



Sherry A. Quirk
202/778-6475
squirk@schiffhardin.com

1666 K STREET N.W., SUITE 300
WASHINGTON, DC 20006

t 202.778.6400
f 202.778.6460

www.schiffhardin.com

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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. and New England Power Pool
Docket No. ER10-787-000

Dear Secretary Bose and Deputy Secretary Davis:

Attached for electronic filing in the above-referenced docket is the *Motion for Leave to File 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

Participants Committee (together, the “Filing Parties”),⁴ pursuant to Section 205 of the Federal Power Act (“FPA”),⁵ the February 13, 2009 Order Accepting Tariff Revisions and Requiring Compliance Filing in Docket No. ER09-356-000 (“February 13 Order”),⁶ and Section III.13.2.5.2.5(f) of the ISO New England Transmission, Market and Services Tariff (“Tariff”).⁷

I. INTRODUCTION AND EXECUTIVE SUMMARY

As set forth in more detail herein, the ISO respectfully requests that the Commission: (i) approve the FCM Redesign Filing as just and reasonable no later than April 22, 2010 so that the ISO has adequate time to implement the design changes prior to running the fourth Forward Capacity Auction (“FCA”),⁸ and (ii) approve continued consideration in the stakeholder process of further design changes to the FCM, with a

⁴ See *ISO New England Inc. and New England Power Pool*, Various Revisions to FCM Rules Related to FCM Redesign, Docket No. ER10-787-000 (filed February 22, 2010); *ISO New England Inc. and New England Power Pool*, Supplement to Filing of Various Revisions to FCM Rules Related to FCM Redesign, Docket No. ER10-787-000 (filed February 25, 2010) (enclosing page 28 which was inadvertently omitted from the initial February 22 filing). The February 22 and February 25 filings shall be collectively referred to herein as the FCM Redesign Filing.

⁵ 16 U.S.C. § 824d (2006).

⁶ *ISO New England Inc. and New England Power Pool Participants Committee*, 126 FERC ¶ 61,115 (2009) (“February 13 Order”).

⁷ Capitalized terms used but not otherwise defined in this filing have the meanings ascribed thereto in the ISO’s Transmission, Markets and Services Tariff (FERC Electric Tariff No. 3) (the “Tariff”). Section III of the Tariff is Market Rule 1.

⁸ To the degree that the External Market Monitor has raised preliminary issues with the FCM Redesign Filing’s treatment of de-list bids rejected for reliability reasons in Alternative Capacity Price Rules APR-1 and APR-3, the stakeholder process set forth in this *Answer* will enable consideration of his concerns prior to the likely application of either APR-1 or APR-3. APR-3 applies, by its terms, only to auctions that are conducted after the expiration of the price floor (*i.e.*, after the FCA for the 2015/2016 Capacity Commitment Period) (FCM Redesign Filing, Attachment 2, Clean Tariff Sheets, Tariff Section III.13.2.7.8.3 (APR-3 applicable to all FCAs not subject to a floor price)) and APR-1 will be invoked only when new capacity is needed. Given current surpluses, the ISO believes that addressing the issues raised by the External Market Monitor in the stakeholder process and filing on December 15, 2010 will precede any likely application of APR-1.

subsequent Section 205 filing by the ISO no later than December 15, 2010, and with the Commission having the option at that time of ordering a paper hearing to the extent that issues are unresolved.

The FCM Redesign Filing was based on the ISO's commitment to conduct a stakeholder process to consider several changes to the Forward Capacity Market ("FCM") design,⁹ the June 2009 report and recommendations of the ISO's Internal Market Monitor on the FCM, and Section III.13.2.5.2.5(f) of the Tariff.¹⁰ Significantly, the vast majority of the filed comments and protests on the rule changes contained in the FCM Redesign Filing recognize that the rule changes are *improvements* to the existing design.¹¹ To be sure, some protestors also criticize some of the elements of the FCM Redesign Filing as not going far enough to solve their perceived problems with the design of the FCM. That the FCM Redesign Filing does not go far enough or does not solve all problems associated with the FCM is simply not a basis for rejection of the filing. Section 205 of the FPA unambiguously requires the Commission to approve the FCM Redesign Filing if it is just and reasonable, without regard to additional or alternative proposals. The FCM Redesign Filing represents real improvements to the FCM, is just and reasonable, and should be approved as such.¹²

⁹ *Various Revisions to FCM Rules Related to Bilateral Contracts and Reconfiguration Auctions*, in Docket No. ER09-356-000 (filed Dec. 1, 2008) ("FCM Phase II Filing") at 5. *See also* February 13 Order at P 6, 21.

¹⁰ Internal Market Monitoring Unit Review of the Forward Capacity Market Auction Results and Design Elements, ISO New England Inc. Market Monitoring Unit (June 5, 2009) ("Internal Market Monitor Report"), available at http://www.iso-ne.com/markets/mktmonmit/rpts/other/fcm_report_final.pdf.

¹¹ *See infra* note 41.

¹² The ISO has reviewed the related complaint filed pursuant to Section 206 on March 23, 2010 in Docket No. EL10-50-000. The ISO will respond to that complaint on April 6, 2010, as required in the Commission's notice.

The ISO has already clearly acknowledged that serious consideration of further changes to the FCM should be undertaken right away.¹³ Such further consideration should be expedited and must include the issues raised by protestors and by the External Market Monitor. There is no basis, however, for simply adopting the alternative proposals advanced by certain protestors in this proceeding, for several reasons. First, the Commission is precluded from doing so pursuant to Section 205 of the FPA. This proceeding must address only whether the changes filed in the FCM Redesign Filing are just and reasonable, regardless of whether other alternatives might be better.

Second, the NEPGA alternative proposal has not been properly vetted and certainly is incomplete. While parts of the NEPGA alternative proposal may have considerable merit, the FCM design is extremely complicated, and significant changes such as those proposed by NEPGA must be thoroughly vetted by stakeholders and by the ISO. Moreover, the NEPGA alternative proposal seems to be missing extremely important elements. Notably, as discussed in more detail below, the Alternative Capacity Price Rule (“APR”) as envisioned by the protestors substantially expands the role of the Internal Market Monitor in the FCA. Instead of just determining whether an offer from a new resource should be allowed below 0.75 times the Cost of New Entry (“CONE”) without being categorized as Out-of-Market (“OOM”) capacity, under the NEPGA proposal the Internal Market Monitor would need to determine a competitive offer for each resource below 0.75 times CONE and that offer would directly affect the pricing in the FCA. This expansion of the Internal Market Monitor’s role would result in far more dependence on administrative offer determination than in current versions of the APR

¹³ See FCM Redesign Filing, Transmittal Letter at 10-11.

and warrants careful consideration by the Internal Market Monitor and discussion with stakeholders. In addition, the proposal to model all zones all the time is not accompanied by the necessary market power mitigation provisions, as the External Market Monitor has pointed out.¹⁴

Protestors' main arguments are: (a) that OOM capacity has massively distorted auction prices in the first three FCAs and will continue to do so in the future because much more capacity (in particular Demand Resources) should be characterized as OOM capacity; (b) that the proposed changes to the APR (which is intended to counteract the price-depressing effects of OOM capacity) move in the right direction but are inadequate; (c) that the CONE is far below any reasonable estimate of the actual cost of new entry (and by this protestors mean the cost of new entry for a new *generating* resource); and (d) that with regard to the formation of pricing zones, all zones should be modeled all of the time and that all "approved" de-list bids should be able to set the price in individual zones.

In addition to these protests, and at least in part in response to generator requests for his opinion, David Patton of Potomac Economics, the ISO's External Market Monitor ("External Market Monitor"), filed comments in response to the FCM Redesign Filing. The External Market Monitor's filing contains three conclusions.

(1) "that the ISO's proposed changes to the FCM will improve the performance of the market by increasing the efficiency of FCM prices,"¹⁵

(2) that certain provisions related to rejected de-list bids in APR-1 and APR-3 are inappropriate and should be rejected,¹⁶ and

¹⁴ External Market Monitor Comments at 18-19.

¹⁵ External Market Monitor Comments at 3.

(3) “even with the improvements contained in the ISO’s amendments, the FCM will not fully satisfy the proposed objectives.”¹⁷

With respect to his third conclusion, the External Market Monitor concludes that “if judged against the objective of the APR rules to minimize the price effects of OOM capacity, the APR provisions fall well short”¹⁸ The External Market Monitor further concludes that Capacity Zones should be modeled all the time, but warns that such a market design solution could raise serious market power concerns that are not addressed by the current design and which must be addressed before modeling separate Capacity Zones for all auctions.¹⁹ Finally, the External Market Monitor filing makes clear that these are initial views and that more complete analyses will be provided in the External Market Monitor’s 2009 Market Report to be published this Spring.²⁰

The ISO takes the concerns of the External Market Monitor and protestors very seriously, and believes that they have raised legitimate issues that require further, expedited consideration. Nonetheless, the protestors have not carried their burden of demonstrating that the changes contained in the FCM Redesign Filing are unjust and unreasonable, as is required by Commission precedent for rejection of a utility’s Section 205 filing. As discussed below, they also have not supported their claim that their “alternative proposals” are just and reasonable, or that immediate action is required that would permit the Commission to adopt their proposals without further development of important components of their approaches.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 15.

¹⁹ *Id.* at 18-19.

²⁰ *Id.* at 3.

There are several serious flaws in protestors' arguments. First, the protestors' claim that immediate action is needed and that further stakeholder proceedings should be bypassed is based on the incorrect assertion that the first three FCAs and resulting prices were "massively distorted" due to OOM capacity.²¹ However, as indicated by the Internal Market Monitor, the significant amount of surplus capacity in the first three FCAs clearly demonstrates that the clearing prices in each auction would have reached the floor even with the presence of OOM capacity.²² Indeed, for each of the first three auctions the ISO filed both the qualifications and characterizations for all resources and the results of each of the auctions and the Commission has approved all these filings.²³ If OOM capacity had been as protestors now claim, those claims should have been made with respect to each auction.

Protestors' claim that large amounts of in-market Demand Resources should have been categorized as OOM capacity is likewise incorrect and is based purely on assertion, not detailed analysis. Protestors made the same claim in the stakeholder process without providing any supporting analysis. Protestors may raise this issue in the future stakeholder process and should provide some analysis or support for the claim. As set forth in more detail herein, the ISO and the Internal Market Monitor do not agree that large amounts of Demand Resources have been mischaracterized as in-market resources.

²¹ See NEPGA Protest at 26-30.

²² See Attachment A, Affidavit of David LaPlante, the Vice President of the Internal Market Monitoring Unit at the ISO ("LaPlante Affidavit") at P 6. The LaPlante Affidavit responds to factual allegations regarding out-of-market capacity (an area of responsibility assigned to the Internal Market Monitor by the FCM rules under Section III.13.1.1.2.6) made in the NEPGA protest. LaPlante Affidavit at P 3.

²³ See *ISO New England, Inc.*, 123 FERC ¶ 61,290 (2008) (Order on results of the first FCA); *ISO New England, Inc.*, 127 FERC ¶ 61,040 (2009) (Order on results of the second FCA); and *ISO New England, Inc.*, 130 FERC ¶ 61,145 (2010) (Order on results of the third FCA).

Given that the FCM has opened the capacity market to new technology types, including Demand Resources, it should not be surprising that the resulting auction prices (or CONE) have been influenced by the cost of entry of these resources, as it should be. If these resources have lower costs of new entry than traditional generating resources, then it should be expected that they would be the marginal resources in the FCM and play a role in determining capacity prices.

Second, and perhaps more importantly, protestors request that their alternative proposal be adopted and “in effect before FCA #4, set to commence on August 2, 2010.”²⁴ It would be utterly impossible to implement protestors’ ideas by the fourth FCA.²⁵ Contrary to their assertions of simplicity, the proposals involve fundamental policy, design, and software issues. Indeed, it is highly uncertain whether implementation of fundamental changes to the FCM design could take place for the fifth FCA. To make significant changes, development of the proposals with appropriate market power mitigation would need to occur; rules would need to be written, vetted and approved; and major software changes would need to be made and tested. The recommendation to model zones “all the time,” for example, not only requires consideration of market power and market power mitigation measures but also raises a threshold question of the ability of the descending clock auction process to model the zonal topology.²⁶

²⁴ NEPGA Protest at 9.

²⁵ It should be noted that there are only 101 days between April 22 and Aug 2, the first day of the fourth FCA.

²⁶ These issues are discussed further in Section III.B *infra*.

It simply is not possible to meet the deadline protestors suggest for any non-trivial auction changes.²⁷ In addition, setting such a deadline would be unwise for several reasons. The ISO agrees that the stakeholder process must be expeditious, but these redesign efforts should not be a frantic exercise undertaken in a litigation context. The issues contained in protestors' alternative proposal (which continues to evolve)²⁸ present several important policy and design issues as well as complicated implementation questions that are deserving of a thoughtful and considered, as well as expeditious, process. The stakeholder process, facilitated or monitored with the help of Commission staff, is a much more constructive environment to consider further changes to the design of the FCM than a litigation or settlement judge process. Upon completion of the stakeholder process, the ISO will submit a Section 205 filing, setting forth proposed market rule changes. To the extent that issues remain at that time, the ISO suggests that a paper hearing before the Commission itself will best resolve those issues.

In summary, the Commission should reject all challenges and approve the FCM Redesign Filing as just and reasonable. Long-standing judicial and Commission precedent requires the Commission to approve the FCM Redesign Filing if it is just and

²⁷ It should be noted that the qualification window for the fifth FCA will begin shortly, and resource owners have a reasonable interest in understanding the applicable rules before deciding to qualify for that auction. Accordingly, if final market rules are to be approved and in place before the applicable qualification period, it is unrealistic to implement any new alternatives prior to the sixth FCA.

²⁸ For example, one important change to NEPGA's APR is that in the stakeholder process versions, new capacity resources between the "corrected" APR price and the non-corrected price would not receive Capacity Supply Obligations, while in NEPGA's current version of APR, which does not calculate the non-corrected price, they do receive Capacity Supply Obligations. Another change in NEPGA's proposal concerns how excess capacity at the corrected clearing price is addressed. The current proposal adopts a demand curve, while earlier proposals used price and megawatt pro-ratoning. It should be noted that NEPGA itself acknowledged the evolving nature of its proposal. NEPGA Protest at 40 ("We propose the following alternative APR to achieve a just and reasonable forward capacity market. This rule combines elements of our proposals during the stakeholder process and the proposals offered in the FCM Revision.").

reasonable, without regard to additional or alternative proposals.²⁹ Even if the Commission were to hold that protestors had met their burden of demonstrating that the FCM Redesign Filing is unjust and unreasonable (again, which the Commission cannot, based upon this record), the alternative proposals are not fully developed and are not ready for implementation. The rules contained in the FCM Redesign Filing were not a settlement or compromise that requires some special treatment; instead, these changes are a Section 205 filing made by the ISO under the authority granted to it as the filing utility. The Commission should direct the ISO, NEPOOL, and all other interested parties to reserve the issues identified in the protests and comments of the External Market Monitor for the stakeholder process. The definition of OOM Capacity, an appropriate mechanism for addressing potential buyer market power, the modeling of zones balanced against seller market power, and the proper definition and uses of CONE are all important issues that should be addressed in detail in this critical, future stakeholder process.

II. MOTION FOR LEAVE TO FILE ANSWER

In this *Answer*, the ISO responds to certain comments and protests filed in response to the FCM Redesign Filing that was submitted on February 22, 2010, as supplemented on February 25, 2010. While the Commission's Rules of Practice and Procedure allow parties to respond to comments,³⁰ as a general matter, the Commission's

²⁹ "Under the FPA, if [the Commission] find[s] that ISO-NE has successfully supported the justness and reasonableness of its [filing, the Commission] must approve it. [The Commission] cannot, under those circumstances, consider alternatives to what is proposed by ISO-NE." *ISO New England*, 114 FERC ¶ 61,315 at P 33 (2006), citing to *Cities of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984) ("FERC has interpreted its authority to review rates under [the Federal Power Act] as limited to an inquiry into whether the rates proposed by a utility are reasonable -- and not to extend to determining whether a proposed rate schedule is more or less reasonable than alternative rate designs."), *cert. denied*, 469 U.S. 917 (1984).

³⁰ See 18 C.F.R. § 385.213(a)(3) (2009).

rules prohibit responses to protests.³¹ The Commission has the authority, however, to waive this prohibition for good cause.³² 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,³³ provide information helpful to the disposition of an issue,³⁴ permit the issues to be narrowed or clarified,³⁵ or aid the Commission in understanding and resolving issues.³⁶ 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 FCM Redesign Filing. In particular, it seeks to clarify certain facts, and amplify its commitment to further enhancements or revisions to the design of the FCM during the stakeholder process going forward. For these reasons, the ISO respectfully requests that the Commission grant the ISO's motion to provide the following *Answer*.

III. ANSWER

A. The FCM Redesign Filing is Just and Reasonable and Should be Approved.

The FCM Redesign Filing was tendered under Section 205 pursuant to: (a) the ISO's commitment in its December 1, 2008 filing of *Various Revisions to FCM Rules Related to Bilateral Contracts and Reconfiguration Auctions* to engage in a stakeholder

³¹ *Id.* at § 385.213(a)(2).

³² *Id.* at § 385.101(e).

³³ *See, e.g., Pacific Interstate Transmission Co.*, 85 FERC ¶ 61,378 at 62,444 (1998), *reh'g denied*, 89 FERC ¶ 61,246 (1999).

³⁴ *See, e.g., CNG Transmission Corp.*, 89 FERC ¶ 61,100 at 61,287 n.11 (1999).

³⁵ *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).

³⁶ *See, e.g., Tennessee Gas Pipeline Co.*, 92 FERC ¶ 61,009 at 61,016 (2000).

process on the Local Sourcing Requirement and Capacity Zones, culminating in a filing of market rules by February 20, 2010;³⁷ (b) the June 2009 Internal Market Monitor Report containing the Internal Market Monitor’s initial assessment of the FCM³⁸ and the stakeholder process designed in large part to consider that report and its recommendations; and (c) Section III.13.2.5.2.5(f) of the Tariff, which requires the ISO to evaluate whether to apply the APR to FCAs affected by de-list bids rejected for reliability reasons³⁹ and to file the results of that evaluation by May 17, 2010.⁴⁰ Significantly, the vast majority of the filed comments and protests on the rule changes contained in the FCM Redesign Filing are recognized by commenters and protestors as representing improvements in the design of the FCM.⁴¹ The main comments and criticisms are that the ISO did not go further in changing certain of the FCM’s design

³⁷ FCM Phase II Filing at 5.

³⁸ Internal Market Monitor Report.

³⁹ Tariff Section III.13.2.5.2.5(f).

⁴⁰ See *ISO New England Inc. and New England Power Pool, Limited Revision to FCM Rules to Extend Date for Filing Regarding Treatment of De-list Bids Rejected for Reliability Reasons*, Docket No. ER08-952-000 (filed May 14, 2008) (“FCM Rules Date Extension Filing”); Letter Order re: Limited Revision to FCM Rules, Docket No. ER08-952-000 (June 10, 2008) (“Letter Order re. FCM Rules Date Extension Filing”).

⁴¹ See, e.g., Comments of Potomac Economics (the ISO’s external market monitor) at 3 (“we find that the ISO’s proposed changes to the FCM will improve the performance of the market by increasing the efficiency of FCM prices”) and 14-15. See also the protests of: NEPGA at 10 and Joint Protestors at 8-10 (supporting the change to model a zone’s auction purchase requirements on the higher of the local sourcing requirement or the transmission security analysis); NEPGA at 11 (regarding the proposal to add certain types of bids to those that are analyzed in determining whether to create additional zones); NEPGA at 12, 66-67 (supporting the ISO’s proposal to decouple the auction starting price from the Cost of New Entry (“CONE”)); NEPGA at 12, 75 (supporting the inflation adjustment for CONE based on the Handy-Whitman index); NEPGA at 18 (stating that the *current* Alternative Price Rules are unjust and unreasonable and that, while the ISO’s proposed revisions are well-intentioned, they do not suffice); NEPGA at 76-77 (supporting, with an additional clarification, the ISO’s provisions regarding the increased transparency in the review of offers below 0.75 times CONE); NEPGA at 77-78 (supporting the extension of the price floor); and NEPGA at n. 107 (stating that it “also supports the changes proposed with respect to compensation where a resource’s prorating election is rejected for reliability reasons).

elements.⁴² NEPGA states that the current market rules and “ISO-NE’s proposed ‘fixes,’ while well-intentioned, also are unjust and unreasonable because they fail to solve the problem.”⁴³ Elsewhere NEPGA acknowledges that the Filing Parties’ APR proposal is a “marginal improvement”⁴⁴ over the existing APR market rules but requests rejection of the FCM revisions concerning the APR.⁴⁵

NEPGA and other protestors plainly acknowledge that the elements of the FCM Redesign Filing are “improvements” over the existing design.⁴⁶ In addition, the existing FCM design previously has been found to be just and reasonable by the Commission.⁴⁷ Given these facts, the argument that the ISO did not go further in proposing changes to the FCM design simply does not provide a basis for rejecting the FCM Redesign Filing.

⁴² *See, e.g.*, NEPGA Protest at 11, 55-56 (proposed changes regarding modeling zones “do not go far enough”); NEPGA Protest at 67 (regarding CONE, “each of these reforms is beneficial, but none go far enough.”); EPSA Protest at 7 (“Some of the individual revisions in the February 22 Filing represent an incremental improvement to certain concerns that the Generator and Supplier Sectors have raised in past FCM-related dockets at the Commission and/or within the stakeholder process and should be approved as requested herein. However, the package of revisions in its totality simply does not go far enough....”); NEPGA at 31, 34 (noting that changes to the APR are “marginal improvements”); NEPGA at 61 (noting that inclusion of certain bids from non-Pivotal Suppliers is “an improvement over the current rules”); NEPGA at 70 (noting that the starting price is “an improvement over the current default at two times CONE”); Boston Gen Companies Protest at 1 (appreciating the proposed revisions concerning compensation for resources not allowed to prorate but criticizing the treatment of out-of-market capacity).

⁴³ NEPGA Protest at 7-8.

⁴⁴ *Id.* at 31, 34.

⁴⁵ *Id.* at 12-13, 34.

⁴⁶ *See* note 41 *supra*. NEPGA also endorses the Filing Parties’ new rule that calculates the Local Sourcing Requirement for an import constrained zone as the amount of capacity needed to satisfy the higher of the resource adequacy requirement or the transmission security requirement, and the rule changes considering certain bids from non-Pivotal Suppliers in modeling zones, conceding that “[o]n balance, these changes will help permit locational pricing.”⁴⁶ NEPGA Protest at 54-56.

⁴⁷ *ISO New England, Inc.*, 119 FERC ¶ 61,045 (accepting market rules implementing FCM), *order on reh’g*, 120 FERC ¶ 61,087 (2007); *see also ISO New England, Inc.*; 120 FERC ¶ 61,190 at P 3 (2007) (noting Commission’s acceptance of market rules on the APR).

Absent a significant, articulated demonstration that the Filing Parties' proposed changes are not just and reasonable, the Commission must accept the revisions.⁴⁸

The protestors support the alleged unjustness and unreasonableness of the FCM Redesign Filing by incorrectly alleging that the market is irreparably broken because several thousand megawatts ("MW") of in-market surplus capacity in the first three auctions ought to have been categorized as OOM capacity (or would be categorized as OOM capacity under the FCM Redesign Filing). The ISO demonstrates in Section III.A.2 below that this assertion is invalid and cannot provide a legitimate basis for finding that the FCM Redesign Filing is unjust and unreasonable, or that immediate action is required to address this "failure."

The FCM Redesign Filing has broad stakeholder support and its rule changes are recognized as improvements to the current FCM design. The ISO and NEPOOL have supported the changes as just and reasonable. Moreover, the protestors have failed to demonstrate that the changes are unjust and unreasonable. In these circumstances, the Commission should approve the FCM Redesign Filing.

1. The Standard of Review

With the alternative proposals put forth by NEPGA and others, it is important to recognize the standard of review for a filing tendered under Section 205 of the Federal Power Act. Under long-standing judicial and Commission precedent, if the Commission finds that the ISO's filing is just and reasonable, it must approve that filing *notwithstanding the availability of other proposed solutions*. For example, the Commission has stated that "[u]nder the FPA, if [the Commission] find[s] that ISO-NE

⁴⁸ See *ISO New England*, 114 FERC ¶ 61,315 at P 33 (2006).

has successfully supported the justness and reasonableness of its [filing, the Commission] must approve it. [The Commission] cannot, under those circumstances, consider alternatives to what is proposed by ISO-NE.”⁴⁹ Similarly, the Commission has stated that “[u]nder the Federal Power Act, the issue before the Commission is whether the [filing utility’s] proposal is just and reasonable and not whether the proposal is more or less reasonable than other alternatives.”⁵⁰

While the commenters and protestors (*e.g.*, NEPGA) have put forth a number of suggested improvements and alternative proposals to what the Filing Parties filed, the Commission is unambiguously bound to review the FCM Redesign Filing on its own merits, and not in relation to other possible solutions. The protestors have not carried their burden of demonstrating that the filed FCM redesign changes are unjust and unreasonable. Indeed, commenters and protestors alike acknowledge that the majority of the elements of the FCM Redesign Filing are improvements to the existing FCM design. Hence, the Commission must approve the ISO’s proposal as just and reasonable.

⁴⁹ *ISO New England*, 114 FERC ¶ 61,315, at P 33 (2006). The Commission cited to *Cities of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984) (“FERC has interpreted its authority to review rates under [the Federal Power Act] as limited to an inquiry into whether the rates proposed by a utility are reasonable -- and not to extend to determining whether a proposed rate schedule is more or less reasonable than alternative rate designs”), *cert. denied*, 469 U.S. 917 (1984).

⁵⁰ *California Independent System Operator Corp.*, 128 FERC ¶ 61,282 at P 31 (2009). The Commission cited to *Oxy USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995) (under the Federal Power Act, as long as the Commission finds a methodology to be just and reasonable, that methodology “need not be the only reasonable methodology, or even the most accurate one”) and *Cities of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 917 (1984).

2. The Urgency with which Protestors Claim Further Rule Changes Are Required Is Premised on Incorrect Facts Regarding Actual Amount of Out-of-Market Capacity and the Effect of Out-of-Market Capacity on the Pricing Results from the First Three Auctions.

NEPGA and other protestors claim that further rule changes are required immediately to improve the FCM design and have put forth detailed alternative proposals. They claim that urgent action is required on the alternative proposals, which mandates eschewing the stakeholder process. However, the foundation for protestors' need for immediate action and avoiding the stakeholder process is based on incorrect assertions. And, as demonstrated in Section III.B below, protestors' alternative proposals are incomplete and largely unvetted by anyone other than the protestors' own witnesses.

The protestors incorrectly allege that the first three FCAs and resulting prices were "massively distorted" due to OOM capacity.⁵¹ The ISO has requested that David LaPlante, the ISO's Internal Market Monitor, review the allegations that the first three FCAs have been distorted by OOM capacity, and his Affidavit is attached. In brief, the Internal Market Monitor has found that this allegation is in error.

NEPGA's view that the surplus capacity in the market is driven "in large part not by market forces but rather by bilateral actions of load interests"⁵² ignores the fact that the first FCA started with a surplus of approximately 2,400 MW.⁵³ The surplus of cleared capacity over the Installed Capacity Requirement increased in the second FCA to 4,755 MW.⁵⁴ From the second to the third FCA

⁵¹ See NEPGA Protest at 26-30.

⁵² NEPGA at 27.

⁵³ LaPlante Affidavit at P 5 (stating that FCA #1 began with a total of 34,705 MW of existing, qualified resources and a Net Installed Capacity Requirement ("NICR") of 32,305 MW).

⁵⁴ *Id.* at P 6 (Table 1, column 3).

there was a 563 MW reduction in the NICR for the ISO control area which contributed to the increase in the surplus of cleared capacity over the NICR in the third FCA of 5,031 MW.⁵⁵ Given these facts, the claim that the reason the first three auction reached the floor price was due to OOM capacity is difficult to sustain.⁵⁶ As demonstrated in Table 1 set forth in the Internal Market Monitor’s affidavit, if one were to subtract the cleared OOM capacity in each auction from the surplus capacity in auction there are still large amounts of surplus capacity that remain. The amount of this “net-of-cleared-OOM-capacity surplus” was 1,732 MW in the first FCA, 3,447 MW in the second FCA, and 3,028 in the third FCA.⁵⁷

Recognizing that an allegation that the cleared OOM capacity distorted the auction prices in the first three FCAs cannot be sustained looking at the auction results, NEPGA then claims that there was a serious understatement of OOM capacity in the first three auctions. However, NEPGA witness Stoddard’s analysis rests on three erroneous assertions: (a) that all of the 585 MW of new capacity treated as “existing” capacity under the FCM rules should have be treated as OOM capacity, (b) that 2778 MWs of Demand Response “would likely have been deemed Out-of-Market under the Rule Changes,”⁵⁸ and (c) that the reduction in the NICR that occurred between FCA #2 and FCA #3 would

⁵⁵ *Id.*

⁵⁶ *Id.* at P 5.

⁵⁷ *Id.* at P 6 (Table 1, last column).

⁵⁸ NEPGA witness Stoddard’s Affidavit at P 16 (also quoted on page 27 of NEPGA’s protest).

reduce (as opposed to increase) the surplus capacity from FCA #2 to FCA #3.

Each of these assertions is incorrect.

The FCM rules permitted certain projects to be treated as “existing” in the auction and NEPGA offers no evidence or support that these project should have been categorized as OOM capacity.⁵⁹ NEPGA provides no support for the claim that that all capacity from demand resources is, by definition, out-of-market.⁶⁰ Further, a reduction in the NICR going from the second FCA to the third FCA, *increases* surplus capacity, it does not reduce it as claimed by NEPGA witness Stoddard.⁶¹

Protestors’ attempt to buttress their erroneous claim that the first three FCAs and resulting prices were “massively distorted” by OOM capacity by asserting that large amounts of in-market Demand Resources should have been categorized as OOM capacity in the first three FCAs is in error.⁶² As the Internal Market Monitor states, while further consideration of OOM resources and their definition in the FCM is important, it is not appropriate, without actual support, to simply assert that most or all of Demand Resources are “likely” to be considered OOM (or should have been considered OOM in the first three

⁵⁹ LaPlante Affidavit at P 9.

⁶⁰ *See* NEPGA witness Stoddard’s Affidavit at P 19 (where Mr. Stoddard states: “there is reason to question whether much of the ‘in-market’ new Demand Resources would have been categorized as Out-of-Market under the proposed Rule Changes. Every kilowatt of ‘in-market’ new Demand Resources had as its lead participant either a utility or a state entity”).

⁶¹ LaPlante Affidavit at P 12.

⁶² *See* LaPlante Affidavit at P 5 (quoting NEPGA witness Stoddard’s Affidavit at P 16).

FCAs).⁶³ In contrast to the protesters, the Internal Market Monitor reviewed each Demand Resource in the qualification process to determine whether each was in-market. Mr. LaPlante's affidavit demonstrates that on the basis of the tariff, the allegation that all Demand Resources are OOM resources is without foundation.⁶⁴

The changes contained in the FCM Redesign Filing do not change how, under the FCM rules, the Internal Market Monitor determines whether a particular project is in-market or out-of-market.⁶⁵ In addition, Mr. Stoddard's innuendo that the vast majority of Demand Response resources are owned or sponsored by a utility or state entity is not correct. In the first three FCAs, the three largest private (for-profit) Demand Response providers (EnerNoc, CPower and Constellation) received obligations to provide an average of approximately 50% of all the demand response resources procured through these auctions, while utility and state sponsored demand response only constituted roughly 30% of the demand response resources that received obligations in these auctions.

⁶³ NEPGA witness Stoddard claims that “[a]ll the Demand Resources are either Out-of-Market or sponsored by a utility or a state and, therefore, likely subsidized by system benefit charges.” NEPGA Protest, Exhibit 3, Stoddard Affidavit at ¶ 20.

⁶⁴ Protestors raised the issue in the stakeholder process stating that “state-mandated or -subsidized resources *may* include [Demand Resources] or renewable [resources]” and that the “entry decision [of these resources is] largely independent of clearing price in FCA”. See August 31, 2009 power point presentation by Mr. Stoddard at 4 (emphasis added). Mr. Stoddard proposed that the definition of OOM be expanded beginning with the fourth FCA and that the ISO should reclassify resources cleared in the first three FCAs for use in the “past excess OOM metric in the revised APR trigger.” *Id.* Protestors may raise this issue in the stakeholder process but should provide some analysis or support for the claim. Absent some support for the claim, the ISO and the Internal Market Monitor do not agree that large amounts of Demand Resources have been mischaracterized as in-market resources.

⁶⁵ LaPlante Affidavit at P 11.

Mr. Stoddard also erroneously claims (as illustrated in NEPGA Exhibit RBS-2) that the reduction in the Net Installed Capacity Requirement (“NICR”) that occurred between FCA #2 and FCA #3 would *reduce* (as opposed to increase) the surplus capacity as compared to FCA #2. However, a reduction in capacity needed will increase, not decrease, the surplus, as Mr. LaPlante notes.

As the Internal Market Monitor states,⁶⁶ the claims of protestors NEPGA, Boston Gen Companies and others that the first three FCAs were distorted are incorrect and at odds with the results of the first three FCAs, which were all approved by the Commission.⁶⁷ At bottom, NEPGA argues that there was actually no surplus capacity in the first three FCAs because thousands of MW of capacity was erroneously treated as in-market rather than as OOM. Because there was so much surplus capacity in the FCAs, NEPGA must look to several sources to find a sufficient total quantity of allegedly mischaracterized capacity to support its claim. Indeed, it is critical to NEPGA’s argument that each of the three key facts asserted by Mr. Stoddard all must be correct. If even a relatively small quantity of the capacity that Mr. Stoddard argues was OOM was actually in-market as observed, then his conclusion is incorrect. Each of his three key facts rest on unproven assumptions and do not withstand scrutiny: (1) there is no basis to consider the 585 MW of new capacity treated as existing as OOM; (2) the assertion that all or most of the 2778 MW of demand resources should be considered OOM is unsupported; and (3) the 563 MW reduction in NICR between FCA 2 and FCA 3 does not reduce the quantity of surplus capacity – it *increases* surplus capacity. For these

⁶⁶ LaPlante Affidavit at PP 4-7.

⁶⁷ See *ISO New England, Inc.*, 123 FERC ¶ 61,290 (2008) (Order on results of the first FCA); *ISO New England, Inc.*, 127 FERC ¶ 61,040 (2009) (Order on results of the second FCA); and *ISO New England, Inc.*, 130 FERC ¶ 61,145 (2010) (Order on results of the third FCA).

reasons, it is simply unreasonable to assume that the large majority of this almost 4000 MW of capacity should have been considered OOM and, unless almost all of that 4000 MW is considered OOM, NEPGA's claims that there is really no surplus fails. For all of these reasons, the Commission should not give any weight to NEPGA's argument that the observed capacity surplus is illusory.

B. While the FCM Redesign Filing Should Be Approved as Just and Reasonable, the Comments and Protests Raise Several Issues that Merit Further Examination but Do Not Justify Approval of their Proposals at this Time.

Approving the FCM Redesign Filing as just and reasonable will allow the improvements to be implemented prior to the fourth FCA. If any of the widely supported improvements in the FCM Redesign Filing, such as extension of the floor price or reflecting local security requirements in setting local purchase requirements, are to be reflected in the fourth FCA, the Commission must approve the FCM Redesign Filing without significant modification.

1. NEPGA's Proposal Represents Significant Changes to the FCM that Would Be Unreasonable to Implement Without a Thorough Vetting by Stakeholders and the ISO.

While parts of the NEPGA alternative proposal may have considerable merit, the FCM design is extremely complicated, and significant changes such as those proposed by NEPGA must be thoroughly vetted by stakeholders and by the ISO. As discussed above, the ISO and the Internal Market Monitor believe that the allegations made by NEPGA that OOM capacity has "massively distorted" the auction clearing prices lacks a foundation and cannot be accepted as presented. Similarly, while NEPGA's proposed alternative APR proposal merits consideration, outright adoption of the proposal at this time, without further refinement, is unwarranted and unwise.

A version of NEPGA's APR proposal was reviewed by the ISO and a consultant on auction design during the FCM Working Group. Two significant concerns with its potentially far-reaching consequences were raised. First, the NEPGA proposal substantially expands the role of the Internal Market Monitor in the FCA. Instead of just determining whether an offer from a new resource should be allowed below 0.75 times CONE without being categorized as OOM, under the NEPGA proposal the Internal Market Monitor would need to determine a competitive offer for each resource below 0.75 times CONE and that offer would directly affect the pricing in the FCA. This expansion of the role of the Internal Market Monitor would result in far more dependence on administrative offer determination than in current versions of the APR and warrants at least discussion with stakeholders. Second, the NEPGA proposal may have an effect on bidding incentives in the FCA. When evaluating one of the earlier versions of the NEPGA proposal raised in the FCM Working Group, concerns were raised that the revised APR proposed by NEPGA at that time would increase the incentives for large suppliers to strategically de-list. The NEPGA proposal has changed from that version, but analysis has not been performed to determine whether or not those same concerns still exist. While further review and possibly modification may alleviate these concerns, it would be reckless to simply accept these changes without a more detailed look.⁶⁸

It simply is not possible to meet the deadline protestors suggest for any significant auction changes (such as a complete redesign and implementation of the APR or modeling zones "all the time"). In addition, setting such a deadline would be unwise for several reasons. The ISO agrees that the stakeholder process must be expeditious, but

⁶⁸ It should be noted that the consultant retained by the ISO is expected to perform a review of these issues concerning the APR.

these redesign efforts should not be a frantic exercise undertaken in a litigation context. The issues contained in protestors' alternative proposal (which as noted above continues to evolve) present several important policy and design issues as well as complicated implementation questions that are deserving of a thoughtful and considered, as well as expeditious, process. The stakeholder process, facilitated or monitored with the help of Commission staff, is a much more constructive environment to consider further changes to the design of the FCM than a litigation or settlement judge process.

2. NEPGA's Proposal Raises Several Fundamental Policy, Design, and Software Issues to be Considered in the Stakeholder Process.

Protestors characterize their approach as a simplified version of the ISO's rule changes. However, implementing the proposed changes would involve fundamental policy, design, and software issues. For example, just focusing on the recommendation to model zones "all the time," not only requires consideration of market power and market power mitigation measures but also raises a threshold question of the ability of the descending clock auction process to model the zonal topology.

However, before discussing the items to be considered in the stakeholder process, it is important to note that the stakeholder process leading to the FCM Redesign Filing had to reach an interim conclusion for the ISO to honor its commitment to the Commission regarding the timing of filing the market rule changes. In addition, the ISO committed in the FCM Redesign Filing to continue to work with stakeholders on further improvements to the FCM design, and reiterates that commitment here.⁶⁹

⁶⁹ See FCM Redesign Filing, Transmittal Letter at 10-11.

With regard to the modeling of Capacity Zones, the External Market Monitor states that the ISO’s proposal to allow certain bids to be considered in the modeling of Capacity Zones “increases the harmonization between the capacity market and the reliability requirements and, therefore, is in accord with the objective [the External Market Monitor] propose[s] above – that the FCM market requirements reflect the system’s reliability requirements.”⁷⁰ The External Market Monitor also states that the ISO’s amendments, while an improvement to the FCM design, require further revision to allow the prices in Capacity Zones to more fully reflect the system’s capacity needs.

Specifically, the External Market Monitor indicates that the objective to have the FCM requirements reflect system reliability requirements “would be satisfied if the zones were always modeled (*i.e.*, the triggers were eliminated).”⁷¹ However, the External Market Monitor cautions that always modeling the zones could “raise market power concerns *that are not fully addressed by the current mitigation measures.*”⁷²

Consequently, the External Market Monitor recommends that the ISO and stakeholders should address further market power mitigation measures and monitoring as they consider long-term changes to the modeling of zones.⁷³ There are several issues to be considered in the stakeholder process with regard to modeling of zones all the time, *e.g.*, how any increased monitoring and mitigation provisions might be designed, the appropriate standard to be applied under any changed mitigation measures, and whether any safe harbor, as under the current rules, is appropriate and compatible with any

⁷⁰ External Market Monitor Comments at 18.

⁷¹ *Id.* at 18-19.

⁷² *Id.* at 19 (emphasis added).

⁷³ *See* External Market Monitor Comments at 20-21.

expanded modeling of zones. Current mitigation measures are not sufficient to address the market power issues arising if zones are modeled as requested by the protestors,⁷⁴ and the Commission should not adopt this recommendation.

Furthermore, when considering whether to model all zones all the time (besides considering the potential impact of market power) it is essential to also consider the ability of the descending clock auction process to model the zonal topology. This issue was discussed extensively with stakeholders at the Reliability Committee as part of the development of the FCM Redesign Filing. The descending clock auction clearing design requires a discrete clearing “order” from most constrained region from least constrained. Each region must be able to be represented with a single interconnection between itself and a single adjacent region, and the constraint must be uni-directional.

While fairly complex topologies may be represented within these limitations, these limitations do preclude many configurations that may otherwise be desirable. In particular, mesh networks, where each zone is connected to more than one adjacent zone, may not be represented with the descending clock. Therefore, in the event that market power concerns can be addressed and it was determined to consider modeling all zones all the time, it is essential that any discussion of the change recognize the limitations of the clearing design. In other words, any order that were to require modeling of all zones all the time also would need to require modeling of constrained zones (a) where meaningful and discrete transfer limits can be calculated between zones, and (b) where the resulting zonal topology can be represented in the auction design. These issues require significant further analysis.

⁷⁴ LaPlante Answer at 4.

With regard to CONE, the elements of the FCM Redesign Filing should be approved as just and reasonable (*i.e.*, decoupling the auction starting price from CONE and updating the CONE using a three-year rolling average of the Handy-Whitman Index of Public Utility Construction Costs when the CONE is not otherwise updated using a market-determined cost-of-new-entry). The ISO nonetheless recognizes that further study of the specific uses of CONE and consideration of whether each of those uses is appropriate at current or lower levels of CONE is an important topic to be discussed with stakeholders.

In summary, the Commission should approve the FCM Redesign Filing and allow the improvements to be implemented prior to the fourth FCA. Aspects of NEPGA's alternative may have considerable merit but represent significant changes with fundamental design, policy and software issues. Such issues are deserving of a thoughtful, considered, and thorough, as well as expeditious, vetting by stakeholders and the ISO. At bottom, approval of the protestors' alternative proposals would be premature at this time because there is insufficient record evidence offered to support those proposals as just and reasonable.

3. NextEra's Concerns Regarding the Clarification to Section III.13.6.4 ("ISO Requests For Energy") Are More Appropriately Addressed in the Stakeholder Process.

NextEra objects to the FCM Redesign Filing's changes to Section III.13.6.4 of the market rules. The revised rule clarifies that where the ISO requests energy from a resource that does not have a Capacity Supply Obligation, such resource shall not be obligated under Section III.13 of the Tariff to provide energy or pay a penalty for failure to provide energy from that capacity. NextEra argues that Section III.13.6.4 should

instead provide that generating resources that do not have capacity supply obligations may only be called upon during emergencies.⁷⁵ According to NextEra, its proposed modification to Section III.13.6.4 will “correctly put the onus on resources being compensated for reliability to resolve reliability concerns first.”⁷⁶

As explained further below, NextEra’s request is unnecessary and untimely because the ISO is currently in the process of revising Operating Procedure 4 (“OP 4”) to harmonize that procedure with the FCM. As reflected in the current draft of a revised OP 4, which has already been approved by the NEPOOL Participants’ Committee, all resources without a Capacity Supply Obligation are called under Action 7 only after a number of other measures are taken, including Action 1 which provides in part: “[e]ach Resource with a Capacity Supply Obligation will prepare to provide all associated operable capability.”⁷⁷ Thus, the treatment of resources that do not have a Capacity Supply Obligation in the FCM is already being addressed in a manner consistent with NextEra’s desires.

Moreover, far from sharing a “near ‘consensus’ view,” it should be noted that the NEPOOL-approved language referenced by NextEra was part of a Design Basis Document not supported by the ISO. The Filing Parties did not “scrap” the language identified by NextEra;⁷⁸ they never supported that language in the first place, in large part because it assigned an obligation to resources without a Capacity Supply Obligation. If NextEra would like to relax that limit, it should raise this issue in the stakeholder process.

⁷⁵ NextEra Protest at 6.

⁷⁶ *Id.* at 4.

⁷⁷ http://www.iso-ne.com/rules_proceeds/operating/future_fcm/op4_fcm_draft.pdf.

⁷⁸ NextEra Protest at 4.

4. Estimates of the Cost Impact of the Changes to the Alternative Price Rule.

The MPUC asserts that load representatives several times asked the ISO for an analysis of the cost implications of the proposed major design changes and “no such analysis was ever provided.”⁷⁹ However, as was noted in the FCM Redesign Filing, the ISO has provided an estimate of the cost impact of the rule changes related to the APR.⁸⁰ During the stakeholder process, the ISO provided MPUC with a quantitative analysis, including a calculation estimating the cost savings of reducing the risk premium in the FCM through better auction design and price formation. The analysis also included various steps in the calculations shown to allow better understanding and to facilitate stakeholders’ own analysis of alternatives.⁸¹ In addition, a qualitative analysis of the long-term need for the APR was also provided to stakeholders.

5. The “Correction” to the Calculation of Maximum Capacity Limits Proposed by GDF Suez is Inappropriate and should be Rejected.

In its intervention, GDF Suez claims “the relevant tariff provisions (1st Rev. Sheet No. 7307F) incorrectly substitutes ‘LRA’ for LSR in the calculation of MCL” and requests that the Commission “direct ISO-NE to correct this error and file revised tariff provisions which reinstate the calculation of MCL as ICR less LSR for the rest of New England.”⁸² First, the FCM Redesign filing did not change any tariff provisions regarding the Maximum Capacity Limits. Second, the intervention language seems to suggest that this change is intended to correct a minor oversight in drafting, rather than to

⁷⁹ MPUC Comments at 5.

⁸⁰ FCM Redesign Filing, Transmittal Letter at 4, n.12.

⁸¹ RTO/ISO Performance Metrics, Motion for Leave to Answer and Answer of ISO New England Inc., Docket No. ER09-1051-000 (filed March 23, 2010) at 4, n.10.

⁸² GDF Suez Protest at 10.

now impose a change that was discussed and rejected in the stakeholder process. However, this was not an error and to “correct” it in the manner suggested would constitute a significant and unintended design change.

One of the widely supported changes in the ISO filing addresses the potential inconsistency in requirements that results from setting FCM purchase amounts for import constrained regions equal to the probabilistic LRA (formerly LSR) while requiring that de-list requests also meet a TSA standard. This filing corrects that inconsistency by setting import constrained region purchase requirements equal to the higher of the adequacy (LRA) or security (TSA) amount. The TSA represents the local resource quantity necessary to meet local transmission security needs in an import constrained sub-area, and is capped at the total adequacy requirement for that region. Stated more simply, a local area may not be required to source more than 100% of its total adequacy requirement from resources within that area.

In contrast, the MCL represents the maximum amount of capacity which may be sourced in an export-constrained area and still contribute toward meeting total pool-wide resource requirements. Again, to state more simply, an export-constrained region may not contain more than 100% of the resources required to meet local requirements plus the additional quantity that can pass the export constraint. This is not a local transmission security issue, and granting GDF Suez the “correction” they seek would require the ISO to somehow devise criterion for calculating a local security requirement for a local import constrained region where that “local” region is the entire New England control area, less Maine.

While ISO does enforce TSA requirements in analyzing de-list requests from resources in import constrained regions, and it is therefore appropriate to include these requirements in setting those local purchase requirements, these local TSAs have no impact on the total New England ICR, and have no impact on the ability of resources constrained behind a Maine export constraint to meet the total New England ICR. In addition, even if a rational criterion could be developed to set such a “local” pool-wide security requirement, higher than the current adequacy requirement, this requirement would not change the ability of resources within Maine to meet a requirement outside Maine. Since such a change to the requirement outside the export constraint has no actual impact on relieving that constraint, the correction proposed by GDF Suez is incorrect, and should be rejected by the Commission.

C. Challenges of the Objecting Parties Impermissibly Exceed the Scope of a Proceeding Under Section 205 of the FPA.

Several of protestors’ arguments involve issues that are not properly before the Commission in this proceeding and are outside the scope of the FCM Redesign Filing.⁸³

⁸³ Several issues raised by the protestors are outside the scope of this proceeding and are not addressed in the pleading: (1) GDF Suez argues that the rules that permit LSEs to designate their owned or contracted capacity resources to self supply their capacity needs as an alternative to purchasing capacity in the FCA should be revised to allow LSEs to self supply their full capacity needs with no premium attached (GDF Suez Protest at 6); (2) GDF Suez argues that the ISO should be directed to amend the market rules to allow LSEs that have Incremental Load and also have resources that have cleared the relevant FCA to update their self-supply designations up to the start of the relevant Capacity Commitment Period (GDF Suez Protest at 8); (3) GDF Suez argues that the FCM Redesign Filing ignores flaws including the “incomparability in capacity sale obligations between generators and demand resources” (GDF Suez Protest at 5); (4) Brookfield asserts that the stakeholder process should be expanded to consider revising the FCM rules to: (i) enhance an Import Capacity Resource’s ability to purchase and sell Capacity Supply Obligations in the bilateral market; and (ii) allow for capacity wheels where the ISO is the intervening control area (Brookfield Comments at 4); (5) NSTAR requests that the ISO provide additional details regarding the selection of an economic consultant for further review of certain issues, as well as details regarding the consultant’s assignments, findings, and efforts (NSTAR Comments at 6); (6) NSTAR requests specifics regarding the integration of proposed enhancements to the Regional System Planning process (NSTAR Comments at 7); (7) Boston

For example, Brookfield asserts that the stakeholder process should be expanded to consider revising the FCM rules to: (1) enhance an Import Capacity Resource's ability to purchase and sell Capacity Supply Obligations in the bilateral market; and (2) allow for capacity wheels where the ISO is the intervening control area, to improve the FCM design.⁸⁴ Such issues are outside the scope of changes contained in the FCM Redesign Filing. The issues should be addressed in the stakeholder process although not necessarily with the same urgency as the items discussed elsewhere in this Answer.

The matters before the Commission in this proceeding are limited to the market rule revisions presented in the FCM Redesign Filing. This proceeding is not the appropriate forum to challenge the entire design of the FCM market as approved by the Commission or to raise issues that are properly addressed in other proceedings, as the Commission has held in prior, analogous cases.

In another proceeding involving an ISO filing pursuant to Section 205 of the FPA, the Commission rejected efforts to expand the scope of the proceeding to include matters more properly addressed in the stakeholder process. In the proceeding, the Commission accepted the ISO's filing of market rule revisions to Appendix J of Market Rule 1 related to the Alternative Technologies Regulation Pilot Program ("Pilot Program").⁸⁵ In response to a party's comment that the recovery of specific costs should be provided for certain technologies participating in the Pilot Program, the Commission stated that such

Gen Companies argue that the compensation for resources denied MW prorationing for reliability reasons should apply to the third FCA (Boston Gen Companies Protest at 30-31); and (8) Several protestors argue that the proposal is the product of an inherently flawed governance voting structure that is skewed in favor of load (GDF Suez Protest at 5-6. EPSA Protest at 8. NEPGA Protest at 37).

⁸⁴ Brookfield Comments at 4.

⁸⁵ *ISO New England Inc. and New England Power Pool*, 29 FERC ¶ 61,213 (2009).

request was outside the scope of the proceeding.⁸⁶ Instead, according to the Commission, the commentor “should raise its cost recovery concerns in the stakeholder process that will ultimately follow the Pilot Program and produce the Market Rule revisions.”⁸⁷

The Commission has also held that “[a] protest does not expand the scope of a proceeding.”⁸⁸ In *Southern Company Services, Inc.*, the Commission held that a party, “through its intervention and protest, would be seeking to convert a section 205 review of [an] Informational Filing into an evaluation of [an] already approved Interconnection Agreement.”⁸⁹ The Commission found that “[a] party seeking such a change must file a complaint under section 206 of the FPA.”⁹⁰ In this case, the ISO’s FCM Redesign Filing was tailored to address only the elements of the FCM that were introduced in that filing, and any arguments beyond these issues should not be permitted.

D. Relief Requested

The ISO requests that the Commission approve the FCM Redesign Filing without condition or modification. As discussed in Section III.A, above, the Filing Parties have provided sound evidence that the FCM Redesign Filing is just and reasonable, and the protestors have not refuted this fact. Furthermore, as was noted in the FCM Redesign Filing, the ISO requests that the Commission issue a decision on that filing no later than

⁸⁶ *Id.* at P 20.

⁸⁷ *Id.*

⁸⁸ *Southern Company Services, Inc.*, 116 FERC ¶ 61,070 at P 26 (2006) (citations omitted).

⁸⁹ *Id.*

⁹⁰ *Id.* See also *Cabrillo Power I LLC*, 114 FERC ¶ 61,160 at P 17 (2006) (the Commission rejected arguments that “have no bearing on the current FPA section 205 proceeding,” where a generator requested that the Commission investigate the prudence of the CAISO’s decision to deselect the generator’s units and select another unit as the final RMR unit, and noted the availability of the CAISO’s dispute resolution procedures if the generator wished to address its concerns).

April 22, 2010 so that the ISO has adequate time to implement the design changes prior to running the fourth FCA.

Protestors' plea that the Commission direct a compliance filing on an expedited basis mandating the adoption of the generators' proposals for the fourth FCA is neither technically feasible, nor desirable given the insufficient record evidence offered to support those proposals as just and reasonable. The ISO reiterates its commitment to a stakeholder process to consider further enhancements or revisions to the design of the FCM. A stakeholder process (facilitated by a senior Commission staff person) followed by an ISO filing is preferable to either litigation or a settlement judge process.

IV. CONCLUSION

For the foregoing reasons, the ISO respectfully requests that the Commission grant the ISO's Motion for Leave to File Answer, and approve the FCM Redesign Filing as discussed herein.

Respectfully submitted,

ISO NEW ENGLAND INC.

By: /s/ Ray W. Hepper

Raymond W. Hepper, Esq.
Kerim P. May, Esq.
ISO New England Inc.
One Sullivan Road
Holyoke, MA 01040-2841
Tel: (413) 540-4585
Fax: (413) 535-4379
E-mail: rhepper@iso-ne.com

/s/ Sherry A. Quirk

Sherry A. Quirk, Esq.
Roger E. Smith, Esq.
Monica M. Berry, Esq.
Schiff Hardin LLP
1666 K Street NW, Suite 300
Washington, DC 20006
Tel: (202) 778-6475
Fax: (202) 778-6460
E-mail: squirk@schiffhardin.com

Dated: March 30, 2010

ATTACHMENT A

1 Capacity was properly considered, then the third FCA would have required the
2 purchase of additional, new, in-market capacity.

3 **The Results of the First Three FCAs and Out-of-Market Supply**

4 **4.** The New England Power Generators Association Inc. (“NEPGA”) claims that the
5 “Forward Capacity Market Has Been Massively Distorted Through Uneconomic
6 [OOM] supply” in the first three FCAs.² NEPGA witness Stoddard states that
7 many of the “2,778 MW of Demand Resources [in FCA#2] . . . would likely have
8 been deemed Out-of-Market under the Rules Changes proposed by ISO-NE.”³
9 Similarly, Boston Gen Companies⁴ witness Bidwell states that:

10 There are numerous reasons why the actual OOM surplus is
11 greater than the INTMMU’s estimate of 2,350 MW (or nearly
12 3,000 MW if the 585 MW of OOM capacity from the first FCA
13 is included). As I discussed above, I recommend that a
14 retrospective analysis be conducted on all resources, including
15 [demand] resources, to identify those that are being subsidized,
16 *i.e.*, which are receiving OOM revenues. My recommendation
17 finds support in Table 2 in Mr. Stoddard’s affidavit [Exhibit
18 RBS-2], which shows that all of the new [demand resources]
19 that cleared in the third FCA was the result of either a State
20 entity or a utility program. In addition to ignoring some
21 subsidies, the INTMMU does not use the same method to
22 evaluate generation resources and demand resources.⁵
23

24 **5.** The statements of NEPGA witness Stoddard and Boston Gen Companies witness
25 Bidwell are not correct. In the June 5, 2009 FCM Report (“FCM Report”), I

² NEPGA Protest at 26-30.

³ NEPGA Protest at 27; Stoddard Affidavit at P 16.

⁴ “Boston Gen Companies” is a collective reference to the protest filed on behalf of Boston Generating, LLC, Mystic I, LLC, Mystic Development, LLC, and Fore River Development, LLC.

⁵ Boston Gen Companies Protest, Bidwell Affidavit at 34-35.

1 concluded that while there were OOM resources clearing in FCA #1 and FCA #2,
2 the OOM resources did not affect the outcome of either auction. After reviewing
3 the results of FCA #3, I found that this conclusion also held in FCA #3. To put
4 the claim that OOM capacity had an adverse impact on the FCA results in
5 perspective, it is worth going back to the supply/demand balance for capacity that
6 existed prior to FCA #1. FCA #1 began with a total of 34,705 MW of existing,
7 qualified resources and a Net Installed Capacity Requirement (“NICR”) of 32,305
8 MW, which means the first FCA started with a surplus of 2,400 MW. Given that
9 the initial condition for the market was a surplus of 2,400 MW, the claim that
10 OOM capacity in the first three auctions was the reason the auction reached the
11 floor price is difficult to sustain. In fact, given this initial condition, any outcome
12 other than reaching the floor price, absent several thousand megawatts of
13 resources leaving the market, in each of the FCAs would have been unusual.

14 **6.** Each of the first 3 FCAs reached the floor price. The FCA stops at the floor price
15 if more capacity than is needed to meet the Installed Capacity Requirement
16 (“ICR”) remains when the descending clock reaches the floor price. Table 1
17 below shows the cleared capacity; the NICR or auction purchase requirement; the
18 surplus capacity that cleared in the auction; and the total OOM capacity that
19 cleared in each of the three FCAs held to date (annual and cumulative).

1

Table 1

	Total Cleared Capacity ⁶	Net Installed Capacity Requirement	Surplus	Cleared Out of Market Capacity	Cumulative OOM	Surplus Above Cumulative OOM
FCA 1	34,077	32,305	1,772	40	40	1,732
FCA 2	37,283	32,528	4,755	1,268	1,308	3,447
FCA 3	36,996	31,965	5,031	695	2,003	3,028

2

3 7. Table 1 shows, among other things, that the surplus capacity in FCA #3 exceeded
4 the OOM Capacity by 3,028 MW or more than 50%. NEPGA nonetheless argues
5 that, while the capacity that was deemed OOM under the rules is well short of the
6 surplus, flaws in the rules and FCM design cause a serious understatement of the
7 actual amount of OOM capacity. This is summarized in the following statement
8 by NEPGA witness Stoddard:

9 But the bulk of the surplus comes from surplus capacity cleared
10 in FCA #1 and FCA #2, which included 1,310 MW of resources
11 designated as Out-of-Market by the INTMMU, 585 MW of new
12 capacity treated as existing in FCA #1 (and consequently was
13 not subject to review as Out-of-Market), and 2,778 MW of
14 Demand Resources, many of which would likely have been
15 deemed Out-of-Market under the Rule Changes proposed by
16 ISO-NE. Taken together, these three categories of supply sum
17 to 4,673 MW, almost the whole of the 4,755 MW of surplus
18 resources cleared in FCA #2, and greater than the surplus
19 Existing Capacity in FCA #3 (net of de-list bids). As shown in
20 Exhibit RBS-2, but for these potentially uneconomic sources of
21 entry in FCA #1 and FCA #2, we would have entered FCA #3
22 needing to acquire 788 MW of new capacity resources.⁷
23

⁶ With Real Time Emergency Generation capped at 600 MW.

⁷ Stoddard Affidavit at P 16; *see also* NEPGA Protest at 27 (quoting most of the same material).

1 **8.** There are three key factual assertions on which NEPGA’s argument rests and I
2 disagree with all three of these assertions. The first flawed assertion is that all of
3 the 585 MW of new capacity that is treated as “existing” capacity under the
4 existing FCM Rules should be treated as out-of-market generation; the second
5 flawed assertion is that many of the 2,778 MWs of Demand Resources would be
6 OOM capacity under the rule changes proposed in the FCM Redesign Filing. The
7 third flawed assertion (illustrated in NEPGA Exhibit RBS-2) is the claim that the
8 reduction in the NICR that occurred between FCA #2 and FCA #3 would *reduce*
9 (as opposed to increase) the surplus capacity from FCA #2 to FCA #3.

10 **9.** First, the argument that the 585 MWs of new capacity treated as “existing”
11 capacity under the FCM Rules should be out of market is incorrect on two counts.
12 First, the FCM rules, which were fairly applied in the first FCA, permitted certain
13 projects to be treated as existing in the auction, even though they were not in
14 operation at the time of the auction. Removing these projects from the total of
15 existing capacity would be inconsistent with the rules in effect at the time.
16 Second, NEPGA presents no evidence that the projects were out-of-market.
17 Therefore, there is no reason to believe that the projects would have been out-of-
18 market had they not been treated as existing capacity.

19 **10.** Second, the claim that most of the 2,778 MWs of Demand Response would be
20 out-of-market appears to be based solely on the unsupported assertion that these
21 resources “would *likely* have been deemed Out-of-Market under the Rule

1 Changes. . . .”⁸ Mr. Stoddard goes on to argue that because all of the 189 MW of
2 new in-market demand response capacity in FCA #3 was proposed by a utility, it
3 should be found to be out-of-market.⁹ This conclusion is apparently based on his
4 assumption that these 189 MWs of Demand Resources relied on state subsidies
5 and *that without these subsidies the projects would not be cost effective*. He then
6 uses this assumption to support his supposition that all Demand Resources are
7 out-of-market.

8 **11.** This line of reasoning and its conclusions are incorrect. As I state in my
9 testimony at pages 3 to 4,¹⁰ the rule changes in the FCM Redesign Filing will not
10 affect the determination of whether a particular project would be found in-market
11 or out-of-market. The determination of whether a particular Demand Resource
12 project is found to be in-market or out-of-market is done by comparing the actual
13 project costs (with no reduction taken for any state subsidies) over the life of the
14 project, to the projects benefits, (as measured by the savings in energy realized by
15 customers) over the life of the project. Project costs include the cost of installing
16 the measures incurred by the demand response aggregator and the customer as
17 well as any administrative costs of operating the Demand Resource. Project
18 benefits are determined by the reduction in the energy portion of a customer’s bill
19 created by the project. As part of the FCM qualification process the Internal

⁸ *Id.* (emphasis added).

⁹ *Id.* at P 19 (where Mr. Stoddard states: “there is reason to question whether much of the ‘in-market’ new Demand Resources would have been categorized as Out-of-Market under the proposed Rule Changes. Every kilowatt of ‘in-market’ new Demand Resources had as its lead participant either a utility or a state entity”).

¹⁰ See Attachment 5 to the FCM Redesign Filing at 3-4.

1 Market Monitoring Department reviewed all of the 189 MW referred to by Mr.
2 Stoddard and found that the projects' benefits over their lives exceeded their
3 costs, without including any subsidies. Thus, there is no basis for his assertion
4 that all 2,778 MW of Demand Resources in the market after FCA #2 would be
5 found out of market.

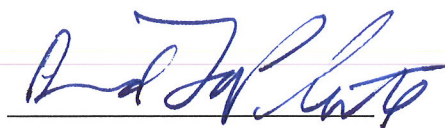
6 **12.** Third, NEPGA Exhibit RBS-2 indicates that a 563 MW reduction in the NICR
7 from FCA #2 to FCA #3 *reduces* the surplus going into FCA #3. This does not
8 make sense. A reduction in capacity needed will increase the surplus, all other
9 things being equal. For example, assume that in FCA #5 the NICR is 30,000 MW
10 and FCA 5 procures exactly 30,000 MW. Further assume that in FCA #6 the
11 NICR has dropped to 29,500 MW. This means that FCA #6 begins with a surplus
12 of 500 MW, which is the difference from the 30,000 MW procured in FCA #5
13 and the 29,500 MW NICR for FCA #6. In the instant case, this means that
14 reduction in NICR from FCA #2 to FCA #3 actually increases the surplus from
15 FCA #2 by 563 MW.

16 **13.** At bottom, NEPGA argues that there was actually no surplus capacity in the first
17 three FCAs because thousands of megawatts of capacity was erroneously treated
18 as in-market rather than as OOM. Because there was so much surplus capacity in
19 the FCAs that have been run (as Table 1 indicates), NEPGA must look to several
20 sources to find a sufficient total quantity of allegedly mischaracterized capacity to
21 support its claim. Indeed, it is critical to NEPGA's argument that each of the
22 three key facts asserted by Mr. Stoddard all must be correct. If even a relatively
23 small quantity of the capacity that Mr. Stoddard argues was OOM was actually in-

1 market as observed, then his conclusion is incorrect. As I have discussed, each of
2 his three key facts rest on unproven assumptions and do not withstand scrutiny:
3 (1) there is no basis to consider the 585 MW of new capacity treated as existing as
4 OOM; (2) the assertion that all or most of the 2,778 MW of Demand Resources
5 should be considered OOM is unsupported; and (3) the 563 MW reduction in
6 NICR between FCA #2 and FCA #3 does not reduce the quantity of surplus
7 capacity – it *increases* surplus capacity. For these reasons, it is simply
8 unreasonable to assume that the large majority of this almost 4,000 MW of
9 capacity should have been considered OOM and, unless almost all of that 4,000
10 MW is considered OOM, NEPGA’s claims that there is really no surplus fails.
11 For all of these reasons, the Commission should not give any weight to NEPGA’s
12 argument that the observed capacity surplus is illusory.

ATTESTATION

David LaPlante, being duly sworn, deposes and states: That the Affidavit attached hereto was prepared under his supervision and control. Affiant further states under penalty of perjury under the laws of the United States of America that the statements therein are true and correct to the best of his knowledge, information, and belief.



David LaPlante

SUBSCRIBED AND SWORN BEFORE ME, THIS 30 day of March, 2010.

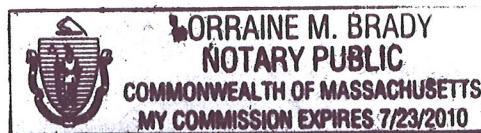


Notary Public

Commonwealth of Massachusetts

Printed Name: Lorraine M. Brady

My Commission Expires: July 23, 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 the 30th day of March 2010.

/s/ E-filed _____

Sherry A. Quirk
Attorney for ISO New England Inc.