UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England Inc.	)	Docket No. ER14-463-000

MOTION TO INTERVENE AND PROTEST OF THE NEW ENGLAND STATES COMMITTEE ON ELECTRICITY

Pursuant to Rules 211, 212, and 214 of the Federal Energy Regulatory Commission's ("Commission" or "FERC") Rules of Practice and Procedure, 18 C.F.R. §§ 385.211, 385.212, and 385.214 (2013), and the Commission's November 27, 2013 Combined Notice of Filings, the New England States Committee on Electricity ("NESCOE") hereby files this Motion to Intervene and Protest of ISO New England Inc.'s ("ISO-NE" or "ISO") Exigent Circumstances filing in the above-captioned proceeding.

I. EXECUTIVE SUMMARY

With this filing, ISO-NE is proposing revisions to certain Forward Capacity Market ("FCM") rules in advance of the next Forward Capacity Auction ("FCA") that seek to (i) remedy a "gap" that ISO-NE has identified in the Insufficient Competition rule (the "IC Rule") (referred to by ISO-NE and herein as the "IC Gap"), (ii) modify the administrative pricing provisions in the IC Rule and Inadequate Supply rule (the "IS Rule"), and (iii) make clarifications to the IS/IC rules and the Capacity Carry Forward Rule.[1] ISO-NE's proposed change to the administrative pricing rules, like the recent complaint filed by the New England Power Generators Association,

[1] Capitalized terms not defined in this filing are intended to have the meaning given to such terms in the Participants Agreement among ISO-NE and the New England Power Pool ("NEPOOL") and any individual Participants (the "Participants Agreement") or the ISO-NE Transmission, Markets and Services Tariff (the "Tariff"). The Commission accepted the Participants Agreement in *ISO New England Inc., et al.*, 109 FERC ¶ 61,147 (2004).

Inc. ("NEPGA") regarding the same provisions,[2] is a last-minute, unilateral market modification with likely significant consumer cost implications and no demonstrated benefit.[3] It is driven by what ISO-NE attempts to characterize as Exigent Circumstances, which, if adequately demonstrated, would enable ISO-NE to avoid the normal stakeholder process through which it vets proposals and receives input from states, market participants, and other stakeholders. Given that ISO-NE has no obligation to consider consumer cost implications associated with its preferred actions, the stakeholder process is the only means under today's regional structure by which the states and others can make cost and other consequences to consumers a relevant element in the range of potential solutions. For that reason, consistent with the terms of the Participants Agreement, the Commission should only allow ISO-NE to bypass state and stakeholder input in circumstances where exigent conditions truly exist and where failing to obtain such input prior to making a filing was genuinely unavoidable. That is not the case here.

ISO-NE has not demonstrated that credible Exigent Circumstances exist to necessitate changes to the IS/IC administrative pricing rules outside of the normal process that requires an opportunity for state and stakeholder input. ISO-NE's reasons for bypassing the stakeholder process are insufficiently supported, and ISO-NE has failed to justify circumventing the procedural requirements in the Commission-approved Participants Agreement. It is only through a demonstration of Exigent Circumstances that ISO-NE has the unilateral authority—without having gone through the stakeholder process—to file changes to the market rules pursuant to

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[2] *New England Power Generators Association, Inc. v. ISO New England Inc.*, Complaint of the New England Power Generators Association, Inc. and Request for Fast Track Processing, Docket No. EL14-7-000 (Oct. 31, 2013) ("NEPGA Complaint"). NESCOE filed a protest of the NEPGA Complaint and a motion to intervene in that docket.

[3] NESCOE's protest is limited to the proposed revisions to the administrative pricing provisions. NESCOE supports the other proposed changes in the filing, and ISO-NE has justified the exigent need to address the IC Gap. However, as discussed below in Section IV.C, the IS/IC rules must be addressed comprehensively by ISO-NE, states, and stakeholders, rather than on a piece-meal basis.

section 205 of the Federal Power Act ("FPA"), 16 U.S.C. §824d (2012). In the absence of such a demonstration here, the Commission should find that ISO-NE lacks the authority to submit its proposed revisions to the administrative pricing rules under section 205.

Accordingly, the Commission should reject the proposed changes, or, if it does not reject the proposed changes outright, ISO-NE's unilateral filing should be considered as if it were made pursuant to section 206 of the FPA, 16 U.S.C. §824e (2012). ISO-NE must demonstrate under section 206, *inter alia*, that the current pricing provisions are unjust and unreasonable. However, ISO-NE does not and cannot demonstrate that the existing administrative pricing provisions—found by the Commission just ten months ago to be just and reasonable[4]—are now unjust and unreasonable. ISO-NE's discussion of the changed circumstances that it claims warrant immediate revisions to the administrative pricing rules is inadequately supported and is premised on unproven hypotheses. ISO-NE does not justify substituting an administrative price based on a competitive market outcome with an administrative mechanism replaced just ten months ago at the Commission's direction.

Regardless of whether the Commission evaluates ISO-NE's proposal under FPA section 205 or 206, ISO-NE has not met its burden of demonstrating that its proposed revisions to the administrative pricing provisions are just and reasonable. To the contrary, ISO-NE's changes will produce unjust and unreasonable rates for consumers. Despite stating that the price floors in the FCA have distorted the past seven auctions and likely resulted in *higher* clearing prices than otherwise would have occurred,[5] ISO-NE has now proposed, without support, to more than double the administrative price for existing resources if the IS/IC rules are triggered.

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4 *ISO New England Inc.*, 142 FERC ¶ 61,107 (2013) ("February 2013 Order").

5 Transmittal Letter at 13.

If the administrative pricing rules are triggered, ISO-NE's revisions would transfer over $1 billion in wealth from New England consumers to generators and other resources in FCA 8—entities that were fully aware of the possibility that the IS/IC rules currently in effect could be triggered. Consumers would realize no corresponding value from this transfer of wealth. The reason is simple: the $1 billion will do nothing to influence the behavior of capacity that has already exited the market or the behavior of existing capacity that has decided to participate in FCA 8. In addition, the rules being modified by ISO-NE are not applicable to new resources and provide no incentive for new entry, which in any case is not possible at this late stage of the process leading up to FCA 8 when new capacity can no longer qualify. Moreover, the proposed change is, according to ISO-NE's expressed intent, irrelevant after FCA 8 because ISO-NE plans to supplant the administrative pricing rules with a sloped demand curve.

For these reasons, the Commission should reject ISO-NE's proposed administrative pricing rule revisions. To the extent the Commission finds that changes to the administrative pricing rules are warranted, the Commission should nonetheless not adopt ISO-NE's proposed revisions but instead should direct ISO-NE to initiate a stakeholder process in accordance with the Participants Agreement, to ensure that revisions to the market rules—vetted by states and stakeholders and considering a range of approaches and cost implications—are in place well before FCA 9.

II. COMMUNICATIONS

Pursuant to Rule 203, 18 C.F.R. § 385.203 (2013), the person to whom correspondence, pleadings, and other papers in regard to this proceeding should be addressed and whose name is to be placed on the Commission's official service list is designated as follows:

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III. BRIEF DESCRIPTION OF ISO-NE'S PROPOSED FILING AND BACKGROUND

ISO-NE proposes a number of changes to the rules governing the FCM. The primary proposed revisions concern the IC Gap and the administrative pricing provisions in the IS/IC rules.[6] ISO-NE has proposed these market rule revisions with the Commission as an Exigent Circumstances filing. ISO-NE requests an order approving the proposed changes without condition, modification or hearing, to be effective on January 24, 2014, so that it may implement the new rules for FCA 8, scheduled to start on February 3, 2014.[7]

ISO-NE states that the IC Gap exists when there are more than 300 MW of new generation and new demand resources but less than the amount of New Capacity Required.[8] With ISO-NE's revisions, the IC Rule would be triggered either when the amount of capacity offered from new generation and new demand resources is less than 300 MW, or where the amount of new capacity offered is less than twice the amount of New Capacity Required.[9]

ISO-NE also proposes to modify the administrative pricing provisions that apply during periods of Inadequate Supply or Insufficient Competition. The IS Rule "was intended to address the situation where the total of existing and all new resources was less than the Installed Capacity

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6 ISO-NE also proposes to delete the definition of the Rest of Pool Capacity Zone "New Capacity Required," insert a definition for system-wide "New Capacity Required," and to clarify the rules governing treatment of permanently de-listed resources and capacity otherwise obligated and de-list and export bids when the operation of the Capacity Carry Forward Rule sets the capacity clearing price. *Id.* at 14-15.

7 *Id*. at 4, 16.

8 *Id*. at 7.

9 *Id*. at 10. As noted above, NESCOE supports this proposed change, as well as the clarifications discussed in the filing.

Requirement ('ICR')."[10] The IC Rule "was intended to address the situation where there were less existing resources than ICR and not enough eligible new resources to assure competition in the auction (although when combined, the eligible existing and new resources exceeded ICR)."[11] When Inadequate Supply occurs in a zone or system-wide, existing resources are paid 1.1 times the Capacity Clearing Price for the most recent FCA not having Inadequate Supply, with new resources receiving the FCA starting price for that auction; this is the administrative pricing provision of the IS Rule.[12] During periods of Insufficient Competition in a zone or system-wide, existing resources are paid the lower of (i) the Capacity Clearing Price for that auction, or (ii) 1.1 times the Capacity Clearing Price for the most recent FCA where there was not Insufficient Competition; this is the administrative pricing provision of the IC Rule.[13] Notably, as stated above, the Commission approved these pricing provisions only ten months ago in its February 2013 Order, issued shortly after ISO-NE ran FCA 7.

ISO-NE contends that the current administrative pricing provisions under the IS/IC rules result in a price for existing resources that "is too low, and would undermine investor confidence in the long-term stability of FCM revenues."[14] To remedy this perceived problem, ISO-NE proposes, in the eleventh hour and without reasonable opportunity for state and stakeholder input, to set the administrative price for existing resources during periods of Inadequate Supply or Insufficient Competition at $7.025/kW-month, the amount that would have been calculated under the rules in place for FCA 7.[15]

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[10] *Id.* at 2; *see* ISO-NE Tariff, §§ III.13.2.8.1.1, III.13.2.8.1.2.

[11] Transmittal Letter at 2; *see* ISO-NE Tariff, § III.13.2.8.2.

[12] ISO-NE Tariff, § III.13.2.8.1.1.

[13] *Id.* at § III.13.2.8.2.

[14] Transmittal Letter at 13.

[15] *Id.* at 12.

In the NEPGA Complaint, NEPGA alleged that the IS/IC rules, as well as the Capacity Carry Forward Rule, create price discrimination between new and existing resources and result in artificial prices for existing resources that are far below what new entrants receive. With respect to the IS/IC rules, NEPGA proposed that the Commission replace the current administrative pricing provision of 1.1 times the Capacity Clearing Price in the most recent competitive FCA with 1.1 times the Offer Review Trigger Price ("ORTP") for a combustion turbine.[16]

ISO-NE answered the NEPGA Complaint with respect to the IS/IC pricing provisions by its filing in this docket.[17] In the instant filing, ISO-NE recounts the Commission's previous rejection of NEPGA's "suggestion that the price paid to existing resources in the event of insufficient competition should be slightly above the benchmark cost of a peaker."[18] ISO-NE explains that a price of 1.1 times the current ORTP for a combustion turbine for FCA 8 would be $11.00/kW-month.[19] ISO-NE argues that NEPGA's proposed pricing mechanism could produce a rate that is "too high,"[20] noting that the updated ORTPs being developed by the Internal Market Monitor are "materially different than the current Offer Review Trigger Price rates contained in the ISO-NE Tariff."[21] ISO-NE also cites to the declining trend in the cost of new combined cycle units, below that of a combustion turbine.[22] However, ISO-NE agrees with NEPGA in its

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16 NEPGA Complaint at 5.

17 *New England Power Generators Association v. ISO New England, Inc.*, Answer of ISO New England, Inc. (Nov. 27, 2013), at 1 (explaining that its Answer to the Complaint in that docket was limited to the Capacity Carry Forward Rule issue and that its response addressing the IS/IC rules was filed in the instant docket).

18 Transmittal Letter at 11, *citing ISO New England, Inc. et al.*, 135 FERC ¶ 61,029, at P 342 (2011) ("April 2011 Order"), *order on reh'g and clarification*, 138 FERC ¶ 61,027 (2012).

19 Transmittal Letter at 11.

20 *Id*. at 13.

21 *Id*. at 12.

22 *Id*.

view that "the administrative price under the existing IS/IC rules of $3.46/kW-month is too low."[23] For FCA 8 only, ISO-NE proposes to replace the current pricing provisions with a set price of $7.025/kW-month, derived from the Cost of New Entry ("CONE") value for FCA 7 of $6.055, escalated to reflect inflation using the Handy-Whitman Index of 1.0546, and multiplying the result by 1.1.[24]

IV. PROTEST OF REVISIONS ADDRESSING ADMINISTRATIVE PRICING IN THE INSUFFICIENT COMPETITION AND INADEQUATE SUPPLY RULES

A. ISO-NE Has Not Demonstrated Exigent Circumstances Justifying Changes to the Administrative Pricing Provisions, and the Commission Should, Therefore, Reject the Proposed Changes or Evaluate Them Under FPA Section 206.

ISO-NE made its filing under Section 11.2 of the Participants Agreement, which allows ISO-NE unilaterally, upon written notice to the Participants Committee and individual Participants, to make a section 205 filing to implement a new or amended Market Rule under Exigent Circumstances. Exigent Circumstances are defined in Section 1.1 of the Participants Agreement as:

> circumstances such that ISO determines in good faith that (i) failure to immediately implement a new Market Rule . . . would substantially and adversely affect (A) System reliability or security, or (B) the competitiveness or efficiency of the New England Markets, and (ii) invoking the procedures [for Participant Process] would not allow for timely redress of ISO's concerns.

At the outset, NESCOE emphasizes that it fully supports this provision of the Participants Agreement. ISO-NE must be able to act expediently in times of true need. NESCOE has never before challenged an ISO-NE decision to make an Exigent Circumstances filing. However, ISO-NE's claim of Exigent Circumstances with respect to its IS/IC pricing changes is unsupported,

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[23] *Id*. at 13.

[24] *Id*. at 12.

unsupportable and should be rejected. ISO-NE has not demonstrated that an abrupt rule change is necessary. Nor has ISO-NE provided a reasonable basis for bypassing the stakeholder process that it previously committed to undertake on these issues. As demonstrated below, ISO-NE has made no showing that retention of the current pricing rules would meet any of the Participants Agreement requisites for Exigent Circumstances.

In addition, granting ISO-NE's request to circumvent the stakeholder process in this case would send a deeply disturbing precedent that it is acceptable for ISO-NE to evade the stakeholder process for eleventh-hour proposed rule changes that could significantly increase costs for New England consumers. In fact, such sudden rule revisions without sufficient stakeholder process would undermine investor confidence in future FCM revenues, one of the very outcomes that ISO-NE states it is trying to avoid with this filing. This lack of stakeholder process would be antithetical to the Participants Agreement, which, as the Commission has stated, sets forth "the prerequisites that ISO-NE must follow before submitting a section 205 filing[.]"[25] It would also be contrary to the requirements of Order No. 2000,[26] which provides for active stakeholder input into RTO decisions.[27] That ISO-NE has no institutional obligation to safeguard consumers' economic interests makes its unilateral, last-minute rule changes, void of any process, even more untenable.

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[25] April 2011 Order at P 43.

[26] *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999) ("Order No. 2000"), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

[27] Order No. 2000 at 31,074 ("Where there is a non-stakeholder board, we believe that it is important that this board not become isolated. Both formal and informal mechanisms must exist to ensure that stakeholders can convey their concerns to the non-stakeholder board.").

The Commission has consistently acknowledged the importance of the stakeholder process in New England.[28] Exigent Circumstances filings should be reserved for true emergency situations, where taking the time to go through the normal stakeholder process could harm reliability or the market. Exigent Circumstances filings should not be used by ISO-NE to address any short-term market issue that arises. This is especially true when, as is the case here, ISO-NE had ample opportunity to address any related concern in the regular stakeholder process, and where ISO-NE is attempting to effectively revive an issue recently decided by the Commission.

1. The Changed Circumstances Cited by ISO-NE Neither Constitute Exigent Circumstances Nor Justify an Immediate Need To Change the Administrative Pricing Provisions.

ISO-NE has not demonstrated that retaining the administrative pricing under the existing IS/IC rules would meet the Participants Agreement requisites for Exigent Circumstances, i.e., that retention of these rules would substantially and adversely affect system reliability or security, or the competitiveness or efficiency of the New England Markets in FCA 8 or beyond. In describing the Exigent Circumstances it believes exist, ISO-NE states that there are "flaws" in the FCM rules that, if unaddressed, could result in the auction "produc[ing] anomalous results."[29] While ISO-NE does explain how the IC Gap would produce such outcomes that could have substantial and adverse affects,[30] it fails to do so with respect to the proposed changes to the administrative pricing provisions under the IS/IC rules.

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[28] *See, e.g., ISO New England Inc.*, 138 FERC ¶ 61,042 at P 114 (2012) ("ISO-NE's stakeholder process is the appropriate venue for Joint Parties to propose and develop appropriate rules . . . ."); *ISO New England Inc.*, 128 FERC ¶ 61,266 at P 55 (2009) (declining to require ISO-NE to make tariff changes where it would end-run the stakeholder process); *New England Power Pool*, 107 FERC ¶ 61,135 at PP 20, 24 (2004) (rejecting an entity's proposed changes because the "suggested revisions have not been vetted through the stakeholder process and could impact various participants.").

[29] Transmittal Letter at 6.

[30] *Id*. at 9.

Instead, ISO-NE cites to "Changing Circumstances for FCA 8" to justify the need for an urgent rule change. ISO-NE states that over 3,000 MW of existing resources submitted Non-Price Retirement bids in October 2013 and that "roughly 800 MW of qualified new resources elected not to participate in the auction."[31] According to ISO-NE, the declining participation in FCA 8 "means that it is possible that the IC Rule will be invoked in FCA 8."[32]

In essence, ISO-NE argues that the mere potential triggering of the IC Rule in and of itself should be viewed as Exigent Circumstances. However, ISO-NE did not propose, and the Commission did not approve, a mechanism, which, if triggered, would be unjust and unreasonable and constitute Exigent Circumstances.

Additionally, ISO-NE fails to show that there will be a significant and adverse impact on system reliability or the competitiveness of the FCM as a result of these developments or the triggering of the administrative price under the existing IS/IC rules. Although ISO-NE does not expressly state that failure to implement the pricing rule changes would adversely affect reliability, the implication is present in its filing. Such a claim would be contradicted by the ISO-NE's own recent reporting of more than sufficient capacity in New England, notwithstanding the "changed conditions" ISO-NE describes. As ISO-NE reported to the Commission on November 5, 2013, a total of 2,126 MW of new resources and 35,877 MW of existing resources will be competing to provide 33,855 MW, the net Installed Capacity Requirement ("ICR") for FCA 8.[33] While ISO-NE states that over 3,000 MW of existing resources submitted Non-Price Retirement bids in October 2013, even if all of these resources

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[31] *Id*. at 12.

[32] *Id*. at 3.

[33] ISO New England Inc., Informational Filing for Qualification in the Forward Capacity Market, Docket No. ER14-329-000 (Nov. 5, 2013) at 4-5 ("FCA 8 Informational Filing").

ultimately left the market,[34] it appears there would still be 32,742 MW of existing resources remaining.[35] These remaining existing resources, together with the 2,126 MW of new resources, are still *greater than* the amount to be procured for FCA 8 (i.e., 33,855 MW). ISO-NE does not explain the adverse impact on reliability that would result under the current provisions.

ISO-NE also suggests (but again, does not expressly state) that there will be an adverse impact on competiveness. As to this claim, as a threshold matter, it is unclear from ISO-NE's filing whether all resources submitting Non-Price Retirement bids will in fact exit the FCM and what effect this will have on the competitiveness of FCA 8. Notwithstanding these questions, it must be remembered that the pricing provisions at issue are administrative protections. They are not mechanisms to induce a competitive market outcome. ISO-NE has not shown how paying a higher administrative price in the event of Inadequate Supply or Insufficient Competition would make the market more competitive or address a lack of competitiveness.

Moreover, ISO-NE does not explain how its proposed changes would specifically address the deficiencies it identifies in the current provisions. ISO-NE states that its proposed increase in the administrative price "recognizes the need to send price signals consistent with evolving market conditions, but also avoids lurching between administrative prices derived from the vertical demand curve, price floors and potentially uncompetitive auctions."[36] ISO-NE also asserts that a resulting rate of $3.46/kW-month "would undermine investor confidence in the

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[34] In recent materials provided to states and stakeholders, ISO-NE indicated that Non-Price Retirement requests for 3,135 MW of resources were submitted or approved. Memorandum to NEPOOL Participants Committee and State Regulators (Nov. 6, 2013), *available at* http://www.iso-ne.com/committees/comm_wkgrps/prtcpnts_comm/prtcpnts/mtrls/2013/nov82013/npc_20131108_addl.pdf.

[35] ISO-NE states in its FCA 8 Informational Filing that there are a total of 35,877 MW of Qualified Existing Capacity Resources for FCA 8. FCA 8 Informational Filing at 4. Subtracting the total Non-Price Retirement bids received, 3,135 MW, from this number produces 32,742 MW.

[36] Transmittal Letter at 13.

long-term stability of FCM revenues."[37] However, as discussed in greater detail in Section IV.B.1 below, it is not clear what ISO-NE's proposal would accomplish in FCA 8—the sole auction for which the change would apply—other than impose a greater cost burden on consumers. The price signal ISO-NE wishes to send will neither bring back resources that have exited the market nor have any effect on new resource participation in the next auction. In fact, this one-time, sudden *ad hoc* change made without sufficient stakeholder review could have the effect ISO-NE wishes to avoid by engendering additional regulatory uncertainty which, in turn, undermines investor confidence. Furthermore, if approved, this change would without question undermine consumer confidence in the market.

ISO-NE's claim of Exigent Circumstances is premised on the sudden and unexpected nature of the exiting of resources from FCA 8.[38] That the supply/demand balance could change in the months leading up to FCA 8 should have been no surprise to ISO-NE. ISO-NE knows that non-price retirements may be submitted *after* the qualification deadline for new resources has expired, thereby potentially eroding an excess supply of resources.[39] Additionally, there is always the possibility that new resources expressing a show of interest early in the qualification process will not ultimately enter the auction.

Indeed, nearly three years ago, ISO-NE recognized the risk that fossil fuel and nuclear power plants may be exiting the market:

> Economic and policy factors are likely to result in substantial changes to the New England power system over the next several years. Such changes could include the exit of a substantial portion of existing, older fossil-fuel capacity, potentially including

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37 *Id.*

38 *See id.* at 4 ("after the deadlines for qualifying new resources to participate in FCA 8, however, the New England capacity supply situation changed dramatically."); *id*. at 12 ("In October 2013, however, the outlook for FCA 8 changed dramatically.").

39 *Id.* at 13.

> resources that are important for system-wide or local security needs. . . .
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> Timing: Compliance with a wide range of environmental requirements is expected to trigger capital investments beginning as soon as within the next two years and extending out for several years. Consequently, decisions on resource retirement and capacity pricing in light of these emerging requirements may affect current capacity auctions.
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> Consequences described below are highly probable in the mid-term absent proactively addressing the issues. For example, Salem Harbor Station, over 700 MW of coal- and oil-fired capacity, has already made application to retire. In addition, although they are nuclear units, Vermont Yankee and Pilgrim Station are both facing challenges to their relicensing efforts, and, if they were to retire, would raise very similar issues to the retirement of the oil units.[40]

In March 2012, ISO-NE acknowledged again the continuing risk of generator retirements:

> One of the near-term risks is the potential for substantial unit retirements before the planned long-term changes can influence resource development decisions. From a market perspective, the retirement of existing uneconomic capacity is an efficient outcome and was contemplated in the design of FCM. The concern, then, is not with retirements per se; rather, ISO-NE has identified unit retirements as a strategic risk due to their potential magnitude in a relatively short time frame, and the interaction between unit retirements and existing challenges associated with the performance, flexibility, and high gas dependence of the existing fleet.[41]

Thus, not only was ISO-NE acutely aware of the risk that generators may retire, but it acknowledged that certain retirements do *not* signal market inefficiency, as ISO-NE suggests with the instant filing.

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40 ISO New England Inc., *Strategic Planning – Risk Summary, Initial Assessment* (April 21, 2011), at 6 (italics removed), *available at* http://www.iso-ne.com/committees/comm_wkgrps/strategic_planning_discussion/materials/spd_risk_summary_apr_2011.pdf.

41 ISO New England Inc., *Roadmap for New England: A Proposal for Meeting the Challenges Identified in the Strategic Planning Initiative* (March 2012), at 9, *available at* http://www.iso-ne.com/committees/comm_wkgrps/strategic_planning_discussion/materials/strategic_plan_initiative_roadmap_march_2012.pdf.

2. To the Extent There Are, as ISO-NE Believes, Exigent Circumstances, These Circumstances Are a Result of ISO-NE's Actions.

The second part of the definition of Exigent Circumstances is "that invoking the normal stakeholder review procedures set forth in Section 11.1, 11.3 or 11.4 of the Participants Agreement would not allow for timely redress of the ISO's concerns."[42] To the extent that ISO-NE perceived there to be insufficient time to initiate the normal stakeholder review process, this insufficiency of time is a result of ISO-NE's own decision not to move forward with proposing to stakeholders changes in the administrative pricing provisions of the current IS/IC rules, as it indicated it would do in its December 2012 FCM Compliance Filing.[43]

ISO-NE acknowledges its contribution toward what it now perceives as Exigent Circumstances, and it states that in hindsight it should have initiated the stakeholder process.[44] ISO-NE explains that it did not undertake such a process in a timely manner because: (1) the press of other important projects occupied much of its time, (2) it thought the triggering of the IS or IC rules in FCA 8 would be unlikely, and (3) it anticipated filing for a change in the market design rules to include a sloped demand curve that would alleviate the need for the IS/IC pricing provisions.[45] As discussed below, those are not credible reasons for short-circuiting the stakeholder process. Accepting ISO-NE's claim of Exigent Circumstances as the basis for approving ISO-NE's change to the IS/IC pricing provisions would imply that required stakeholder procedures can be bypassed despite an entirely foreseeable and previously identified need to consider these rules with stakeholders.

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42 Transmittal Letter at 6; *see also* Participants Agreement, Section 1.1.

43 *ISO New England Inc.*, Forward Capacity Market Redesign Compliance Filing and Request for Waiver of Compliance Obligation, or, In The Alternative, Limited Filing Pursuant to Section 205 of the Federal Power Act, filed in Docket No. ER12-953-001 (Dec. 3, 2012) ("December 2012 FCM Compliance Filing").

44 Transmittal Letter at 3.

45 *Id.*

ISO-NE's first reason for not initiating a timely stakeholder process, the press of other business, contradicts its claim of Exigent Circumstances. If other projects ISO-NE undertook were *more* important than initiating a stakeholder process to address the administrative pricing rules, then the failure to adopt a change to these provisions cannot suddenly create an emergency circumstance that requires instant action. Additionally, the other projects ISO-NE cites were generally not unforeseen. For example, ISO-NE's Pay for Performance proposal, arguably the largest project on ISO-NE's list of items that ISO-NE claims made it impossible to discuss the current matter earlier with stakeholders, has been under development for over a year.[46] ISO-NE's argument that this and other projects created an emergency condition that warrants bypassing stakeholder input on a proposed rule change that will cost New England consumers upwards of a billion dollars strains credibility.

Likewise, ISO-NE's argument that there was a general perception that the IS/IC rules would not likely be triggered is without merit. As discussed above, ISO-NE has for at least several years anticipated generator retirements and should have anticipated the potential for a change to the supply/demand balance that could trigger the rules. Also, in addition to the possibility that new resources might ultimately not enter the auction, existing resources have the right under the Tariff to submit Non-Price Retirement bids up to four months preceding the start of the next auction.[47]

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[46] *See* ISO New England Strategic Planning Initiative, FCM Performance Incentives (October 2012), *available at* http://www.iso-ne.com/committees/comm_wkgrps/strategic_planning_discussion/materials/fcm_performance_white_paper.pdf.

[47] ISO-NE Tariff, § III.13.1.2.3.1.5.2 (a Non-Price Retirement bid "must be submitted to the ISO between the Existing Capacity Qualification Deadline and 120 days prior to the date of the relevant Forward Capacity Auction. In the case of a resource that has a Permanent De-List Bid rejected by the Internal Market Monitor, a Non-Price Retirement Request may be submitted within 14 days after the resource receives notice of the rejection or 120 days prior to the date of the relevant Forward Capacity Auction, whichever is later.").

Finally, ISO-NE's argument that it did not initiate stakeholder discussions because it was on the eve of proposing a demand curve is wholly out of order as a rationale for claiming Exigent Circumstances and not taking the pricing provisions through the stakeholder process. There has been no indication that ISO-NE intended to introduce a demand curve in 2013. For example, ISO-NE's 2012 and 2013 Work Plans did not provide states and stakeholders notice that ISO-NE intended to move forward before FCA 8 with a demand curve. There is similarly no indication in Markets Committee materials that it intended to proceed with a demand curve in advance of 2014. Rather, NESCOE understands that ISO-NE planned to hold discussion of a demand curve until after its Pay for Performance proposal was concluded to avoid stakeholder discussion of both issues simultaneously.

3. ISO-NE's Proposed Administrative Pricing Revisions Should Be Evaluated Under FPA Section 206.

Because ISO-NE has not demonstrated that Exigent Circumstances exist, the Commission should reject ISO-NE's proposed administrative pricing revisions and direct ISO-NE to bring these issues to the stakeholder process in accordance with the terms of the Participants Agreement. In the alternative, if the Commission does not reject the proposed administrative pricing revisions, the Commission should evaluate ISO-NE's proposed changes to these provisions under section 206 of the FPA. To do so would be consistent with Commission precedent. In its order on the paper hearing held in Docket No. ER10-787-000 *et al*., the Commission found that in the absence of a stakeholder process and Exigent Circumstances, ISO-NE's filing should be treated as a section 206 filing:

> We first note that, in accordance with the Participants Agreement, absent exigent circumstances, ISO-NE cannot make a proposal to change market design under section 205 without first taking that proposal through the NEPOOL Participants Committee. The July 1 Proposal was not taken through the Participants Committee; consequently, it cannot be treated as a section 205 submission.

> While the July 1 Proposal was not expressly presented to us under section 206, we agree with NEPOOL that it is effectively a proposal under section 206 to replace rates found unjust and unreasonable, and thus we will accord it no more weight than the filing of any intervenor to the proceeding.[48]

As the Commission is aware, the distinction between section 205 and section 206 filings is critical. A public utility submitting a filing under section 205 need only demonstrate that its proposed change in rates is just and reasonable.[49] However, an entity making a filing under section 206 has a dual burden to demonstrate first that the existing rate is unjust and unreasonable, and second that the proposed replacement rate is just and reasonable.[50] ISO-NE did not attempt to demonstrate that the existing rate is unjust and unreasonable because it was relying on its Exigent Circumstances claim to make the proposal under section 205. Nonetheless, ISO-NE cannot meet the burden of showing that the existing rate is unjust and unreasonable.

As NESCOE discussed in its protest of the NEPGA Complaint,[51] the Commission made the finding in the April 2011 Order that, in addition to eliminating CONE from certain market rules, replacing CONE "in its remaining functions with the starting price or clearing price of the FCA" was just and reasonable "because such values *reasonably reflect market conditions*."[52] In the absence of adequate supply or sufficient competition, it is of course impossible to know what the competitive auction price would have been. However, to the extent possible and as reflected in the current pricing provisions, the resulting administratively set price should be based on a

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48 April 2011 Order at P 43, *citing* Participants Agreement § 11.1.

49 *See, e.g., Winnfield v. FERC,* 744 F.2d 871, 877 (D.C. Cir. 1984) ("the utility had the burden of proving that its proposed new method of incremental cost rate computation was just and reasonable.").

50 *See, e.g., Maryland Pub. Serv. Comm'n v. FERC*, 632 F.3d 1283, 1285 n.1 (D.C. Cir. 2011), *citing Tenn. Gas Pipeline Co. v. FERC*, 860 F.2d 446, 454 (D.C. Cir. 1988).

51 Motion to Intervene and Protest of New England States Committee on Electricity, Docket No. EL14-7-000 (Nov. 27, 2013) ("NESCOE Protest of NEPGA Complaint"), at 15.

52 April 2011 Order at P 342 (emphasis added).

competitive market outcome. Use of the last prior competitive auction achieves this objective, and the Commission appears to have shared this view in its April 2011 Order. While there may be other proxy values that could "reasonably reflect market conditions," the Commission's acceptance of the prior competitive auction as that proxy indicates that it considered such a value a reasonable approximation for market conditions in the absence of competition.

In sum, ISO-NE has not supported its claim of Exigent Circumstances. If the Commission does not reject the administrative pricing proposal on that basis alone, it should reject it because ISO-NE has not (and cannot) demonstrate that the current rate is unjust and unreasonable or that its proposed change is just and reasonable.

B. ISO-NE Has Not Demonstrated That The Proposed Revisions Addressing Administrative Pricing Under the Inadequate Supply and Insufficient Competition Rules Are Just And Reasonable.

In its February 2013 Order, the Commission found that ISO-NE's proposed revisions to the IS/IC rules, i.e., basing the administrative pricing on 1.1 times the Capacity Clearing Price in the most recent FCA not experiencing Inadequate Supply or Insufficient Competition, complied with the Commission's prior orders directing changes to the rules that had been in place for FCA 7.[53] The Commission noted that "no party has objected to them or otherwise questioned their compliance with prior Commission orders."[54] ISO-NE had stated in its compliance filing leading to the February 2013 Order that the pricing provisions "should instead refer to 1.1 times the Offer Review Trigger Price for a combustion turbine" and that it would convene a stakeholder

[53] February 2013 Order at PP 127-128. *See* December 2012 FCM Compliance Filing at 44.

[54] February 2013 Order at n. 120.

process relative to this change.[55] ISO-NE states that such a change would have been beyond the scope of its compliance filing.[56] It did not seek rehearing of the February 2013 Order.

ISO-NE now seeks to changes the rules approved in the February 2013 Order and return to the pricing mechanism that had been in place for FCA 7, arguing that a different administrative pricing provision is necessary for FCA 8. As detailed below, ISO-NE's asserted reasons for the proposed change to the current administrative pricing provisions under the IS/IC rules are speculative. These purported justifications neither support a change to the current pricing provisions adopted by the Commission just ten months ago nor demonstrate that the proposed revisions are just and reasonable. More critically, ISO-NE's proposed solution will not address the problems it cites as necessitating the changes, and the proposed revisions will come at a substantial and unsupported cost to New England consumers if the rules are triggered. Accordingly, ISO-NE has not met its burden to demonstrate that the proposed changes to the administrative pricing provisions are just and reasonable.

1. ISO-NE Has Not Demonstrated That Resource Decisions Not To Participate in FCA 8 Are Related to the IS/IC Pricing Provisions or That Increasing the Administrative Pricing Will "Fix" the Problem.

ISO-NE states that over 3,000 MW of existing capacity left the FCM in October 2013 by submitting Non-Price Retirement bids, thus changing the supply-demand balance from a surplus of existing resources of over 2,000 MW to a deficiency of existing resources of over 1,000 MW compared with the ICR.[57] However, ISO-NE provides no evidence establishing that existing capacity elected to exit the market because of the administrative pricing provisions under the

[55] December 2012 FCM Compliance Filing at 44.

[56] *See* Transmittal Letter at 2.

[57] *Id*. at 12.

IS/IC rules. ISO-NE's filing suffers from the same deficiency found in NEPGA's complaint as explained by NESCOE in its protest in that proceeding:

> NEPGA produces no evidence to support its conclusory assertion that the recent retirement announcements are tied to the pricing provisions at issue in this proceeding. Nor could it provide such evidence. NEPGA may attempt to establish a causal connection between these rules and resources exiting the market, but there are myriad conditions and factors that could individually or collectively motivate retirements, including, for example, the removal of the price floor in FCA 8, low natural gas prices leading to lower marginal energy revenues, and environmental regulations. In fact, a majority of the retirements that NEPGA references appear to be in direct response to the mitigation of certain Static De-List Bids, as demonstrated by the conversion to Non-Price Retirement Bids of 1,907 MW initially submitted into FCA 8 as Static De-List Bids.[58] Generating resources may have consternation over falling gas prices, market changes and the dynamics that drive prices down (or costs up), but that does not amount to evidence of changed circumstances or a demonstration that the pricing mechanisms are failing to work as intended.[59]

NESCOE, of course, has no knowledge of the reasons, which could be many and diverse, why approximately 3,000 MW of capacity submitted Non-Price Retirement bids. ISO-NE, however, has the burden to establish that its assertions are grounded in fact and that its changes are just and reasonable, and to do so it must demonstrate that the proposed changes actually address the perceived problem. ISO-NE has not met this burden.[60]

Changing the administrative price for the IS/IC rules will not fix the perceived problem of declining participation by existing resources in FCA 8. In the case of resources that have already exited the market, they cannot return to FCA 8 even if the prospect of a higher

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[58] Citing FCA 8 Informational Filing at 4-5 ("A total of 7,851 MW of de-list bids were submitted for the eighth FCA. Subsequently, 1,907.024 MW of these de-list bids were later converted into Non-Price Retirement Requests. In total, 98 existing resources submitted Non-Price Retirement Requests.") (footnote omitted).

[59] NESCOE Protest of NEPGA Complaint at 12.

[60] *Winnfield v. FERC*, 744 F.2d at 877.

administrative price under the IS/IC rules is enticing.[61] Moreover, as noted above, there are numerous conditions and factors that could motivate retirements.

ISO-NE also states that roughly 800 MW of qualified new resources elected not to participate in FCA 8.[62] ISO-NE concludes that there is "a general decline" in new resources seeking to participate in the FCM "*likely* because of low prices set by the current vertical demand curve structure, which signaled that new resources were not needed."[63] Again, ISO-NE has provided no evidence that new resources chose not to participate in FCA 8 because of the administrative pricing provisions of the IS/IC rules—which are entirely unconnected to the prices paid to *new* resources. The decisions of these new resources not to participate in FCA 8 could be for a variety of reasons and/or forces in ISO-NE's market that have nothing to do with the existing IS/IC provisions. To the extent a rule change is needed to address a declining trend in new resource participation, ISO-NE's proposed change for FCA 8 is not a remedy. There is simply no evidence that changing the pricing rules for this upcoming single auction, FCA 8, will have any effect on the participation of new entry or existing resources. ISO-NE itself confirms that there is no opportunity for new resources to participate at this late stage of the process.[64] ISO-NE's proposed administrative pricing change therefore serves no purpose other than to transfer wealth from consumers to existing resources with no benefits received in return.

As discussed above, the Commission recently approved the existing administrative pricing provisions under the IS/IC rules as just and reasonable. That ruling was not predicated on an expectation by ISO-NE, generators, or the Commission that the IS/IC rules would never be

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61 ISO-NE Tariff, § III.13.2.5.2.5.3(a)(i)("A resource, or portion thereof, that submits a Non-Price Retirement Request pursuant to Section III.13.1.2.3.1.5 will be retired coincident with the commencement of the Capacity Commitment Period for which the Non-Price Retirement Request is submitted if the request is approved").

62 Transmittal Letter at 12.

63 *Id*. at 3 (emphasis added).

64 *Id.* at 13.

invoked. Rather, that ruling was based on a finding that the results produced by these rules—even in the event that the IS/IC rules *were* triggered—would be just and reasonable.[65] The Commission should not now grant ISO-NE's request to change the IS/IC rules simply because the level of supply resources in the next auction has decreased. Changing the administrative pricing provisions in the IS/IC rules as ISO-NE proposes could, in effect, reinstate a *de facto* price floor, an outcome the Commission has explicitly rejected at least twice.[66]

ISO-NE states that a $3.46/kW-month price, derived from the last auction to clear with adequate supply and sufficient competition (i.e., FCA 7), is too low.[67] However, ISO-NE fails to provide any factual support for this proposition. The Commission must set rates based on reasoned decision-making and substantial evidence in the record.[68] There must be a rational connection between the facts found and the decision reached by the agency.[69] ISO-NE's speculation does not satisfy these requirements.

In fact, if the IS Rule or IC Rule is triggered in FCA 8, it would produce a higher price (i.e., 110%) for existing resources than such resources were paid in FCA 7. If ISO-NE views 110% of FCA 7 prices as too low for the upcoming auction, as its argument suggests, it fails to explain why the decline in participation by existing resources did not occur earlier in light of the lower rate. Nor does ISO-NE explain how a higher payment to resources in FCA 8 than they received one year prior would have deleterious effects on the market.

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65 *See* April 2011 Order at P 342.

66 *See id.* at P 10 and n.14 (directing that the price floor be eliminated upon implementation of buyer-side mitigation rules, anticipated to occur in FCA 6 but which was extended to FCA 7); February 2013 Order at PP 127-128 (eliminating the price floor).

67 Transmittal Letter at 13.

68 *See Pac. Gas & Elec. Co. v. FERC*, 306 F.3d 1112, 1115 (D.C. Cir. 2002), *citing Sithe/Independence Power Partners, L.P. v. FERC*, 165 F.3d 944, 948 (D.C. Cir. 1999).

69 *Neighborhood TV Co. v. FCC,* 742 F.2d 629, 639 (D.C. Cir. 1984) (requiring that the court be able to "discern a reasoned path from the facts and considerations before the [agency] to the decision it reached.").

Although the courts accord substantial deference to the methods used by the Commission to determine a just and reasonable rate, that methodology cannot be arbitrary and capricious.[70] Here, ISO-NE fails to demonstrate how its proposed revisions would address the problems it identifies. ISO-NE has also submitted no evidence establishing a link between the decline in the number of existing and new resources electing to participate in FCA 8 and the existing administrative pricing provisions of the IS/IC rules that it seeks to change. In short, ISO-NE has not submitted sufficient information for the Commission to find that the proposed administrative pricing changes are just and reasonable.

2. ISO-NE's Proposed Solution Would Increase Costs to Consumers by Orders of Magnitude Without Corresponding Benefits.

ISO-NE has not demonstrated that sending more ratepayer funds into the market will fix the problem it perceives. As explained above, the proposed revisions cannot bring back the existing resources that have already exited FCA 8 or incent new resources to enter a qualification process that is now closed. Moreover, because ISO-NE seeks the change only for the next auction and ultimately plans to eliminate these provisions through use of a sloped demand curve, the proposed revisions will not serve as an incentive for existing resources to remain in future FCAs. Rather, it will serve only to transfer substantial dollars from consumers to owners of existing resources without a demonstration that consumers will receive any value for these payments.

Although ISO-NE provided no data with its filing demonstrating the effect of its proposed rate change on consumers, if the IS/IC rules are triggered, its proposal will more than double the cost of capacity for New England consumers in FCA 8. The difference between ISO-

[70] *S. Cal. Edison Co. v. FERC*, 717 F.3d 177, 182 (D.C. Cir. 2013) ("In order to discharge its statutory duty of ensuring that "[a]ll rates . . . [are] just and reasonable," 16 U.S.C. § 824d(a), the Commission may require the use of a particular ratemaking methodology so long as its embrace of that methodology is not arbitrary and capricious.").

NE's proposed rate of $7.025/kW-month and what otherwise would have been the rate of $3.46/kW-month is $3.565/kW-month, a little more than twice the cost of capacity if the rules are triggered. Application of this price differential to the 32,742 MW[71] of existing capacity assumed remaining in FCA 8 after taking the Non-Price Retirement bids into account could result in an increase in the cost of capacity to consumers for that delivery year of approximately $1.4 billion.

The Commission has rejected arguments for proposed changes in rates where the revision will have no effect on market behavior.[72] Since ISO-NE's proposed rate change cannot affect new or existing resource participation in FCA 8, and, according to ISO-NE, will not be applicable in future auctions, the Commission must reject the proposed change. The proposed change will cost consumers over $1 billing without improving reliability.

3. ISO-NE Has Not Shown That the $7.025/kW-Month Rate Is Just and Reasonable.

While ISO-NE need not demonstrate that its proposal is "the best," it must demonstrate that its proposed rate is just and reasonable.[73] ISO-NE has not done so. Its proposed use of CONE is premised on establishing a price for existing resources based on estimates of the cost of new entry, a method rejected by the Commission. In the April 2011 Order, the Commission addressed ISO-NE's and NEPOOL's joint submission of a number of proposed changes to the FCM market design rules, including a proposal to "decouple the FCA starting price from CONE

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[71] 32,742 MW is assumed for existing supply participating in FCA 8 (35,877 total existing MW minus possible non-price retirements of 3,135 MW). *See supra* n. 35. This amount could change based on resources that remain in the auction and those that accept payment under other provisions of Market Rule 1.

[72] April 2011 Order at P 21 (rejecting arguments to apply buyer side mitigation to all existing out-of-market resources because that investment is sunk and the mitigation rules cannot affect those past decisions).

[73] *See, e.g., Winnfield v. FERC*, 744 F.2d at 877 ("the utility had the burden of proving that its proposed new method of incremental cost rate computation was just and reasonable").

as well revisions to CONE's updating mechanism."[74] There, the Commission found that ISO-NE's proposal to eliminate or replace CONE was just and reasonable, that the proposed changes to the seller and buyer market power mitigation rules did not require retention of CONE, and thus replacing CONE "in its remaining functions with the starting price or clearing price of the FCA" was just and reasonable "because such values reasonably reflect market conditions."[75]

The Commission rejected NEPGA's proposal in that proceeding nonetheless to calculate "a value called 'CONE' that represents the actual cost of new entry."[76] The Commission explained:

> [W]e find equally uncompelling the argument that CONE should be reset to reflect the true cost of new entry of a peaking unit because it is that cost that the FCM must sustain. Whatever the theoretical merits of this proposition, no party demonstrates how calculating the cost of new entry of a peaking unit (which NEPGA asserts will be done anyway) and labeling it "CONE" will have any effect on the market. We decline to order ISO-NE to "reset" a value that will essentially be written out of the market rules. We therefore reject the proposals to reset CONE.[77]

Consequently, CONE is no longer a relevant calculation as a result of the Commission's April 2011 Order.

In effect, ISO-NE's proposal to use the CONE value from FCA 7 adjusted by the Handy-Whitman Index and the 1.1 multiplier is premised on the belief that an administrative determination of the cost of new entry is better than determining the cost of new entry based on a market outcome. The Commission twice decided otherwise.[78] Moreover, the context in which ISO-NE seeks to impose CONE as the administratively determined price to be paid to existing

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74 April 2011 Order at P 336.

75 *Id*. at P 342.

76 *Id*. at P 344.

77 *Id*. at P 344.

78 *See id*. at PP 342-44; February 2013 Order at PP 127-28.

resources is during periods of Inadequate Supply or Insufficient Competition, i.e., by definition in periods when sellers have an opportunity to exert market power. While it may be appropriate to pay new resources a price that reflects their cost to enter the market, guaranteeing existing resources a high price during these events may have the unintended consequence of encouraging seller market actions to trigger the rules.

ISO-NE concludes its discussion of the proposed change to the administrative pricing provisions of the IS/IC rules by arguing that the current price of $3.46/kW-month is "too low"[79] and the NEPGA proposed price of $11.00/kW-month using the formula of 1.1 times the ORTP for a combustion turbine is "too high,"[80] implying that its proposed middle ground of $7.025/kW-month is "just right." The fact that the proposed $7.025/kW-month falls in between the price proposed by NEPGA in its complaint and the current price is not a sufficient reason to find ISO-NE's proposal just and reasonable. This is especially true where ISO-NE has not demonstrated that there is a problem that can be fixed by its proposed rate change. ISO-NE's proposed split-the-baby approach is not inherently just and reasonable.[81] The Commission must find an independent ground to approve this rate as just and reasonable based on evidence that provides a rational connection between the facts found and the conclusions reached.[82] ISO-NE has provided no evidence that its proposed rate is in any way linked to the problem to be solved, will remedy the problem, is based on sound economic theory, or is otherwise just and reasonable.

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79 Transmittal Letter at 13.

80 *Id*.

81 *See, e.g.*, *Public Utilities Comm'n. of the State of Calif. v. FERC*, 894 F.2d 1372, 1383 (1990) ("We note that in its orders on review here the Commission appeared to justify its baby-splitting position on grounds of equity…But our previous decision only remanded the issue to FERC because it had failed to provide a reasoned explanation for what it had done. The court obviously never intended to imbue the Commission with the authority to ignore the law in achieving an equitable result.").

82 *See supra* n. 69.

C. The Commission Should Direct ISO-NE To Initiate a Stakeholder Process to Develop Long-Term and Comprehensive Solutions.

For the reasons discussed above, the Commission should not approve ISO-NE's proposed changes to the administrative pricing provisions. ISO-NE's unsupported basis for the need for sudden pricing rule changes does not justify putting in place a temporary unjust and unreasonable rate for capacity—one that was removed by the Commission less than a year ago, and one that would, without any corresponding benefit to consumers, double the price paid to all existing resources in the event of Inadequate Supply or Insufficient Competition. Rather, the Commission should reject these proposed changes to the pricing provisions, leave in place what it already approved for FCA 8 in the February 2013 Order, and direct ISO-NE to implement an appropriate stakeholder process before FCA 9 so that there is no "crisis" next November leading to another Exigent Circumstances filing.

Moreover, as NESCOE stated in its protest to the NEPGA Complaint, such a stakeholder process should examine the IS/IC rules comprehensively and should consider a range of solutions that take consumer costs into account. The fact that ISO-NE only identified the IC Gap after NEPGA filed its complaint underscores the need for a stakeholder process to consider these rules holistically. While NESCOE agrees with ISO-NE's revision to address the IC Gap, this may not be the only issue that exists within the IS/IC rules.[83] ISO-NE, states, and stakeholders must have a reasonable opportunity to analyze all of the potential issues associated with the IS/IC rules and to develop additional revisions, as appropriate.

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[83] For example, during a Markets Committee meeting, a Market Participant proposed a change to the IC Rule calculations to include imports in the calculations for the IC Rule triggers. ISO-NE stated that it would like to look at addressing this matter for future auctions, but that it wanted to keep its fixes as narrow as it could because it was too close to the start of the next auction. *See* Minutes of November 18, 2013 Markets Committee Meeting, at 3-4, *available at* http://www.iso-ne.com/committees/comm_wkgrps/mrkts_comm/mrkts/mins/index.html.

V. CONCLUSION

For the reasons stated herein, NESCOE respectfully requests that the Commission (i) grant its Motion to Intervene, (ii) reject the proposed changes to the IS/IC administrative pricing provisions, (iii) direct ISO-NE to convene a meaningful stakeholder process to address issues raised not only by ISO-NE's filing but to undertake a larger analysis of a range of issues related to these rules, and (iv) take other necessary and appropriate actions consistent with the foregoing protest.

Respectfully submitted,

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Date: December 16, 2013

CERTIFICATE OF SERVICE

In accordance with Rule 2010 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day served by electronic mail a copy of the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Boston, MA this 16th day of December, 2013.

Respectfully submitted,

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