UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

ISO-New England Inc.	)	
	)	
and	)	**Docket No. ER14-1639-000**
	)	
New England Power Pool	)	
Participants Committee	)	

MOTION TO INTEVENE AND PROTEST OF
THE NEW ENGLAND POWER GENERATORS ASSOCIATION, INC. AND
ELECTRIC POWER SUPPLY ASSOCIATION

Pursuant to Rules 211 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. §§ 385.211 and 214, and in accordance with the Commission's Combined Notice of Filings # 1, dated April 2, 2014, the New England Power Generators Association, Inc. ("NEPGA") and the Electric Power Supply Association ("EPSA") [1] hereby file this Motion to Intervene and Protest in response to ISO New England, Inc.'s ("ISO-NE") and the New England Power Pool Participants Committee's ("Participants Committee"- jointly with ISO-NE, the "Filing Parties") proposal to apply a sloped demand curve to ISO-NE's Forward Capacity Market ("FCM") beginning in the ninth Forward Capacity Auction ("FCA 9"), as filed with the Commission on April 1, 2014 ("ISO/NEPOOL Filing").

NEPGA and EPSA support several aspects of the Filing Parties' proposal, including the curve slope, the maximum price cap, the reference technology, and the estimated net cost of new entry ("Net CONE"). The Filing Parties' proposed minimum price cap of 1.0 x Gross CONE,

[1] The comments expressed herein represent those of NEPGA and EPSA as organizations, but not necessarily those of any particular member.

however, fails to help mitigate against insufficient price signals and should be rejected in favor of a minimum price cap of 1.25 x Gross CONE. The Filing Parties also fail to justify their proposed change to an administrative price cap methodology under the Insufficient Competition and Inadequate Supply Rules ("IC and IS Rules"), which should remain at the product of 1.1 and the value used in that FCA as an estimate of the cost of new entry. In addition, the Filing Parties have included in their Filing a number of proposals that go beyond the Commission's directive in its January 24, 2014, order to establish a sloped demand curve for FCA 9.[2] These ancillary elements unrelated to the parameters of the demand curve create obstacles to just and reasonable market outcomes.

Specifically, the Filing Parties propose to waive the Minimum Offer Price Rule ("MOPR") for certain renewable resources ("MOPR Exemption"), and extend the clearing price lock-in period option for new resources clearing in FCA 9, from 5 years to 7 years (the "New Entry Lock-In Extension"). As discussed further below, and in the attached affidavit of Dr. David Hunger,[3] the ancillary elements will allow for FCA price suppression and price discrimination, are not responsive to the Commission's clear, narrow directive, and indeed are in conflict with that directive and should be rejected. NEPGA and EPSA respectfully request that the Commission reject those provisions of the Filing Parties' proposal and grant the relief sought by NEPGA and EPSA below.

I. Motion to Intervene and Communications

NEPGA is a private, non-profit trade association advocating for the business interests of competitive electric power generators in New England. NEPGA's member companies represent

[2] *ISO-New England, Inc.*, 146 FERC ¶ 61,038, at P 30 (2014) ("January 2014 Order").
[3] Attachment A, *Affidavit of Dr. David Hunger In Support of Protest of the New England Power Generators Association, Inc.* ("Hunger Testimony").

approximately 26,000 megawatts of installed capacity throughout the New England region. NEPGA's mission is to promote sound energy policies which will further economic development, jobs, and balanced environmental policy. NEPGA's member companies are responsible for generating and supplying electric power for sale within the New England bulk power system. As active participants in the ISO-NE capacity and wholesale electricity markets, NEPGA's member companies have substantial and direct interests in the outcome of these proceedings, and those interests cannot be adequately represented by any other party in the proceeding.

EPSA is the national trade association representing competitive power suppliers, including generators and marketers. These suppliers, who account for nearly 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities serving global power markets. EPSA seeks to bring the benefits of competition to all power customers. The comments contained in this filing represent the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue. As active participants in the ISO-NE capacity and wholesale electricity markets, EPSA's member companies have substantial and direct interests in the outcome of these proceedings, and those interests cannot be adequately represented by any other party in the proceeding.

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II. Background

The "difficult and challenging issues" presented by the administrative price caps under the Insufficient Competition and Inadequate Supply Rules ("IC and IS Rules") in FCA 8 compelled the Commission to direct ISO-NE to file a new demand curve no later than April 1, 2014.[4] At the outset of the expedited NEPOOL process in response to the Commission's directive, the ISO announced at the NEPOOL Markets Committee ("MC") meeting on February 6, 2014, the scope of its April 1 filing.[5] The ISO proposed to include, for effect prior to FCA 9:

- A system-wide sloped demand curve (but not constrained capacity zone-specific curves);
- Net CONE;
- Eliminating the system-wide IS and IC Rules; and
- Continuing an administrative price cap for the capacity zone IS and IC Rules.

The ISO explicitly excluded a MOPR exemption for renewable resources from the scope of its April 1, stating that a "[r]enewables exemption" would be one of several "issues to be

[4] January 2014 Order at P 30.
[5] *Memorandum from Robert Ethier, Vice President, Market Development, to the NEPOOL Markets Committee*, February 3, 2014, ("ISO Memo") *available at*: http://www.iso-ne.com/committees/comm_wkgrps/mrkts_comm/mrkts/mtrls/2014/feb62014/index.html.

addressed following the April 1 filing."[6] The ISO made no mention of its New Entry Lock-In Extension at that time. In addition, the ISO stated that it would not propose sloped demand curves for individual capacity zones because there was insufficient time to appropriately consider them in a stakeholder process before the April 1 filing date.[7]

During the course of six meetings held over less than two months, the NEPOOL Markets Committee ("MC") deliberated the ISO's, and its consultants' (the Brattle Group ("Brattle") and Sargent and Lundy ("S&L")), proposed demand curve parameters and estimated Net CONE. For the reference technology upon which the Net CONE is based, Brattle and S&L considered several technology types, including the F-Class Combustion Turbine with Selective Catalytic Reduction ("F Frame"), two other Combustion Turbine types, and a Combined Cycle ("CC") unit, ultimately proposing to base the Net CONE on a 2x1 CC unit. The ISO adopted Brattle's reference technology recommendation. With respect to the demand curve, Brattle proposed a curve which had, among other features, a price cap of 2.0 x Net CONE and a kink at the 1-in-15 year loss of load equivalent ("LOLE") reserve margin.[8] Brattle's proposed curve slope was relatively steep above the kink, *i.e.*, when the market is short, and relatively flat below the kink, creating marginally stronger price signals when New England was in greater need of new resources to meet its resource adequacy needs. The ISO declined to adopt the Brattle's recommended curve, initially recommending a curve with a 1.65 x Net CONE price cap at the March 12 MC meeting,[9] at which time the ISO announced for the first time its proposed New Entry Lock-in Extension. On March 17, two days before the March 19 MC vote on the ISO's

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[6] ISO Memo at pp. 1-2.
[7] *Id.*
[8] *See Draft Recommendations for a Capacity Demand Curve in ISO-NE, The Brattle Group, Samuel A. Newell, et al.*, (January 14, 2014) at p. 13, *available at:* http://www.iso-ne.com/committees/comm_wkgrps/mrkts_comm/mrkts/mtrls/2014/jan14152014/index.html.
[9] *Capacity Demand Curve, ISO's Recommended Curve and Net CONE*, March 12, 2014, *available at:* http://www.iso-ne.com/committees/comm_wkgrps/mrkts_comm/mrkts/mtrls/2014/mar12132014/index.html.

demand curve proposal, the ISO changed its proposal to a curve originally proposed by Northeast Utilities, with a 1.6 x Net CONE price cap and no kink, and at the same time announcing for the first time that it was proposing a MOPR exemption for renewable resources.[10]

III. Supporting Comments

A. The Commission Should Approve a Sloped Demand Curve For Effect in FCA 9 Given the Significant Improvements the Curve Will Bring to the Forward Capacity Market

NEPGA and EPSA strongly support the Filing Parties' proposal to implement, for the first time in New England, a downward sloping demand curve. As NEPGA and EPSA have previously stated in other proceedings, the "boom/bust" cycle of the FCM's vertical demand curve has failed to provide revenue stability and has discouraged investment in New England.[11] Revenue stability through a sloped demand curve will provide a more sustainable market that will better support long-term capital investment decisions than a vertical demand curve. The sloped demand curve will also lead to better price formation and price signals. Prices formed using a sloped demand curve reflect the value of capacity beyond the minimum resource adequacy requirements and signal needed investment by incrementally increasing or decreasing clearing prices depending on whether ISO-NE is relatively long or short on capacity compared to its Net Installed Capacity Requirement ("NICR"). Improved price signals and price formation will incent investment when new capacity is needed and discourage the premature exit of existing generation.

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[10] *Memorandum From Robert Ethier, Vice President, Market Development, "Revised ISO Sloped Demand Curve Proposal"*, ("ISO Revised Curve Proposal Memo") *available at*: http://www.iso-ne.com/committees/comm_wkgrps/mrkts_comm/mrkts/mtrls/2014/mar192014/index.html.

[11] *See, e.g., Comments of the New England Power Generators Association, Inc.*, at p. 4, Docket No. AD13-7 (January 8, 2014).

The Commission properly recognized that the FCM cannot be sustained without the immediate adoption of a sloped demand curve, which will provide immediate benefits to the FCM, particularly if market participants can rely on the certainty of a Commission order prior to the need for Market Participants to make business decisions relative to their de-list bids and offers into the ninth FCA. NEPGA and EPSA, therefore, respectfully request that the Commission issue an order prior to the June 2, 2014, deadline for Existing Capacity qualification, and, should the Commission grant NEPGA's and EPSA's relief below (or any other parties' requests for relief), compel the ISO to file any necessary changes to the ISO-NE Tariff as expeditiously as possible to allow market participants and new entrants sufficient time prior to FCA 9 to factor the updated demand curve information into FCA 9 offer and de-list decisions. As there may be additional issues beyond the implementation of an appropriate demand curve that require additional stakeholder consideration, those should not impede the demand curve's implementation for FCA 9, but should be held for future consideration and potential implementation for FCA 10 or beyond.

B. The Filing Parties' Proposed Reference Technology, Estimated Cost of New Entry, and Curve Slope Are Reasonable Demand Curve Parameters

The Filing Parties' proposed reference technology for purposes of estimating the cost of new entry ("CONE"), their estimated Gross and Net CONE, and demand curve slope (including the curve "foot" and point at which the curve flattens to a price cap), should be approved. Though the proposals are not in every detail without fault, in total they represent a reasonable application of sound economic principles that should, together with the relief NEPGA and EPSA seek elsewhere in this Protest, create an FCM that strikes an appropriate balance between allowing for price signals sufficient to incent new entry when needed, and to retain appropriate existing resources or incent retirements when economic.[12] These elements constitute the "bones" of the demand curve and provide a reasonable framework to deliver clear, consistent and fair competitive market outcomes that the Commission has strived for in capacity markets.

The Filing Parties' proposed curve features a constant slope from the price cap to the foot, *i.e.,* with no kink, that will reduce price volatility and provide Market Participants with greater confidence in the FCA's likelihood of producing clearing prices that, on average over time, equal Net CONE. The curve is likewise calibrated to procure capacity, on average and over time, in an amount equal to the 1-in-10 year loss of load expectancy, an appropriate resource adequacy goal. In addition, under the Filing Parties' proposed curve the FCA will clear at 1.25 x Net CONE at the NICR volume of procurement, a reasonable margin above Net CONE to help mitigate the risk of under-procurement in the event the administrative Net CONE does not represent the true (market-based) Net CONE in any given year. The Filing Parties' curve represents a significant improvement over the vertical demand curve and (except as discussed below with respect to the Filing Parties' minimum price cap proposal), in sum, will better signal new entry when needed and retain existing resources when it is economic to do so.

NEPGA and EPSA also support the Filing Parties proposal to use a 2 x 1 CC gas turbine plant as the reference technology used to develop the cost of new entry.[13] The CC represents a technology type that has already economically entered the FCM,[14] and therefore serves as a reasonable choice as the basis for the cost of new entry. Other reference technologies considered

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[12] *ISO New England, Inc.*, 146 ¶ 61,038, at P 26 (2014), *citing, e.g.*, *New York Indep. System Operator, Inc.*, 122 FERC ¶ 61,064, at P 54, *order on reh'g*, 125 FERC ¶ 61,299 (2008) (rejecting use of updated demand curve factors that do not recognize the need to balance the impact on consumers with the need to provide correct price signals for new generation entry).

[13] ISO/NEPOOL Filing, *Testimony of Dr. Samuel A. Newell and Mr. Christopher D. Ungate on Behalf of ISO New England Inc. Regarding the Net Cost of New Entry For the Forward Capacity Market Demand Curve*, ("Newell/Ungate Testimony") at pp. 64-66.

[14] *Id.* at p. 17 (noting that the majority of the 1,331 MW of CC capacity development in ISO-NE is from two proposed merchant plants).

by Brattle with lower estimated Net CONE values (such as the F Frame) have never been built in New England, on a merchant basis or otherwise, and, as noted by Brattle, there is significant doubt as to whether they are viable candidates for new build.[15] The CC has a low estimated Net CONE relative to the several reference technologies considered by Brattle, but not so low so as to unreasonably increase the risk of significantly underestimating the true Net CONE. While no reference technology type is likely to lead to an estimated cost of new entry exactly equal to the "true" cost of new entry, the use of the CC technology better protects against under-estimating the cost of new entry than would some other reference technologies considered by NEPOOL stakeholders, such as the F Frame, which has the lowest estimated Net CONE value of those considered by Brattle.[16] If the true Net CONE is greater than the estimated Net CONE (and the Commission does not accept further changes to the price cap, as discussed below), the FCA could systematically under-procure resources, leading to long-term system reliability risks.[17] Conversely, if the true Net CONE is less than the estimated Net CONE, the FCA may procure more capacity over time but at "modestly increased costs."[18] The relative potential harms of overestimating versus underestimating the Net CONE value clearly weigh in favor of choosing a reference technology that helps to mitigate the risk of underestimating the Net CONE. The choice of the CC as the reference technology helps to mitigate against this risk by avoiding the use of technologies that are not proven to be economic in New England and have lower estimated Net CONE values than economic technologies that have cleared in the FCA.

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[15] *Id.* at p. 18.
[16] *Id.* at p. 63.
[17] ISO/NEPOOL Filing, *Prepared Testimony of Robert G. Ethier on Behalf of ISO New England Inc.*, at pp. 12-13 ("Ethier Testimony").
[18] *Id.* at p. 12.

IV. Protest

A. The Filing Parties Propose Market Rule Changes That Exceed the Scope of the Commission's Directive to File a Sloped Demand Curve

The Commission directed the ISO to file a demand curve by April 1, most immediately to correct for the "difficult and challenging issues" caused by the IS and IC Rules.[19] Consistent with the Commission's urgency, on February 3, 2014, the ISO notified the MC that its April 1 filing would include only those Market Rule changes necessary to respond to the Commission's January 2014 Order. Specifically, the ISO stated:

> The January 24 Order requires the ISO to file rules that specify a sloped demand curve in order to eliminate the administrative pricing rules that are the subject of the January 24 Order and the genesis of the Commission's mandated filing. This package would also include a proposed net CONE, which is necessary to calibrate the proposed demand curves. To those ends, below are the ISO's proposed scope for the April 1 filing, and a proposed scope for issues to be addressed following the April 1 filing.[20]

The ISO accordingly announced that in its April 1 filing it would propose Tariff changes to eliminate the system-wide IS and IC Rules, a sloped demand curve and an estimated Net CONE value, but not several other potential changes, including: (1) the sloped demand curves and Net CONE calculations for import and export-constrained zones necessary to eliminate the IS and IC Rules in those zones; and (2) a "[r]enewables exemption."[21] For both the zone-specific demand curves and the renewable exemption, the ISO announced that it would begin to discuss those issues with NEPOOL stakeholders "Post-April 1."[22] Not until March 12, one week before the MC vote on the ISO's proposal and stakeholder-proposed amendments, did the ISO

[19] January 2014 Order at P 30.
[20] *See* ISO Memo.
[21] *Id.*
[22] *Id*.

report its New Entry Lock-In Extension proposal, and not until March 17 (two days before the MC vote) did the ISO announce its proposed MOPR Exemption.[23]

The Filing Parties' MOPR Exemption and New Entry Lock-In Extension proposals are inconsistent with the Commission's January 2014 Order. The Commission did not "suggest[] that ISO work with its stakeholders to design a renewable resources exemption,"[24] but gave the ISO a simple directive to file a sloped demand curve. The only direction the Commission gave in its January 2014 Order was to eliminate the IC and IS Rules, which the Filing Parties propose to do for the system-wide application of those rules, but not in constrained zones. The Filing Parties confirm that their MOPR Exemption and New Entry Lock-In Extension proposals are outside of the ISO's core obligation under the January 2014 Order, by characterizing them as sets of "second" and "third" market rule changes, in addition to their proposed system-wide sloped demand curve and estimated Net CONE.[25] Going beyond the scope of their demand curve and Net CONE Tariff changes, the Filing Parties propose the MOPR Exemption that will erode investor confidence in the market and a New Entry Lock-In Extension that is intended to be a "temporary" administrative fix to prop up investor confidence[26] (an item that is at odds with the purpose of the demand curve itself).

These conflicting provisions require greater deliberation and consideration than offered in the expedited NEPOOL stakeholder process, and should not be within the scope of this proceeding. Proposals to NEPOOL typically are discussed at three MC meetings and voted at a separate NEPOOL Participant Committee meeting, with some proposals compelling a longer NEPOOL process. The MOPR Exemption and New Entry Price Lock-In proposals should each

[23] *See* ISO Revised Curve Proposal.
[24] Ethier Testimony at p. 38.
[25] Filing Parties' Transmittal Letter at p. 2.
[26] Ethier Testimony at p. 25 (asserting that the New Entry Lock-In Extension is a "short-term step" and that, if approved, the ISO would "reevaluate the [New Entry Lock-In Extension] after a series of successful auctions.")

be subject to at least the typical NEPOOL process. Whether brought to the Commission following meaningful NEPOOL process, or if subject to hearing and settlement judge procedures, the MOPR Exemption and New Entry Price Lock-In should not take effect, if at all, until at least FCA 10, given that for FCA 9 the New Capacity Show of Interest Window has closed and the New Capacity Qualification Review is underway.[27] Accordingly, the Commission should reject the MOPR Exemption and New Entry Price Lock-In Extension, and require the ISO to bring its proposals (if it so chooses) through a meaningful NEPOOL stakeholder process, or, in the alternative, set the MOPR Exemption and New Entry Price Lock-In proposals for hearing and settlement judge procedures.

B. The Filing Parties' Proposed MOPR Exemption Is Unjust and Unreasonable

Should the Commission consider its merits in this proceeding, the Commission should likewise reject the MOPR Exemption because it would unjustly and unreasonably suppress FCA prices below competitive levels due to the uneconomic entry of out-of-market ("OOM") renewable resources.

1. The Commission Has Denied MOPR Exemptions in New England Because It Has Found That New England's Capacity Market Is Materially Different From That of Other ISOs/RTOs With MOPR Exemptions

The Filing Parties propose to exempt up to 200 MW per year of new OOM renewable resources from New England's MOPR, allowing them to enter the FCA at prices below their actual economic costs. The Filing Parties' adopted their MOPR Exemption proposal from one proposed by the New England States Committee on Electricity ("NESCOE"), which brought

[27] *Supply Resources Show of Interest New Generation and Imports Qualification FCA # 9 for CCP 2018-2019*, ISO-NE Customer Training Webinar, January 23, 2014, at p. 23, *available at*: http://www.iso-ne.com/support/training/courses/fcm/supply_resource_soi_01_23_2013.pdf (noting that the Show of Interest Window closed on March, 4, 2014, and the Qualification Review process began on the same day).

before the MC a MOPR exemption for up to 225 MW per year of new OOM resources.[28] The Filing Parties' proposal is nearly identical to a MOPR exemption NESCOE sought, and the Commission denied, pursuant to a complaint NESCOE filed in late 2012.[29] As with NESCOE's request for relief in its Complaint, the Filing Parties' proposal does not mitigate the price suppressing effects or market inefficiencies caused by allowing up to 200 MW per year of new uneconomic entry into the supply curve.[30] Therefore, as with the NESCOE Complaint, the Commission should deny the Filing Parties MOPR Exemption because it will unjustly and unreasonably suppress capacity market prices and displace otherwise economic resources.

In 2011, the Commission found unjust and unreasonable the then-effective new resource offer mitigation regime (the Alternative Price Rule or "APR") and directed ISO-NE to implement a new mitigation scheme, which ultimately resulted in the Offer Review Trigger Prices ("ORTPs") and offer floor price mitigation mechanism in ISO-NE.[31] The Commission concluded that the APR did not prohibit OOM resources from offering into the FCA at uneconomic prices, which in turn "create[d] a significant design issue for the FCM, … clearing price below competitive levels,"[32] and "fail[ing] to fully adjust for the effect of OOM investment on the capacity price."[33] The Commission, therefore, ordered the ISO to develop a new offer floor mitigation construct, preemptively addressing at the outset of the process the question of

[28] *NESCOE Renewable Exemption*, February 27, 2014, MC Materials, Agenda Item A03B1, *available at*: http://www.iso-ne.com/committees/comm_wkgrps/mrkts_comm/mrkts/mtrls/2014/feb272014/index.html.
[29] *Complaint and Motion to Consolidate Proceedings of the New England State Committee on Electricity*, at pp. 17-19, Docket Nos. EL13-14-000, ER12-953-001, (December 28, 2012) ("NESCOE Complaint") (asking the Commission to order the ISO to amend the Tariff to allow up to 225 MW per year of OOM resources to be MOPR-exempt).
[30] Price suppression due to unmitigated renewable resource exemptions has had a significant effect on other capacity markets, most notably in PJM Interconnection, L.L.C. ("PJM"). PJM's MOPR exemptions, in addition to other RPM design elements, caused approximately $4.6 billion in price suppression on the RPMs 2016/2017 base residual auction. *2013 PJM Internal Market Monitor State of the Markets Report,* at p. 1 (March 13, 2014).
[31] *ISO New England, Inc. and New England Power Pool Participants Committee*, 135 FERC ¶ 61,029, at P 19 (2011) ("April 13 2011 Order").
[32] *Id*. at P 14.
[33] *Id*., *quoting ISO New England. Inc., and New England Power Pool Participants Committee*, 131 FERC ¶ 61,065 at P 85 (2010) ("April 23 2010 Order").

whether OOM resources developed pursuant to state policies should be exempt from an offer floor requirement. The Commission held that "certain resources that receive payments pursuant to state programs, which would otherwise trigger mitigation" may request an exemption from the MOPR on an individual basis "based on each case's unique facts," not through a blanket exemption for a class of OOM resources.[34] An individual resource may do so either by offering below its relevant ORTP if justified based on its actual costs following Internal Market Monitor review, or it may seek an ORTP exemption through a Section 206 filing at the Commission.

In 2013, the Commission confirmed its findings in denying NESCOE's complaint pursuant to which NESCOE asked the Commission to find that ISO-NE's buyer-side mitigation scheme is unjust and unreasonable because it does not include a categorical MOPR exemption.[35] In *NESCOE*, the Commission found that it was just and reasonable to not allow for a categorical exemption from the MOPR in the FCM, in part due to the relative size of New England's capacity market, where MOPR exemptions "will have a larger effect on capacity prices in the smaller New England market compared with the larger PJM market."[36] And though the Commission also found that the FCM's vertical demand curve was relevant to the Commission's decision, the FCM's move to a sloped demand curve does not, by itself, compel a different result. According to the Commission, support for a MOPR exemption in New England "must do more than rely on findings specific to PJM."[37] Instead, justification for a MOPR exemption must "address the …characteristics of ISO-NE's market," including the relative size of the ISO-NE capacity market and the large price suppressing effect of MOPR exemptions in the FCA.[38]

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[34] *Id.* at P 20.
[35] *New England States Committee on Electricity v. ISO New England Inc.*, 142 FERC ¶ 61,108 at P 35 (2013) ("*NESCOE*").
[36] *Id*.
[37] *Id.* at P 37.
[38] *Id*.

2. The Filing Parties' Proposed MOPR Exemption Will Significantly Suppress Capacity Market Prices and Revenues in ISO-NE

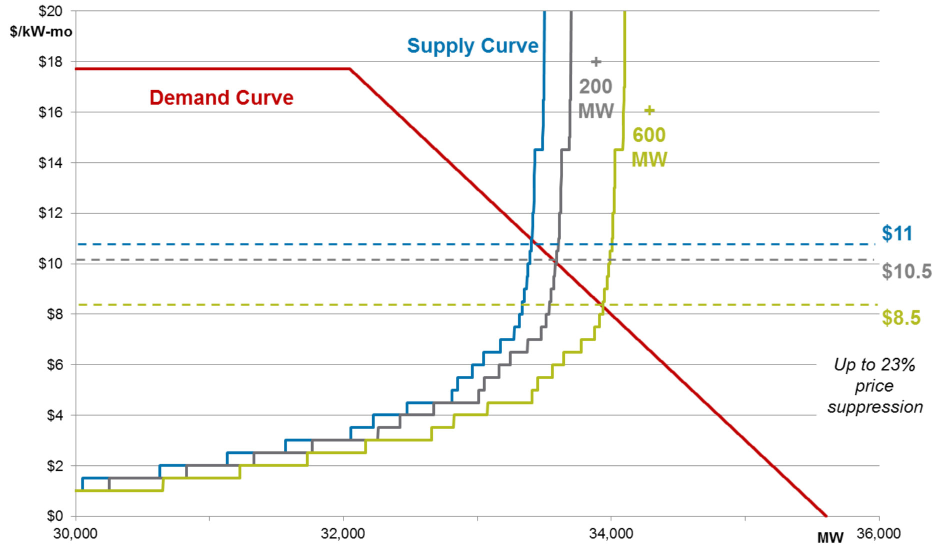
The ISO does not deny that price-suppression will occur,[39] but only that there will be less price-suppression than if the Filing Parties' proposal were to apply to a vertical demand curve, assuming a consistent 200 MW/year peak load growth (with no other changes, *e.g.,* increased unit availability, that would reduce the NICR).[40] Though the Filing Parties' proposal would have had a greater price-suppressing effect under a vertical demand curve, price-suppression under the sloped demand curve remains significant. As explained by Dr. Hunger in his attached affidavit, in any given year the Filing Parties' MOPR Exemption proposal can cause FCA clearing prices to be 4.5% – 23% lower than they would be in a purely economic market absent the MOPR Exemption, which corresponds to a $0.50/kW-month to $2.50/kW-month decrease in the FCA clearing prices, and an up to $1 billion suppression of capacity revenues in a single year.[41] Shown graphically here, the MOPR exemption would allow anywhere from 200 MW to 600 MW per year to shift the supply curve to the right, causing the supply curve to intersect lower on the demand curve at a point where the supply curve is steep and therefore extremely elastic:[42]

[39] Under the ISO's assumption that all resources offer into the FCA at $0/kW-month, the clearing price will be higher under the sloped demand curve than under a vertical demand curve. The ISO acknowledges, however, that "not all circumstances will result in such significant price differences between sloped and vertical demand curve." Ethier Testimony at p. 40.

[40] *Id*., at pp. 39-40.

[41] Hunger Testimony at PP 18-19.

[42] *Id.* In creating this graphical representation of the price-suppressing effects of the Filing Parties' proposed MOPR exemption, Dr. Hunger used the same supply curve as developed by the Brattle Group for purposes of estimating demand curve outcomes in its testimony in this proceeding, and used the demand curve proposed by the Filing Parties. *See* Hunger Testimony at P 17; *see also* ISO/NEPOOL Filing, *Testimony of Dr. Samuel A. Newell and Dr. Kathleen Spees on Behalf of ISO New England Inc. Regarding a Forward Capacity Market Demand Curve,* at pp. 14-16 ("Newell/Spees Testimony").



Because of the relative elasticity of supply at the margin, even a small change in the supply curve can have a significant effect on price, regardless of whether the curve is vertical or sloped.

A shift in the supply curve, where caused by new resources that economically offer into the FCA based on actual low costs, is consistent with a change in the market fundamentals and, by itself, will not adversely affect the FCAs ability to attract and retain the resources necessary to maintain resource adequacy.[43] But where uneconomic entry is allowed to shift the supply curve and displace otherwise economic resources, as would be the case with the MOPR Exemption, investor confidence in the ability of the FCA to allow efficient market outcomes is shaken. Investors in long-lived assets, such as generation facilities, must have confidence that the FCA outcomes will reflect fundamental capacity supply and demand conditions far into the future to support investment in such assets.[44] The FCM design already includes several administrative constructs that tend to erode rather than increase investor confidence in New England,[45] such as the mitigation of de-list bids. The certainty of price-suppression (and the unpredictability of its

[43] Hunger Testimony at P 16.
[44] *Id.* at PP 11-12.
[45] *Id.* at P 13.

magnitude) caused by the MOPR Exemption would significantly erode investor confidence in the FCM, thus risking the resource adequacy the FCM is intended to guarantee.[46]

According to the ISO, the Filing Parties' proposal will not cause "systematic" downward pressure on prices so long as the renewable OOM MWs that clear in a year do not exceed the increase in the NICR in that year (which in part is a function of projected load growth and reserve margin).[47] Whether price-suppression is "systematic" or not, the Filing Parties' proposal will suppress price, adversely affect the economic functioning of the FCA, and mute the price signals it is intended to create. The ISO acknowledges that the Filing Parties' proposal will distort price formation under certain circumstances, explaining that the cleared renewable OOM MWs "would be expected to slow the market's return to equilibrium"[48] when the market is long.[49] When the market is short or close to equilibrium, the ISO asserts that the market clearing prices will reflect the cost of new entry.[50] The ISO's dismissal of the adverse affects ignores four consequences of the Filing Parties' MOPR Exemption proposal.

First, if the marginal new entry does not exceed the 200 MW (or other) shift in the demand curve, the FCA will clear at a price lower than it would have without the uneconomic new entry. Second, the NICR may very well not increase by 200 MW per year, due to, among other potential factors, improved resource availability performance, additional tie benefits, or reduced peak loads. Should renewable OOM resources clearing in the FCA exceed NICR growth (which is likely where renewable OOM resources are carried forward to subsequent FCA(s)), there will be "systematic downward pressure on prices."[51] Third, new renewable OOM

[46] *Id.* at PP 11, 13-14.
[47] Ethier Testimony at p. 41.
[48] The ISO does not define what it considers an FCA in "equilibrium" for purposes of its discussion of price-suppression.
[49] Ethier Testimony at p. 42.
[50] *Id*.
[51] *Id.* at p. 41.

resources will "be expected primarily to displace the new entry required to meet load growth."[52] Up to 200 MW per year of load growth (and opportunities for new entry and the associated opportunity for existing resources to recover part of the long run Net CONE) will be displaced with zero-priced entry, rather than entry at or above the ORTPs.[53] Finally, to the extent there is any residual load growth left to be filled with market-based entry, the magnitude of that need is likely to be smaller (possibly much smaller) than the minimum size of conventional new entrants. Because of this lumpy addition, together with the New Entry Lock-In Extension, the FCA could clear at market-based prices one year, and then suppressed prices for the next 6 years (even with positive load growth) because of ISO's new entry pricing rules.[54] Contrary to the ISO's assertions, therefore, simply capping the MOPR exemption to some expectation of annual increases in NICR does not protect the FCA against price-suppression due to uneconomic entry. Indeed, adding a sloped demand curve to the MOPR Exemption simply provides certainty on the extent of price suppression possible.

The MOPR Exemption would cause significant price suppression in the FCA. The Filing Parties' essentially argue that because there may be less price suppression under a sloped demand curve than under a vertical demand curve, the MOPR Exemption is just and reasonable.

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[52] *Id.*

[53] Or at prices below the relevant ORTPs for resources that can justify such an offer as economic with the IMM.

[54] For example, assume approximately 200 MW of ICR growth per year, 200 MW/year of new renewable OOM resource entry and 100 MW/year of retirements, assumptions consistent with the ISO's expectations. *See* Ethier Testimony at p. 41. Under those assumptions, New England has a need for 100 MW of net new entry per year, rather than the 300 MW of new entry the FCA would otherwise require without the MOPR Exemption. Also assume that in Year 1 the most practical new entrant is a 700 MW combined cycle facility, an assumption consistent with the ISO's reference technology recommendation in this proceeding. In Year 1, the auction clears the 700 MW new entrant, which selects a 7 year rate lock, and that new entrant offer sets the FCA clearing price for Year 1. If, in subsequent years the assumptions hold true, *i.e.*, 200 MW/year of new renewable OOM resources, 200 MW of load growth, and 100 MW/year of retirements, then it would takes *7 years* to absorb the surplus created by the single 700 MW new entrant in Year 1, due to the 200 MW of renewable OOM resources decreasing the 300 MW of net new entry need to 100 MW of need. In Years 2 through 7, the FCA clearing prices will be set by delist bids, and not new entry. Even though the FCM needs 300 MW/year of new supply (*i.e.*¸200 MW of load growth and 100 MW of retirements), the MOPR Exemption would cause the FCA to clear well below the cost of new entry in Years 2-7.

This fails to address the impact the price suppression will have, no matter its magnitude relative to that under a vertical demand curve, on investor confidence in the FCA, efficient entry and exit, and, ultimately, resource adequacy. New England is a relatively small market compared to other ISOs/RTOs with MOPR exemptions, where in New England, as demonstrated by Dr. Hunger, even a small amount of uneconomic entry can have significant effects on the predictability, and revenue stability necessary to attract and retain economic resources. The Commission has historically protected the FCA against such distorting economic entry, and should do so here by rejecting the MOPR Exemption.

C. Should the Commission Find That The FCM Must Allow For Uneconomic Entry It Should Require That it Do So With the Least Amount of Price Suppression Possible

Should the Commission find that some form of MOPR exemption for OOM renewable resources in ISO-NE is just and reasonable, it should order the ISO to amend the Filing Parties' proposal to protect against the price-suppressing effects of the uneconomic entry permitted due to such an exemption. As discussed above, the Filing Parties' proposal allows uneconomic resources to clear in the FCA and unjustly and unreasonably fails to: (1) mitigate the price suppressing effects of uneconomic entry into the market; and (2) avoid the displacement of economic resources with uneconomic resources. However, if the Commission is to find that allowing renewable OOM resources to distort economic market outcomes can be just and reasonable in the FCA, it should adopt a construct that satisfies, at least in some part, the Commission's responsibility to protect the integrity of the FCM against uneconomic price suppression and uneconomic resource displacement. Alternatives to the Filing Parties' proposal exist and should be considered if a MOPR exemption is deemed necessary by the Commission.

1. The Brookfield Proposal Mitigates Price Suppression Relative to the Filing Parties' Proposal

One such alternative was brought before NEPOOL stakeholders by Brookfield Energy ("Brookfield Proposal").[55] Like the Filing Parties' proposal, the Brookfield Proposal guarantees that renewable OOM resources ("Renewable Technology Resources" or "RTRs") that offer into the FCA will receive capacity market revenues. The Brookfield Proposal differs from the Filing Parties' proposal in that it mitigates price suppression and does not displace otherwise economic resources with OOM RTR resources, while at the same time imposing no additional costs on consumers.[56]

Under the Brookfield Proposal, an OOM RTR, like all other resources subject to the MOPR, would offer into the FCA at its relevant ORTP, or at a price below the ORTP if it could justify such an offer with the IMM pursuant to the market mitigation rules.[57] The FCA would run as it otherwise would under the Filing Parties' demand curve proposal, with the auction procuring resources on an economic basis in a MW amount according to the sloped demand curve.[58] An RTR that clears would receive a CSO and be treated as an existing resource in all subsequent FCAs in which they offer their capacity.[59] An RTR that does not clear in the auction because it is OOM would nonetheless receive a CSO and be paid the same price as the resources that clear in the auction, and would be treated as an OOM RTR in all subsequent FCAs until it

[55] *Brookfield Proposal to the NEPOOL Markets Committee, "Proposal how to integrate renewable resources under a market design construct"*, March 19, 2014, MC Meeting Materials, Agenda Item A02C, *available at:* http://www.iso-ne.com/committees/comm_wkgrps/mrkts_comm/mrkts/mtrls/2014/mar192014/index.html ("Brookfield MC Presentation").

[56] The Brookfield Proposal would still result in an incremental decrease in capacity revenues to capacity sellers than would otherwise occur under the demand curve, but provides significant mitigation of the $0.50/kW-month to $2.50/kW-month price suppression that would occur under the MOPR Exemption. *See* Hunger Testimony at PP 18-19, 25.

[57] Brookfield Presentation at p. 6.

[58] *Id*.

[59] *Id*.

clears economically in the auction.[60] Consequently, every RTR that offers into the FCA is guaranteed a CSO and the associated revenues, either as a resource that clears economically in the FCA, or as an OOM RTR that receives a CSO even though it did not clear.

Like the Filing Parties' Proposal, the Brookfield Proposal allows: (1) up to 200 MW of new OOM RTRs to offer into the FCA each year; (2) carries forward up to 200 MW per year of "unused" OOM RTR MWs in the two prior years; and (3) establishes the total costs to load as the product of the auction clearing price and the MWs cleared in the FCA. The core element of the Brookfield Proposal, however, is that all resources that receive a CSO (*i.e.*, those that clear economically and OOM RTRs that do not clear but are awarded a CSO) are paid a slightly reduced price, in an amount per MW equal to the following ratio multiplied by the auction clearing price:

> MWs cleared in the FCA /
> (MWs cleared in the FCA + RTRs receiving a CSO that did not clear in the FCA).

As a result, all CSO resources incur a reduction in the revenues they receive relative to the clearing price they would otherwise have received if not for the introduction of RTRs into the FCA. All CSO resources, therefore, bear the costs of allowing OOM RTRs to receive CSOs, but to a far lesser extent than they would under the Filing Parties' proposal. Under the Brookfield Proposal, resources receiving CSOs (both those that clear economically and RTRs that receive CSOs through the mechanism) would at most receive capacity payments 1.8% lower than they otherwise would based on the FCA clearing price.[61] The Brookfield Proposal, therefore, causes less price suppression than would occur if renewable OOM resources are simply allowed to offer into the FCA uneconomically and clear the market, as the Filing Parties propose.[62]

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[60] *Id.*, at pp. 6-7.
[61] Hunger Testimony at P 26.
[62] *Id.* at P 25.

The Brookfield Proposal also caps the total costs of the capacity market at the product of price and quantity specified under the demand curve. Capacity costs are no greater than they otherwise would be if OOM RTRs were not granted CSOs without clearing economically in the FCA. Rather than load incurring the cost of including renewable OOM resources in the capacity market construct, other capacity resources will absorb the effect of awarding CSOs to RTRs that do not clear the FCA. Each CSO resource will receive a capacity payment less than the market clearing price, in an amount that reflects the effect of adding uneconomic resources to the pool of economic resources that cleared in the FCA without increasing the total cost of capacity purchases when determining the CSO payment per MW. Finally, the Brookfield Proposal, unlike the MOPR Exemption, caps the total MWs that may receive a CSO without having cleared the FCA at 1,000 MWs,[63] protecting the FCA against relatively unlimited price suppression.

During the NEPOOL stakeholder process, ISO-NE asserted that the Brookfield Proposal is objectionable because it will cause an "overbuild", *i.e.*, it will cause more MWs to receive CSOs than under the Filing Parties' proposal, in an amount exceeding New England's resource adequacy needs. Though the Brookfield Proposal may allow for resources to cumulatively receive CSOs in an amount greater than the sloped demand curve would otherwise procure, that potential outcome does not render the Brookfield Proposal unjust and unreasonable. Brookfield did not offer its Proposal *sua sponte*, but instead did so in an effort to accommodate the states' interests in providing revenue certainty to OOM RPS-eligible resources. Brookfield, and other Market Participants who support the Brookfield Amendment, simply sought to develop a construct that would mitigate the significant price-suppressing effects of allowing the RTRs to shift the FCA supply curve by up to 200 MW per year. It is the states' interests in awarding

[63] Brookfield Presentation at p. 6.

CSOs to uneconomic resources, therefore, that is the cause of an "overbuild" if any, not the Brookfield Proposal itself. As the Commission explained in *NESCOE*, "'if the states choose to build uneconomic resources outside of the FCM pursuant to current or future initiatives to further various policy interests, the states, not the FCM are responsible for procuring redundant capacity.'"[64] In any event, load would not incur extra costs due to the supposed "overbuild." Under the Brookfield Proposal, the total cost to the market is capped at the product of the auction clearing price and the MWs clearing in the FCA (as would be the case without granting CSOs to OOM RTRs). Effectively, the FCM would procure incremental CSOs but at no incremental cost to load. Under the Brookfield Proposal, therefore, New England consumers will pay no more for capacity than they otherwise would without the MOPR exception.

2. Shifting the Demand Curve In an Amount Commensurate With the OOM Entry Will Mitigate Price Suppression

According to NESCOE, it proposed the MOPR exemption to assist the states in meeting their RPS goals by allowing out of market resources to realize capacity market revenues. With this as the primary objective of incorporating the NESCOE proposal into the Filing Parties' proposal, once that objective is satisfied other market effects should be considered and where possible mitigated. The most obvious adverse consequence of the Filing Parties' proposal is its price-suppressing effects, which could be extinguished if the ISO estimates the economic offers MOPR-exempt resources would otherwise make, or if the demand curve is shifted in an amount that negates the price suppressing effects of the MOPR-exempt resources that clear in the FCA.

Conceptually, the price-distorting effects of a MOPR exemption can be offset by estimating at what price the FCA would have cleared but for the uneconomic entry of

[64] *NESCOE* at P 34, *quoting Motion For Leave to Answer and Answer of ISO-New England, Inc.*, at p. 13, Docket No. ER12-953-001 (filed January 14, 2012).

resources.[65] In practice, this can be difficult in an unmitigated market, but in a mitigated market such as the FCA the ISO could reasonably assume the price at which a resource would have economically offered, such as based on the ORTP for those resource types with an ORTP.[66] Alternatively, shifting the demand curve to the right, in an amount equal to the number of OOM RTR MWs that clear in each auction, would negate the price-suppression caused by uneconomic new entry, while giving the states the CSOs they desire for their OOM renewable resources. The states would not realize price-suppression under a "but-for" supply curve or curve-shifting mechanism, but price-suppression should not, and cannot serve as a basis for its proposal. Estimating a "but-for" supply curve or shifting the curve would assist the states in their stated objective to allow OOM RPS-eligible resources to receive CSOs, and protect the FCA against poor outcomes.

D. The Filing Parties' Proposal to Extend the New Resource Price Lock-In From Five to Seven Years Is Unjust and Unreasonable Because It Exacerbates Price Suppression and Price Discrimination

At present, a resource that clears the FCA as a New Generating Resource may elect to receive the clearing price from the FCA in which it clears for four additional years (for a five year "lock-in" period), indexed for inflation ("New Entry Pricing"). Pursuant to their New Entry Lock-In Extension proposal, the Filing Parties are proposing to extend the clearing price "lock-in" period to seven years, asserting that a seven year lock-in period is necessary to offset aspects of the Filing Parties' proposed design that have a deterring effect on new resource investment, including the Filing Parties' proposed price cap.[67] The Filing Parties' proposal is unjust and unreasonable, in that it attempts to incent new entry at the expense of capacity market efficiency

[65] Hunger Testimony at P 21.
[66] *Id.* at PP 21-22.
[67] Ethier Testimony at pp. 30-36.

and price formation.[68] The purpose of the FCM is to both incent new entry when resource adequacy requirements signal the need for new entry, and to retain existing resources economically.[69] The Filing Parties' proposal creates incentives for new entry but at the expense of non-discriminatory pricing and accurate price formation, the main determinants of whether the market economically incents new resources and retains existing resources.

1. The New Entry Lock-In Extension Will Exacerbate Price Suppression Caused by New Entry Pricing

When a new capacity supplier elects New Entry Pricing, it is prohibited from offering any type of de-list or export bid in subsequent FCAs for the term of the price guarantee.[70] As a result, the new entrant is deemed to be a price taker for the four subsequent FCAs, shifting the supply curve and causing a lower market clearing price and displacement of otherwise economic resources.[71] In this respect, New Entry Pricing is no different than the uneconomic entry of new resources. The Commission has recognized the risk of harm to the efficiency of capacity markets by rejecting new entry pricing rules substantively identical to those in New England, finding that capacity prices that are below competitive levels will lead to the inefficient retirement of existing resources. And, as the Commission explained, "[i]f retention of existing capacity is less costly than new entry, in the long run, extending [New Entry Pricing] could lead to higher overall costs if existing capacity exits and has to be replaced by new entry."[72] What at present is a four-year price suppression will, under the New Entry Lock-In Extension proposal, become a six-year price suppression, further risking the uneconomic exit of otherwise economic resources and the efficiency of the FCM. In addition, new entrants would be willing to offer at a

[68] Hunger Testimony at P 30.
[69] *ISO-New England, Inc.*, 125 FERC ¶ 61,102 at P 43 (2008).
[70] ISO-NE Tariff, § III.13.1.1.2.2.4.
[71] Hunger Testimony at P 31.
[72] *PJM Interconnection, L.L.C.*, 128 FERC ¶ 61,157, at P 103 & n. 61 (2009).

relatively lower price under the New Entry Lock-In Extension than they otherwise would under the existing price lock-in election period.[73] Clearing prices are therefore lower in years when new entry that otherwise would have been uneconomic but for the lower offer sets the clearing price.[74] Due to two additional years of New Entry Pricing and lower new entry offers, the New Entry Lock-In Extension would artificially suppress prices leading to inefficient price signals for capacity resource entry, exit and expansion decisions, as well as exacerbating the existing price discrimination between new and existing resources.[75]

The New Entry Lock-In Extension is also an inefficient mechanism to increase investor confidence in the FCA. Investors will consider not only the length of the lock-in period, but the price suppressing effects of the added years of price lock-in, in predicting not only the lock-in year revenues, but the likely revenues after the lock-in period ends.[76] A longer lock-in period decreases long-term price signals, which in turn would create greater subsidization in the near-term and lead to even lower long-term price expectations.[77] The New Entry Lock-In Extension in a sense, therefore, is self-perpetuating and self-defeating. It is also an attempt to insulate investors from the actual market risks, a strategy that favors new entry at the expense of existing, because the artificial reduction of risk causes the market to lose value.[78] As a result, existing resources bear the costs through price suppression, and load risks paying more due to uneconomic retirements.[79]

The Commission, when faced with a similar proposal in PJM Interconnection, L.L.C. in 2012, found it unjust and unreasonable to offer "locked-in" new capacity as a price-taker in

[73] Hunger Testimony at P 31.
[74] *Id*.
[75] *Id.* at P 30.
[76] *Id.* at P 34.
[77] *Id.*
[78] *Id.* at P 35.
[79] *Id.*

subsequent auctions.[80] The Commission explained that $0 offers from locked-in resources will reduce capacity prices to existing resources and result in discriminatory pricing, with no offsetting economic justification for that market outcome.[81] The Commission therefore ordered PJM to continue its rules that require a new entrant receiving a locked-in price to offer into subsequent auctions (for the duration of the lock-in period) at the lesser of a CONE-based offer level or the locked-in resource's first-year offer price.[82] In so doing, the Commission affirmed its belief that capacity prices below competitive levels due to, among other reasons, the price suppressing effects of uneconomic offers, "could lead to higher overall costs if existing capacity exits and has to be replaced by new entry."[83] There are no unique circumstances in New England that justify the Commission reaching a different decision here to approve a seven-year lock-in.

Similarly, in CAISO's energy market, the ISO generates an economic offer for MWs that, under certain circumstances, may fail to be offered into the market, rather than enter the MWs as price-takers.[84] According to the Commission,

> "the use of zero price bids could have the unintended effect of depressing the market clearing prices in the CAISO market, thus adversely affecting other market participants. CAISO's proposed use of the generated bid for dispatching purposes accounts for this adverse effect and, thus, ensures that market clearing prices are not unnecessarily suppressed."[85]

The Commission found that for certain MWs, "no obvious cost basis exists", and market efficiency and price formation were served by CAISO having the "flexibility to elect the

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[80] *PJM Interconnection, L.L.C.*, 128 FERC ¶ 61,157, at P 112 (2009) ("*PJM*").
[81] *Id*.
[82] *Id*. at P 108.
[83] *PJM*, at P 103 & n. 61 (2009).
[84] *California Independent System Operator Corporation*, 136 FERC ¶ 61,238 (2011).
[85] *California Independent System Operator Corporation*, 142 FERC ¶ 61,191, at P 28 (2013).

appropriate costs representation."[86] Likewise in New England, locked-in resources have no obvious cost basis because they have no price exposure to the market. ISO-NE should avail itself of the flexibility to price resources with no price basis under which to offer into the FCA, but that affect market prices, at a just and reasonable offer price consistent with the actual economics of the locked-in resource.

In its attempt to reduce what the ISO believes is the perceived regulatory risk for new entry in FCA 9, the ISO considered both the Filing Parties proposal and simply setting the price cap higher while maintaining the five-year lock-in.[87] The ISO asserts that a seven-year lock-in is necessary because the "perceived risks in the FCM are currently unnaturally high and reflect more than the normal volatility that the initial five-year lock-in period was designed to ameliorate."[88] This reasoning fails to overcome the price suppressing and discriminatory pricing[89] effect of the Filing Parties' proposal for two reasons. First, one of the primary reasons the Commission ordered ISO-NE to adopt a sloped demand curve was to eliminate the extreme price volatility under the FCA's vertical demand curve.[90] The relative stability of auction clearing prices under a sloped demand curve should create, not erode confidence in the market. To state the obvious, the Commission itself believes that a sloped demand curve will improve the FCM design and increase price certainty and investor confidence in the market. The ISO's take on the level of perceived regulatory risk appears inconsistent with that of the Commission.

Second, there is no basis to conclude that the five-year lock-in period is somehow calibrated to "normal volatility" or that anticipated price volatility in future FCAs is greater than

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[86] *Id*. at P 17.
[87] Ethier Testimony at p. 32.
[88] *Id.* at p. 31.
[89] As NEPGA explained, *e.g.*, in its Complaint on the Capacity Carry-Forward Rule, *et al.*, New Entry Pricing exacerbates price discrimination between new and existing resources. *See Complaint of the New England Power Generators Association, Inc. and Request for Fast Track Processing*, at pp. 23-28, Docket No. EL14-7 (October 31, 2013).
[90] *ISO New England, Inc.*, 146 FERC ¶ 61,038, at P 30 (2014).

the “normal” level of price volatility, thus compelling two additional years of price certainty for new resources. The Commission approved the five-year lock-in for New England as part of an overall settlement, and has explicitly declined to find that the five-year lock-in is just and reasonable.[91] The Commission has not found that a five-year lock-in period (much less seven years) appropriately balances the market goals of attracting new investment and retaining economic existing capacity, nor that a five-year lock-in period is proportional to any particular level of perceived or actual price volatility.[92] The Filing Parties argument that a seven-year lock-in is therefore a proportional response to higher than “normal volatility” in the FCM has no economic support and no basis in Commission reasoning or precedent.

The Filing Parties proposal will only create greater price suppression, as resources that clear in the FCA will offer as price takers for two additional years. Together with the Filing Parties’ proposed MOPR Exemption, which according to the ISO will essentially extinguish demand growth,[93] the New Entry Lock-In Extension will allow lumpy resources to suppress FCA clearing prices for up to six years, because any load growth exceeding 200 MW annually will likely be *de minimis*, and completely consumed by the lumpy entry offering as a price taker for six years. Consistent with Commission findings in other organized electricity markets, the Commission should find that the Filing Parties proposal is unjust and unreasonable. In the event the Commission finds that a seven year price lock-in is just and reasonable, it can only be so if its price-suppressing effects are eliminated. As the Commission has “determined in multiple markets that these bidding practices undermine the design and function of the capacity market,”[94] the Commission should not allow this problem to be exacerbated in ISO-NE through the

[91] *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275, at P 150, n. 65 (2009).
[92] *Id*. *(*balancing the potential for a longer commitment period against possible uplift payments).
[93] Ethier Testimony at pp. 40-42.
[94] *NEPGA v. ISO – New England, Inc.* 146 FERC ¶ 61,039 (2014) (Dissenting Opinion of Commissioner Clark.)

approval of a seven-year lock-in period. As NEPGA explains in its Request for Rehearing of the *NEPGA* order, the Commission did not explicitly discuss the effect of $0 offers from locked-in resources in its *NEPGA* order, and it is the nexus between those offers and the resulting price suppression that is the basis of NEPGA's and EPSA's protest of the seven-year locked-in period proposed by the Filing Parties in this docket.[95] The Commission should deny the Filing Parties' proposal to extend the New Entry Pricing to a seven-year lock-in to protect the FCA against further price suppression.

2. The New Entry Lock-In Extension Will Exacerbate Existing Price Discrimination in the FCA

The New Entry Lock-In Extension would exacerbate the existing price discrimination in the FCM between new and existing resources, by giving new resources two additional years of high price certainty while suppressing clearing prices for existing resources, as discussed above. There is no efficiency benefit to offset the market inefficiency caused by the transfer of revenues from existing resources to new resources under the New Entry Lock-In Extension.[96] The economics of the price discrimination that would occur are no different than those addressed by the Commission relative to subsidized new entry by vertically-integrated rate-base entities.[97] Price discrimination can lead to the exit of otherwise economic (and lower cost) resources, as well as cause inefficient market outcomes when new resources are compelled to compensate for long-term price suppression through higher, uneconomic new entry offers. [98]

Regardless of its cause, price discrimination between new and existing resources violates a fundamental economic premise of a capacity market that resources that provide the same

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[95] *Request for Rehearing and Clarification of the New England Power Generators Association*, at pp. 22-29, Docket Nos. EL14-7-000, ER14-463-000 (not consolidated) (February 24, 2014).
[96] Hunger Testimony at P 30.
[97] *Id.*
[98] *Id.; see also* Newell/Spees Testimony at p. 26.

service should receive the same price.[99] When the Commission's urgency in ordering the ISO to file a sloped demand curve by April 1 was to eliminate the administrative and discriminatory pricing outcomes of the IS and IC Rules, to add a construct that introduces greater price discrimination is counterproductive. The Commission should therefore deny the Filing Parties' proposal.

E. The Filing Parties' Proposed Minimum Price Cap Is Too Low to Protect Against Inadequate Price Formation

Under the Filing Parties' proposal, the price cap may go no lower than 1.0 x Gross CONE, a threshold intended to protect against the demand curve "collapsing on itself." The Filing Parties' proposal, however, would allow the price cap to decrease to a level that may not be resilient enough to withstand forecasting errors in CONE and/or address E&AS offset uncertainty, both of which are significant concerns for both new and existing resources. The price cap in any downward sloping demand curve needs to be robust enough to incent new entrants that are looking to invest over the long-term, with a demand curve designed to ensure that long-run average prices equal Net CONE. According to the Brattle Group, the demand curve filed by ISO-NE and NEPOOL is expected to be at the price cap 7.4% of the time, with 6.4% of the time procuring less than the minimally acceptable reserve margin. However, those percentages presume that the administrative Net CONE perfectly reflects true Net CONE. The minimum price cap needs to be high enough to provide a substantial margin for administrative error in the event that the true Net CONE is found higher than administrative Net CONE.

A higher minimum price cap equal to 1.25 x Gross CONE, as proposed by NextEra Energy Resources during the NEPOOL stakeholder process ("NextEra Proposal"), would protect against a capacity market design that does not allow price to rise to the level necessary to incent

[99] *Id*.

new resources when needed and to retain existing resources when economic. The NextEra Proposal will help mitigate the risk of the FCA under-procuring resources, which in turn will help ensure resource adequacy and protect system reliability.

As discussed, *supra*, if the Net CONE (or, in the case of the minimum price cap, the Gross CONE value) is too low, the FCA could systematically under-procure resources, leading to long-term system reliability risks.[100] If Net CONE is set too high, more supply will enter the market than what is needed and consumer costs will increase. In his testimony, Dr. Ethier recognized that the consequences of setting Net CONE too low are much greater than the consequences of setting Net CONE too high. All of these concerns are compounded when coupled with the distortion in price signals that would result from the Commission accepting the MOPR Exemption and New Entry Lock-In Extension without any modification. Consistent with the Filing Parties' choice of a reference technology, which itself was in part due to the risk of under-procuring resources, the Commission should deny the Filing Parties' proposal to set the minimum price cap at 1.0 x Gross CONE, and instead adopt NextEra's proposal to set the minimum price cap at 1.25 x Gross CONE.

F. The Filing Parties Provide No Explanation for Their Proposal to Base the Administrative Price Under the IC and IS Rules at Net CONE

As noted, *supra*, the ISO did not propose sloped demand curves for constrained zones in FCA 9, and consequently proposed temporary extensions of the IS and IC Rules for the import-constrained zones. The Filing parties propose to change the payment rate, in the event the IC or IS Rule is triggered, from its current $7.025/kW-mo to "the higher of Net CONE ($11.08/kW-

[100] *See, supra*, at p. 8; Ethier Testimony at pp. 12-13.

month) or the Capacity Clearing Price for the Rest-of-Pool Capacity Zone."[101] The Filing Parties' proposal, however, is unjustified and inconsistent with ISO's prior statements and prior Commission orders, pursuant to which ISO-NE has always maintained an administrative pricing value under the IC and IS Rules of 1.1 x Net CONE. Consistent with the historical use of 1.1 x Net CONE, the administrative price cap under the IC and IS Rules should be "the higher of **1.1** times Net CONE **($12.19)** or the Capacity Clearing Price for the Rest-of-Pool Capacity Zone."

Since the beginning of the FCM, the formula for calculating one of the "higher of" values in the IC and IS Rule has always been 1.1 x the then-existing value for the net cost of new entry.[102] Most recently, in its November 25, 2013, filing seeking several FCM changes, including a change to the definition of the IC and IS Rule administrative price cap for FCA 8, the ISO stated:

> "Specifically, if CONE were still applicable for FCA 8, it would be $6.386 (*i.e.*, the FCA 7 CONE of $6.055 escalated using the Handy-Whitman Index of 1.0546). Multiplying that $6.386 figure by 1.1 yields $7.025/kW-month. While the ISO recognizes that this rule is no longer in effect, the ISO believes it is the most appropriate rate under the current and rapidly changing circumstances in New England."[103]

In this proceeding, the Filing Parties propose a Net CONE for effect in FCA 9 which allows for the use of a current Net CONE value rather than the proxy value ($6.36-kW month) used in FCA 8, and other approximations before that. In proposing a new administrative price cap value for FCA 9, the Filing Parties correctly substitute the proxy value used in FCA 8 with the proposed CONE value ($11.08/kW-month), but also, without explanation, propose to

[101] Transmittal Letter at p. 13.
[102] The basis for estimating CONE has changed several times since the FCM was initiated, but the 1.1 x multiplier was approved by the Commission in the initial FCM orders, and has never been changed.
[103] *ISO – New England Inc., Exigent Circumstances Filing of Revisions to Forward Capacity Market Rules*, Transmittal Letter at p. 12, Docket No. ER14-463-000 (November 25, 2013).

abandon the historic 1.1 multiplier in favor of a 1.0 multiplier. Instead the Filing Parties simply substituted "Net CONE" for "$7.025," ignoring the fact that the $7.025 value is equal to 1.1 x Net CONE, not 1.0 x Net CONE. The Filing Parties are not, as they assert, "using the current administrative formulas"[104] for the IC and IS Rule, but are instead proposing a new methodology for FCA 9 whereby existing resources subject to the IC or IS Rule will receive less relative to Net CONE than they would have in any prior FCA. The Commission neither directed nor approved the Filing Parties' proposed change in multiplier in approving the FCA 8 IC and IS Rule administrative price cap value or in its January 2014 Order. During the NEPOOL stakeholder process to consider the ISO's April 1 demand curve proposal, Exelon raised the inconsistency between all prior multipliers (1.1) and the ISO-proposed multiplier of 1.0, but the ISO chose not to address Exelon's concerns.[105]

The Filing Parties offer some rationale for their proposed values, stating that "the best alternative to a competitively determined price in an import-constrained zone is the 'target' long-term price based on estimated Net CONE,"[106] but this rationale applies just as well to any prior FCA, where the administrative price value has always been based on the 1.1 multiplier. Because the Filing Parties' have not demonstrated why their proposed change in multiplier is just and reasonable, the ISO should be required to maintain the administrative price cap value as 1.1 x Net CONE.

[104] Transmittal Letter at p. 13.
[105] *See* NEPOOL Markets Committee Minutes, March 19, 2014, meeting, at n. 26, *available at*: 3/19/14 mtg at note 26: http://www.iso-ne.com/committees/comm_wkgrps/mrkts_comm/mrkts/mins/2014/mc_minutes_140319.doc.
[106] Transmittal Letter at p. 13.

V. Conclusion

NEPGA and EPSA respectfully request that the Commission grant each Motion to Intervene and adopt NEPGA's and EPSA's recommendations herein which are as follows:

a. Accept the Filing Parties' proposed demand curve slope, maximum price cap, Net CONE value, and choice of reference technology for use in FCA 9 and thereafter;

b. Reject the Filing Parties' proposal to set the minimum price cap at 1.0 x Gross CONE, and adopt NextEra's Proposal to set the minimum price cap at 1.25 x Gross CONE;

c. Reject the Filing Parties' proposal to base the administrative price cap value under the IC and IS Rules on 1.0 x Net CONE;

d. Reject the Filing Parties' MOPR Exemption and New Entry Lock-In Extension as outside the scope of this proceeding, and order the ISO to bring these or like proposals through a meaningful NEPOOL stakeholder process (if it so chooses) such as the typical three MC meetings and one NEPOOL Participants Committee meeting, or, in the alternative, set the MOPR Exemption and New Entry Lock-In Extension for hearing and settlement judge procedures, but in any event not approve either proposal for effect in FCA 9;

e. To the extent the Commission considers the merits of the MOPR Exemption and New Entry Lock-In Extension, reject both proposals on the merits; and

f. To the extent the Commission finds that some form of renewable OOM resource MOPR exemption is just and reasonable in the FCA, adopt a construct that minimizes price suppression and price discrimination to the greatest extent possible, such as the Brookfield Proposal, shifting the demand curve, or imputing economic offers for resources that clear the market with OOM offers.

Respectfully Submitted,

*/s/ Bruce Anderson*_________

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the comments by via email upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Boston, Massachusetts, April 22, 2014.

*/s/ Bruce Anderson*_______________

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