period, but not necessarily for the entire 12 months.³³ Indicated New England Generators state that the instant proposal would change the capacity resources for which ISO-NE must submit a required demand bid to existing capacity resources that have a significant decrease in capacity for the entire 12 months of the capacity commitment period and for the new resources that are not yet commercial, meaning those with a capacity operation date after the capacity commitment period.³⁴

18. Indicated New England Generators explain that the proposed change would benefit market participants as a way to manage risk under the Pay for Performance design, which will take effect in the capacity commitment period associated with FCA 9. Indicated New England Generators further explain that if a capacity resource is required to forgo all or some part of its CSO in the third ARA it will be prohibited from managing its capacity position in one or more months of the capacity commitment period. Indicated New England Generators argue that Filing Parties have offered no reason why the required demand bid change should take effect no earlier than FCA 11.³⁵

³¹ The PSEG Companies consist of PSEG Power LLC, PSEG Energy Resources & Trade LLC, and PSEG Power Connecticut LLC.

³² The Indicated New England Generators consist of Exelon Corporation, CPV Towantic, LLC, and NRG Power Marketing, LLC.

³³ Indicated New England Generators Protest at 2.

³⁴ *Id.* at 3.

³⁵ *Id.* at 3-4.

19. FirstLight states that it supports the bulk of Filing Parties' filing, except for the proposed change to materiality thresholds. Specifically, FirstLight objects to the change to the significant decrease thresholds, which would consider any deficiency of less than 2 MW as insignificant, irrespective of what percent of the resource's CSO cannot be supported by the resource's actual capability.³⁶ FirstLight argues that this change would ignore significant deficiencies by smaller resources and would result in discriminatory treatment of capacity resources. FirstLight explains that, for example, if a resource with a 5 MW capacity sale can only demonstrate a 3.01 MW capability, an almost 40 percent deficiency, it would have no culpability or consequence for that deficiency. FirstLight argues that, conversely, a resource with a 20 MW capacity sale, which can demonstrate an 18 MW capability (i.e., only a 10 percent deficiency), will be considered significant and required to buy replacement capacity. FirstLight contends that rejecting Filing Parties' proposal to exempt deficiencies less than 2 MW would ensure that all CSO purchases in the Forward Capacity Market are verified to support at least 90 percent of their capacity sale.³⁷

20. FirstLight also argues that the proposed exemption for deficiencies less than 2 MW will now miss a significant amount of deficiencies that are currently addressed. FirstLight states that the Gillespie testimony illustrates that the proposal to change the threshold to the lesser of 10 percent of a resources' CSO or 10 MW, which FirstLight supports, will capture 72.4 MW of incremental deficiency on larger resources. However, FirstLight states that the Gillespie testimony also shows that if the additional proposal to treat a deficiency of less than 2 MW as insignificant is approved, the significant decrease threshold would miss 90.5 MW in deficiencies by resources whose individual deficiency exceeds 10 percent but would be ignored because their individual deficiency is less than 2 MW. FirstLight argues that this result seems inconsistent with the purpose of the significant decrease provisions, which require resource owners to correct deficiencies in their ability to support their capacity sales either by demonstrating why the deficiency will be restored by the start of the commitment period or by purchasing capacity in the third ARA to fulfill their CSO. FirstLight contends that it seems particularly important to reject the 2 MW threshold aspect of the proposed significant decrease changes at a time when there is an increasing trend in market entry by smaller resources in New England.³⁸

21. In its answer, ISO-NE opposes Indicated New England Generators' argument that the new rules should apply immediately, including for the Capacity Commitment Period beginning on June 1, 2018, associated with FCA 9. ISO-NE contends that suppliers already possess the tools to cover their obligations over the next two commitment

³⁶ FirstLight Protest at 4.

³⁷ *Id.* at 5.

³⁸ *Id.* at 7.

periods. ISO-NE explains that for the two relevant commitment periods, suppliers retain their ability to manage their CSOs on a part-year basis by using seasonal and monthly bilateral transactions.³⁹ ISO-NE adds that, given the continued availability of part-year bilateral transactions to manage CSOs for delayed resources, it is unnecessary to immediately implement the full-year mandatory demand bid change.

22. ISO-NE also argues that the proposed 2 MW threshold is reasonable and not unduly discriminatory. ISO-NE contends that any combination of fixed and percentage thresholds affects resources differently based on absolute size. ISO-NE explains that the threshold reflects a reasonable administrative method of identifying a level of capacity deficiencies from both large and small resources without also capturing a large number of insignificant decreases that, even in the aggregate, do not raise reliability concerns.⁴⁰ ISO-NE adds that the revised rules, which are expected to affect a similar amount of capacity as the existing rules, will not undermine the integrity of the market. ISO-NE states that, for all resources, regardless of the significant decrease threshold, the general obligations associated with having a CSO continue to apply. ISO-NE also states that if the capacity of the market was in question, FirstLight's arguments would apply not just to the 2 MW threshold, but to the overall threshold structure itself.⁴¹

23. NEPOOL answers that while there could be other reasonable approaches to achieve desired outcomes, Filing Parties' filing provides sufficient information for the Commission to determine that the proposed revisions satisfy the requirements of FPA section 205.⁴² NEPOOL adds as part of the NEPOOL Participant Process, it fully considered FirstLight's proposed modification to the significant decrease changes, but ultimately failed to support FirstLight's amendment. NEPOOL further states that because Indicated New England Generators' request regarding the timing for implementation of the proposed revisions was never presented for a vote by the stakeholders, NEPOOL is not able to take a substantive position. However, NEPOOL notes that the current package of tariff revisions leaves in place through the tenth FCA the current tariff revisions that have been accepted as just and reasonable.⁴³

24. In response, FirstLight argues that, even if the aggregate number of MWs excluded under the new thresholds is approximately equal to the number of MWs excluded under the current thresholds (and thus an equitable outcome for consumers), it

³⁹ ISO-NE Answer at 9.

⁴⁰ *Id.* at 4.

⁴¹ *Id.* at 6.

⁴² NEPOOL Answer at 4-6.

⁴³ *Id.* at 8.

still unfairly discriminates between resources. FirstLight points out that the new thresholds would accept a less than 2 MW resource with up to a 100 percent deficiency while other resources will face a threshold of 10 percent. FirstLight disagrees with ISO-NE that the ongoing obligations associated with a CSO help justify the 2 MW threshold. FirstLight contends that the willingness of a market participant to accept the financial consequences of a non-performance penalty is not enough. FirstLight concludes that a financial charge to the resource owner, even if it occurs, will not keep the lights on and is not a replacement for the physical provision of capacity.⁴⁴

IV. Discussion

A. Procedural Matters

25. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2017), the timely-filed unopposed motions to intervene serve to make the entities filing them parties to this proceeding. We will grant PSEG Companies' late intervention given its interest in this proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

26. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2017), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept the answers in this proceeding because they have provided information that have assisted us in our decision-making process.

27. We find good cause to grant Filing Parties' request for waiver of the 120-day notice requirement in section 35.3 of the Commission's regulations.⁴⁵ Additional notice will provide market participants with more time to prepare for the implementation of the financial assurance changes.

B. Substantive Matters

28. As discussed below, we accept the Filing Parties' proposed filing, effective March 1, 2018 and June 1, 2018, as requested. We agree with Filing Parties that the ART mechanism provides a just and reasonable replacement of the CSO Bilateral, while also accounting for the impact on system reliability from the use of the MRI-Based demand curves. The ART mechanism will accommodate even or uneven exchanges within the same zone or across constrained zone boundaries, even where exchanges previously were prohibited, while accounting for the actual net impact on reliability in a manner that does not disadvantage suppliers or consumers. By allowing for partial substitutability, the

⁴⁴ FirstLight Answer at 5.

⁴⁵ 18 C.F.R. § 35.3 (2017).

proposed ART mechanism will provide more flexibility to resources looking to replace their CSO through a bilateral contract. Further, the ART mechanism accounts for proper settlement with load due to the impact of a resource's location on system reliability through the combined settlement of the ART and ARA bids and offers. We also note that no party protested or filed adverse comments with respect to Filing Parties' proposed replacement of the current CSO Bilateral construct with the ART mechanism. Accordingly, we accept as just and reasonable the proposed ART mechanism.

29. We reject Indicated New England Generators' request that the Commission accept the filing with the condition that the mandatory demand bid changes take effect in FCA 9, rather than FCA 11. Because we find Filing Parties' proposal, including its implementation date, to be just and reasonable, we need not consider whether an alternative proposal is also just and reasonable.⁴⁶ Further, section 205 provides utilities with the statutory right to amend their rates and to propose an effective date for such amendments. As noted above, protestors do not challenge the justness and reasonableness of the specific tariff provisions establishing the ART mechanism. Instead, Indicated New England Generators ask that ISO-NE implement certain changes to the required demand bids for FCA 9 rather than FCA 11 as a way to manage risk under the Pay for Performance design, which takes effect in FCA 9.⁴⁷

30. We also dismiss FirstLight's request that the Commission eliminate the minimum 2 MW floor for the significant decrease threshold. We do not find any evidence that the proposed changes will result in undue discrimination among resources or compromise the integrity of the capacity markets, as FirstLight claims. To the contrary, we find that Filing Parties' proposed thresholds reasonably balance the impact on large and small resources, while reducing ISO-NE's administrative burden.

31. Under ISO-NE's current rules, the same sized deficiency is treated differently based on the size of a resource's CSO. For example, a 35 MW deficiency from a 100

⁴⁶ *City of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984) ("FERC has interpreted its authority to review rates under the FPA as limited to an inquiry into whether the rates proposed by a utility are reasonable — and not to extend to determining whether a proposed rate schedule is more or less reasonable than alternative rate designs"), cert denied, 469 U.S. 917 (1984); *OXY USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995) ("[T]he Commission may approve the methodology proposed in the settlement agreement if it is 'just and reasonable'; it need not be the only reasonable methodology or even the most accurate.").

⁴⁷ *Cf. ISO New England Inc. and the New England Power Pool*, 157 FERC 61,025, at P 31 (2016) ("[D]eclining to defer the effective date of an otherwise just and reasonable proposal would be inconsistent with the notice provisions in section 205 of the FPA.").

MW resource would not be exempt from ISO-NE's mandatory demand bid rule, while the same deficiency from a 200 MW resource would be exempt. This is consistent with ISO-NE's contention that any combination of fixed and percentage criteria will affect resources differently based on their absolute size. Under the proposed 2 MW threshold, small resources with small absolute sized deficiencies will be exempt from the mandatory demand bid rule. That means that the exemption can apply to a relatively large number of resources while still exempting a cumulatively small number of MWs which, Filing Parties assert, will not negatively affect reliability, because the sole focus of this provision is to trigger the purchase of replacement capacity.⁴⁸ This is in contrast to the current rules, where a similar cumulative exemption of MWs results from exempting a relatively small number of resources.⁴⁹ The proposed rules will also reduce ISO-NE's administrative burden because ISO-NE will have to enter a demand bid for far fewer entities, while exempting approximately the same number of MWs. In light of the foregoing, we agree with ISO-NE that the proposed criteria "reflects a reasonable administrative method of identifying a level of capacity deficiencies, from both large and small resources without also capturing a large number of insignificant decreases (in an absolute sense) that, even in their aggregate, do not raise reliability concerns."⁵⁰

32. We also find no evidence that applying the new significant decrease rules will undermine the integrity of the capacity market. For all resources, regardless of the significant decrease threshold, the general obligations associated with having a CSO continue to apply. Moreover, as ISO-NE points out, the existing significant decrease thresholds have not undermined the integrity of the capacity market or sent a signal that it is appropriate to intentionally overstate a resource's capacity values. We find it is reasonable to expect that the revised rules, which ISO-NE expects to affect a similar amount of capacity as the existing rules, likewise would not undermine the integrity of the market. Accordingly, we dismiss FirstLight's arguments.

⁴⁸ Based on data from the last three third ARAs, ISO-NE states that, under the instant proposal, 212 resources would have made up 90.5 MW of insignificant deficiencies because they would have been greater than 10 percent, but less than 2 MW. Gillespie Test. 62.

⁴⁹ ISO-NE shows that representative data from the last few third ARAs indicate that on average over 160 MW from 125 resources (an average deficiency of 1.3 MW per resource) *are not* deemed significant (i.e., below the 20 percent or 40 MW limit) while about 75 MW from 185 resources (an average of 0.4 MW per resource) *are* deemed significant. Gillespie Test. 61.

⁵⁰ ISO-NE Answer at 4.

The Commission orders:

Filing Parties' proposed revisions are hereby accepted, effective March 1, 2018 and June 1, 2018 as requested, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.