173 FERC ¶ 61,198
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James P. Danly, Chairman;
Neil Chatterjee and Richard Glick.

ISO New England Inc. Docket No. EL20-54-000

ORDER ON PAPER HEARING

(Issued December 2, 2020)

1. On July 1, 2020, in Docket No. EL20-54-000, the Commission instituted a new proceeding pursuant to section 206 of the Federal Power Act (FPA)[1] because the Commission preliminarily found that the New Entrant Rules[2] in ISO New England's (ISO-NE) Transmission, Markets, and Services Tariff's (Tariff) may be unjust and unreasonable.[3] The Commission established paper hearing procedures and posed questions to address in briefs. As discussed below, we find that the New Entrant Rules are no longer just and reasonable and direct ISO-NE to remove them from the Tariff.

I. Background

A. New Entrant Rules

2. At the inception of the ISO-NE Forward Capacity Market (FCM), the Commission accepted Tariff provisions that allow a new resource to lock in for five years the capacity price that it receives in the first Forward Capacity Auction (FCA) in which it obtains a capacity supply obligation.[4] Under that rule, a new resource receives that initial clearing price for the four subsequent annual auctions (the lock-in period), even if the actual clearing price in those subsequent auctions is higher or lower. Although the new

[1] 16 U.S.C. § 824e.

[2] New Entrant Rules refers to ISO-NE's price-lock mechanism and zero-price offer rule. ISO-NE Tariff, § III.13.1.1.2.2.4 (63.0.0).

[3] *ISO New England Inc.*, 172 FERC ¶ 61,005 (2020) (Order on Remand).

[4] *See Devon Power LLC*, 115 FERC ¶ 61,340, at P 16 (2006).

resource must forego any later FCA clearing price that is higher than its locked-in price, the lock-in also mitigates downward price risk.[5]

3. During the lock-in period, a price-locked generator is required to offer its capacity into those subsequent auctions at a zero-price offer to ensure that it clears[6] each FCA.[7] In accepting these Tariff provisions, the Commission found that the five-year price lock and associated zero-price offer requirement were just and reasonable because they provide "predictable revenues and facilitate[] financing for new capacity."[8]

4. In 2013, ISO-NE informed the Commission that there had been "an abrupt change in supply and demand in New England, from a years-long capacity surplus to a potential capacity shortage in the upcoming FCA, as well as a general decline in the amount of new resources seeking to participate in the auction."[9] Accordingly, on April 1, 2014, as part of its proposed Tariff revisions to implement a downward sloping demand curve, ISO-NE proposed extending the duration of the price lock for new entrants from five to seven years.[10] In accepting these proposed revisions, the Commission found that the seven-year price lock was "an appropriate way to provide investor assurance" because it achieved a "reasonable balance between incenting new entry and protecting consumers from very high prices" in New England.[11] Although the Commission acknowledged that the lock-in extension could result in lower relative market clearing prices, it found that, if

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[5] *See New England Power Generators Ass'n*, *Inc. v. ISO New England Inc.* 146 FERC ¶ 61,039, at P 6 (2014) (NEPGA Initial Order), *order on reh'g*, 150 FERC ¶ 61,064, at P 19 (2015) (NEPGA Rehearing Order).

[6] We define "clear" in this order in the same way for all resources, whether new or existing, to mean to receive a capacity supply obligation. Under this definition, a resource clears when the capacity clearing price is greater than or equal to the price specified in the resource's offer.

[7] That is, a price-locked resource may not submit a de-list bid, which is the lowest price at which a resource is willing to accept a capacity supply obligation in that year's annual capacity auction. *See* ISO-NE Tariff, §§ III.13.1.1.2.2.4; III.13.1.4.2.2.5.

[8] *Devon Power LLC*, 115 FERC ¶ 61,340 at P 16.

[9] NEPGA Initial Order, 146 FERC ¶ 61,039 at P 7.

[10] ISO New England Inc., Filing, Docket No. ER14-1639-000 (Apr. 1, 2014).

[11] *See ISO New England Inc.*, 147 FERC ¶ 61,173, at P 56 (2014) (Sloped Demand Curve Initial Order), *order on reh'g*, 150 FERC ¶ 61,065, at P 31 (2015) (Sloped Demand Curve Rehearing Order).

the five-year lock-in period remained unchanged, ISO-NE would have to increase the price cap to achieve the same level of reliability, "exposing consumers to very high prices in the event the auction is not competitive."[12]

B. D.C. Circuit Remand

5. On February 2, 2018, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued an order remanding without vacatur for further proceedings four Commission orders[13] related to two complaints, one filed by the New England Power Generators Association, Inc. (NEPGA) and the other filed by Exelon Corporation (Exelon) and Calpine Corporation (Calpine) (collectively, the Complainants).[14] At issue on remand was whether the Commission erred by not requiring ISO-NE to adopt an offer floor, akin to that used by PJM Interconnection, L.L.C. (PJM), for new entrants that have opted for a price lock.[15] The D.C. Circuit found that the Commission did not adequately explain why it allowed ISO-NE to forego an offer floor for its seven-year price-lock period despite previously rejecting PJM's request to remove the offer floor for its three-year price-lock period.[16] Accordingly, the court remanded the Commission's orders for further explanation.[17]

C. Order on Remand, Instituting FPA Section 206 Proceeding, and Establishing Paper Hearing Procedures

6. In light of the time that had passed since the complaints were filed and the changes to the ISO-NE FCM during that time, in the Order on Remand, the Commission found it appropriate to provide parties an opportunity to refresh the record upon which it would

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[12] Sloped Demand Curve Rehearing Order, 150 FERC ¶ 61,065 at P 31. No party in the Sloped Demand proceeding appealed the seven-year price lock.

[13] NEPGA Initial Order, 146 FERC ¶ 61,039; NEPGA Rehearing Order, 150 FERC ¶ 61,064; *Exelon Corp. v. ISO New England Inc.*, 150 FERC ¶ 61,067, at P 6 (2015), *order on reh'g*, 154 FERC ¶ 61,005, at P 2 (2016) (Exelon Rehearing Order).

[14] *New England Power Generators Ass'n, Inc. v. FERC*, 881 F.3d 202 (D.C. Cir. 2018) (*NEPGA*).

[15] *Id.* at 211-13*; see also PJM Interconnection, L.L.C.*, 128 FERC ¶ 61,157 (2009) (*PJM III*).

[16] *NEPGA*, 881 F.3d at 211-13.

[17] *Id.* at 213.

address the issues raised in the court's remand.[18] In considering the issues, the Commission found it appropriate to consider whether the New Entrant Rules remain just and reasonable and not unduly discriminatory or preferential.[19] In particular, the Commission expressed concern that any potential effects that the New Entrant Rules may have on the FCM clearing price may outweigh the certainty and other benefits that the Commission considered when accepting those provisions.[20] In order to fully consider those issues, the Commission established paper hearing procedures and posed the following questions.

7. First, to evaluate the need for the price lock, the Commission asked the following questions: (1) How many resources have taken advantage of the price lock to date? (2) Is a price lock still needed to incent new entry in ISO-NE? (3) Does the price lock lead to unreasonable price suppression in the entry year? (4) Does the price lock with the zero-price offer rule result in unreasonable price suppression in years 2-7? (5) Is the price lock unduly discriminatory? and (6) If the price lock is retained, should the term be shortened and, if so, what would be a just and reasonable term?

8. Second, to evaluate the option of retaining the price lock and adding an offer floor, the Commission asked the following questions: (1) How would an offer floor be implemented? (2) Would an offer floor require significant market redesign? and (3) What would be the timeline for implementing an offer floor in ISO-NE?

9. Third, to evaluate whether to impose an alternative replacement rate, the Commission asked the following questions: (1) Are there alternative approaches to the current price lock that would be sufficient to incent new entry? (2) How would these alternative approaches address any concerns related to unreasonable price suppression? and (3) How would these alternative approaches address any concerns related to unduly discriminatory or preferential treatment?

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[18] Order on Remand, 172 FERC ¶ 61,005 at P 21.

[19] *Id.* (citing *Se. Mich. Gas Co. v. FERC*, 133 F.3d 34, 38 (D.C. Cir. 1998) (noting that, once the Commission reacquired jurisdiction on remand, it had the discretion to reconsider the whole of its original decision)).

[20] *Id.* (citing Sloped Demand Curve Initial Order, 147 FERC ¶ 61,173 at P 56 (accepting the extension of the duration of the price lock for new entrants from five to seven years).

II. Notice of Paper Hearing and Interventions

10. Notice of the initiation of the paper hearing was published in the *Federal Register*, 85 Fed. Reg. 41,237 (July 9, 2020), with interventions due on or before July 21, 2020.

11. Connecticut Department of Energy and Environmental Protection; Connecticut Public Utilities Regulatory Authority (Connecticut Commission); and Massachusetts Department of Public Utilities filed notices of intervention. Attorney General for the State of Connecticut; Avangrid, Inc.; Brookfield Renewable Trading and Marketing LP; Calpine Corporation; CPV Towantic, LLC; Energy New England LLC; Electric Power Supply Association; Eversource Energy Service Company; Exelon Corporation; Dominion Energy Services, Inc.; FirstLight Power Inc.; Independent Market Monitor for PJM (PJM IMM); ISO-NE; ISO-NE Internal Market Monitor; LS Power Associates, L.P.; Massachusetts Attorney General; Massachusetts Municipal Wholesale Electric Company; New England Power Company;[21] New England Power Pool Participants Committee (NEPOOL); New England States Committee on Electricity; New York Transmission Owners;[22] New Hampshire Electric Cooperative Inc.; NEPGA; NextEra Energy Resources, LLC; NRG Power Marketing LLC (NRG); NTE Energy, LLC; H.Q. Energy Services U.S. Inc.; Potomac Economics, Ltd. (Potomac Economics); Public Citizen Inc.; Talen Energy Corporation; and Vistra Corp. and Dynegy Marketing and Trade LLC, jointly, filed timely motions to intervene. BSW Project Co. LLC (BSW), RENEW Northeast, Inc. (RENEW), and Energy Storage Association (ESA) filed untimely motions to intervene.

12. On August 24, 2020, ISO-NE, Massachusetts Attorney General, NEPGA, NEPOOL, NRG, Potomac Economics, and RENEW filed initial briefs.

13. On September 23, 2020, BSW, Connecticut Commission, ISO-NE, Massachusetts Attorney General, NEPGA, NRG, Potomac Economics, and RENEW and ESA (RENEW/ESA), jointly, filed reply briefs.

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[21] Massachusetts Electric Company; Nantucket Electric Company; and Narragansett Electric Company d/b/a National Grid.

[22] Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; Orange and Rockland Utilities, Inc.; New York Power Authority; Niagara Mohawk d/b/a/ National Grid; New York State Electric & Gas Corporation; Rochester Gas and Electric Corporation; Long Island Lighting Company d/b/a Power Supply Long Island; and Long Island Power Authority.

III. Initial Briefs

A. Market Changes

14. ISO-NE states that its wholesale markets have matured significantly since 2014 and details extensive market changes since that time period. ISO-NE contends that several market enhancements have resolved concerns of perceived regulatory risks to supply resources and attracted significant new supply resources, even as electricity demand has trended downward.[23]

15. ISO-NE specifically identifies three FCM changes relevant to our inquiry: (1) changes in the downward sloping demand curve at the zonal and system-wide levels; (2) removal of administrative pricing rules; and (3) replacement of the Renewable Technology Resource exemption with the Competitive Auctions with Sponsored Policy Resources changes (CASPR). ISO-NE explains that, in 2014, it instituted a downward sloping demand curve at the system-wide level that ISO-NE states significantly reduces expected capacity price volatility.[24] ISO-NE states that, in 2016, it enhanced the demand curve design and introduced downward sloping zonal demand curves to ensure that capacity prices more accurately reflect the locational marginal reliability impact of additional capacity.[25] ISO-NE explains that, due to these changes, it was able to remove the administrative pricing rules that investors identified as one of the causes for their lack of confidence in the markets.[26] Specifically, ISO-NE states that it eliminated system-wide administrative pricing rules governing "inadequate supply" and "insufficient competition" scenarios by implementing the system-wide demand curve for FCA 9 and eliminated zonal administrative pricing rules by implementing the marginal reliability impact-based demand curves for FCA 11. ISO-NE states that it also replaced the Renewable Technology Resource exemption from the Minimum Offer Price Rule (MOPR) with CASPR, which improved the competitive functioning of the FCM and accurately aligned capacity prices with the reliability value of the capacity procured.[27]

16. ISO-NE also identifies several enhancements to the energy and ancillary services markets. ISO-NE states that these enhancements improve price formation and provide suppliers with greater opportunity to earn higher revenues that tend to reduce the cost of

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[23] ISO-NE Initial Br. 17-18.

[24] *Id.* at 20.

[25] *Id.*

[26] *Id.* at 21.

[27] *Id.* at 22.

new entry that must be recovered through the FCM.[28] Specifically, ISO-NE notes that, in 2014, it implemented energy market scarcity pricing enhancements that increase the price resources are paid for energy and reserves in real time during scarcity conditions. ISO-NE also notes that, in 2017, it implemented Fast-Start Pricing Enhancements that allow fast-start resources to set prices more often, which increase the energy and reserve prices paid to resources supplying those products after contingencies, during high load conditions, and in stressed system operating conditions. ISO-NE explains that it removed the Peak Energy Rent mechanism, which was a downward adjustment applied to monthly payments to capacity suppliers to reduce the potential for a supplier to withhold energy and increase real-time prices. ISO-NE adds that, on April 15, 2020, in Docket Nos. EL18-182-000 and ER20-1567-000, it proposed energy security improvements to increase compensation in the energy and ancillary services markets to compensate resources for certain essential reliability services that are not currently priced in the day-ahead energy and ancillary services markets.[29]

17. ISO-NE asserts that technological advancements have reduced the costs that resource developers must recover in the FCM to build new generation facilities because either the costs of building a generation facility have decreased (lowering the developer's up-front costs) or new generation facilities are more efficient (and therefore expect to earn greater energy and ancillary service revenues).[30]

18. NEPGA supports re-evaluation of the New Entrant Rules due to market changes. Specifically, NEPGA points to the replacement of the vertical demand curve with a downward-sloping demand curve that substantially reduces price volatility and renders moot the rationale for paying new entry a preferential rate. NEPGA also notes that CASPR is adversely affected by the price lock. NEPGA asserts that the price lock suppresses FCA clearing prices and therefore suppresses the "buy out" payments that old generation might receive under CASPR.[31]

19. Massachusetts Attorney General argues that the FCM has undergone changes that create the need to refresh the record, noting that ISO-NE has gone from a capacity shortage to a capacity surplus, has adopted a downward sloping demand curve, and has replaced the Renewable Technology Resource exemption with CASPR. Massachusetts

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[28] *Id.* at 23-25.

[29] *Id.* at 24-25 (citing ISO New England Inc., Filing, Docket Nos. EL18-182-000 and ER20-1567-000 (filed Apr. 15, 2020)).

[30] *Id.* at 25-26.

[31] NEPGA Initial Br. 4; Stoddard Aff. ¶ 15.

Attorney General contends that these changes raise the question of whether a price lock is still needed to incent new entry.[32]

B. Price Lock

1. Whether the price lock is still needed to incent new entry

20. ISO-NE explains that the price-lock mechanism can be a substitute for new resources acquiring revenue certainty from capital markets in the form of hedges (e.g., multi-year revenue puts, spark-spread call options, or functionally-similar financial instruments), which effectively provides new capacity resources with a "free hedge." ISO-NE states that the "free hedge" is a substitute for entrants incurring, and reflecting in their initial capacity supply offer prices, the true cost of acquiring the price certainty via a hedge purchased through the financial markets. ISO-NE explains that, as a result, the price-lock mechanism can be viewed as a *de facto* subsidy to new entry because the mechanism (1) shifts risk of uncertain future capacity revenues away from new capacity investors and onto electricity consumers and (2) spreads the payments that consumers make to new entrants over time, so new price-locked entrants would be willing to accept a lower initial-year capacity price than if they acquired equivalent revenue certainty via a financial market hedge.[33]

21. ISO-NE states that, while there is reasonable doubt about the necessity of continuing the administrative price-lock mechanism, it cannot definitively answer the question of whether the price-lock mechanism is *necessary* to incent new resource entry, rather than simply serving as a means to encourage new entry and thereby lower capacity clearing prices. ISO-NE notes that PJM, NYISO, and ERCOT have attracted new merchant generation development in recent years without a comparable price-lock mechanism,[34] demonstrating that ISO-NE's price-lock mechanism is not an absolute necessity for competitive entry to occur generally.[35]

22. ISO-NE and NEPGA provide evidence of the number of resources that have taken advantage of the price lock to date. According to ISO-NE, 494 new resources, of the 1,421 eligible, elected the price lock in the first 14 FCAs; of the 494 new resources that

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[32] Massachusetts Attorney General Initial Br. 3-5.

[33] ISO-NE Initial Br. 5, 48-49.

[34] ISO-NE notes that PJM's price-lock mechanism is limited to certain constrained zones and has a maximum price-lock duration that is a considerably shorter time period. *Id.* at 49.

[35] *Id.*

elected the price lock, 247 of them were awarded capacity supply obligations in the first 14 FCAs.[36] NEPGA provides a chart detailing the quantity and type of resources that have elected the price lock, which indicates that (1) more than 3,000 MW of capacity was subject to a price lock and offered on a price-taker basis into the FCAs for the 2020/2021, 2021/2022, 2023/2024 and 2024/2025 capacity commitment periods and (2) more than 2,000 MW of capacity was or will be subject to a price lock and offered on a price-taker basis into the FCAs for the 2022/2023 and 2025/2026 capacity commitment periods.[37]

23. In initial briefs, NRG is the only party to assert that the price lock is needed to incent new entry in ISO-NE.[38] ISO-NE explains that the underlying conditions that supported the introduction of the five-year price lock more than 14 years ago, and its extension to seven years in 2014, no longer exist because administrative pricing rules have been replaced by market enhancements that better support competitive outcomes grounded in market fundamentals. ISO-NE explains further that the region presently has excess supply that is expected to persist until market fundamentals once again signal the need for new competitive merchant project development.[39] Massachusetts Attorney General similarly states that, in the intervening years, the FCM has gone from a capacity shortage to a large capacity excess.[40]

24. NEPGA and Potomac Economics argue that the price lock mechanism is no longer, and may never have been, needed to incent new entry.[41] NEPGA claims that, when the price lock was initially introduced more than 14 years ago, the concern was that the FCM was a novel market design and that lenders were not ready to finance projects on the basis of a one-year FCM price signal. NEPGA contends that, similarly, in 2014 when the price lock was extended from five to seven years, the extended time period was intended to reassure investors during a time when the FCA was moving to a downward-sloping demand curve with a price cap. NEPGA explains that, when the price lock was

[36] ISO-NE Initial Br. attach. A at 1-4.

[37] NEPGA Initial Br. 5-6.

[38] *See* NRG Initial Br. 2; ISO-NE Initial Br. 47; Massachusetts Attorney General Initial Br. 3-4; NEPGA Initial Br. 6-9; Potomac Economics Initial Br. 2. RENEW and NEPOOL do not address whether the price lock is still needed.

[39] ISO-NE Initial Br. 27.

[40] Massachusetts Attorney General Initial Br. 3-4 (stating that, in the most recently completed Forward Capacity Auction, FCA 14, there were 41,915 MW of qualified resources entering the auction but a regional need of just 32,490 MW).

[41] NEPGA Initial Br. 6-9; Potomac Economics Initial Br. 2.

originally adopted, there was concern about investment with high (fixed) costs over a short period of time; however, ISO-NE's 2014 adoption of a downward-sloping demand curve eliminated the risk of extreme price volatility posed by the vertical demand curve and substantially moderated the potential price impact of new entry. NEPGA argues that the FCM can no longer be described as novel or untested because capacity markets now have a long track record both inside the U.S. and around the globe and lenders have grown accustomed to financing merchant generation. NEPGA adds that, despite the objective of providing investor assurance, the price-lock rule undermines investor confidence by suppressing capacity prices in years 2-7 below sustainable levels. NEPGA states that new entrants can now receive multi-year revenue certainty through energy forward contracts, power purchase agreements, or other offtake agreements, which provide revenue certainty to new entrants without distorting the FCA clearing prices. NEPGA argues that, because the core reasons for supporting the price lock no longer exist, there is no longer sufficient justification to support the discriminatory rates inherent in the New Entrant Rules.[42]

25. Potomac Economics claims that ISO-NE does not need to guarantee future prices to attract new entry because any risks new entrants face can be hedged by a variety of private contract arrangements. Potomac Economics contends that the fact that new entry has occurred in other RTOs without a price-lock rule demonstrates that RTOs generally do not need to guarantee future revenues to attract new entry. Potomac Economics adds that sound economic theory does not support the price-lock provisions and that the incentives provided by the price-lock provisions are inefficient.[43]

26. By contrast, NRG argues that the price-lock rule should remain because it is an important feature of ISO-NE's existing market design; however, the pricing treatment for years 2-7 should be changed to implement an offer floor.[44]

2. **Whether the price lock results in price suppression in the entry year**

27. ISO-NE states that two conditions must be met for the price lock to affect the FCA clearing price in the entry year: (1) the price lock must lead a potential entrant to reduce its offer price relative to what it would have offered without the price lock, and (2) the reduction in the participant's offer price because of the price-lock election must impact the capacity clearing price. ISO-NE explains that, although the first condition is likely always true, the second condition depends on the degree to which the price lock reduces

[42] NEPGA Initial Br. 6-9 (citing Stoddard Aff. ¶ 32).

[43] Potomac Economics Initial Br. 2-3.

[44] NRG Initial Br. 2.

the new resource's offer. ISO-NE explains that, because it does not know what a resource *would* have offered absent the price lock, it is impossible to substantiate the frequency or magnitude of the impacts of the price lock. However, ISO-NE argues that the changes in market rules and in capacity market outcomes imply that the underlying conditions that supported the introduction of the price lock and its extension no longer exist and the potential price impacts of the price-lock provisions may no longer be reasonable.[45]

28. NEPGA contends that the price lock leads to substantial first-year price suppression. NEPGA adds that the price lock lowers financial risk, incents over-scale new entry, and causes premature entry, each of which shield new entrants from capacity price volatility and, in turn, lower their initial offer prices.[46]

29. Potomac Economics asserts that the price lock generally results in lower capacity auction clearing prices in the entry year because, by guaranteeing the new entrant a price for seven years, the new entrant's risk of lower post-entry year prices (which would be the expectation absent the price lock rule) is artificially eliminated. Potomac Economics argues, however, that the price lock does not *always* lead to price suppression because, under uncompetitive market conditions, the price lock increases the benefits of exercising market power without decreasing the risk of the entrant not being selected in the auction, an effect which can increase the incentive for an entrant to exercise market power by offering at higher prices.[47]

3. Whether the price lock or the zero-price offer rule results in price suppression in years 2-7

30. ISO-NE explains that whether the zero-price offer rule is likely to affect capacity clearing prices in years 2-7 depends on the offer behavior of new price-locked resources. ISO-NE states that it believes that these resources will typically offer competitive offers below the clearing price for two reasons: (1) resources are not permitted to de-list at prices higher than their going-forward costs, and the de-list bid represents the minimum capacity price for which a resource would accept a capacity supply obligation, and (2) new resources' improved operating efficiency results in lower going-forward costs

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[45] ISO-NE Initial Br. 50, 55 (citing *NextEra Energy Resources v. FERC*, 898 F.3d 14, 21-22 (D.C. Cir. 2018) (finding it appropriate for the Commission to update its application of the balancing test to reflect changes in market rules and other market features when explaining why the Commission's position on the legitimacy of the market impacts of a MOPR exemption for renewables has evolved)).

[46] NEPGA Initial Br. Stoddard Aff. ¶ 15.

[47] Potomac Economics Initial Br. 3-6.

and lower FCA offer prices than many other existing capacity resources. ISO-NE states that the zero-price offer rule lowers the capacity clearing price after the first year of entry (during the price-lock period) only when a resource has a high competitive offer and acquires a capacity supply obligation but would not acquire a capacity supply obligation after the first year without the zero-price offer rule. ISO-NE states that, in contrast, when a resource has a low competitive offer in the same scenario, the FCA's clearing price is the same regardless of whether the zero-price rule applies. ISO-NE believes that this latter scenario is most likely and therefore the zero-price offer requirement is unlikely to affect FCA prices.[48]

31. NEPGA argues that, while there may be differing opinions regarding when price suppression occurs (i.e., whether it occurs in the entry year or in the entry year and subsequent years 2-7), it is indisputable that price suppression does occur. NEPGA asserts that the Commission recognized price suppression in its Order on Remand when it found the existence of the lock-in option may result in lower capacity clearing prices. NEPGA provides new evidence to argue that lowering a new entrant's financial risk, incenting over-scale new entry, and incenting premature entry cause the price lock to suppress prices in both the entry and subsequent years.[49]

32. Potomac Economics contends that the price lock almost certainly causes unreasonable price suppression in years 2-7. Potomac Economics asserts that, with the price lock, new entrants will have an incentive to enter at lower prices, even if post-entry prices are expected to fall well below Net Cost of New Entry (Net CONE) because the new entrant would still receive the higher locked-in price in years 2-7. Potomac Economics argues that capacity prices are still expected to fluctuate as entry and exit occurs but that the seven-year price lock should shift the entire range of expected prices downward, which is a result of the subsidy implicit in the seven-year lock that shifts price risk from the developer to New England's customers.[50]

33. NRG argues that the offer price aspect of the seven-year price lock has an unreasonable price-suppressing effect because the seller must offer its supply at a zero

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[48] ISO-NE Initial Br. 56-59. ISO-NE compares the FCA clearing prices under the current market rules, where the zero-price offer rule is in effect, to a scenario in which this zero-price offer rule is not in place. For these purposes, ISO-NE assumes that, in the absence of the zero-price offer rule in years 2-7, resources that have elected for the price lock will submit de-list bids (capacity supply offers at the minimum price level that they would accept a capacity supply obligation) and that there are no new administrative pricing rules that would govern how this supply is priced during that time period.

[49] NEPGA Initial Br. 9-14 (citing Stoddard Aff. ¶¶ 15-23; 51-55).

[50] Potomac Economics Initial Br. 4.

dollar price in auction years 2-7 regardless of the existence of actual costs that exceed this threshold and, in so doing, puts inappropriate downward pressure on the FCA clearing prices. NRG notes that the Commission previously rejected a proposal made by PJM for price-locked resources to submit zero-price offers, finding that such offers would suppress market prices inappropriately and that there are no regional differences that warrant a contrary finding in ISO-NE. NRG contends that a rule that requires supply offers below the seller's cost will have a price-suppressing effect and any price suppression is unreasonable.[51]

4. Whether the price lock is unduly discriminatory

34. ISO-NE asserts that, when looking at a single capacity auction, the price-lock mechanism is economically discriminatory because it results in situations in which resources with nominally identical capacity supply obligations are paid different rates for that specific, Tariff-defined service. In particular, ISO-NE contends that, due to market changes, it is more difficult now to justify the preferential treatment afforded new entrants through the price lock. Because the "perceived risks in the FCM" that the Commission relied upon for differential treatment are no longer unnaturally high and given the improvements to the demand curve design, ISO-NE anticipates that the FCM will clear at the price required to attract new entry.[52]

35. NEPGA argues the price lock is unduly discriminatory for two reasons. First, NEPGA asserts that, despite providing exactly the same capacity product as new entrants, existing suppliers (with the narrow exception of certain existing suppliers repowering their facilities and thus eligible for a price lock) are not entitled to lock in what have consistently been higher entry-year prices under the price lock. Second, NEPGA claims that, while being denied the opportunity to lock-in prices themselves, existing suppliers must bear the cost of the price suppression caused by the price lock. NEPGA contends that the downward trend in prices that the Commission noted in the Order on Remand has exacerbated the discrimination and has provided new entrants not only price certainty but

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[51] NRG Initial Br. 2-4 (citing *Devon Power LLC*, 103 FERC ¶ 61,082, at P 29, *order on reh'g*, 104 FERC ¶ 61,123 (2003) ("[S]uppressed market clearing prices . . . erode the ability of other generators to earn competitive revenues in the market."); *Calpine Corp.*, 163 FERC ¶ 61,236, at P 35 (2018) (explaining that subsidies that "allow resources to suppress capacity market clearing prices, render[ ] the rate unjust and unreasonable")).

[52] ISO-NE Initial Br. 60-62.

also prices consistently higher than FCA clearing prices in years 2-7 of the price-lock period.[53]

36. NEPGA asserts that the price lock's preferential treatment for new entrants was originally justified on two grounds: (1) the expected price paid to both the new entrant and other resources would be the same with only a difference in the risk and volatility of that price and (2) the market needed "training wheels" in light of the risk of extreme capacity price volatility. NEPGA argues that the first rationale is false because the price lock benefits new entrants by not only lowering the volatility of capacity payments but also paying them a significant premium relative to incumbents. NEPGA claims that the second rationale is false because the risk of extreme capacity price volatility was eliminated with the downward sloping demand curve, adding that 14 years of "training wheels" should be sufficient.[54]

37. NEPGA adds that, while the Commission has properly recognized that existing suppliers and new entrants face different costs and risk when offering into capacity auctions, it has also found that they are nonetheless similarly situated from the perspective of the reliability benefit they provide and that they should receive the same price so that price signals are not skewed in favor of new entry. NEPGA asserts that the price-lock rule ensures that existing and new resources are paid different prices. NEPGA argues that it has strongly skewed price signals in favor of new entry and against existing resources, without a showing that new entrants and existing resources are differently situated in a way that justifies the magnitude of the preference afforded to the former.[55]

38. RENEW argues that the price lock unduly discriminates against existing capacity resources and discriminates against new capacity resources by favoring the existing resource mix over newer and cleaner resources. RENEW asserts that, although the price lock is available to all new generators, it provides far greater predictability in revenue streams to gas generators, which creates an unequal and unduly discriminatory advantage to those resource types, while simultaneously putting other new resources, such as wind and demand response, at a comparative disadvantage in the markets. RENEW contends that different technology types with different cost structures and sources of revenue risk cannot compete on equal footing in the market and achieve a socially optimal outcome

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[53] NEPGA Initial Br. 15.

[54] *Id.* at 16-19.

[55] *Id.* at 17 (citing *Consol. Edison Co. v. FERC*, 165 F.3d 992, 1012 (D.C. Cir. 1999); *Sebring Utils. Comm'n v. FERC*, 591 F.2d 1003, 1009 n.24 (5th Cir. 1979); *Transwestern Pipeline Co.*, Opinion No. 238-A, 36 FERC ¶ 61,175, at 61,433 (1986), *aff'd sub nom*. *Transwestern Pipeline Co. v. FERC*, 820 F.2d 733 (5th Cir. 1987)).

when the design of the market imparts a significant advantage to only a small subset of resources.[56]

39. Potomac Economics argues that the price lock discriminates in favor of investment in new resources and against existing resources, which is inefficient because it does not lead the market to satisfy ISO-NE's resource adequacy requirements at the lowest cost. Potomac Economics contends that the price lock is unduly discriminatory because ISO-NE's requirements are satisfied by a combination of new and existing resources and megawatts of unforced capacity from new and existing resources are completely fungible. Potomac Economics adds that new resources can off-load the market risks associated with price fluctuations while existing resources cannot.[57]

40. ISO-NE asserts that it is not possible to draw conclusions about how shortening the maximum price-lock duration would impact potential entrants' willingness to participate in the FCM, the frequency with which eligible resources would elect a price-lock with a shortened term, how this change would impact auction outcomes more generally, or which durations would be appropriate if the maximum term were shortened.[58] NEPGA argues that, given the unjust and unreasonable price suppression, undue discrimination, and the outdated rationales for the price-lock mechanism, the price lock should be eliminated, not just reduced. NEPGA claims that reductions would not eliminate the unjust and unreasonable price suppression and undue discrimination.[59] Potomac Economics contends that the only just and reasonable term for the price lock is one year because the capacity auction is conducted annually.[60]

C. <u>Offer Floor</u>

41. ISO-NE explains that there is no unique or standard market design for non-economic administrative rules such as price-lock offer-floor prices and provides three design questions that would need to be assessed and answered before any such offer-floor rule could be developed and implemented: (1) What happens if the offer-floor price stipulates a value in excess of the capacity clearing price in the FCA? (2) What methodology is used to set the "hard" or the initial "soft" offer floor applicable to a price-

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[56] RENEW Initial Br. 2-8.

[57] Potomac Economics Initial Br. 6-7.

[58] ISO-NE Initial Br. 63-64.

[59] NEPGA Initial Br. 20.

[60] Potomac Economics Initial Br. 7.

locked resource? and (3) Should a priced-locked resource be permitted to offer its capacity into the auction at a price above the offer floor?[61]

42. ISO-NE states that, although it has not fully assessed how such an offer floor could be implemented, these initial design decisions could produce markedly different market outcomes. ISO-NE further states that the numerous challenges and potential concerns with any offer floor price design reflect the inherently ad hoc nature of such an administrative rule. ISO-NE explains that there are three potential designs for an offer floor: (1) a "hard offer floor" where a price-locked resource would not receive a capacity supply obligation if its offer floor exceeded the clearing price in the corresponding FCA; (2) a hard offer floor with out-of-market awards and capacity uplift payments to ensure the price-locked resource receives its lock-in price when the resource's offer floor exceeds the clearing price; and (3) a "soft offer floor" that is administratively adjusted by ISO-NE, in some technical manner, to ensure that a price-locked resource is awarded a capacity supply obligation in the FCA. ISO-NE contends that the soft offer floor approach is by far the most complex administrative rule of those that it considered in connection with the Order on Remand. ISO-NE expresses concern that further examination and design evaluation of possible administrative offer floor rules will likely reveal a host of complicated questions and unintended problems that have no sound economic answers, which could create continued controversy and unproductive future litigation. Therefore, ISO-NE concludes that it may be best to eliminate the price-lock provisions in their entirety rather than require ISO-NE to develop and implement a new set of complex administrative rules to accommodate an offer floor.[62]

43. NEPGA contends that a price-locked resource cannot be relied upon to offer competitively at its going-forward costs because the existence of the price lock distorts the resource's incentive to clear the capacity market. To address this distortion, NEPGA argues that a resource should be required to offer into each FCA during the term of the price lock at its original offer price (i.e., the price of its offer into the entry FCA), as under PJM's New Entry Price Adjustment. NEPGA contends that, if the price lock is eliminated prospectively, any existing price-locked resources should be subject to an offer floor for the remainder of their price-lock periods.[63]

44. NEPGA contends that this offer-floor design would not require significant market rule changes because ISO-NE would not need to attempt the difficult, if not impossible, task of calculating the but-for offer price. However, NEPGA asserts that, if ISO-NE implemented an offer floor solely for resources that remain price-locked after the

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[61] ISO-NE Initial Br. 64.

[62] *Id.* at 65-72.

[63] NEPGA Initial Br. 21-22.

prospective elimination or as part of a New Entry Price Adjustment-based replacement for the price lock, ISO-NE will need to address an offer floor that prevents the price-locked resource from clearing. If the Commission directs ISO-NE to adopt an offer floor, NEPGA urges the Commission to require its implementation in time for FCA 16 for the 2025/2026 Capacity Commitment Period.[64]

45. Potomac Economics argues that adding an offer floor to the price lock would be more economically unsound and inefficient than the current offer floor. Potomac Economics contends that the price-lock is an inefficient way to reduce the risk to investors, an inefficiency which would be compounded by adding an offer floor. Potomac Economics explains that a resource that has entered the market has sunk costs and that its going-forward costs, net of energy and ancillary services market revenues would be close to zero or negative. Therefore, Potomac Economics asserts that it is profit-maximizing and economically rational for a recently constructed unit, without market power, to offer as a price-taker. Potomac Economic claims that enforcing an offer floor on such a supplier would compel the supplier to offer in an inefficient and uneconomic manner, leading to lower expected revenues for the investor and higher costs for ISO-NE customers.[65]

46. NRG advocates for maintaining the price lock but replacing the zero-price rule with an offer floor like the Offer Review Trigger Price (ORTP) or New Resource Offer Floor Price set by ISO-NE's Internal Market Monitor in the first year that a resource clears.[66]

D. Alternate Rates

47. ISO-NE and NEPGA agree that any alternate rate or approach to the current price-lock should be tailored to new entrants' specific needs.[67] However, parties disagree on whether there is a current need for an alternate rate or approach to the current price lock and what it should be.[68] ISO-NE points out that it is not necessary to consider the price lock further because currently the price lock is not essential for procuring capacity to

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[64] *Id.* at 22-23.

[65] Potomac Economics Initial Br. 7-8.

[66] NRG Initial Br. 2.

[67] ISO-NE Initial Br. 65; NEPGA Initial Br. 24-27.

[68] *See* ISO-NE Initial Br. 65; NEPGA Initial Br. 24-27; Potomac Economics Initial Br. 8; RENEW Initial Br. 2-3, 9-12.

meet the FCM's reliability objectives.[69] NEPGA argues for narrowly tailoring any new approach to a reliability need (e.g., a capacity shortage) and to resources that address that need.[70]

1. Alternate approaches to incent new entry

48. ISO-NE asserts that it cannot currently propose an alternative replacement rate because it has not performed an assessment of potential alternative market designs. ISO-NE argues that it is not necessary to prioritize further consideration of the price lock because the price lock mechanism is no longer essential to meeting the FCM's reliability objectives, adding that it is not possible to predict if it will be needed in future markets.[71]

49. NEPGA argues that any mechanism to incent new entry should be as narrowly tailored as possible to a reliability concern such as PJM's New Entry Price Adjustment, which is narrowly tailored to address lumpy investment in import-constrained zones and limited to resources that address a reliability requirement, with the resources re-offered at their original offer price for the extension years. NEPGA contends that the price lock should only be available for a potential net Installed Capacity Requirement shortfall when a resource is needed to avoid clearing less than the net Installed Capacity Requirement in the region as a whole and limited to the time that it takes for the market to absorb the new capacity (e.g., a three-year term like the New Entry Price Adjustment price-lock term).[72]

50. RENEW states that the price lock favors the development of gas generation because the timing of the capacity auction and commitment period is built around the typical development cycle for a new-build gas generator. As such, RENEW asks the Commission to investigate price-lock alternatives that will provide similar risk reduction to low- or no-carbon resources that are more cost effective and will assist with decarbonization. RENEW asserts that, although ISO-NE has taken a hands-off approach to whether New England states will achieve Renewable Portfolio Standards, an "agreed-upon mechanism" in ISO-NE markets could be implemented to meet state clean energy laws.[73]

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[69] ISO-NE Initial Br. 65.

[70] NEPGA Initial Br. 25.

[71] ISO-NE Initial Br. 77-78.

[72] NEPGA Initial Br. 25-26.

[73] RENEW Initial Br. 2-3, 9-12.

2. Alternate approaches to address price suppression or discriminatory treatment

51. NEPGA argues that limiting the circumstances when a new resource can lock in its price would decrease price suppression and minimize premature overbuilding, adding that the requirement to re-offer at the original price ensures clearing prices more accurately reflect the cost of such resources.[74] Potomac Economics asserts that it is reasonable to remove the price lock without an alternative replacement rate because a replacement rate that seeks to incent new investment over maintenance of existing resources produces the same inefficiencies and undue discrimination as the existing price lock.[75]

52. NEPGA notes the Commission's recognition in *PJM III* that some degree of preferential treatment for new entrants might be justifiable and might not be unduly discriminatory if appropriately tailored to respond to a clear reliability need. NEPGA argues that, for that reason, an approach like PJM's New Entry Price Adjustment would not be unduly discriminatory and prohibits price-taker offers from price-locked resources, which would minimize price suppression.[76]

E. Stakeholder Process

53. ISO-NE states that any redesign rules to implement an offer floor need to be codified in the Tariff and brought through the stakeholder and regulatory process for Commission review.[77] NRG asks the Commission to direct ISO-NE, along with interested stakeholders, to propose appropriate mechanisms to ensure that a price-locked asset maintains a capacity supply obligation during the price-locked years and to determine how to allocate any uplift costs to market participants.[78] If the Commission determines that the current price lock and zero-price offer rule are unjust and unreasonable, Massachusetts Attorney General asserts that ISO-NE and NEPOOL must fashion a remedy that is vetted through the NEPOOL process to enhance support for the

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[74] NEPGA Initial Br. 27.

[75] Potomac Economics Initial Br. 8.

[76] NEPGA Initial Br. 27 (citing *PJM III*, 128 FERC ¶ 61,157 at PP 101-102).

[77] ISO-NE Initial Br. 76.

[78] NRG Initial Br. 8-9.

proposed solutions and better ensure that any FCM modifications are suitable for the New England market.[79]

54. NEPOOL states that, because the price-lock provisions have always been part of a broader package of market reforms, it is unclear how market participants view those provisions in isolation. NEPOOL therefore takes no substantive position at this time on the specific issues or questions. However, if the Commission determines that a change is required to the Tariff, NEPOOL asks the Commission to direct that such changes be considered within the region's stakeholder process before they are filed with the Commission. NEPOOL also asks the Commission to avoid taking any action in this or any other proceeding that would circumvent or compromise the full benefits of the region's stakeholder processes. NEPOOL advocates against a "one-size-fits-all" solution because any changes to the price-lock provisions can have material and potentially unintended consequences on the markets. NEPOOL argues that its stakeholder process provides time and flexibility for ISO-NE and the New England stakeholders to work together to develop rules that work best for the region's markets, while properly accounting for any Commission guidance in this proceeding and other market design features unique to New England.[80]

IV. Reply Briefs

A. Price Lock

55. PJM Independent Market Monitor (PJM IMM) argues that a price lock is not needed to ensure sufficient new entry in any organized markets, adding that PJM's New Entry Price Adjustment Tariff provisions are analogous to the disputed Tariff provisions. PJM IMM states that the New Entry Price Adjustment provisions have only been used once during the 2012-2013 delivery year for a relatively small incremental capital addition to an existing plant, noting that the PJM capacity markets facilitated the entry of over 41,000 MW of generation capacity additions during the 2007-2008 and 2019-2020 delivery years.[81]

56. NEPGA clarifies that the removal of the price lock should be prospective only, adding that the Commission must address the unreasonable price suppression that will continue to exist for price-locked resources. NEPGA contends that, because the record demonstrates that the New Entrant Rules are unjust and unreasonable, the Commission should require ISO-NE to eliminate the rules in time for FCA 15 and require pre-existing

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[79] Massachusetts Attorney General Initial Br. 6.

[80] NEPOOL Initial Br. 6-9.

[81] PJM IMM Reply Br. 1-2 (citing PJM OATT, Attach. DD § 5.14(c)).

resources with price locks to adopt an offer floor before FCA 16. NEPGA asserts that it is highly significant, if not dispositive, that not a single party has submitted evidence rebutting the Commission's preliminary finding that the price lock may be unjust or unreasonable or attempting to defend the price lock.[82]

57. While advocating for terminating the price-lock provisions, Massachusetts Attorney General argues that resources with existing price locks should have those prices honored for the duration of their terms because, even though modifying or terminating existing price-lock agreements might reduce customer costs, such changes could be unjust and unreasonable and violate the filed-rate doctrine and the rule against retroactive ratemaking.[83] Massachusetts Attorney General contends that price-locked resources should continue to offer into FCAs with the zero-price offer rule, noting that ISO-NE is strongly against replacing the zero-price offer rule with a price offer floor as an interim or permanent measure. Massachusetts Attorney General opposes NEPGA's recommended offer floor approach because it would dramatically increase the cost of the capacity market due to the outsized uplift payments that would be required. If the Commission retains the price lock, Massachusetts Attorney General recommends making it available to a broader range of generation technologies.[84]

58. The Connecticut Commission argues that the price lock is still needed to incent new entry because it provides stable and predictable revenues necessary for financing and to overcome barriers to entry. The Connecticut Commission asserts that ISO-NE fails to consider whether the New Entrant Rules continue to serve an important purpose when FCM prices spike due to a supply and demand imbalance, the need for new supply resources and the need to moderate the prices paid to the entire market during a price spike while at the same time locking in a higher capacity price for the new entrant, noting that ISO-NE assumes there will be no shortages in the future. The Connecticut Commission argues that the price lock does not result in price suppression in the entry year and that the zero-price offer in years 2-7 appropriately reflects the competitive level of bids for a new resource. The Connecticut Commission contends that the New Entrant Rules appropriately recognize that new and existing resources are not similarly situated. The Connecticut Commission asserts that the New Entrant Rules are just and reasonable, are working as intended by incenting some new entry while maintaining appropriate price formation, and therefore should not be materially changed.[85]

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[82] NEPGA Reply Br. 2-8.

[83] Massachusetts Attorney General Reply Br. 4-11.

[84] *Id.* at 11-13.

[85] Connecticut Commission Reply Br. 2-3, 9-15.

59. BSW contends that the price lock is still needed to incent new resources to enter the FCM for two reasons: (1) the degree of regulatory risk is exceptionally high due to uncertain state and federal rules and requirements, and (2) the FCM rules are frequently and constantly changing, resulting in market uncertainty and a lack of investor confidence. BSW argues that the New Entrant Rules are not unduly discriminatory because the different treatment of new resources and existing resources is based on operational differences that are material to explaining how the two are not similarly situated. BSW contends that older generators have increased maintenance costs and upgrades needed to remain operational and therefore are not similarly situated to new entrants in terms of going-forward costs. BSW asserts that this distinction provides a rational basis for treating new entrants differently with respect to the FCA offer price for the subsequent years of the lock-in period.[86]

B. Offer Floor

60. ISO-NE asks the Commission to reject NEPGA's and NRG's requests to add an offer floor for price-locked resources. ISO-NE contends that arguments in support of an offer floor are not grounded in economic logic; do not answer fundamental, difficult questions about its design; over-estimate the value of an offer floor; and under-estimate the complexity of implementing such a mechanism. ISO-NE asserts that neither NEPGA nor NRG provide an explanation of how the suggested offer floors would be implemented, reiterating the design questions that need to be addressed. ISO-NE claims that, in suggesting the implementation of a soft offer floor price that guarantees the clearing of the price-locked resource through reductions to the resource's offer price in successive rounds of the auction, NEPGA underestimates the workings of the FCM's descending clock auction and the technical challenges a soft offer floor would pose.[87]

61. NEPGA argues that ISO-NE and Potomac Economics erroneously attempt to minimize the impacts of the zero-price offer rule by arguing that a price-locked resource has low going-forward costs and overstate the barriers to, and understate the benefits of, implementing an offer floor. NEPGA emphasizes the need to consider the impact of these price-locked resources on future FCA clearing prices. NEPGA asks the Commission to direct ISO-NE to adopt PJM's New Entry Price Adjustment soft offer floor approach or some other just and reasonable replacement to mitigate the price suppressive effects of any existing price-locked resources in time for FCA 16.[88]

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[86] BSW Reply Br. 11-15.

[87] ISO-NE Reply Br. 5, 10-13.

[88] NEPGA Reply Br. 8-11.

62. The Connecticut Commission argues against the adoption of an offer floor because new entrants are expected to have low costs in years 2-7 because "construction costs and risks are now behind the new entrant and sunk."[89] The Connecticut Commission contends that therefore it is appropriate and competitive for the new entrant to bid close to zero, reflecting its going-forward costs. The Connecticut Commission asserts that an offer floor will distort these bids by forcing them to be artificially high, which will inflate the market clearing price above competitive levels and hinders proper price formation.[90]

C. Alternate Rates

63. ISO-NE contends that RENEW's argument (i.e., that the seven-year price lock strongly favors new resources with low capital costs and high operating costs over new resources with high capital costs and low operating costs and that further examination into alternatives to the price-lock rules is needed) is outside the scope of this proceeding. ISO-NE notes that the issues and observations RENEW raises would be better addressed in the current stakeholder initiative to evaluate the future of the electrical grid, in particular whether and what modifications and enhancements to the wholesale market design may be necessary or beneficial in the event the New England states achieve their de-carbonization goals and to support the region's transition to a resource mix that achieves these goals.[91]

64. The Connecticut Commission suggests the following minor modifications to the New Entrant Rules: (1) regarding price suppression in year 1 due to new entrants benefiting from the price lock option, the Commission can set the price level that locks in for years 2-7 at a level below the initial or year 1 clearing price; for example, five to ten percent below; (2) regarding price suppression in years 2-7 due to new entrants being required to bid zero when their going-forward costs are somewhat higher, the Commission can require that new entrants bid consistent with their going-forward costs in years 2-7; and (3) regarding discrimination towards existing resources due to these resources not having the price lock option, the Commission can use the same approach to address price suppression in year 1 with the lock-in price somewhat less than the year 1 clearing price. The Connecticut Commission also asks the Commission to consider whether barriers to entry exist for state-sponsored new resources and for other

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[89] Connecticut Commission Reply Br. 15.

[90] *Id.* at 14-15.

[91] ISO-NE Reply Br. 15-16.

new resources with high construction costs and low operating costs and which mechanisms may be needed for them to overcome the barriers to entry.[92]

65. If the Commission directs any changes to the ISO-NE price-lock mechanism, RENEW/ESA ask the Commission to direct ISO-NE to retain the ability to secure a guaranteed stream of capacity revenues for up to seven years for energy storage, including pumped hydro storage, as well as repowered hydropower, wind, and solar resources because newer technologies face greater challenges to secure financing and rely heavily on capacity revenues. If the Commission limits the availability of the price lock, RENEW/ESA ask the Commission to consider either a schedule for phasing out the price-lock over a number of years or shortening the duration of the price lock to less than seven years rather than eliminating it.[93]

V. Discussion

A. Procedural Matters

66. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2020), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

67. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2020), we grant BSW Project Co. LLC's, RENEW's, and ESA's late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

B. Substantive Matters

68. As discussed below, we find that, in light of changed circumstances, the New Entrant Rules are unjust and unreasonable because they result in unreasonable price distortion. Based upon the record, we find that the FCA price assurance that the Commission previously found necessary in approving these rules is no longer required to attract new entry.[94] Consequently, the benefits provided by the price certainty afforded by the New Entrant Rules for new capacity resources no longer outweigh their price suppressive effects. We clarify that our termination of the price lock will

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[92] Connecticut Commission Reply Br. 15-17.

[93] RENEW/ESA Reply Br. 3-6.

[94] *See* ISO-NE Initial Br. 47; Massachusetts Attorney General Initial Br. 3-4; Massachusetts Attorney General Reply Br. 4-11; NEPGA Initial Br. 6-9; PJM IMM Reply Br. 1-2; Potomac Economics Initial Br. 2.

not impact price-lock agreements in effect prior to the issuance of this order.[95] We direct ISO-NE to submit a compliance filing, within 60 days of the date of this order, to revise its Tariff to eliminate the price lock and associated zero-price offer rule for new entrants starting in FCA 16.

69. ISO-NE has implemented several changes to the FCM since the price-lock was extended from five to seven years in 2014 that support a re-evaluation of the New Entrant Rules. In 2014, ISO-NE implemented a system-wide downward sloping demand curve to address capacity price volatility.[96] In 2016, ISO-NE introduced downward sloping zonal demand curves that more accurately reflect the marginal reliability impact of incremental capacity at a location.[97] After implementation of the downward sloping system-wide and zonal demand curves, ISO-NE removed administrative pricing rules addressing instances of inadequate supply and insufficient competition.[98]

70. The system-wide and zonal downward sloping demand curves now in place in the FCM moderate the potential price impact of new entry by reducing annual price volatility. While prices can still increase to or above ISO-NE's estimate of Net CONE with a downward sloping demand curve, the downward sloping demand curve is designed to prevent clearing prices at the offer ceiling by relaying a gradual need for new capacity. Similarly, the sloped demand curves moderate downward price movements that could result in the years that follow new entry.

71. In 2014, ISO-NE also implemented energy market scarcity pricing enhancements that increased the Reserve Constraint Penalty Factors for 10- and 30-minute reserves, which increased the price that resources are paid for energy and reserves in real-time during scarcity conditions. In 2015, ISO-NE also removed the Peak Energy Rent mechanism, which was a downward adjustment to monthly capacity payments that aimed to prevent suppliers from withholding energy to increase prices.[99]

72. Together, these changes to the capacity, energy, and ancillary services markets have significantly altered the landscape for new entrants in ISO-NE. The energy and

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[95] *See ISO New England Inc.*, 170 FERC ¶ 61,187, at PP 15-18 (2020); *ISO New England Inc.*, 134 FERC ¶ 61,128, at PP 39-40, *order on reh'g*, 136 FERC ¶ 61,221 (2011); *ISO New England Inc.*, 132 FERC ¶ 61,136, at P 30 (2010).

[96] *See* Sloped Demand Curve Initial Order, 147 FERC ¶ 61,173 at P 29.

[97] ISO-NE Initial Br. 20.

[98] *Id.* at 21.

[99] *Id.* at 24.

ancillary services market improvements provide resources the opportunity to receive a greater proportion of revenues in these markets, which reduces the revenue that resources need to earn from the FCM to recover their costs. Because new resources in ISO-NE now have greater certainty about their ability to earn revenues through energy and ancillary services markets, there is a reduced need for resource owners and investors to rely on the price certainty provided by the New Entrant Rules.

73. Turning to the New Entrant Rules, we find that the entry of new resources should be driven, at least in part, by expectations about the prices in future years. The price lock interferes with that dynamic by making a price-locked resource insensitive to the prices in the several FCAs following the entry year.[100] In the entry year, a resource that is eligible to receive a price lock can offer below what it would offer absent the risk that FCA prices will go below its entry year offer during years 2-7. With its price risk eliminated, a new resource may lower its offer price to increase the likelihood that it will be selected in the auction. If this resource is the marginal resource, the lower clearing price distorts the price signal sent by the FCM and also reduces the price paid to all capacity suppliers in that auction.

74. While the Commission previously recognized that the New Entrant Rules may result in price suppression, the Commission found that any such price suppression was an acceptable byproduct of market rules that would attract new entry through greater investor assurance and protect consumers from very high year-one prices.[101] Based on the new record evidence in this proceeding, we find that the price suppression caused by the New Entrant Rules can no longer be justified as necessary to facilitate new entry.[102] That is particularly so because the record indicates that there are alternatives outside of ISO-NE's markets that can provide price assurance in a more efficient and specific manner.[103] For instance, resources are able to purchase contracts in capital markets and

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[100] NEPGA Initial Br. 12-14; PJM IMM Reply Br. 1; Potomac Economics Initial Br. 3.

[101] *NEPGA*, 881 F.3d at 209 (The Commission previously found that a lower clearing price "is an acceptable byproduct of a just and reasonable market rule . . . that achieves particular and distinct objectives": (1) incenting new entry into the FCAs to ensure capacity; and (2) protecting consumers from high prices) (quoting Exelon Rehearing Order, 154 FERC ¶ 61,005 at P 15).

[102] *See, e.g.*, ISO-NE Initial Br. 50-55; NEPGA Initial Br. 7 (citing Stoddard Aff. ¶ 32); Potomac Economics Initial Br. 3-4. We note that we do not find that the zero-price offer requirement here is likely to contribute to any price suppression.

[103] *See, e.g.*, ISO-NE Initial Br. 48; NEPGA Initial Br. 8; Potomac Economics Initial Br. 2.

then incorporate the cost of that hedge into their FCA offers.[104] Accordingly, based on these findings, we conclude that the New Entrant Rules are unjust and unreasonable.

75. Having made this finding, we must address the price treatment for existing price-locked resources in future FCAs until their price lock expires. We find that the zero-price offer requirement more closely estimates a price-locked resource's competitive offer for years 2-7 than a soft offer floor. We agree with ISO-NE and Potomac Economics that a recently cleared resource would likely have lower going-forward costs than the marginal resource, making it inframarginal.[105] Further, as ISO-NE demonstrates, any inframarginal offer has the same effect on the FCA price whether that inframarginal offer is at or above zero.[106] We agree that requiring price-locked resources to offer at zero (i.e., ensuring that they are inframarginal) is consistent with their likely going-forward costs and yields an FCA clearing price reflective of a competitive market.[107] Accordingly, we direct ISO-NE to retain the zero-price offer requirement for existing price-locked resources for the duration of their existing price lock.

76. We disagree with NEPGA's argument that unreasonable price suppression will continue to occur after the price lock is removed unless ISO-NE implements a soft offer floor for the remaining resources that elected the price lock.[108] Although NEPGA demonstrates that FCA pricing outcomes can theoretically differ depending on whether a soft offer floor or a zero-price offer requirement is in place,[109] recently cleared resources are unlikely to have high going-forward costs. As noted above, the likely going-forward costs—and thus the competitive offer—of a recently cleared resource is low, so the current zero-price offer rule more accurately reflects this likelihood than the offer floor for which NEPGA advocates. Further, we agree with ISO-NE and Potomac Economics that adopting an offer floor would unnecessarily complicate the FCM and have detrimental consequences.[110] Given that the results of the FCA are unlikely to change under NEPGA's soft offer floor proposal, we decline to require ISO-NE to

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[104] ISO-NE Initial Br. 48; Potomac Economics Initial Br. 2.

[105] ISO-NE Initial Br. 59; Potomac Economics Initial Br. 7.

[106] ISO-NE Initial Br. 55-59.

[107] *Id.* at 59.

[108] *See supra* P 61.

[109] NEPGA Initial Br., Stoddard Aff. ¶¶ 3-16.

[110] ISO-NE Initial Br. 65; Potomac Economics Initial Br. 7-8.

implement that proposal, with its attendant complications and potential detrimental consequences.

77. As discussed above, because we find that the New Entrant Rules are unjust and unreasonable and direct ISO-NE to eliminate the price lock, we need not consider NRG's proposal to adopt an offer floor to remedy price suppression. We also decline to consider alternate price-lock mechanisms to remedy alleged discrimination and preferential treatment resulting from the New Entrant Rules, as RENEW requests.[111] The Commission "is not required to choose the best solution, only a reasonable one."[112] Because we find that the New Entrant Rules are unjust and unreasonable, any claims of unduly discriminatory or preferential treatment are moot.

The Commission orders:

(A) The Commission hereby finds the Tariff unjust and unreasonable and directs ISO-NE to submit Tariff revisions to remove the price lock and zero-price offer rule prospectively, as discussed in the body of this order.

(B) ISO-NE is hereby directed to submit a compliance filing, within 60 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

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[111] RENEW Initial Br. 12.

[112] *Monongahela Power Co.*, 162 FERC ¶ 61,129, at P 117 (citing *Petal Gas Storage, L.L.C. v. FERC*, 496 F.3d 695, 703 (D.C. Cir. 2007)), *reh'g denied*, 164 FERC ¶ 61,217 (2018).