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VIA ELECTRONIC FILING

The Honorable Kimberly D. Bose, Secretary
The Honorable Nathaniel J. Davis, Sr., Deputy Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: ISO New England Inc., Docket No. ER10-438-000

Dear Secretary Bose and Deputy Secretary Davis:

Attached for electronic filing in the above-referenced docket is the *Motion for Leave to Answer and Answer of ISO New England Inc.* A copy of the foregoing has been served upon all parties included in the Commission's service list.

If you have any questions or concerns regarding this filing, please feel free to contact me. Thank you for your assistance in this matter.

Respectfully submitted,

/s/ Sherry A. Quirk
Sherry A. Quirk, Esq.

Counsel for ISO New England Inc.

Attachment

cc: Official Service List

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

ISO New England Inc.

)

Docket No. ER10-438-000

**MOTION FOR LEAVE TO ANSWER
AND ANSWER OF ISO NEW ENGLAND INC.**

Pursuant to Rules 101(e), 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”),¹ ISO New England Inc. (the “ISO”) hereby submits its *Motion for Leave to Answer and Answer* (“Answer”) to the comments and protests² filed in response to the ISO’s Filing of (1) Installed Capacity Requirement,³ Local Sourcing Requirements and Maximum Capacity Limits (collectively, the “ICR-Related Values”) and Hydro Quebec Interconnection Capability Credits (“HQICCs”) for

¹ See 18 C.F.R. §§ 385.101(e), 385.212 and 385.213 (2009).

² This Answer addresses the following comments and protests filed January 8, 2010 in Docket No. ER10-438-000: Supplemental Comments of the New England Power Pool Participants Committee (“NEPOOL Comments”); Comments of NSTAR Electric Company (“NSTAR Comments”); Motion for Leave to Intervene and Limited Protest of Connecticut Municipal Electric Energy Cooperative, Massachusetts Municipal Wholesale Electric Company, and New Hampshire Electric Cooperative, Inc. (“Public Systems Protest”); Joint Motion to Intervene and Comments of National Grid USA (“National Grid”), The United Illuminating Company (“United Illuminating”); Associated Industries of Massachusetts (“AIM”); and The Energy Consortium Regarding New England Tie Benefits (“National Grid Comments”); Comments and Limited Protest of the Massachusetts Attorney General (“MA AG Protest”); Comments of the New England States Committee on Electricity (“NESCOE Comments”); Motion to Intervene and Comments of the New England Conference of Public Utility Commissioners (“NECPUC Comments”); Notice Of Intervention and Comments by The Connecticut Department of Public Utility Control on ISO New England’s Proposed Market Rules Revisions for Computing Tie Benefits (“CT DPUC Comments”); and Motion to Intervene of The Vermont Department of Public Service, Notice of Intervention of The Vermont Public Service Board and Joint Motion for Partial Rejection (“Vermont Motion”). The ISO also responds to the Motion to Submit Clarifying Comments by The Connecticut Department of Public Utility Control on ISO New England’s Proposed Revisions to Market Rules for Computing Tie Benefits (“CT DPUC Supplemental Comments”) (filed Jan. 13, 2010).

³ Capitalized terms used but not defined in this filing are intended to have the meaning given to such terms in the ISO New England Inc. Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3 (“ISO Tariff”), the Second Restated New England Power Pool Agreement, the Participants Agreement, and the ICR Filing. Market Rule 1 is Section III of the ISO Tariff.

the 2010/2011 Capability Year and (2) Related Market Rule Revisions (“ICR Filing”)⁴ submitted on December 15, 2009 in accordance with Section 11.4 of the Participants Agreement.⁵ The ICR Filing is Attachment I-1a-1h of the materials included with the December 15, 2009 filing in this docket.⁶ For the reasons set forth more fully below, the ISO requests that the Commission reject these comments and protests in their entirety and accept the proposed market rule revisions and the ICR-Related Values and HQICCs reflected in the ICR Filing.

I. BACKGROUND

On December 15, 2009, the ISO submitted the ICR Filing which constituted the ICR-Related Values and HQICCs for the 2010/2011 Capability Year third annual reconfiguration auction to be held in March 2010. In the stakeholder process leading up to that filing, the ISO identified problems with the Installed Capacity Requirement value that would be produced under the existing market rules. The problems relate to the manner in which “tie benefits” are calculated.⁷

The current market rules require that tie benefits be calculated for the third annual reconfiguration auction using an “as is” methodology. Using this methodology for the

⁴ *ISO New England Inc.*, Filings of ISO New England Inc. and New England Power Pool Concerning the Installed Capacity Requirement and Related Values for Final Reconfiguration Auction for the 2010/2011 Capability Year and Certain Market Rule Changes, Docket No. ER10-438-000 (filed Dec. 15, 2009) (“ICR Filing”).

⁵ Participants Agreement among ISO New England Inc., the New England Power Pool and the Individual Participants (“Participants Agreement”) at Section 11.4, available at http://www.iso-ne.com/regulatory/part_agree/index.html.

⁶ The rules governing the Forward Capacity Market are primarily contained in Section III.13 of the ISO Tariff, but also may include other provisions, including portions of Section III.12 (Calculation of Capacity Requirements) and portions of Section III.1.3.2 (Definitions).

⁷ Tie benefits from neighboring Control Areas reflect the amount of emergency assistance that it is assumed will be available to New England from its neighboring Control Areas, without jeopardizing reliability in New England or its neighboring Control Areas, in the event of a capacity shortage in New England. The amount of tie benefits reduces the Installed Capacity Requirement, or the capacity needed to meet the resource adequacy criterion for the New England Control Area.

2010/2011 Capability Year results in an extremely high tie benefits value of 3,415 MW, which produces a lower Installed Capacity Requirement that, in turn, results in a reserve margin of only 4.3% over the forecasted system peak.⁸ As the ISO has explained, with this reserve margin it would be very difficult to operate the New England electric system in accordance with North American Electric Reliability Corporation (“NERC”) and Northeast Power Coordinating Council (“NPCC”) Reliability Standards.⁹ Both the ISO and NEPOOL agree that the 3,415 MW amount of tie benefits, calculated according to the current market rules, results in an assumption that is not an acceptable amount to rely on to meet the resource adequacy needs of New England. However, the ISO and NEPOOL disagree regarding what tie benefits value should be relied upon instead.

In the December 15 submittal in this docket, the ISO and NEPOOL each submitted market rule proposals supporting different tie benefits values. Pursuant to Section 11.1.5 of the NEPOOL Participants Agreement¹⁰ (referred to as the “jump ball provision”), NEPOOL submitted a market rule amendment (“NEPOOL Amendment”) supporting a tie benefits value capped at 2,286 MW. The ISO disagrees that the jump ball provision is applicable to market rule revisions that address the calculation of the Installed Capacity Requirement, and in particular to a rule change that simply establishes a tie benefits value. Nonetheless, the ISO in the ICR Filing presented both proposals for the Commission’s review in the event that the Commission determines that Section 11.1.5 does apply.

The ISO in the ICR Filing explained why the results obtained using the currently effective tariff cannot be supported and proposed a tariff change and an alternative tie benefits

⁸ ICR Filing, Attachment I-1a at 3.

⁹ *Id.* at 13.

¹⁰ Participants Agreement at Section 11.1.5 (Alternative Committee Market Rule Proposal).

value that would represent minimal changes to the status quo, and that deferred more substantial revisions until after the completion of the ongoing stakeholder processes. Specifically, the ICR-Related Values were determined using a gross tie benefits value of 1,860 MW, which was the value that the ISO utilized in calculating the ICR-Related Values for the primary Forward Capacity Auction and second annual reconfiguration auction for the 2010/2011 Capability Year. Because use of the 1,860 MW tie benefits value was a departure from the calculation methodology called for in existing Market Rule 1 for third annual reconfiguration auctions, the ISO proposed modifications to the market rules that address the manner in which tie benefits from adjacent Control Areas are determined for purposes of calculating the ICR-Related Values.

A number of parties filed protests and comments opposing the ISO's ICR Filing based on various arguments.

II. INTRODUCTION

The ISO's approach in the ICR Filing is straightforward and simple: it demonstrates why the results obtained using the currently effective tariff regarding tie benefits cannot be supported; proposes minimal changes that do not rely on unsupported methodologies or incomplete analyses; and defers more substantial revisions until after completion of a stakeholder review process. The protests and comments opposing the ICR Filing rest on unfounded claims and inaccuracies and detract from the important issue at hand – the need to effectively address the current market rules governing the valuation of tie benefits so that the appropriate Installed Capacity Requirement can be set.

Protesters incorrectly assert that the ISO's proposed tie benefits approach is a "permanent" rule change, in contrast to the NEPOOL Amendment. To the contrary, the ISO proposal is not permanent and the ISO has clearly indicated that a comprehensive stakeholder process is needed

to address broadly the issue of tie benefits and help the parties determine a more permanent approach. The simple reason for proposing the rule change in the manner proposed is to ensure that there is always a rule in place. At the same time, the ISO has committed to reviewing the tie benefits issue and will amend the rule as appropriate.

Commenters also erroneously maintain that the ISO did not provide sufficient substantiation for the ISO's tie benefits proposal during the stakeholder process leading up to the ICR Filing. In fact, the ISO conducted the stakeholder process in a fair and open manner, developing the ICR-Related Values and HQICCs in consultation with NEPOOL and other interested parties, and the stakeholder process evidenced broad agreement on many of the underlying inputs for the ICR Filing.

Similarly misplaced is the argument that the ISO's proposal is a "new" tie benefit valuation method which would replace the existing Commission-approved methodology. To the contrary, the ISO proposal merely carries forward the tie benefits methodology used in the primary auction and the second annual reconfiguration auction, and by doing so preserves the status quo for a period of time necessary for the ISO and the New England stakeholders to complete by the end of the year 2010 the ongoing analysis of the tie benefits calculation methodology.¹¹ NEPOOL's proposal, on the other hand, replaces the "as is" methodology with a tie benefits value cap – calculated using a new methodology that was never fully developed or vetted – and does so before the stakeholder proceedings vetting the disputed issues have concluded.

The NEPOOL Amendment contravenes Commission precedent rejecting tie benefit

¹¹ The ISO and NEPOOL filed in Docket No. ER08-41-004 a report on a timetable for a stakeholder process to study certain Reserved Issues and committed to submit a filing with the Commission no later than February 1, 2010. Compliance Report of ISO New England Inc. and New England Power Pool Regarding a Timetable for a Stakeholder Process on Issues Pertaining to Calculating Tie Benefits, Docket No. ER08-41-004 (filed Nov. 26, 2008). The ISO on January 14, 2010 filed with the Commission an updated report outlining a new timeline for a comprehensive evaluation of all outstanding tie benefits issues.

valuations that lack any supporting analytical studies and that are instead supported only by the compromise consensus of interested parties. There is no sound methodological basis for using NEPOOL's proposed 2,286 MW "cap" tie benefits value. The NEPOOL Amendment merely represents a number that has garnered a favorable Participant vote. The Commission has made clear that the establishment of the New England Installed Capacity Requirement should rest on analysis, not majority vote.¹²

The ISO's proposal considered both cost and reliability concerns to provide a level of stability to the calculation of tie benefits, and thus, to ICR-Related Values. As was explained in the ICR Filing, the stability gained from utilizing the tie benefits value from the primary auction for the reconfiguration auctions is beneficial to stakeholders, system operators in neighboring Control Areas, and the ISO.¹³ Moreover, the 1,860 MW value results in an acceptable reserve margin of 9.7% for operational purposes,¹⁴ which is similar to the level of reserves required within New England for the past three other Power Years.¹⁵

Lastly, none of the arguments in the comments and protests demonstrate that the "jump ball" provision should apply to the rules for calculating the Installed Capacity Requirement. If accepted, the arguments would produce an illogical interpretation of the Participants Agreement that would render some provisions meaningless – NEPOOL agrees that the Installed Capacity Requirement itself is not subject to the "jump ball" provision but, yet, their argument is that by putting the number into a market rule it converts the dispute into a "jump ball" issue.

For the reasons stated in the ICR Filing and in this *Answer*, the Commission should reject

¹² *ISO New England Inc.*, 111 FERC ¶ 61,185 at P 30 (2005) ("2005/2006 Order").

¹³ ICR Filing, Attachment I-1a at 15-16.

¹⁴ ICR Filing, Attachment I-1c, Wong Testimony at 12; ICR Filing, Attachment I-1d, Brandien Testimony at 3.

¹⁵ ICR Filing, Attachment I-1d, Brandien Testimony at 4.

the protesters' arguments and find the ISO's proposal for tie benefits just and reasonable and accept the proposed market rule revisions, the ICR-Related Values and HQICCs submitted by the ISO and reflected in the ICR Filing without change.

III. MOTION FOR LEAVE TO ANSWER

In this *Answer*, the ISO responds to certain comments and protests filed in response to the ICR Filing. While the Commission's Rules of Practice and Procedure allow parties to respond to comments,¹⁶ as a general matter, the Commission's rules prohibit responses to protests.¹⁷ The Commission has the authority, however, to waive this prohibition for good cause.¹⁸ The Commission has found good cause to permit replies where they are otherwise prohibited in various circumstances, including where the answer would assure a complete record in the proceeding,¹⁹ provide information helpful to the disposition of an issue,²⁰ permit the issues to be narrowed or clarified,²¹ or aid the Commission in understanding and resolving issues.²² The ISO believes that this *Answer* will clarify the issues, assure a more complete record in this proceeding, and otherwise assist the Commission in understanding and resolving the issues raised concerning the ICR Filing. For these reasons, the ISO respectfully requests that the Commission grant the ISO's motion to provide the following *Answer*.

¹⁶ See 18 C.F.R. § 385.213(a)(3) (2009).

¹⁷ *Id.* at § 385.213(a)(2).

¹⁸ *Id.* at § 385.101(e).

¹⁹ See, e.g., *Pacific Interstate Transmission Co.*, 85 FERC ¶ 61,378 at 62,444 (1998), *reh'g denied*, 89 FERC ¶ 61,246 (1999).

²⁰ See, e.g., *CNG Transmission Corp.*, 89 FERC ¶ 61,100 at 61,287 n.11 (1999).

²¹ See, e.g., *PJM Interconnection, L.L.C.*, 84 FERC ¶ 61,224 at 62,078 (1998); *New Energy Ventures, Inc. v. Southern California Edison Co.*, 82 FERC ¶ 61,335 at 62,323 n.1 (1998).

²² See, e.g., *Tennessee Gas Pipeline Co.*, 92 FERC ¶ 61,009 at 61,016 (2000).

IV. ANSWER

A. The assertion that the NEPOOL Amendment is a superior temporary solution to the tie benefits problem, while the ISO has proposed an inappropriate permanent change, is incorrect.

Several commenters argue that the ISO has inappropriately proposed a “permanent” market rule change to Section 12.9 regarding tie benefits, while the NEPOOL Amendment is a “temporary fix” that will “allow the stakeholder process to continue in an orderly and fair manner.”²³ These assertions are incorrect and should be rejected.

When the “as is” methodology was first applied to the third annual reconfiguration auction (*i.e.*, for the 2010/2011 Capability Year), the ISO discovered that the resulting tie benefits value and Installed Capacity Requirement could have serious, negative implications for reliability.²⁴ Accordingly, the ISO proposed to change the applicable market rules to prevent this unacceptable outcome. Contrary to some assertions, the ISO has been very clear that the proposed change is temporary for use in the upcoming annual reconfiguration auction. The ISO has clearly stated that this measure should be utilized only “*until the ISO and stakeholders are able to complete a more comprehensive stakeholder process on the use of the ‘as is’ and ‘at criteria’ calculation methodologies.*”²⁵ The ISO’s proposal is no more or less “permanent” than NEPOOL’s proposal (or any other tariff change proposal).

The ISO has proposed to formally initiate a stakeholder discussion to assess the outstanding tie benefits issues and, in fact, stakeholder proceedings related to tie benefits are ongoing. Thus, rather than “preempting” the stakeholder process or “prematurely” implementing

²³ NSTAR Comments at 4, *see also* National Grid Comments at 5-6, 9-14, 19-21; NESCOE Comments at 2; Vermont Motion at 5; CT DPUC Comments at 5.

²⁴ ICR Filing, Attachment I-1a at 10.

²⁵ *Id.*

“unilateral” rule changes that circumvent the stakeholder process, as some commenters assert,²⁶ the ISO recommended holding the tie benefits value constant at 1,860 MW, which is the value calculated for the primary Forward Capacity Auction and assumed for the second annual reconfiguration auction for that Capability Year.²⁷ The ISO’s statements clearly underscore that it “strongly believes that any fundamental changes to the manner in which tie benefits are calculated is premature.”²⁸

The potential impact of the current tie benefits calculation methodology on the reliable operation of the New England system highlights the need to more comprehensively evaluate the tie benefits calculation methodology through the stakeholder process.²⁹ Indeed, the ISO shares the belief of the commenters that, in light of these ongoing discussions, any larger-scale changes to the tie benefits calculation methodology is premature.³⁰ The ISO is proposing a temporary, just and reasonable modification to address the fact that the existing market rule for calculating tie benefits for the third annual reconfiguration auctions cannot be supported. This is precisely what Section 205 of the Federal Power Act requires the ISO to do.

Finally, NSTAR and others mistakenly argue that the NEPOOL Amendment is superior because it was favored by a super majority of NEPOOL participants.³¹ NSTAR asserts that “[a]ll

²⁶ See e.g., MA AG Protest at 8; National Grid Comments at 6.

²⁷ ICR Filing, Attachment I-1a at 3.

²⁸ *Id.* at 12. The ISO in the ICR Filing stated that it would “formally initiate a discussion within the NEPOOL PSPC and Reliability Committee to assess these tie benefits issues.” *Id.* By filing dated January 14, 2010, the ISO updated the Commission on the status of the stakeholder process referenced in the December 15 Filing, and stated its intent to expand the process to include the issue of the appropriate methodology for calculating tie benefits. ISO New England Inc. Update to Compliance Report Regarding a Timetable for a Stakeholder Process on Issues Pertaining to Calculating Tie Benefits, Docket No. ER08-41-004 (filed Jan. 14, 2010) at 4-6.

²⁹ ICR Filing, Attachment I-1a at 14.

³⁰ *Id.* at 16.

³¹ See e.g., CT DPUC Comments at 2.

parties agree that the capped tie benefit level proposed by NEPOOL would result in an [Installed Capacity Requirement] that meets New England’s one-day-in-years Loss of Load Expectation (“LOLE”) reliability criterion.”³² However, the appropriate standard for calculating the Installed Capacity Requirement is not to pick a value that is based on incomplete analyses and unsound reasoning so long as it is accepted by stakeholders. The Commission’s precedent on Installed Capacity Requirement calculations in New England clearly requires the ISO to establish Installed Capacity Requirement values based on reasoned and supported analyses of relevant data and assumptions and not based on consensus.³³

B. The ISO and NEPOOL conducted the stakeholder review process in an open and fair manner.

NESCOE takes issue with the stakeholder review process leading up to the ICR Filing, arguing that the ISO did not provide the type of analysis requested by stakeholders, and “[n]or did it offer real analysis on alternative proposals proposed by other stakeholders.”³⁴ According to NESCOE, “[i]t is troubling, substantively, for ISO-NE on one hand not to provide analysis in connection with alternative proposals in response to requests and on the other hand, to assert that it cannot support alternative proposals . . . because of a lack of analysis.”³⁵

NESCOE’s claims are misplaced. The ISO and NEPOOL conducted an open and fair stakeholder process. As was noted in the ICR Filing, the ISO, in consultation with NEPOOL and other interested parties, developed the proposed ICR-Related Values and HQICCs for the

³² NSTAR Comments at 4.

³³ See 2005/2006 Order at PP 14, 30 (finding that the ISO failed to exercise independent judgment when it lowered the tie benefits value from 2,000 MW to 1,800 MW because the ISO’s tie benefits study supported the 2,000 MW value while the 1,800 MW level “was not supported by any study but rather was reached by the PC’s consensus vote”).

³⁴ NESCOE Comments at 6.

³⁵ *Id.*

2010/2011 third annual reconfiguration auction through a stakeholder process that involved eleven meetings since April, 2009.³⁶ There was broad agreement among stakeholders regarding many of the assumptions, inputs and projections for calculating these values for the 2010/2011 third annual reconfiguration auction. In fact, on virtually all of the many details presented, with the exception of tie benefits, the ISO, NEPOOL, and stakeholders appear to be in agreement.

C. The ISO proposal carries forward the tie benefits methodology used in the primary auction and the second annual reconfiguration auction and does not constitute a “new” proposal.

National Grid asserts that the ISO’s proposal would substitute a “new method of tie benefit valuation” while the NEPOOL Amendment “preserves” the existing Commission approved “as is” methodology.³⁷ NSTAR asserts that the ISO’s proposal “would preempt stakeholder debate and impose a permanent Market Rule change that is inconsistent with the FCM settlement and inconsistent with the Commission’s directive that the ‘as-is’ criterion be used for the 3rd ARA.”³⁸ As explained further below, these assertions are incorrect and fail to cast doubt on the justness and reasonableness of the ISO’s proposal.

³⁶ ICR Filing, Attachment I-1a at 24.

³⁷ National Grid Comments at 5, 11.

³⁸ NSTAR Comments at 5. It should be noted that several commenters argue that the ISO is proposing “a permanent rules change that undoes a key FCM Settlement Agreement term...”, *i.e.*, the use of an “as is” assumption for purposes of calculating the tie benefits that will be used in determining the Installed Capacity Requirement for the third annual reconfiguration auctions. CT DPUC Comments at 5. *See also* NSTAR Comments at 1, 5. However, the use of “as is” for third annual reconfiguration auctions was not a subject of the Settlement Agreement. Rather, it was introduced in the filing of market rules in Section 12 of the ISO’s Tariff. *See ISO New England Inc. and New England Power Pool*, 118 FERC ¶ 61,157 at P 49 (2007)(“We agree with ISO-NE that it is appropriate to use “as is” for the Annual Reconfiguration Auction two months before the Capacity Commitment period.”). Moreover, such arguments are inapposite because the Commission has found that the settlement agreement no longer controls. In *ISO New England Inc.*, the Commission underscored that “[t]he Filing Parties (and the Commission) cannot refrain from addressing [a] problem on the basis that complex negotiations were necessary to arrive at the Forward Capacity Market Settlement Agreement.” *ISO New England Inc.*, 125 FERC ¶ 61,355, at P 37 (2008). According to FERC, the parties in that case had not “alleged a violation of the Forward Capacity Market Settlement Agreement or ISO-NE’s market rules, nor could they do so: all parties were aware that, after a period during which parties waived their rights to seek changes to the Settlement’s provisions

1. The ISO’s proposal is not a “new” methodology for calculating tie benefits.

The ISO is not proposing to adopt a “new” methodology for calculating tie benefits. Instead, the ISO recommends holding the tie benefits value constant at 1,860 MW, which is the value calculated using the “at criteria” methodology for the primary Forward Capacity Auction and assumed for the second annual reconfiguration auction for that Capability Year.³⁹ Thus, rather than represent a new methodology, the ISO’s proposal preserves the status quo.

NESCOE asserts that the ISO’s proposal is flawed because conditions have changed both within and outside the ISO since approval of the 1,860 MW tie benefits value prior to the Forward Capacity Auction for the primary auction.⁴⁰ NESCOE argues that market and operating conditions have changed significantly since these values were developed in 2007, including load conditions in neighboring control areas, operating procedures, and the mix and assumed availability of generating and demand resources in both New England and neighboring control areas.⁴¹

However, as a general matter, when tie benefits are calculated on an “at criteria” basis, the potential for year-to-year changes and the magnitude of change in the level of tie benefits is significantly reduced.⁴² ISO witness Mr. Mark Karl has explained that because the external

or the related market rules, any party (including ISO-NE and NEPOOL) could seek to make such changes.” *Id.* In another case, the Commission stated that “[w]hile any section 205 filing is subject to the just and reasonable standard, we note that this settlement language [Section 4.A], which terminates the Waiver Period at the earlier of September 5, 2008 or the date on which the second Forward Capacity Auction prices become final, terminated the Waiver Period on September 5, 2008, eliminating these additional requirements.” *ISO New England Inc. and New England Power Pool Participants Committee*, 126 FERC ¶ 61,115 at P 30 (2009)(noting that the waiver period was terminated in a prior order).

³⁹ ICR Filing, Attachment I-1a at 3.

⁴⁰ NESCOE Comments at 7-8.

⁴¹ *Id.*

⁴² ICR Filing, Attachment I-1b, Karl Testimony at 15.

systems are assumed to be “at criteria,” changes in the level of external surplus or shortage have no impact on the tie benefits calculation.⁴³ Some second order changes, such as a change in the relative mix of external resources, will have minimal impacts on the calculated tie benefit value.⁴⁴ The ISO believes that the 1,860 MW level of tie benefits remains available from neighboring Control Areas and does not believe that system conditions have changed sufficiently to warrant a departure from this value.⁴⁵

The ISO’s proposed rule change also has the benefit of preserving the status quo for a period of time necessary for the ISO and the New England stakeholders to complete the ongoing analysis of the tie benefits calculation methodology. Because the ISO has shown that the 3,415 MW value yields an unreliable result, the best choice is to use the previously filed and Commission-approved 1,860 MW value. According to Mr. Karl, “[d]evelopment of a new tie benefits methodology is unfeasible and inappropriate at this time since doing so would undercut the process already underway.”⁴⁶ Until the outstanding tie benefits issues are resolved, it is important that tie benefits be calculated with a Commission-approved methodology that is not merely a compromise that is based on simply capping the tie benefit value.

To date, the “at criteria” calculation methodology has produced, for each Installed Capacity Requirement calculation, relatively stable tie benefits values. For example, for the

⁴³ *Id.* at 15-16.

⁴⁴ *Id.* at 16.

⁴⁵ *ISO New England Inc. and New England Power Pool*, Filing of (1) Installed Capacity Requirement, Hydro Quebec Interconnection Capability Credits and Related Values for the 2010/2011 Capability Year and (2) Related Market Rule Revisions, Docket No. ER09-640-000, Transmittal Letter at 17-18 and Peter K. Wong Testimony at 29-30 (filed Jan. 30, 2009) (“2010/2011 Second Annual Reconfiguration Auction Installed Capacity Requirement Filing”) (noting that during the review of the assumptions for the calculation of Installed Capacity Requirement for the 2010/2011 second annual reconfiguration auction, the ISO determined that there was no need to update the tie reliability benefits study for the 2010/2011 Capability Year).

⁴⁶ ICR Filing, Attachment I-1b, Karl Testimony at 16.

primary Forward Capacity Auction and second annual reconfiguration auction for the 2010/2011 Capability Year, use of the “at criteria” methodology resulted in a tie benefits value of 1,860 MW.⁴⁷ For the Forward Capacity Auction for the 2011/2012 Capability Year, use of the “at criteria” methodology resulted in a tie benefits value of 1,800 MW.⁴⁸ Each of these values produced a reasonable reserve margin that the ISO believes is sufficient for reliable operation of the system.⁴⁹ Until the ISO and stakeholders can comprehensively address the outstanding issues with the calculation of tie benefits, the ISO believes it is just and reasonable to cease recalculation of these values for each of the annual reconfiguration auctions and use the “at criteria” value calculated from the primary auction.

In conclusion, rather than embody a “new” methodology, the ISO’s proposal maintains the previously filed and Commission-approved 1,860 MW value. What is truly relevant is that the 1,860 MW value preserves the status quo and provides a level of stability to the calculation of tie benefits and, accordingly, the ICR-Related Values. This stability is beneficial to stakeholders, system operators in neighboring Control Areas, and the ISO.

2. NEPOOL’s proposal does not “preserve” the existing “as is” methodology.

National Grid argues that with the NEPOOL Amendment the existing Commission-approved “as is” methodology is “preserved . . . while placing a conservative cap on the tie benefits calculated thereby to guard against any negative reliability effects until the parties can

⁴⁷ *ISO New England Inc. and New England Power Pool*, Filing of Installed Capacity Requirement, Hydro Quebec Interconnection Capability Credits and Related Values for the 2010/2011 Capability Year, Docket No. ER08-41-000 at 14 (filed October 11, 2007) (“2010/2011 Primary Forward Capacity Auction Installed Capacity Requirement Filing”); 2010/2011 Second Annual Reconfiguration Auction Installed Capacity Requirement Filing.

⁴⁸ *ISO New England Inc.*, Filing of Installed Capacity Requirement, Hydro Quebec Interconnection Capability Credits and Related Values for the 2011/2012 Capability Year, Docket No. ER08-1512-000 at 14 (filed Sept. 9, 2008).

⁴⁹ ICR Filing, Attachment I-1d, Brandien Testimony at 4.

... formulate a new and more robust valuation method.”⁵⁰ However, rather than “preserve” the use of the “as is” calculation methodology for the third annual reconfiguration auction, NEPOOL’s proposal replaces the use of that methodology with a cap out of recognition that the “as is” methodology did not produce acceptable results for the 2010-2011 third annual reconfiguration auction. The cap ultimately controls the value of tie benefits, and as many commenters note, this cap was calculated using an “at criteria” methodology (one that, as the ISO has explained, is based on an incomplete analysis that utilizes numbers that are inapplicable for the Capability Year at issue here).

As explained in the ICR Filing, the 2,286 MW cap proposed by NEPOOL was calculated by taking the results of an “at criteria” calculation methodology that was suggested by the Long Island Power Authority (“LIPA”) during discussions before the Power Supply Planning Committee (“PSPC”),⁵¹ and applying a 10% discount “to assuage any ISO-NE concerns.”⁵² For the November 19, 2009 Participants Committee meeting, the 2,286 MW tie benefits value was introduced again, this time in the form of a “cap” to be utilized for the third annual reconfiguration auctions for both the 2010/2011 and 2011/2012 Capability Years, with the underlying “as is” methodology to remain in effect until a new methodology is developed through a stakeholder process in 2010.

The ISO does not support the NEPOOL Amendment because, contrary to Commission precedent, it “was not supported by any study” applicable for the 2010/2011 Capability Year, nor

⁵⁰ National Grid Comments at 11.

⁵¹ See ICR Filing, Attachment I-1c, Wong Testimony at 34, 32-38 generally (noting that the NEPOOL Amendment was developed from one of five cases that used an “at criteria” methodology, not an “as is” methodology).

⁵² See ICR Filing, Attachment I-1b, Karl Testimony at 21.

was it grounded in a fully developed or vetted calculation methodology.⁵³ Instead, the value represents a compromise proposal intended to garner the support of the ISO and stakeholders.⁵⁴ Moreover, there is no question that the 2,286 MW tie benefits value itself drives the NEPOOL Amendment. A value of 3,415 MW in tie benefits has been calculated under the “as is” methodology for 2010/2011. Accordingly, unless there is a dramatic shift in surplus conditions in neighboring Control Areas, the 2,286 MW “cap” value will be utilized for the 2010/2011 and 2011/2012 third annual reconfiguration auctions under the NEPOOL Amendment.

D. NESCOE’s dollar estimate reflecting costs to consumers is based on incomplete assumptions regarding the annual reconfiguration auction.

The ISO’s proposed rule change is just and reasonable notwithstanding incorrect assertions that it is flawed for failing to take into account cost implications. Several commenters complain that the ISO did not consider the “cost to consumers” associated with the rule changes proposed in the ICR Filing.⁵⁵ In particular NESCOE claims that the ISO proposal could cost consumers as much as \$65 million more than current rules.⁵⁶ However, NESCOE has simply calculated the theoretical cost savings if the Installed Capacity Requirement is lowered. This cost estimate is based on an incomplete picture of the full cost implications underlying the annual reconfiguration auction and should not be given weight.

⁵³ See 2005/2006 Order at PP 14, 30 (finding that the ISO failed to exercise independent judgment when it lowered the tie benefits value from 2,000 MW to 1,800 MW because the ISO’s tie benefits study supported the 2,000 MW value while the 1,800 MW level “was not supported by any study but rather was reached by the PC’s consensus vote”).

⁵⁴ See ICR Filing, Attachment I-1c, Wong Testimony at 32-38 (describing the circumstances and context in which the NEPOOL Amendment was developed).

⁵⁵ See CT DPUC Supplemental Comments at 2 (“ISO-NE has no responsibility, however, to consider costs. Its singular focus on reliability may skew any ICR determination toward requiring more capacity than reliability requirements dictate and more capacity than customers desire or can afford.”).

⁵⁶ NESCOE Comments at 5.

First, while NESCOE calculates an estimated cost savings of \$65 million, it is extremely unlikely that these savings would be realized. The ISO is required to offer surplus capacity into the auction as a supply curve, willing to sell the entire surplus at 75% of the primary auction price and selling none if the price is below 25% of the primary price. In this auction, the purchasers for surplus capacity are those resources that obtained a capacity obligation, but who now seek a buy-out of that obligation. Since the entire surplus could be sold at 75% of the primary auction price, a supplier seeking to buy out of its obligation would be unlikely to submit a bid significantly higher than that level. In addition, the clearing price in the prior reconfiguration auction was only \$1.50/ kW-mo. Even assuming that the full capacity surplus is sold, the Market Participants controlling several thousand megawatts of capacity must be willing to forgo capacity revenue. Both of these assumptions are unlikely to be valid.

Moreover, this analysis assumes that the loss of capacity resources does not trigger shortage pricing in the energy market. During a significant shortage event the region enters emergency conditions, and calls for emergency transactions and assistance from generation not subject to a Capacity Supply Obligation. Emergency transactions from New York may be priced at \$999/MW-hr and those from Quebec may even be higher. Thus, a single hour of shortage has the potential of offsetting the total potential capacity cost differential resulting from this proposed change.

E. The “jump ball” provision does not apply.

National Grid, NESCOE, and several other commenters argue that the Participants Agreement requires the ISO to file the ICR Filing under the “jump ball” provision.⁵⁷ They argue that the “jump ball” provision applies because the tie benefits proposal is a “market rule” under

⁵⁷ National Grid Comments at 14-20; NESCOE Comments at 3; NEPOOL Comments at 3-6; Public Systems Protest at 6-10; MA AG Protest at 3-4; Vermont Motion at 4.

the Participants Agreement, and NEPOOL's proposal achieved a positive vote exceeding the 60% threshold, triggering the "jump ball" provision in Section 11.1.5.⁵⁸ They argue that the language of the jump ball provision in Section 11.1.5 was "heavily negotiated by the parties to the Participants Agreement," and that "[h]ad they intended to exclude any category of Market Rules from the jump ball provision they could easily have done so, but they did not."⁵⁹ However, none of the arguments in the comments and protests demonstrate that the "jump ball" provision should apply to the rules for calculating the Installed Capacity Requirement.

As was explained in the ICR Filing, the ISO disagrees that the jump ball provision is applicable to market rule revisions that address the calculation of the Installed Capacity Requirement, and in particular to a rule change that simply establishes a value.⁶⁰ As set forth in Section 11.4 of the Participants Agreement, the proposed Installed Capacity Requirements are subject to the market rule voting provisions in Sections 11.1.2 and 11.1.3 of the Participants Agreement. However, Section 11.4 of the Participants Agreement does *not* state that the proposed Installed Capacity Requirements are subject to the jump ball provision in Section 11.1.5 (Alternative Committee Market Rule Proposal). By specifically citing Sections 11.1.2 and 11.1.3 as applicable to the Installed Capacity Requirement, it follows that other, potentially applicable provisions are excluded, including Section 11.1.5. It is noteworthy that when the Participants Agreement was negotiated, the Installed Capacity Requirement rules were not codified in the Tariff.⁶¹ The new Section 12 was added to the market rules as a result of a stakeholder process conducted over a

⁵⁸ See *e.g.*, National Grid Comments at 15.

⁵⁹ NEPOOL Comments at 4.

⁶⁰ ICR Filing, Attachment I-1a at 5-8.

⁶¹ *ISO New England Inc. and New England Power Pool Participants Committee, Revisions to Market Rule 1 Relating to the Methodology for Calculating Installed Capacity Requirements*, Docket No. ER07-365-000 (filed Dec. 22, 2006); See also *ISO New England Inc. and New England Power Pool*, 118 FERC ¶ 61,157 (2007).

one-year period through August 2006, and was approved by the Commission in February, 2007.⁶² Thus, for the commenters to argue that all parties intended for these rules to be subject to the “jump ball” provisions is illogical because the rules did not exist at the time the “jump ball” provision was negotiated.

Moreover, the argument that the market rules governing the determination of ICR-Related Values are subject to Section 11.1.5 because that provision references “alternate Market Rule proposals” when describing the mechanism of the jump ball provision is incorrect because it would render Section 11.4 meaningless. The ISO’s proposed revision to Section 12 of Market Rule 1 pertains to the methodology for calculating the tie benefits value, which is an integral component of the calculation of ICR-Related Values that, under Section 11.4, are within the ISO’s sole discretion. In fact, the Installed Capacity Requirement value is a product of the Installed Capacity Requirement calculation methodology in Section 12. Because the Installed Capacity Requirement *value* is not subject to the jump ball provision, it follows logically that the calculation methodology *rule* is not subject to the jump ball provision. Otherwise, as NEPOOL’s proposed tie benefits rule modification demonstrates, NEPOOL could simply propose to specify in the *rule* (Section 12.9 of Market Rule 1) the numerical tie benefits *value* that would apply for the Installed Capacity Requirement calculations (and in this instance for the next two reconfiguration auctions). The “jump ball” provision should not be used to shift debate away from finding a just and reasonable methodology for calculating the Installed Capacity Requirement to a debate over a particular value that is not supported by a sound or reasoned methodology.

⁶² *ISO New England Inc. and New England Power Pool Participants Committee, Revisions to Market Rule 1 Relating to the Methodology for Calculating Installed Capacity Requirements*, Docket No. ER07-365-000 (filed Dec. 22, 2006), transmittal letter at p. 10.

V. CONCLUSION

For the foregoing reasons, the ISO respectfully requests that the Commission grant the ISO's *Motion for Leave to Answer and Answer*, consider the additional facts and arguments set forth herein, and accept the proposed market rule revisions and the ICR-Related Values and HQICCs reflected in the ICR Filing without condition or modification.

Respectfully submitted,

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Dated: January 25, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the parties designated on the official service list for the above-captioned docket in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.2010 (2009).

Dated at Washington, D.C. on this 25th day of January, 2010.

/s/ E-filed _____
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