

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

<b>Maine Public Utilities Commission,</b>	)	<b>Docket No. EL07-38-000</b>
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>ISO New England Inc.</b>	)	
<b>Respondent.</b>	)	

**MOTION FOR LEAVE TO ANSWER AND ANSWER OF THE MAINE PUBLIC  
UTILITIES COMMISSION AND THE MAINE OFFICE OF THE PUBLIC  
ADVOCATE TO THE ANSWERS OF ISO NEW ENGLAND INC. AND  
INDICATED SUPPLIERS**

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”), 18 C.F.R. § 385.213 (2008), the Maine Public Utilities Commission (“MPUC”) and the Maine Office of the Public Advocate (“OPA”) (collectively (“MPUC”)) file this Motion for Leave to Answer and Answer to the Answers of ISO New England, Inc. (“ISO-NE”) (“ISO-NE Answer”) and Indicated Suppliers (“Indicated Suppliers Answer”), each filed on October 14, 2008 in the above-captioned proceeding.

**I. MOTION FOR LEAVE TO ANSWER**

Although the Commission’s regulations normally do not permit the filing of an answer to an answer,<sup>1</sup> the Commission has the authority to waive this prohibition for “good cause.”<sup>2</sup> The Commission has found “good cause” to permit answers when they are otherwise prohibited in various circumstances, including when the answer would

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<sup>1</sup> 18 C.F.R. § 385.213(a)(2) (2008).

<sup>2</sup> *See id.* §§ 385.101(e), 385.213(a)(2).

ensure a complete record in the proceeding,<sup>3</sup> provide information helpful to the disposition of an issue,<sup>4</sup> permit the issues to be narrowed or clarified,<sup>5</sup> or aid the Commission in understanding and resolving issues.<sup>6</sup>

In the present case, this brief answer in response to ISO-NE's Answer and Indicated Suppliers' Answer will ensure a more complete record in this proceeding and otherwise assist the Commission in understanding and resolving outstanding issues in the case. Therefore, the MPUC has shown "good cause" to submit the instant Answer and respectfully requests that the Commission accept and consider the same.

## **II. ANSWER**

In this answer the MPUC does not address arguments about double recovery during the transition period. This issue is pending rehearing in Docket ER07-397. Therefore, all the arguments relating to double recovery during the Transition Period are before the Commission in that case.

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<sup>3</sup> See, e.g., *Pac. Interstate Transmission Co.*, 85 FERC ¶ 61,378 at p. 62,443 (1998), *reh'g denied*, 89 FERC ¶ 61,246 (1999); *Delmarva Power & Light Co.*, 93 FERC ¶ 61,098 at p. 61,259 (2000) (allowing answers to a protest in order to "insure a complete and accurate record"); *N. Natural Gas Co.*, 91 FERC ¶ 61,212 at p. 61,767 (2000) (allowing an answer to a protest "to achieve a complete and accurate record").

<sup>4</sup> See, e.g., *CNG Transmission Corp.*, 89 FERC ¶ 61,100 at p. 61,287 n.11 (1999).

<sup>5</sup> See, e.g., *PJM Interconnection, L.L.C.*, 84 FERC ¶ 61,224 at p. 62,078 (1998); *New Energy Ventures, Inc. v. S. Cal. Edison Co.*, 82 FERC ¶ 61,335 at p. 62,323 n.1 (1998).

<sup>6</sup> See, e.g., *Carolina Power & Light Co.*, 94 FERC ¶ 61,032 at p. 61,068 (2000) (allowing an answer to protests when the answer would assist in the Commission's "understanding and resolution of the issues raised"); *El Paso Natural Gas Co.*, 56 FERC ¶ 61,038 at p. 61,139 (1991) (explaining that the utility conceded "that the Commission in its discretion may accept an answer to a request for rehearing in order to have a more complete record on which to base its decision," and allowing the answer because it "will not delay the proceeding or otherwise prejudice any party"). To the extent necessary, the MPUC requests waiver of Rule 213(a)(2).

In filing this answer, the MPUC respectfully asks the Commission to fully resolve the double recovery issue as it relates to the first and subsequent Forward Capacity Auctions (“FCAs”). While the annual revenue—\$24 million (*see* ISO-NE Answer n.11)—resulting from the Schedule 2 CC Component is small in comparison to the \$1.6 billion annual revenues produced by the first FCA, the amount of the over-recovery does not make the over-recovery of revenues any less unjust and unreasonable. For these reasons, we urge the Commission to direct ISO-NE to either implement the dead-band proposal or eliminate the Schedule 2 CC payments to generators that are successful bidders in the FCAs.

**A. ISO-NE’s Current Position that the Schedule 2 CC Payment Is Not Meant to Compensate Generators for their Fixed Costs Incurred to Provide Reactive Service Is Wrong As Well as Inconsistent with ISO-NE’s Earlier Stated Position.**

ISO-NE’s witness Marc D. Montalvo states:

The VAR CC Rate is a negotiated value and is not set equal to, nor is it intended to recover, the cost of service of any particular generating Resource. Thus, it is incorrect to state that a generating Resource receiving VAR capability payments necessarily recovers the fixed costs of providing the service—assuming that those costs could be reasonably established and broken out from the overall fixed costs incurred to allow the generating Resource to sell energy or other ancillary services in the first place. Rather, the VAR CC Rate is best thought of as an ISO Tariff-based revenue stream that generating Resource providing VAR capability receives. Ultimately, this revenue stream, on its own, may or may not fully offset the fixed costs associated with the provision of the VAR capability. To the extent that this revenue stream plus the other revenues that the generating Resource earns from the sale of energy and ancillary services exceeds the cost of earning those revenues (*e.g.* rule, O & M), the generator will continue as a going

concern. That a generating Resource earns VAR capability payments, then reduces the total revenues that it would otherwise minimally require from the other markets in which it can participate to cover its fixed and operating costs.<sup>7</sup>

Further, the Montalvo Testimony states that it is incorrect that FCM capacity payments and the Schedule 2 CC payments compensate generation resources for the same equipment because the payments “are not cost-of-service based and are payments for two distinct and valuable products.” *Id.* lines 24-26. This testimony is flawed in several respects. First, contrary to the claim of ISO-NE, the CC payment was intended to provide compensation for capital costs, especially because, at the time it was developed, the generation capacity payment was only 0.17/kW month. Thus, in the New England Power Pool (“NEPOOL”) filing implementing the original negotiated CC component of the Schedule 2 rate, advocates for a reactive capacity charge asserted that a capital cost component under Schedule 2 was important because “. . . *the capital costs covered by the CC charge* are not necessarily recoverable in the market-based real power markets and therefore it is appropriate to establish an administratively set rate *to allow generators to recover such costs* and be incentivized to provide VAR support capability and service.”<sup>8</sup> Additionally, in Docket No. ER07-397-000, NEPOOL and ISO-NE described the CC component as the rate component “which compensates for the fixed capital costs incurred

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<sup>7</sup> ISO-NE Answer, Attachment 1, Testimony of Marc D. Montalvo (“Montalvo Testimony”) at 10, lines 4-18.

<sup>8</sup> New England Power Pool Seventy-Third Agreement Amending the Restated NEPOOL Agreement, Docket No. ER01-2161-000 at 10 (2001).

by a generator associated with the installation and maintenance of the capability of providing reactive power.”<sup>9</sup>

Second, the Montalvo Testimony asks the Commission to simply think of the Schedule 2 CC rate as an “ISO-Tariff based revenue stream that a generating Resource providing VAR capability receives,” Montalvo Testimony at 10, lines 10-11, but does not address why generators should get this revenue stream if the revenue stream is not intended to compensate generators for the equipment necessary to provide reactive service. Third, ISO-NE suggests that VAR capability is a separate product that is separate from the capacity product. This is incorrect. The non-CC Schedule 2 rate components provide payment for the reactive service product. The very title of the rate at issue here however is the CC—Capital Cost—rate and thus, the rate goes specifically to the capital costs of the equipment to provide reactive service. Finally, the Montalvo Testimony is inconsistent with ISO-NE’s position set forth in its Motion for Leave to Answer and Answer in Docket ER07-397 (“ISO-NE/NEPOOL Answer in ER07-397”), filed on February 5, 2007. There, ISO-NE, jointly with NEPOOL, stated that during the transition period the FCM transition payments will be below the Cost of New Entry established for the FCM market and that accordingly “the FCM transition payments will likely be at a level *below* the actual cost of providing both installed capacity and reactive power.” ISO-NE/NEPOOL Answer in ER07-397 at 12. Thus, contrary to ISO-NE’s

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<sup>9</sup> ISO New England and NEPOOL Participants Committee, Amendments to Schedule 2 - Reactive Power Supply and Voltage Control of the ISO New England Inc. Open Access Transmission Tariff, Docket No. ER07-397-000, filed December 29, 2006, Transmittal Letter at 7.

testimony and argument here, both the FCM revenues and the Schedule 2 CC rate revenues are intended to be compensatory in nature.

**B. Eliminating the Schedule 2 CC Rate for FCM Resources or Implementing the Dead Band Proposal Would Not Under-Compensate FCM Resources.**

ISO-NE argues that eliminating the Schedule 2 CC payments for FCM resources or implementing the dead band Proposal “would systematically under-compensate Qualified Generator Reactive Resources that clear the FCA.” ISO-NE Answer at 11. However, the ISO-NE Answer does not provide support for this statement. While the Answer discusses at length the bidding strategies that would occur under various scenarios, this discussion contains an underlying erroneous assumption—that there is an “opportunity cost” of providing the capability of meeting minimum VAR requirements.<sup>10</sup> The Montalvo Testimony, for example, states that although “relative to the total revenue opportunities available for the set of markets the VAR CC Rate payments are very small,” Montalvo Testimony at 8, line 25 to 9, line 1, a generator that “expects less revenues from non-capacity sources (*e.g.* energy, ancillary services), it must increase its FCA bid/offer (again all other things equal) to earn the same net revenues (which at the margin equal the Resource’s net opportunity costs.)” Montalvo Testimony at 9, lines 2-4. Thus, the Montalvo Testimony appears to include as an opportunity cost the revenue the generator *would expect to get from the Schedule 2 CC rate as an opportunity cost without ever determining that there is an underlying cost-based justification for that payment in view of the FCM revenue stream.* Further, the Affidavit of Jinye Zhao, PH.D., Attachment 2 to the ISO-NE Answer, states that the game theory analysis

assumes that “a Qualified Generator Reactive Resource has only two possible strategies: offering at a price only equal to its ICAP cost or offering *at a price equal to ICAP plus minimum VAR capability cost.*”<sup>11</sup> The error of these statements is the assumption that there are separate capability (capital) costs of providing reactive service. ISO-NE has nowhere refuted the evidence provided by the MPUC in the Waine Whittier Affidavit that the same equipment is used for both services. In fact, the witness for the Indicated Suppliers, Robert B. Stoddard, acknowledges that “in many cases the equipment needed to meet interconnection requirements for new generators will be the same as the equipment needed to provide reactive service . . . .” Indicated Suppliers Answer, Affidavit of Robert B. Stoddard at P 5. Therefore, there is no *incremental capability cost of providing reactive service beyond the capital costs of providing generation service.*

**C. ISO-NE’s Game Theory Does Not Ensure that FCM Generators Will Not Double Recover.**

As stated above, ISO-NE’s game theory is based on a fundamentally flawed assumption that there are incremental capital costs of providing reactive service beyond those necessary to generate electricity. However, there is an additional flaw in ISO-NE’s theory that generators will net the Schedule 2 CC payments from their FCM offers. The

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<sup>10</sup> Opportunity Costs of providing reactive service are already provided for under Schedule 2 under the Lost Opportunity Costs (“LOC”) provisions.

<sup>11</sup> Zhao Affidavit at 4, P 7; *see also* Appendix to Zhao Affidavit (setting forth its assumptions for the game theory analysis and identifying as a separate component (“BV”) in the analysis the cost of meeting the minimum VAR requirements).

theory does not contemplate the existence of the price floor in the first three auctions.

As long as there is a capacity surplus and a floor, ISO-NE's own theoretical construct does not hold up, even accepting, *arguendo*, ISO-NE's incorrect assumption that there are incremental **capacity** costs of providing minimum reactive service beyond the capital costs of providing generation service. ISO-NE posits that capacity sellers will voluntarily reduce their bids to net their reactive service payments from their bids. Even if there were a way to ensure that this would actually occur, and there is not, existence of a price floor places in question even the theoretical underpinning for ISO-NE's refusal to implement changes to Schedule 2 to ensure that generators do not double recover their equipment capital costs.<sup>12</sup> In the first FCA, for which ISO-NE is obligated to ensure that there is no double recovery, the auction stopped, consistent with Market Rule 1, when the price reached the price floor of 0.6 CONE (\$4.50 per kW month).

The failure of the ISO-NE Answer to account for the existence of the price floor is a significant flaw in ISO-NE's analysis because the price floor prevented the auction from reaching the market price of capacity. Therefore, it is unlikely that the existence of the Schedule 2 revenue stream caused generators to reduce their bids to net out the Schedule 2 CC payments as hypothesized in the Montalvo Testimony. Accordingly, rather than ensuring that there will be no double recovery prior to the first FCA, ISO-

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<sup>12</sup> Under Market Rule 1, during the first three auctions, "[t]he Capacity Clearing Price shall not fall below 0.6 CONE." ISO-NE Market Rule 1 § III.13.2.7.3.

NE's response that it does not need to reduce the CC component of Schedule 2 assures that there will be at least some generators that receive double recovery for the first and likely the second and third FCAs.

Finally, a mathematical formula cannot "ensure" that there will be no double recovery.

**D. Removing the Schedule 2 CC payments for FCM Resources or Implementing the Dead Band Proposal Does Not Put Generators at a Disadvantage to Demand Response Resources; Rather it Creates a Level Playing Field.**

ISO-NE states that removing the Schedule 2 CC payments for FCM resources "would put generators in the auction at a competitive disadvantage relative to demand resources and imports, all other things being equal." ISO-NE Answer at 27. ISO-NE further posits that:

...if the generating Resource expects less revenues from non-capacity sources (*e.g.*, energy, ancillary services), *it* must increase its FCA bid/offer (again, all other things being equal) to earn the same net revenues (which at the margin equal the Resources's net opportunity costs). Since it is competing against resources that have no obligation to provide VAR Service and no related opportunity to earn VAR revenues (or in some cases, energy revenues) non-VAR capable resources would be able to offer at a lower price into the auction; not because they are inherently less costly sources of capacity, but because they are not encumbered by a joint obligation to provide VAR Service. *The net effect of . . . [removing the Schedule 2 CC payments] would be a systematic biasing of the auction outcomes in favor of non-VAR capable resources.*

ISO-NE Answer at 27-28 (emphasis added). ISO-NE's view of which entity has the competitive disadvantage is backwards. It is FCM resources, which also have a second revenue stream for the same equipment, that have a competitive advantage over demand resources. According to ISO-NE's game theory (which as stated above is based on faulty

assumptions), generators, with Schedule 2 CC rate revenues in hand, will lower their FCM bids to net the revenue received under the Schedule 2 CC Component. Thus, these units will be more competitive, in ISO-NE's view, than demand response and will be more likely to set the clearing price.

There are two problems with this analysis. First, giving generators a dual recovery stream so that they can be "more competitive" in the FCM may be one approach to developing a capacity market, but it clearly was not the one developed in the FCM settlement.<sup>13</sup> There was no preference to be given to non-demand response units. In fact, quite the opposite is true. The unique and innovative part of the FCM market is that *it allows demand response to compete on an equal footing in the capacity market.*<sup>14</sup> Further, the Commission has recently stated, "our goal is for RTOs and ISOs to develop rules to ensure the treatment of supply and demand resources on a comparable basis to the extent each is technically capable of providing the service."<sup>15</sup> The significant participation of demand response in the FCM, in turn, can reduce the need for additional generation and transmission. Thus, to the extent that the Schedule 2 CC revenue stream would influence the bidding behavior of VAR capable resources, this effect would place demand resources at a competitive disadvantage since bidders of these units do not have access to a second revenue stream.

Second, as stated earlier, since there are no incremental costs of providing minimum VAR capability, the absence of a revenue stream that is there for the purpose of

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<sup>13</sup> See generally *Devon Power, LLC*, 115 FERC ¶ 61,340 (2006) ("June 16 Order").

<sup>14</sup> See, e.g., *ISO New England, Inc.*, 123 FERC ¶ 61,290, at P 6 (2008) (noting ISO-NE's assertion that one of the goals of the FCM was to encourage participation of demand resources).

<sup>15</sup> *Wholesale Competition in Regions with Organized Electric Markets*, 72 Fed. Reg. 36,276 (July 2, 2007), FERC Stats. & Regs. ¶ 32,617, P 35 (2007) (Competition ANOPR).

compensating for the capital costs of providing reactive service cannot put VAR capable resources at a disadvantage.

**E. Changes to the Schedule 2 CC Rate Are Not Precluded By Virtue of Not Being Mentioned in the FCM Settlement Agreement.**

Indicated Suppliers argue that eliminating the CC Component of Schedule 2 “would amount to a material change in the compensation parties should reasonably have expected following the Settlement Agreement.” Indicated Suppliers Answer at 9 and Stoddard Affidavit at P 9. Indicated Suppliers’ implication that all revenue streams that were not mentioned in the FCM were required to remain static is illogical. The absence of any assurance in the FCM Settlement that the Schedule 2 CC Rate would continue made any reliance on the continuation of this revenue stream unreasonable. Further, Indicated Suppliers cannot expect ancillary services to remain static simply because these services were not mentioned in the FCM Settlement Agreement. Such an approach would put a choke hold on the ability of the Commission to ensure that the wholesale electric markets are just and reasonable. It is much more likely that generators did not consider the existence or non-existence of the Schedule 2 payments in negotiating the FCM Settlement where the Schedule 2 CC annual payments are a very small fraction of what generators receive from transition payments and the FCM auctions.

**F. The MPUC Was Not Required to Try to Obtain Information from Generators or ISO-NE About What Actual Transition Payment and FCM Revenues They May Receive in Order for the Commission to Open an Investigation.**

Indicated Suppliers state that the Complaint is deficient because the Whittier and Austin Affidavits<sup>16</sup> “do not demonstrate that the cost-based compensation reflected in the currently-effective capital cost component of Schedule 2 is excessive or causes generators to over-recover reactive power service costs.” Indicated Suppliers Answer at 11-12. They also assert that the MPUC Complaint is unsupported because “[t]he Complaint fails to provide any analysis demonstrating how [the first FCA] clearing price can result in any double recovery”<sup>17</sup> given the clearing price in the first FCA auction. Finally, they state that the MPUC was required, “but has failed, to show the amount of revenues actually resulting from the FCA, and then compare those revenues on a supplier-specific to cost-based reactive power revenues, to demonstrate that, combined, the revenues for the two result in recovery that is beyond the zone of reasonableness for those suppliers.”<sup>18</sup> These assertions misunderstand the import of the Commission’s determinations in Docket Nos. ER03-563 and ER07-397.

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<sup>16</sup> Affidavit of Waine Whittier (“Whittier Affidavit”), provided as Attachment A to the Original Complaint; Affidavit of Dr. Thomas D. Austin (“Austin Affidavit”), provided as Attachment B to the Original Complaint.

<sup>17</sup> Indicated Suppliers Answer at 13.

<sup>18</sup> *Id.*

In Docket No. ER07-397-000, ISO-NE and NEPOOL acknowledged that, when the FCM is in place, “FCM payments will be set by the market and will reflect *the actual cost of new entry as revealed by new Resources entering the market.*”<sup>19</sup> The Commission stated that it did not believe that there was a double recovery issue during the transition period<sup>20</sup> but stated that it was concerned “that double recovery can occur during the first FCA *since the payments equal the cost of new entry.*”<sup>21</sup> Where the FCA clearing price *equals the cost of new entry* and since the equipment needed to generate power and provide reactive service is the same, *there is no need for a second revenue stream for generators receiving FCM revenues.* Even if the MPUC could have had access to information about generator revenues from the FCM (which would have been a difficult if not impossible pre-requirement given the ISO-NE information policy), this information would not have been relevant since the Commission in determining the justness and reasonableness of the transition payments and the FCM mechanism did not undertake individual fact-finding proceedings regarding the circumstances of each generator.<sup>22</sup>

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<sup>19</sup> ISO-NE/NEPOOL Answer in ER07-397 at 13.

<sup>20</sup> MPUC and others sought rehearing of this conclusion. The rehearing request on this matter is still pending. *See ISO New England Inc. and NEPOOL Participants Committee*, 123 FERC ¶ 61,294 (2008).

<sup>21</sup> *ISO New England and NEPOOL Participants Committee*, 118 FERC ¶ 61,163 (2007) at P 30 (“February 28 Order”).

<sup>22</sup> *See, e.g.*, Brief of Intervenors in Support of FERC at 19, *Maine Public Utils. Comm’n v. FERC*, Case No. 06-1403, 520 F.2d 464 (D.C. Circuit 2008). In their brief in *Maine Public Utils. Comm’n v. FERC*, many of the same generators argued that “FERC was not required to have individual fact-finding proceedings for each supplier addressing whether they ‘needed’ the additional revenue stream provided by the transition payments.” *Id.*

**G. Where the Commission Required ISO-NE to Ensure that There is No Double Recovery Once the First FCA Begins, ISO-NE's Speculation About What Kind of New Units May Bid into the FCM Does Not Excuse Its Failure to Comply with The Commission's Directive.**

In Docket No. ER07-397-000, the Commission directed ISO-NE "to implement, prior to the commencement of the first FCA commitment year beginning June 1, 2010, tariff provisions to ensure that resources eligible for CC payments under Schedule 2 that provide reactive supply and voltage control do not receive double compensation."

February 28 Order at P 30. In its Answer, ISO-NE suggests that the Schedule 2 CC rate should not be changed to eliminate CC payments for FCM resources based, in part, on the following speculative statement: "If, lacking appropriate financial inducements such as the VAR CC Rate, generators were unwilling to provide the additional dynamic VAR capability that the ISO currently relies on to reliably operate the system, the ISO would have to work with transmission owners to install transmission devices which are normally more expensive and have more limited dynamic response capability than generators."

ISO-NE Answer at 26. There is no evidence, however, that implementing the dead band proposal would have this effect. In fact, the *purpose* of the dead band proposal is to provide compensation for the capability to provide reactive service outside of the required range. As stated in the October 14, 2008 Motion to Intervene and Answer of the New England Conference of Public Utility Commissioners and the Maine Office of Public Advocate in Support of Complaint ("NECPUC Answer"):

. . . it is unclear whether a need for additional financial inducements, and in particular for the CC payment within the dead band, is supported by the facts. For example, are new generators in fact not capable of providing capability outside of the dead band? Since generators offering reactive service are compensated for opportunity costs, is there already an incentive to offer this service outside of the dead band? Are there any other benefits to

generators in having the additional capacity to provide reactive service outside the dead band? How many generators currently are capable of providing service outside of the dead band? What are the incremental costs of providing capacity to provide service outside of the dead band? All of these questions should be addressed.<sup>23</sup>

The MPUC Complaint provides one approach to addressing (1) the double recovery issue and (2) ISO-NE's concern about encouraging new generators to build generation facilities that are capable of providing capability *outside the dead band*. ISO-NE should consider this approach or develop another one in order to comply with the Commission's directive in Docket No. ER07-397-000. The MPUC's approach would reduce the annual recovery from Schedule 2 from approximately \$19 million to approximately \$6 million<sup>24</sup> if all FCM generation units were capable of providing reactive service outside of the dead band.<sup>25</sup> In some other RTOs, it appears that the generator is paid for service outside of dead band as a result of a directive, either in response to a specific directive or in accordance with the generator's voltage schedule.<sup>26</sup> Such alternative approaches should be further considered as well. ISO-NE has access to information regarding which units can provide reactive service outside of the dead band; thus, it can determine which entities may receive a payment for reactive service capability outside of the dead band. Alternatively, ISO-NE could model its payments after some of the "outside of the dead band" proposals recently approved by FERC.<sup>27</sup> Whichever methodology may be chosen to provide capital cost compensation for providing reactive service outside the dead band (to the extent additional capacity payments are needed), ISO-NE must comply with FERC's order by ensuring that there is no double recovery.

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<sup>23</sup> NECPUC Answer at 14.

<sup>24</sup> Affidavit of Waine Whittier at P 20, appended to Original Complaint.

<sup>25</sup> The non-generation units receiving Schedule 2 payments would continue to receive these payments without reduction since they would not be receiving FCM payments.

<sup>26</sup> See, e.g., *Midwest ISO Transmission Owners*, 122 FERC ¶ 61,305, at P 91 (2008).

<sup>27</sup> *Id.*

**H. ISO-NE Has Failed to Demonstrate that Complying with the Commission’s Order Is Not Feasible.**

ISO-NE states for the first time that the dead band Proposal is “administratively infeasible.” ISO-NE Answer at 32. This claim was not made in its Answer in Docket No. ER07-397 nor was it made in the stakeholder process when the MPUC first introduced the concept. *See generally* ISO-NE/NEPOOL Answer in ER07-397. Thus, ISO-NE’s claims of infeasibility should not be accepted as fact. Further, where these claims seek to excuse ISO-NE from implementing one approach to addressing the Commission’s directive in Docket No. ER07-397 to ensure that by the first FCA FCM generators do not double recover capacity compensation, ISO-NE should be required to develop an alternative “workable” solution if indeed the dead band proposal is shown upon further examination to be “infeasible.”

**I. The Existence of Reactive Service Capability Rates in Other RTOs Does Not Address the Double Recovery Issue.**

ISO-NE relies on *Calpine Oneta Power*<sup>28</sup> for the proposition that the use of a dead band approach “is not compelled by Commission precedent.” ISO-NE Answer at 30. *Calpine Oneta* stands for the principle set forth clearly in Order 2003, that if an integrated utility pays its own generator a reactive service capability charge it must also so compensate independent power producers for their reactive service capability.<sup>29</sup> This case also stands for the proposition since reaffirmed several times that generators are not

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<sup>28</sup> *Calpine Oneta Power*, 116 FERC ¶ 61,282 (2006).

<sup>29</sup> *See id.* at P 7; *see also* Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs., Regulations Preambles ¶ 31,146 at P 21 (2003) (Order No. 2003), order on reh’g, Order No. 2003-A, 69 Fed. Reg. 15,932 (March 26, 2004), FERC Stats. & Regs., Regulations Preambles ¶ 31,160 (2004) (Order No. 2003-A), order on reh’g, 109 FERC ¶ 61,287 (2004) (Order No. 2003-B), order on reh’g, Order No. 2003-C, 111 FERC ¶ 61,401 (2005) (Order No. 2003-C).

*entitled to compensation for reactive service capability within the required power factor range.*<sup>30</sup> Further, none of these cases addressed the double recovery issue. Indicated Suppliers cite to other RTOs that compensate generators for providing reactive service within the dead band. Indicated Suppliers Answer at 7. However, these examples do not have any precedential weight because there has apparently been no litigation over this double recovery issue. Neither ISO-NE nor Indicated Suppliers mention the [Midwest ISO] case in which the Commission approved for an RTO a mechanism that provides compensation *only* for reactive service capability outside the required power factor range. Neither ISO-NE nor Indicated Suppliers mention *Midwest ISO Transmission Owners*, 122 FERC ¶ 61,305 (2008), in which the Commission approved an RTO mechanism that provides compensation only for reactive service capability outside the required power factor range.

### **III. CONCLUSION**

For the above stated reasons, MPUC respectfully (1) requests that it be permitted to answer the response of ISO-NE and the Indicated Suppliers, as discussed herein

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<sup>30</sup> *Id.*

and in the Revised Amended Complaint, and (2) requests that the Commission order ISO-NE to adopt the MPUC's dead band proposal or eliminate the Schedule 2 CC payments for FCM resources.

Dated: October 29, 2008

Respectfully submitted,

/s/ Lisa S. Gast

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## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing document either by first class mail or electronic service upon each party on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 29th day of October, 2008.

/s/ Harry A. Dupre  
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