

electricity markets (the LTTR Package). Through this order, the Commission addresses the availability of long-term transmission rights for load serving entities in New England and finds that, while the Filing Parties' filing complies with five of the seven guidelines, it does not adequately address the need to: (i) provide sufficient flexibility to enable firm coverage for power supply arrangements of varying term lengths (Guideline 4); and (ii) make LTTRs available without requiring a recipient to submit a winning bid in an auction (Guideline 7). Therefore, the Commission directs the Filing Parties to revise their proposal in accordance with the guidance provided herein and to submit a revised proposal within 90 days of the date of this order.

I. Background

2. ISO-NE is the private, non-profit entity that serves as the regional transmission organization (RTO) for New England. It operates the New England bulk power system and administers New England's organized wholesale electricity market pursuant to the ISO-NE tariff and the Transmission Operating Agreement with the New England transmission owners.

3. NEPOOL is a voluntary association established in 1971 pursuant to the New England Power Pool Agreement. The Participants include all of the electric utilities rendering or receiving services under the OATT, as well as independent power generators, marketers, load aggregators, brokers, consumer-owned utility systems, demand response providers, end users and a merchant transmission provider. Pursuant to the revised governance provisions accepted by the Commission, the Participants act through the NEPOOL Participants Committee.⁵

4. The Filing Parties state that, under the current market design, a Financial Transmission Right (FTR) is a financial hedging instrument that entitles the holder to

Agreement, the Participants Agreement, or the ISO-NE Transmission, Markets and Services Tariff. Notwithstanding the Filing Parties' use, when we refer to Long Term Transmission Rights generally, we use the abbreviation "LTTR" rather than "LFTR" in order to provide consistency with Commission precedent relating to Order No. 681. *See Midwest Independent Transmission System Operator, Inc.*, 119 FERC ¶ 61,143 (2007); *California Independent System Operator Corp.*, 116 FERC ¶ 61,274 (2006); and *PJM Interconnection, LLC*, 117 FERC ¶ 61,220 (2006). We do, however, use the abbreviation LFTR when referring to "Allocated," "Auctioned" and "Incremental" rights in order to be consistent with ISO-NE's tariff.

⁵ *ISO New England Inc.*, 109 FERC ¶ 61,147 (2004)

receive compensation for congestion costs that arise when there are binding transmission constraints in the day-ahead energy market. Each FTR is unidirectional and is defined in megawatts (MWs) from a point of receipt (where the power is injected into the transmission system) to a point of delivery (where the power is withdrawn from the transmission system). The cash flow of an FTR is determined by the difference between the congestion components of the day-ahead locational marginal price (LMP) at the point of receipt and point of delivery. Because the FTR is an obligation, the cash flow can be positive or negative. The Filing Parties state that, under the current system, the longest-term FTR is one year.

5. Consistent with the Energy Policy Act of 2005 (EPAcT 2005),⁶ Order No. 681 required independent transmission organizations that oversee organized electricity markets to make LTTRs available to all transmission customers. The Final Rule directed these independent transmission organizations to make available LTTRs that satisfy seven guidelines.⁷

II. ISO New England's Current Financial Transmission Rights System

A. Acquisition of Financial Transmission Rights

6. Currently, FTRs are acquired either through an FTR auction or through bilateral trading in a secondary market. ISO-NE conducts periodic auctions to allow bidders to acquire monthly and annual FTRs. Bilateral trading may be done independently or through an ISO-administered trading system that automatically transfers ownership and adjusts monthly billing statements accordingly.

7. The FTR Auction, in which FTRs are initially created, is conducted in order to maximize revenue conditioned on the maximum use of the grid compatible with the transmission constraints present for the duration of a given auction, and allows holders of annual FTRs an opportunity to sell those that they currently hold. In the FTR Auction,

⁶ Pub. L. No. 109-58, § 1233, 119 Stat. 594, 958 (2005). Section 217(b)(4) of EPAcT 2005 directed the Commission to use its authority to facilitate transmission planning and expansion to meet the reasonable needs of Load Serving Entities with respect to meeting their service obligations and, relevant to this filing, securing LTTRs for long-term supply arrangements made, or planned, to meet such obligations. *Id.*

⁷ Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 108-428; Order No. 681-A, 117 FERC ¶ 61,201 at P 12-15.

bidders submit bids to purchase a quantity of FTRs at a price quoted in dollars per MW. Auction bids must specify: (i) a unidirectional path between two specified locations (i.e., source and sink); (ii) on-peak hours or off-peak hours; and (iii) the maximum amount of MWs for a given path the market participant is willing to purchase.

8. Similarly, existing FTR Holders may offer to sell a quantity of FTRs at a “reservation price” below which the FTR will not be sold. All winning bids on the same path pay the same price regardless of what their bids were (i.e., the lowest price clears the path).

B. Qualified Upgrade Awards and Auction Revenue Rights

9. Auction Revenue Rights and Qualified Upgrade Awards are the mechanisms through which the revenues (net of payments to FTR sellers) from each FTR Auction are transferred to the entities that are responsible for paying congestion costs and the costs of certain transmission upgrades. Auction revenues are distributed after the FTR Auction is conducted so that the market’s pricing of FTRs can be used in the process.

1. Qualified Upgrade Awards

10. Auction revenues are allocated first to entities that pay for transmission upgrades directly (Elective Upgrades and Generator Interconnection Related Upgrades, but not upgrades paid for through the Regional Network Service Rate), if, and to the extent that the upgrade makes it possible to award additional FTRs as a result of increasing the transfer capability of the system. Qualified Upgrade Awards allocate FTR Auction revenues by direct measurement of the difference in revenues generated in “mock auctions” run with and without the subject upgrades (and their effect on transfer capabilities) and using the original FTR Auction bids. As a result, the FTRs that clear in the “mock auctions” are then priced at the original FTR Auction clearing prices to determine the amount of the Qualified Upgrade Award.

2. Auction Revenue Rights

11. Auction revenues remaining after the Qualified Upgrade Award allocations are currently made to the entities that are responsible for paying the congestion charges (congestion paying load serving entities) incurred in association with serving load. Thus, the load serving entities that pay embedded costs of the system through the Regional Network Service Rate also receive the auction revenues. The congestion paying load serving entities receive FTR Auction revenues when they have load on the congested side of a binding constraint for which FTRs were awarded and auction revenues were collected. This is achieved through a four stage Auction Revenue Right allocation process designed to allocate auction revenues in proportion to the amount of load served

in the Load Zone and in relation to where the bidders in the FTR Auction anticipate congestion to occur.

12. An Auction Revenue Right Holder does not have to participate in an FTR Auction to receive its allocated revenues and an Auction Revenue Right Holder can choose not to seek FTRs and instead apply its allocation of auction revenues to payment of any hourly congestion charges that may accrue. The Filing Parties state that this strategy risks under-valuation of the associated FTRs by other bidders, which could have the result that an Auction Revenue Right allocation could be insufficient to cover hourly congestion charges. The total dollar value of an Auction Revenue Right allocation depends on both the amount (in MW) resulting from the four-stage Auction Revenue Right allocation and the auction clearing prices associated with the Auction Revenue Right paths. Additionally, market participants can hedge against real-time locational price risk by arbitraging energy sales or purchases between the Day-Ahead Energy Market and the Real-Time Energy Market, entering into bilateral supply contracts, or obtaining long-term entitlements in, or contracts with, generators located near the load they serve.

III. The Filing

13. The Filing Parties explain that ISO-NE and NEPOOL stakeholders (through an extensive working group process) have developed a comprehensive package of changes to the existing OATT system of: (i) FTRs; (ii) Auction Revenue Rights; and (iii) Qualified Upgrade Awards. The LTTR Package also includes changes to the OATT provisions governing the New England Regional System Planning process. The proposed changes build on the existing FTR markets and Regional System Planning process in New England by adding new products with expanded capabilities for Market Participants, while leaving many aspects of the market design and planning process largely unchanged.⁸

14. The Filing Parties assert that the LTTR Package meets the requirements of the LTTR Orders, satisfies each of the seven compliance guidelines (LTTR Guidelines) and is supported by a substantial majority of NEPOOL. The Filing Parties request an effective date on or after August 29, 2008.

⁸ See The Filing Parties' January 29, 2007 Compliance Filing, Attachment 3 at 11-12 (Marc D. Montalvo Test.).

IV. Notice of Filing and Responsive Pleadings

15. Notice of the Filing Parties' filing was published in the *Federal Register*, 72 Fed. Reg. 6, 550 (2007), with interventions, protests and comments due on February 20, 2007. Timely motions to intervene were filed by: The United Illuminating Company (United Illuminating); Exelon Corporation; Dominion Resources Services, Inc.⁹; National Grid USA¹⁰; The Long Island Power Authority and LIPA; Strategic Energy, L.L.C.; Bridgeport Energy, LLC; Casco Bay Energy Company, LLC; Dynegy Power Marketing, Inc.; Millennium Power Partners, L.P.; and Milford Power Company, LLC. The Northeast Utilities Companies¹¹ by their Agent Northeast Utilities Service Company and the Attorney General of Massachusetts filed late motions to intervene.

16. Motions to intervene with comments were filed by: DC Energy, Inc. (DC Energy); Coral Power, L.L.C.;¹² and NSTAR Electric & Gas Corporation, Fitchburg Gas and Electric Light Company and Unitil Energy Systems, Inc. (NSTAR, *et al.*). Motions to intervene with protests were filed by: New England Public Systems (NEPS)¹³; Energy America, LLC; and Constellation Energy Commodities Group, Inc.

⁹ Dominion Resources Services, Inc. filed on behalf of Dominion Energy Marketing, Inc., Dominion Nuclear Connecticut, Inc., and Dominion Retail, Inc.

¹⁰ National Grid USA filed on behalf of itself and its New England utility operating subsidiaries: New England Power Company; Massachusetts Electric Company; The Narragansett Electric Company; Granite State Electric Company; and Nantucket Electric Company.

¹¹ The Northeast Utilities Companies include: The Connecticut Light and Power Company, Western Massachusetts Electric Company and Public Service Company of New Hampshire.

¹² Coral Power, L.L.C. supports the comments filed by DC Energy, L.L.C.

¹³ New England Public Systems are: Vermont Public Power Supply Authority, Barton Village, VT; Burlington (VT) Electric Department; Village of Enosburg Falls, VT; Town of Hardwick (VT) Electric Department; Village of Hyde Park, VT; Village of Jacksonville, VT; Village of Johnson (VT) Water & Light Department; Village of Ludlow (VT) Electric Department; Village of Lyndonville (VT) Electric Department; Village of Morrisville (VT) Water & Light Department; Village of Northfield, VT; Village of Orleans, VT; Town of Readsboro (VT) Electric Department; Town of Stowe (VT) Electric Department; Swanton Village, VT; Washington Electric Cooperative;

(continued)

and Constellation NewEnergy, Inc. (collectively, Constellation). National Grid filed reply comments in support of the methodology for allocation of long-term firm transmission rights.

17. The Filing Parties filed a motion for leave to answer and answer. United Illuminating filed an answer. NEPS filed an answer, or in the alternative, motion for leave to reply and reply, and Constellation filed a reply to the Filing Parties' answer.

V. Discussion

A. Procedural Matters

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers filed herein because they have provided information that assisted us in our decision-making process.

19. We will grant the motions to intervene out of time of Northeast Utilities and the Attorney General of Massachusetts given their interest in this proceeding, the early stage of this proceeding and the absence of any undue prejudice or delay.

Vermont Electric Cooperative, Inc.; New Hampshire Electric Cooperative; Littleton (NH) Water & Light Department; Connecticut Municipal Electric Energy Cooperative; Pascoag (RI) Utility District; Houlton (ME) Water Company; Kennebunk (ME) Light & Power District; Belmont (MA) Municipal Light Department; Braintree (MA) Electric Light Department; Chicopee (MA) Municipal Lighting Plant; Concord (MA) Municipal Lighting Plant; Groton (MA) Electric Light Department; Hingham (MA) Municipal Lighting Plant; Hudson (MA) Light & Power Department; Ipswich (MA) Municipal Light Department; Mansfield (MA) Municipal Electric Department; Middleborough (MA) Gas & Electric Department; Peabody (MA) Municipal Light Plant; Princeton (MA) Municipal Light Department; Reading (MA) Municipal Light Department; Shrewsbury (MA) Electric & Cable Operations; Taunton (MA) Municipal Lighting Plant; Templeton (MA) Municipal Light & Water Plant; Westfield (MA) Gas & Electric Department.

VI. Determination

A. Guideline 1

The [LTTR] should be a point-to-point right that specifies a source (injection node or nodes) and sink (withdrawal node or nodes), and a quantity (MW).

20. Guideline 1 is intended to support the ability of load serving entities to obtain point-to-point LTTRs that will hedge delivery of power from particular long-term power supply arrangements to load. The Commission has noted that Guideline 1 is largely consistent with existing designs (i.e., point-to-point transmission rights) already in place in the organized electricity markets operated by transmission organizations.¹⁴

21. Order No. 681 clarified that Guideline 1 permits specification of long-term firm transmission rights to hedge zonal or hub pricing where, for example, congestion prices are calculated using a weighted average of the locational marginal prices within a zone. Guideline 1 also permits specification of LTTRs from points on the network, such as boundary locations, that are not the locations of specific generators.¹⁵

1. Proposal

22. The Filing Parties state that the LTTR Proposal is consistent with Guideline 1 because it incorporates the existing New England FTR design, which already requires that FTRs designate specific source and sink points and quantities. To comply with Order No. 681, the Filing Parties propose to create “Allocated LFTRs,” which will be made available through direct allocation, only to eligible load serving entities with long term power supply arrangements and load serving obligations, while a second category, “Auctioned LFTRs,” will be made available in the FTR auctions. Both the LTTR Nomination process for Allocated LFTRs and the auction process for Auctioned LFTRs will require the specification of specific delivery and receipt points and quantities for LTTRs.

23. The Filing Parties assert that NEPS’s concern, which the Commission took note of in Order No. 681,¹⁶ that most New England Auction Revenue Rights are allocated among

¹⁴ Order No. 681 at P 116.

¹⁵ *See id.* P 117.

¹⁶ *Id.* P 112.

congestion paying load serving entities on a zonal load ratio share basis, is moot in light of the fact that the LTTR Package satisfies the requirements of the LTTR Orders through allocation of long-term FTRs, and not through the issuance of Auction Revenue Rights.¹⁷

2. Comments and Protests

24. NEPS argue that the LTTR Package is not compliant with Guideline 1 (which works in conjunction with Guideline 7). NEPS contend that the only permissible use of an auction with respect to the allocation of LTTRs is the PJM market design, under which Auction Revenue Rights may be converted into firm transmission rights that correspond to the sources and sinks of the respective Auction Revenue Rights (and therefore comply with Guideline 1). NEPS point out that in their comments to the Final Rule, they noted that under the ISO-NE market rules, most Auction Revenue Rights are allocated among congestion paying load serving entities on a zonal load ratio share basis and each such load serving entity is paid the auction clearing price of an average FTR in the zone times the ratio of its peak load to the zonal peak load.¹⁸

25. NEPS also note that during the Final Rule process, they requested that the Commission confirm that FTRs awarded under the then current rules should not simply be extended in term. NEPS suggested that, alternatively, under Guidelines 1 and 7, ISO-NE should provide either the allocation of point-to-point LTTRs or point-to-point long-term Auction Revenue Rights that could be converted to LTTRs.¹⁹

3. Answers

26. The Filing Parties respond that NEPS are not correct that the combination of auction-based valuation and New England's zonally socialized Auction Revenue Rights structure fails to ensure that New England load serving entities will be able to obtain long-term firm transmission rights without participating in an auction. The current Auction Revenue Rights structure in New England has no applicability to the eligibility requirements for obtaining allocated LTTRs.

27. The Filing Parties also argue that the PJM market design is incompatible with the Auction Revenue Rights and transmission cost allocation system in New England,

¹⁷ See The Filing Parties' January 29, 2007 Compliance Filing at 5 n.4.

¹⁸ NEPS's February 20, 2007 Motion to Intervene and Protest at 23-26.

¹⁹ *Id.*

because the New England Auction Revenue Rights and transmission cost allocation mechanisms are not based on a source, sink, and fixed quantity paradigm and are not linked to any concept of historical use of the transmission system, or prospective rights based on historical use.

28. NEPS answer that Order No. 681 expressly responded to NEPS's observation that "the allocation process now used by ISO-NE does not permit a direct conversion of [Auction Revenue Rights] into corresponding [FTRs]," and concluded that "[i]f so, the process does not meet the requirements of [Guideline 7] for allocating long-term firm transmission rights and must be modified."²⁰ NEPS argue that the Auction Revenue Rights allocation mechanism to combine an auction-based pricing mechanism for LTTRs with New England's zonally-spread Auction Revenue Rights approach is not just and reasonable (or consistent with Order Nos. 681 and 681-A).

4. Commission Determination

29. The Commission finds that the Filing Parties' proposal satisfies Guideline 1 because it provides for a long-term congestion hedging instrument that is specified by a source, a sink and a megawatt quantity in the manner prescribed by Order No. 681. NEPS's contention that the proposal does not meet the requirements of Guideline 1 (and Guideline 7) because it does not allow Auction Revenue Rights to be converted into firm transmission rights that have the same sources and sinks as the Auction Revenue Rights does not, strictly speaking, implicate the requirements of Guideline 1. Rather, it presents an issue that more accurately falls within the purview of Guideline 7. Accordingly, the Commission addresses NEPS's concern below in the discussion of Guideline 7.

B. Guideline 2

The [LTTR] must provide a hedge against [LMP] congestion charges or other direct assignment of congestion costs for the period covered and quantity specified. Once allocated, the financial coverage provided by a financial [LTTR] should not be modified during its term (the "full funding" requirement) except in the case of extraordinary circumstances or through voluntary agreement of both the holder of the right and the transmission organization.

30. Guideline 2 responds to the requirement in FPA section 217(b)(4) that load serving entities with service obligations should be able to obtain "firm" transmission rights or equivalent financial or tradable rights on a long-term basis. As stated in Order

²⁰ NEPS's March 22, 2007 Answer at 5 (citing Order No. 681 at P 392).

No. 681, the Commission interpreted “firmness” in the context of LTTRs to refer primarily to two properties of such rights: stability in the quantity of rights that a load serving entity is allocated over time; and an enhanced degree of “price certainty” for the rights, once they are allocated to a load serving entity, by requiring that they are fully funded. In Order No. 681, the Commission also encouraged transmission organizations to evaluate extending full funding to short-term transmission rights.²¹

1. LTTR Proposal

31. The Filing Parties state that all LTTRs and Short-Term FTRs will be fully funded using the existing Congestion Revenue Fund mechanism. The Filing Parties explain that any surpluses in the Congestion Revenue Fund in a given month will be carried forward to cover any shortfalls in a subsequent month. The Filing Parties further explain that if, in a given month, the accrued surplus is insufficient to cover a shortfall, Auction Revenue Right holders will be charged an amount equal to the net shortfall. To the extent there are shortfalls at the end of the year, such shortfalls will be paid by Auction Revenue Right holders in proportion to their Auction Revenue Right holdings in the month of December. Also, to the extent there are surpluses at the end of the year, surpluses will be allocated first to Auction Revenue Right holders who paid into the Congestion Revenue Fund during the past year and then any remaining surplus will be paid to all Auction Revenue Right holders in proportion to their Auction Revenue Right holdings during the past year.

32. The Filing Parties explain that Auction Revenue Right holders’ obligation to fund shortfalls in the Congestion Revenue Fund will be excused by catastrophic events that both: (i) render substantially all of the outstanding FTRs infeasible; and (ii) make the sum of all monthly positive target allocations greater than the Transmission Congestion Revenue for the current month. Promptly following the occurrence of such an event, ISO-NE will submit an informational filing providing notice and describing how the catastrophic event has affected FTR feasibility. For any month in which Auction Revenue Right holders’ obligation to fund shortfalls in the Congestion Revenue Fund is due to the occurrence of a catastrophic event, each FTR holder will be assigned a share of total Transmission Congestion Revenue for the applicable month in proportion to its positive target allocations. This methodology received the broadest stakeholder support.

²¹ Order No. 681 at P 179.

2. Comments/Protests

33. DC Energy supports the LTTR Proposal and states that fully funding FTRs without charging shortfalls back to FTR holders will maximize FTR auction revenues for the Auction Revenue Right holders. DC Energy asserts that, if the shortfalls were allocated to FTR holders, market participants in the FTR market would take this additional risk of shortfall into account in their price evaluation of bids, resulting in lower FTR auction clearing prices and less revenue to Auction Revenue Right holders.

34. Energy America protests the Filing Parties' full funding proposal. Energy America suggests that the Filing Parties should be required to modify their proposal to allocate the under-funding to all beneficiaries of full-funding -- all FTR holders on a pro-rata basis according to the total target allocations for all FTRs held at any time during the relevant planning period.

35. Constellation also opposes requiring Auction Revenue Right holders to fund all LTTR and FTR congestion shortfalls. Constellation maintains that Auction Revenue Right holders do not cause congestion shortfalls and have no ability to mitigate congestion or to hedge the risk of funding this uncapped congestion shortfall. Constellation states that, at a minimum, the Commission should direct the Filing Parties to cap the liability of Auction Revenue Right holders to fund shortfalls based on historical congestion levels.

36. National Grid supports the Filing Parties' full funding provision. It points out that assigning risk to those who are expected to benefit from a particular market feature is neither new nor inappropriate. National Grid asks that any decision by the Commission to reconsider the full funding proposal be accompanied with reconsideration of the allocation of Auction Revenue Rights previously decided by the Commission.

3. Answers

37. The Filing Parties argue that Energy America's proposal that all FTR holders should fund such shortfalls violates Guideline 2 because requiring FTR holders to fund the shortfalls causes FTR holders to remain at risk that congestion will reach target levels.

38. Constellation protested this aspect of the LTTR Proposal as well, arguing that the obligation should at least be capped at a certain level based on historical congestion levels, with any amount above the cap allocated to Regional Network Service load. The Filing Parties state that this notion belies the intentional design of the full funding provision and should therefore be rejected. They point out that Auction Revenue Right

holders receive the benefit of LTTR auction revenues while undertaking the risk of funding shortfalls.

39. The Filing Parties also contend that allocating some or the entire shortfall to Regional Network Service load ignores this rationale and offsets the balance of risk and benefit inherent in ISO-NE's LTTR Proposal. The Filing Parties argue that the parties that benefit from surplus congestion revenues should be the same parties that bear the risk of potential shortfalls. They further argue that Constellation's proposal would give benefits to congestion-paying load serving entities while subjecting transmission customers to the risk of shortfalls, thus creating an inappropriate mismatch of risks and benefits.

40. United Illuminating states that it would not oppose a cap on the liability of Auction Revenue Right holders to fund congestion revenue shortfalls but requests that the Commission not adopt any proposal that would assign the congestion revenue shortfall to load.

41. In response to the Filing Parties' and National Grid's argument that Auction Revenue Right holders should bear the risk of congestion shortfalls since they are the beneficiaries of FTR auction revenues, Constellation argues that costs and under-funding of FTRs are two separate issues. According to Constellation, while load serving entities may cause congestion -- and FTRs and Auction Revenue Rights are a mechanism to manage that congestion -- load serving entities do not cause under-funding and are in fact powerless to avoid it. Constellation states that, at a minimum, the exposure levels placed on Auction Revenue Right holders must be capped.

4. Commission Determination

42. In Order No. 681, the Commission determined that a reasonable approach to accomplish full funding would be to charge uplift to support a subset or the full set of load serving entities that hold long-term firm transmission rights. Additionally, the Commission found that it would be reasonable to distribute uplift charges over holders of both short and long-term rights.²²

43. In the instant proceeding, we find that the Filing Parties' LTTR Proposal complies with the requirements of Guideline 2 because the proposal fully funds short-term and long-term FTRs by requiring that Auction Revenue Right holders fund net shortfalls in the Congestion Revenue Fund. The Filing Parties have complied with this requirement by

²² Order No. 681 at P 177.

proposing an uplift mechanism that fully funds short and long-term transmission rights, except in the case of a catastrophic event.²³ If such an event occurs, the Filing Parties commit to submit an informational filing with the Commission describing how the catastrophic event affected FTR feasibility.

44. No party objects to the Filing Parties' extension of its uplift mechanism to short and long-term transmission rights and we find it to be consistent with Order No. 681, where we encouraged transmission organizations to evaluate whether the requirements to fully fund long-term rights should be paired with those relating to short-term rights.²⁴ We also concur with the Filing Parties' observation in their transmittal that extending full funding to short and long-term transmission rights ensures fungibility of the rights and promotes efficiency,²⁵ because it should assist load serving entities in selecting rights with term lengths consistent with their load serving needs. Therefore, we will accept the proposal to extend uplift to all transmission rights.

45. In Order No. 681, we allowed transmission organizations the discretion to propose methods for allocating full funding uplift.²⁶ The Filing Parties' approach to provide full funding of all FTRs by requiring that Auction Revenue Right holders fund net shortfalls provides adequate symmetry between benefit and risk regarding the full funding proposal of Guideline 2. We find it reasonable that the entities in position to benefit from Auction Revenue Rights are the entities responsible for being exposed to risk. This decision is consistent with prior precedent in the New England region, where the Commission found it acceptable to allocate Auction Revenue Rights to congestion paying load serving entities that did not pay transmission costs because the retail loads served by congestion paying load serving entities ultimately paid the transmission costs, and because the Commission expected that the benefits of the Auction Revenue Rights allocated to the load serving entities would flow to these same retail loads.²⁷ Similarly, using this approach, the entities that receive the benefits of surplus congestion revenues are the same entities that shoulder the risk of paying for shortfalls. The Filing Parties' proposal

²³ Section III 5.2.5(c) "Calculation of Transmission Congestion Credits" of ISO-NE's Transmission, Markets, & Services Tariff.

²⁴ Order No. 681 at P 179.

²⁵ The Filing Parties' January 29, 2007 Compliance Filing at 6.

²⁶ Order No. 681 at P 175.

²⁷ *New England Power Pool*, 101 FERC ¶ 61,344, at P 55-64 (2002).

to allocate uplift to all Auction Revenue Right holders should mitigate the impact of full funding on all FTR holders and is reasonable.

46. With regard to protestors' arguments that Auction Revenue Right uplift payments should be capped at historical congestion levels, and that the Filing Parties should be required to modify their proposal to allocate the underfunding to all beneficiaries of full-funding (as in PJM), we find that protestors have not sufficiently supported their alternative proposals. In addition, to minimize the possibility of Auction Revenue Right holders funding shortfalls, the Filing Parties state that ISO-NE will continue to conduct simultaneous feasibility tests on all bids and offers in all FTR auctions in order to ensure that there are sufficient Transmission Congestion Revenues to satisfy all FTR obligations for the applicable FTR Auction period.²⁸ For these reasons, we find that the Filing Parties' proposal meets the requirements of Order No. 681.

C. Guideline 3

[LTTRs] made feasible by transmission upgrades or expansions must be available upon request to any party that pays for such upgrades or expansions in accordance with the transmission organization's prevailing cost allocation methods for upgrades or expansions.

47. As the Commission explained in Order No. 681, Guideline 3 of the Final Rule applies to transmission rights awarded to entities that fund transmission upgrades and expansions through direct cost assignment and not to rights related to upgrades that are rolled into transmission rates.²⁹

1. Proposal

48. The Filing Parties state that the LTTR Package includes revisions to Appendix C

²⁸ ISO-NE's Market Rule 1, Section III.7.2.4(c) "Determination of Winning Bids and Clearing Price in FTR Auctions" (stating, in part, "The ISO will determine simultaneous feasibility using power flow models for the contingency-constrained auction, taking into account outages, and expected configuration of transmission facilities, outages of individual generating units to the extent such outages impact voltage or stability limits and the assumed configuration and availability of transmission capability during the period covered by the auction ...[ensuring] sufficient Transmission Congestion Revenues to satisfy all FTR obligations for the auction period....").

²⁹ Order No. 681 at P 211.

to Market Rule 1, which provides for award of Qualified Upgrade Awards to parties that fund transmission upgrades or expansion that make it possible for ISO-NE to award additional FTRs, thereby increasing the pool of available Auction Revenue Rights revenues.

a. Incremental Auction Revenue Rights

49. The LTTR Package replaces the existing Qualified Upgrade Award process with a mechanism that provides for the award of Incremental Auction Revenue Rights to entities that increase transfer capability on the transmission system, thereby making it possible to award additional FTRs in the FTR Auction. The Incremental Auction Revenue Rights will be convertible into Incremental LFTRs and, according to the Filing Parties, this component of the LTTR Proposal therefore provides even greater flexibility than is required by Guideline 3. The Filing Parties explain that transmission upgrades initially placed in service on or after March 1, 1997 may qualify for Incremental Auction Revenue Right awards.

50. The Filing Parties further explain that the amount of any Incremental Auction Revenue Right award will consist of specific MW quantities over one or more specific pairs of receipt and delivery points relevant to the applicable transmission upgrade. In addition, an Incremental Auction Revenue Right award will have a value associated with each FTR Auction, which will be determined by the sets of Incremental Auction Revenue Rights awarded for specific receipt and delivery points, and the market clearing prices for each pair of receipt and delivery points as determined by the applicable FTR Auction. To the extent that a transmission upgrade resulting in new transfer capability is paid for through the Regional Network Service rate (if the upgrade's costs are allocated among all regional Transmission Customers), such upgrade will not be eligible to support the award of Incremental Auction Revenue Rights. Consequently, any Auction Revenue Rights associated with the sale of FTRs made possible by such socialized upgrades, other than FTRs sold by FTR Holders, will be allocated to Transmission Customers and congestion paying load serving entities in the four-stage Auction Revenue Right Allocation process.

51. In addition, all previously granted Qualified Upgrade Awards will be converted into Incremental Auction Revenue Right awards. Incremental Auction Revenue Rights will be awarded to the entities funding the transmission upgrade at the time the upgrade goes into service and support payments begin, and will continue for so long as the entities, or their successors, support the costs of the upgrade (either through upfront support payments or periodic installments) for the life of the upgrade.

b. Conversion to Incremental LFTRs

52. An Incremental Auction Revenue Right Holder may request that the entire amount of its awarded Incremental Auction Revenue Right between a specific pair of receipt and delivery points be converted in whole-year increments up to the remaining life of the Incremental Auction Revenue Right into an Incremental LFTR with the same MW amount between the same pair of receipt and delivery points. Such a conversion request: (i) must be made prior to an LTTR auction; (ii) will become effective at the start of the period covered by the LTTR auction; and (iii) will remain in effect until the earlier of (a) the end of the period for which the conversion of the Incremental Auction Revenue Right into an Incremental LFTR was requested, (b) the date at which the Incremental Auction Revenue Right being converted would have expired, or (c) 40 years from the date of conversion. During the period for which an Incremental Auction Revenue Right award is converted into an Incremental LFTR, the applicable entity's associated Incremental Auction Revenue Right payments will be suspended.

c. Characteristics of Incremental LFTRs

53. Incremental LFTRs will be settled as options rather than obligations, meaning that Incremental LFTR Holders will receive positive target allocations of Transmission Congestion Credits, but will not receive negative target allocations of Transmission Congestion Credits. Incremental LFTRs will provide a right to Transmission Congestion Revenue for both on-peak and off-peak periods and may be traded on the FTR secondary market but not sold in FTR Auctions. Incremental LFTRs may not be converted into LTTR obligations. The Filing Parties assert that since Incremental LFTRs will be treated as options rather than obligations, Incremental Auction Revenue Right Holders will not be entitled to receive a share of any excess Congestion Revenue in the Congestion Revenue Fund, nor will they be required to make payments into the Congestion Revenue Fund when the fund is insufficient to pay positive target allocations to all FTR Holders.

d. Determination of Incremental Auction Revenue Right Awards

54. ISO-NE will determine a baseline Incremental Auction Revenue Right to be awarded to an entity for an eligible transmission system upgrade that will reflect the additional cleared FTR amounts between receipt and delivery points made possible by the upgrade. The amounts of the baseline award on the relevant pairs of receipt and delivery points will be determined by: (1) measuring the maximum MW that can be cleared using the FTR Auction clearing software with the transmission system upgrade included in the modeled network; (2) measuring the maximum MW that can be cleared in the same manner with the upgrade excluded; and (3) calculating the difference in total cleared MW over each relevant pair of receipt and delivery points.

55. Additionally, the Filing Parties state that the increase in cleared FTRs over the relevant pairs of receipt and delivery points becomes the baseline award. After receiving the baseline award, the entity requesting the Incremental Auction Revenue Right award may request ISO-NE to provide up to three additional Incremental Auction Revenue Right determination analyses. ISO-NE will provide the entity with a list of all qualifying pairs of receipt and delivery points relevant to the upgrade that may be considered. The entity will then identify for each determination analysis a specific set of pairs selected from the list of qualifying pairs of receipt and delivery points. In each determination analysis, the entity may adjust the MW amounts and bids to be used in the clearing calculations over the qualifying pairs to reflect the entity's preferences and priorities for specific receipt and delivery point pairs in the Incremental Auction Revenue Right award. In addition, the entity must then select the results of either the baseline award or any one of the determination analysis awards to become the final Incremental Auction Revenue Right award.

e. Comments and Protests

56. No party filed comments, protests, or interventions with respect to the Guideline 3 proposal.

f. Commission Determination

57. Consistent with the Commission's directive in earlier proceedings to replace the temporary Qualified Upgrade Award allocation process and provide greater transparency in all of its calculations, procedures and review processes,³⁰ we accept the Filing Parties' proposal to replace the existing Qualified Upgrade Award process with a permanent mechanism that provides Incremental Auction Revenue Rights to entities that increase transfer capability on the New England Transmission System, and thereby enable additional FTRs to be awarded in the FTR auctions.³¹ The proposed mechanism allows Incremental Auction Revenue Rights to be converted into Incremental LFTRs, which can

³⁰ *New England Power Pool and ISO New England, Inc.*, 100 FERC ¶ 61,287, at P 84; *New England Power Pool and ISO New England, Inc.*, 101 FERC ¶ 61,344, at P 52 (2002); and *New England Power Pool*, 102 FERC ¶ 61,112 at P 53 (2003).

³¹ According to the Filing Parties, there are 23 existing Qualified Upgrade Awards and each of these will be converted into an Incremental Auction Revenue Right. Additionally, they state that each conversion is a one-time process. *See* The Filing Parties' January 29, 2007 Compliance Filing, Attachment 3 at 33-34 (Marc D. Montalvo Test.).

be beneficial to entities that fund transmission upgrades, but who would prefer to use Incremental LFTRs to hedge congestion costs rather than receive Incremental Auction Revenue Rights. Moreover, the proposal offers Incremental Auction Revenue Right holders the option to convert Incremental Auction Revenue Rights to Incremental LFTRs with the same receipt and delivery points and MW amounts.³²

58. In addition, upgrades to the transmission system may allow for the increased flow of energy in both directions. Since Incremental LFTRs will settle as options, if the direction of congestion reverses over a particular path, an Incremental LFTR holder will not have to pay for any negative target allocations of Transmission Congestion Credits. In other words, since Incremental LFTRs will settle as options, rather than obligations, the Incremental LFTR holder will receive payments for target allocations of Transmission Congestion Credits, but will not be required to pay for negative target allocations.³³

59. As a result, we agree with the Filing Parties that “if the direction of congestion reverses, the Incremental LFTR holder should not be financially harmed, since the upgrade they funded would also allow increased flow in this new direction of congestion.”³⁴ Therefore, the proposal allows for the entities that fund transmission upgrades to receive the benefits and is consistent with Guideline 3.

D. Guideline 4

[LTTRs] must be made available with term lengths (and/or rights to renewal) that are sufficient to meet the needs of [Load Serving Entities] to hedge long-term power supply arrangements made or planned to satisfy a service obligation. The length of term of renewals may be different from the original term. Transmission organizations may propose rules specifying the length of terms and use of renewal rights to provide long-

³² ISO-NE, Transmission, Markets, & Services Tariff, Section III.C.8. “Incremental Auction Revenue Right Awards.”

³³ ISO-NE, Transmission, Markets, & Services Tariff, Sections III. C.8. “Incremental Auction Revenue Right Awards” and 5.2.4 “Target Allocation to FTR Holders”.

³⁴ See The Filing Parties’ January 29, 2007 Compliance Filing, Attachment 3 at 34 (Marc D. Montalvo Test.).

term coverage, but must be able to offer firm coverage for at least a 10-year period.

60. In Order No. 681, the Commission stated that it will allow regional flexibility in defining the terms of LTTRs and permit substantial latitude to determine how to achieve long-term coverage through combinations of LTTRs of specific terms and renewal rights, along with transmission planning and expansion procedures that support LTTRs.³⁵ However, in Order No. 681, the Commission required transmission organizations to make available LTTRs and renewal rights that provide coverage for a period of at least 10 years so that the LTTRs offered meet the reasonable needs of load serving entities to obtain transmission service for long-term power supply arrangements used to meet service obligations.

1. Proposal

61. The Filing Parties state that their proposal complies with Guideline 4 by providing that an Allocated LFTR will have an initial term of five years, with renewal rights for an unlimited number of five-year terms as long as eligibility is maintained. In general, to be eligible for Allocated LFTRs, a load serving entity must have a prospective load serving obligation and power supply commitment of at least five years' duration. The Filing Parties contend that their proposal therefore allows such entities to hedge their locational price risk indefinitely, thereby providing more flexibility than would be available with LTTRs offered with only a fixed ten-year term.

62. The Filing Parties propose that when an entity renews an Allocated LFTR, the market value will be the market-clearing price for the points of receipt and delivery determined in the LTTR auctions conducted in the year that the renewal of the Allocated LFTR is requested, for each of the five effective years that the Allocated LFTR is renewed.

2. Comments and Protests

63. NEPS protest that the inability to renew Allocated LFTRs for periods of less than five years unnecessarily exposes the load serving entity to market risk. NEPS contend that if a load serving entity enters into a supply contract for a number of years greater than 5 but not divisible by 5, the load serving entity will be unable to obtain an Allocated LFTR for the remaining years beyond the last five-year renewal for which it is eligible, and the prices for any five-year blocks beyond the first five-year block will be unknown

³⁵ Order No. 681 at P 258.

at the time of the resource commitment.³⁶ To obtain an LTTR for those remaining years beyond the last five-year renewal, NEPS state that the load serving entity will have to bid for an Auctioned LTTR. NEPS argue that, for these reasons, the Filing Parties' proposal does not meet the requirements of the Final Rule. NEPS propose an alternative framework that makes Allocated LFTRs available with an initial term between five and ten years (at the request of the load serving entity) and unlimited one-year roll-over rights that can be exercised with five years' notice.

3. Answers

64. The Filing Parties ask the Commission to reject any protests asking for a modification to the proposed term-length provisions in the LTTR Package. They argue that the LTTR Package meets and is more flexible than the "firm coverage for at least a 10 year period" requirement stated in Order No. 681. The Filing Parties argue that their proposal exceeds the requirement in Guideline 4 because it offers unlimited firm coverage so long as the customer remains eligible for renewal.

65. NEPS state in their answer that the Filing Parties' answer fails to address the deficiency identified in NEPS's protest.

4. Commission Determination

66. The Commission will accept, subject to modification, the Filing Parties' proposal to offer Allocated LFTRs with a minimum term of five years. The Commission finds that this is reasonable given that, to be eligible to receive Allocated LFTRs, a load serving entity must have a power supply arrangement with a term of at least five years.³⁷ However, the Commission agrees with NEPS that the proposal is overly restrictive in that it does not provide a means to obtain firm coverage for a power supply arrangement with a term that is greater than five years but less than ten years. The Commission therefore finds that the Filing Parties' proposal does not satisfy the requirements of Guideline 4.

67. We direct the Filing Parties to amend its Guideline 4 proposal in order that this component of the LTTR Proposal provides sufficient flexibility to enable firm coverage

³⁶ For example, a load serving entity with an eight-year supply contract would be able to obtain LTTRs with a term of five years, but would not be able to renew those LTTRs to cover the remaining three years of the contract.

³⁷ As discussed below, the Commission accepts this proposed eligibility criterion because it meets the requirements of Guideline 5.

for power supply arrangements with initial terms of at least five years and that are not necessarily multiples of five, and allows LTTRs to be renewed when the remaining term of a power supply arrangement is less than five years. The required term of the renewal could be either five years or the remaining term of the power supply arrangement. Also, the alternative approach proposed by NEPS is one appropriate solution to be considered.

E. Guideline 5

Load-serving entities must have priority over non-load serving entities in the allocation of long-term firm transmission rights that are supported by existing transmission capacity. The transmission organization may propose reasonable limits on the amount of existing transmission capacity used to support long-term firm transmission rights.

68. Guideline 5 ensures that load serving entities have priority access to the LTTRs that they need to satisfy their native load service obligations. Although, in Order No. 681, the Commission stated that these LTTRs should have characteristics that support long-term power supply arrangements, Guideline 5 neither requires nor prohibits the consideration of power supply arrangements in determining allocation priority. Also, Guideline 5 allows the transmission organization to place reasonable limits on the amount of existing transmission capacity used to support LTTRs, and the Commission concluded in Order No. 681 that “the transmission organization and its stakeholders should be given flexibility to determine the level at which a load serving entity may nominate long-term firm transmission rights as long as that level does not fall below the ‘reasonable needs’ of the load serving entity.”³⁸ The Commission found that this level can be expressed in a variety of ways, such as minimum daily peak load or 50 percent of maximum daily peak load.

1. Proposal

69. The Filing Parties state that the LTTR Package maintains the existing FTR framework with only a few significant changes. Among the changes is the introduction of Allocated LFTRs, which will be made available to meet the reasonable needs of eligible Load Serving Entities with long term power supply arrangements and load serving obligations. Allocated LFTRs would have an initial term of five years. To be eligible to submit nominations for and be awarded Allocated LFTRs, or to renew Allocated FTR Awards, prior to the start of each LTTR allocation process, an entity must demonstrate that it satisfies the following criteria: (i) it is a Market Participant; (ii) either

³⁸ Order No. 681 at P 323.

(a) it is a congestion paying load serving entity that has and attests to a prospective Real-Time Load Obligation and a power supply commitment of at least five years in duration, or (b) it has and attests to a state-mandated default service obligation equal to or greater than five years in duration; and (iii) it meets the applicable requirements of the ISO-NE financial assurance policy.

70. Under the proposal, each entity that satisfies the eligibility criteria would be eligible to submit LTTR Nominations by specifying a megawatt quantity and receipt and delivery locations. The Filing Parties further state that the receipt location for an LTTR Nomination must be either: (i) a node where an existing listed capacity resource is located or the next adjacent node to where an existing listed capacity resource is located; or (ii) an external node. The delivery location for an LTTR Nomination must be either: (i) the load zone in which the eligible entity has the Real-Time Load Obligation (or, in the case of entities eligible to submit LTTR nominations due to a default service obligation, the load zone where the entity has a default service obligation) for the relevant LTTR Auction Period; or (ii) a node where the eligible entity's asset related demand is located for the relevant LTTR Auction Period. The aggregate megawatt amount of LTTR Nominations submitted by an eligible entity to a delivery location may not exceed: (i) the expected annual average of the market participant's hourly Real-Time Load Obligation associated with that delivery location; or (ii) the sum of the supply arrangements to that delivery location.

71. The Filing Parties state that the LTTR Package designates 25 percent of the network capability of the transmission system to be made available for Allocated LFTRs during each year of the relevant LTTR Auction Periods, less all of the previously awarded Allocated LFTRs. However, the LTTR Package makes available for LTTR allocation and auction up to 100 percent of the capability of the radial facilities to nodes where existing generators are located for each year of the relevant LTTR Auction Periods. The Filing Parties state that each radial facility to a generator node is listed in section III.7.6.5 of the LTTR Package. The Filing Parties explain that it is reasonable that all of the capacity of the applicable radial facilities to generating resources be made available for Allocated LFTRs because only a market participant with entitlements in the generator at the end of the applicable radial line would have a reasonable need for LTTRs over such radial facility. With respect to radial lines to *load*, however, the Filing Parties explain that these are treated (for purposes of Allocated LFTRs) the same as any regional network transmission facility, and are thus also subject to the 25 percent capacity reservation for Allocated LFTRs.

72. According to the Filing Parties, ISO-NE will determine the simultaneous feasibility of all outstanding Allocated LFTRs and of all LTTR Nominations in the LTTR allocation process in a manner that maximizes the total MW amount of Allocated LFTRs that may be awarded. The Filing Parties assert that when LTTR Nominations are

infeasible, awards of Allocated LFTRs will be prorated as necessary to ensure feasibility while maximizing the MW amount of feasible LTTR Nominations.

73. The Filing Parties' proposal also provides for Auctioned LFTRs. These are similar to Allocated LFTRs except that they are one-year instruments, are available to any market participant without having to meet eligibility requirements (other than creditworthiness), and are not renewable. Up to 25 percent of the system capability would be made available for Auctioned LFTRs in addition to the 25 percent set aside for Allocated LFTRs. Auctioned LFTRs are acquired by submitting a winning bid in an auction that establishes the market clearing prices for the Auctioned LFTRs for each year of the five-year auction period.

2. Comments and Protests

74. NSTAR, *et al.* object to the Filing Parties' proposed requirement that load serving entities must either own listed capacity or have a supply contract with a term of at least five years with a listed generator in order to be eligible to receive Allocated LFTRs. NSTAR, *et al.* note that the Commission chose not to impose such a requirement in its Final Rule on LTTRs.

75. NEPS state that they have not been able to confirm the accuracy of the ISO's list of radial facilities to generator nodes and notes that the inclusion of such a list will require Market Rule amendments whenever a new generator is connected to a radial transmission line. Arguing that this could cause actual practice to diverge from the tariff if amendments are not diligently made, NEPS submit that the Filing Parties should be required to modify section III.7.6.5 to clarify that the included list of radial lines to generating resources is illustrative and not exhaustive. NEPS also ask the Commission to require the Filing Parties to clarify that 100 percent of *all* radial lines to generators will be available for Allocated LFTRs,³⁹ not just those listed in section III.7.6.5.

76. In addition, NEPS are concerned that the application of the 25-percent limitation to radial lines connecting *load* to the bulk power system is too restrictive and could prevent a load serving entity from acquiring Allocated LFTRs to hedge congestion costs associated with the delivery of a substantial portion of its baseload, heavy intermediate, and renewable resources.

77. Constellation supports the Filing Parties' proposal to allocate LTTRs directly to congestion paying load serving entities that have a real-time load obligation, but opposes

³⁹ NEPS's February 20, 2007 Motion to Intervene and Protest at n.6.

their proposal also to allocate LTTRs to default service providers, which it claims are distribution companies that are nominally the default service providers but that do not have any real-time load obligation and are not exposed to congestion with respect to that load. Instead, Constellation argues, pursuant to state-mandated procedures, these default service providers are required to contract with third party suppliers, like Constellation Commodities Group, to meet the real-time load obligation. Constellation states that, in fact, over 80 percent of New England's load is procured and provided such that third-party wholesale suppliers are selected in periodic solicitations to satisfy default service obligations.⁴⁰

78. Conversely, NSTAR, *et al.* argue that the provisions concerning load serving entities with state-mandated default service requirements are too restrictive and request that the Commission require the Filing Parties to modify the LTTR tariff to allow these load serving entities to qualify for LTTRs with generation contracts of one year or greater. NSTAR, *et al.* state that default service providers have been limited to short-term purchases of default service due to most states' belief that the majority of utility load would move to a competitive supplier within a few years. However, according to NSTAR, *et al.*, the majority of residential and small commercial and industrial load have remained with their utility supplier. Eventually, say NSTAR, *et al.*, the restraints on contracting currently imposed on most utilities with default service may be lifted. NSTAR, *et al.*, argues that until then, default service customers should not be subjected to inferior rights to the transmission system solely because of these restraints on long-term contracting.

3. Answers

79. The Filing Parties disagree with NEPS's assertion that including a list of the radial facilities to generator nodes will (a) require Market Rule amendments whenever a new generator is connected to the radial line and (b) could cause actual practice to diverge from the terms of the tariff if amendments are not diligently made. NEPS request that the Filing Parties be required to modify section III.7.6.5 of the LTTR Package to clarify that the included list is illustrative and not exhaustive. The Filing Parties argue that it would be clearer and more beneficial to include a definitive list of the radial facilities to

⁴⁰ Constellation's February 20, 2007 Protest at 6 (citing <http://www.synapse-energy.com/Downloads/SynapseReport.2006-06.CSG.Energy-Efficiency-in-New-England-Forward-Capacity-Market.06-012-Exec.%20Summary.pdf> at slide 10 (indicating that the load of Public Service Company of New Hampshire, Vermont Electric Company and the Massachusetts and Connecticut municipals is about 17.5 percent of the total New England load)).

generators whose full capacities can be made available to Allocated LFTR holders. The Filing Parties state that they will commit to update the list as new generating resources are added.

80. Additionally, the Filing Parties disagree with NEPS's argument that more than 25 percent of radial lines connecting load to the New England transmission system should be available through Allocated LFTRs. The Filing Parties state:

Load obligations are settled by zone, and as described in Section III.7.6.4(d) of the proposed rules, the sink node of an Allocated LFTR must be a Load Zone. Radial lines are not required to deliver power from a generator to a Load Zone. Therefore, there is no need to utilize more than 25 percent of any facilities, other than a radial line where a generator is located.⁴¹

NEPS did not respond to these comments in their answer.

81. With regard to the proposal to allow default service providers to be eligible for Allocated LFTRs under certain limited circumstances, the Filing Parties assert that this resulted from extensive debate, compromise and consensus building among NEPOOL participants, and is consistent with the overall eligibility features for Allocated LFTRs. They therefore urge that the protests of Constellation and NSTAR, *et al.*, be denied.

82. National Grid argues that Constellation's assertions on this issue are unfounded and may represent a misunderstanding of the Filing Parties' proposal. National Grid notes that default service providers have actual loads and service obligations for which LFTRs may be beneficial. National Grid disagrees with Constellation's claim that the "inevitable consequence...[is] that third party suppliers to the default service providers...will be unable to hedge their full load serving obligations."⁴² National Grid states that the rules clearly require the Allocated LFTRs to be transferred to a load serving entity at its option when it acquires a Real-Time Load Obligation on behalf of a default service provider.

83. United Illuminating dismisses Constellation's protest on this issue. It points out that either a third-party supplier or a default service provider could be the entity that is exposed to congestion costs associated with serving specific retail load, depending on the

⁴¹ The Filing Parties' March 7, 2007 Answer at 18.

⁴² National Grid's March 6, 2007 Reply Comments at 4 (citing Constellation's February 20, 2007 Motion to Intervene and Protest at 7).

terms of the contractual supply arrangement. United Illuminating argues that the entity that contractually bears the risk of congestion costs should be allocated LTTRs to hedge that risk, and it notes that the Filing Parties' proposal provides this hedge, whether the entity bearing the risk is a third-party supplier or a default service provider.

84. Constellation contends that the Filing Parties' answer to its earlier protest does not overcome the protest. Constellation argues that the ISO-NE tariff should not undermine state restructuring initiatives, nor should it create unintended barriers to retail competition. Constellation explains that state restructuring initiatives in most of New England have designed default service to be a backstop to customers transitioning from retail competitive suppliers or who do not otherwise want to be served by a retail competitive supplier.

85. Constellation further argues with the Filing Parties' conclusion that loads would benefit from having some entity receive the Allocated LFTRs. It states that there is likelihood that allocating LTTRs to an entity with no load serving obligation (with respect to the default load) will increase costs to default load and therefore result in a detriment.

86. Constellation states that "ISO-NE and National Grid provide no basis for the Commission to conclude that default service providers, whose only role in the supply process is to pass through charges assessed by third party suppliers, will be either motivated or have sufficient expertise to take into account the long-term interests of load or the long-term prospects for congestion."⁴³ It notes the dangers in placing overlapping and potentially conflicting responsibility for default load supply into the hands of both the default service provider and the third party supplier, who inherently may have different motivations and interests.

87. Finally, Constellation argues that the Filing Parties' implication that default service providers have dedicated resources to load that require LTTRs is incorrect. Some default service providers, Constellation argues, are required to place their entire loads out for competitive supply without regard to the continued ownership of resources by the default service provider.

4. Commission Determination

88. We find that the Filing Parties' proposal meets the requirements of Guideline 5. The Commission recognizes that the proposal was carefully crafted in an effort to balance

⁴³ The Filing Parties' March 7, 2007 Answer at 6.

the need to implement LTTRs in New England in a manner that meets the requirements of Order No. 681, while substantially retaining the system of short-term FTRs and auction revenue rights that currently supports the retail access that exists throughout much of New England.

89. The predominant industry structure in the New England region today includes some form of retail access in which power supply arrangements of three to twelve months duration are typical,⁴⁴ and all states in the ISO-NE region, except Vermont, are retail access states. Consequently, according to the Filing Parties, the only market participants that have expressed significant interest in LTTRs are the load serving entities that do not operate in a retail access environment. In New England, these include public power entities and the utilities in Vermont, which typically use longer-term supply arrangements to meet their service obligations. In light of this fact, the Commission finds that the Filing Parties' proposed LTTR eligibility criteria, as well as the limitations placed on Allocated LFTR receipt and delivery point nominations, satisfy the requirements of Guideline 5 because these provisions meet the reasonable needs of the load serving entities in New England that have a demonstrated need for LTTRs. In particular, and contrary to the position of NSTAR, *et al.*, we find that the requirement that an eligible load serving entity have both a load serving obligation and a power supply commitment of at least five years duration is appropriate for these entities, given the long-term nature of their business model. The Commission notes that Guideline 5 does not require that a preference be given to load serving entities with long-term power supply arrangements, but it also does not prohibit such a preference.⁴⁵ In this case, the Commission finds that such a preference is acceptable because it helps the Filing Parties to balance the interests of market participants that prefer short-term hedging instruments with those of the load serving entities that prefer a long-term product.

⁴⁴ The Filing Parties' January 29, 2007 Compliance Filing, Attachment 3 at 17 (Marc D. Montalvo Test.).

⁴⁵ The Commission has allowed other transmission organizations to provide a similar preference for load serving entities with long-term power supply arrangements in the allocation of LTTRs. *See Midwest Independent Transmission System Operator, Inc.*, 121 FERC ¶ 61,062 at P 41 (2007); *California Independent System Operator Corporation*, 120 FERC ¶ 61,023 at P 155-158 (2007); and *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,220 at P 40-42 (2006).

5. Allocated LFTRs

90. In addition, we find that the Filing Parties' proposal to reserve 25 percent of ISO-NE's network capability for Allocated LFTRs also satisfies the requirements of Guideline 5. NEPS's testimony estimates that the maximum number of Allocated LFTRs that will be needed by public power entities and the utilities in Vermont will be about 1,500 megawatts on a system with a peak load of over 28,000 MW.⁴⁶ Thus, reserving 25 percent of network capability for Allocated LFTRs should be more than sufficient to meet the reasonable needs of those entities that are likely to request them.

6. Auctioned LFTRs

91. With regard to Auctioned LFTRs, which are one-year instruments that are available to any market participant, the Commission finds that the instruments, by themselves, do not meet the requirements of Guideline 5. This is because they are made available to all market participants without providing a priority for load serving entities over non-load serving entities, and they have other features that do not meet the Final Rule guidelines.⁴⁷ Nevertheless, we will accept the Filing Parties' proposal for Auctioned LFTRs because we believe that they will provide a useful complement to the other short- and long-term hedging products that are available to market participants under the existing and proposed market design.

7. Radial Lines

92. With regard to radial lines, the proposal would make available for Allocated LFTRs 100 percent of the capability of the radial facilities to nodes where existing generators are located. The Commission finds this proposal to be reasonable. Radial lines connecting generators to the looped transmission grid are usually sized to carry the generator's maximum output capacity. Thus, the Commission agrees with the Filing Parties that if, for example, only 25 percent of a radial facility's capacity was available for Allocated LFTRs, a load serving entity would not be able to obtain Allocated LFTRs in an amount that reflects more than a 25 percent entitlement in a generation resource that

⁴⁶ See NEPS's February 20, 2007 Protest, Ex. WHD-1 at 10 (William H. Dunn, Jr. Test.). The 1500 megawatts represents about 50 percent of the load serving entities' peak demand, reflecting the capacity of base load, heavy intermediate, and renewable resources.

⁴⁷ For example, they do not meet the requirements of Guideline 7 because they require the purchaser to submit a winning bid in an LTTR auction.

is located on a radial facility. As the Filing Parties note, such a limitation would unnecessarily restrict a load serving entity's ability to obtain Allocated LFTRs to meet its reasonable needs, and would not contribute to an efficient market design.⁴⁸

93. The Filing Parties' proposal also provides that each radial facility to a generator node would be listed in section III.7.6.5 of the ISO-NE tariff. NEPS argue that they have not been able to confirm the accuracy of the list of radial facilities to generator nodes. As a result, NEPS contends that the Filing Parties should be required to modify section III.7.6.5 to clarify that the included list is illustrative and not exhaustive. However, the Commission agrees with the Filing Parties that it would be beneficial to provide market participants with a definitive list of the radial facilities to generators whose full capacities can be made available to holders of Allocated LFTRs. In its answer, ISO-NE commits to update the radial line list as new generating resources are added. Accordingly, we will require ISO-NE to post on its OASIS website, amendments reflecting the addition of a new generating resource within 30 days of adding a new generator to the list in section III.7.6.5 of the ISO-NE tariff.

94. With respect to radial lines connecting load to the ISO-NE transmission system, the Filing Parties' proposal treats these lines the same as regional network transmission facilities. That is, for purposes of LTTR allocations and auctions, only 25 percent of the capacity of these lines is reserved for Allocated LFTRs. Although NEPS argue that this percentage should be greater, we disagree. With respect to the amount of transmission capability made available over radial lines connected to load, we find the proposed 25 percent limitation reasonable given the way the Filing Parties propose to define the sources and sinks associated with Allocated LFTRs. As the Filing Parties note, the proposal provides that the sink node of an Allocated LFTR must be a load zone, and radial lines (other than those where a generator is located) are not required to deliver power to a load zone. Thus, there is no need to set aside more than 25 percent of the capacity of radial lines to load.

8. Default Service Providers

95. We also find reasonable the Filing Parties' proposal to provide a limited allowance for default service providers to receive Allocated LFTRs. Under the proposal, a default service provider may receive Allocated LFTRs if: (1) there is no congestion paying load serving entity with a prospective five-year load serving obligation for its load; and (2) the default service provider attests to a minimum five-year power supply commitment.

⁴⁸ The Filing Parties' January 29, 2007 Compliance Filing, Attachment 3 at 17 (Marc D. Montalvo Test.).

96. The Filing Parties explain that the default service provider eligibility standard proposal is the product of extensive stakeholder deliberation. We note that NSTAR, *et al.*, did not join in the consensus developed through the stakeholder process. According to the Filing Parties, during the stakeholder process, proponents of the eligibility standard established, among other things, that: (i) default service providers have a state law mandated obligation to service actual load within their service territory on an indefinitely long-term basis; (ii) there will be instances when there will not be a competitive supplier for that load that is eligible for Allocated LFTRs; and (iii) the minimum five-year power supply commitment criterion will also appropriately limit default service providers to acquiring Allocated LFTRs under the same types of limiting conditions (i.e., long-term load serving obligation and power supply commitment) as any other load serving entity eligible to receive Allocated LFTRs.⁴⁹

97. The Filing Parties acknowledge that the requirements that the load serving entity attest to a long-term load obligation and supply entitlement are more stringent than the requirements spelled out by the Commission in the Final Rule. However, they note that the requirements reflect a strong consensus developed through the stakeholder process, including the public power sector, that Allocated LFTRs should be limited as much as possible to entities with long-term commitments.⁵⁰

98. The Commission recognizes that some market participants, such as NSTAR, *et al.*, are limited by state mandates from entering into five-year commitments to supply power to meet their default service load obligations. However, under the alternative proposed by NSTAR, *et al.*, default service providers would be allowed to receive Allocated LFTRs with a term as short as one year. The Commission finds that such preferential treatment vis-à-vis other load serving entities would be unduly discriminatory. Moreover, default service providers and load serving entities with power supply commitments of less than five years have other hedging options available. For example, a market participant like NSTAR may obtain Auctioned LFTRs, as well as short-term FTRs that are available in the annual and monthly auctions. Additionally, ISO-NE's Market Rules provide that Allocated LFTRs can be transferred either: (i) through an FTR auction, as mentioned; (ii) through the FTR secondary trading market; or (iii) to a

⁴⁹ The Filing Parties' March 7, 2007 Answer at 20-21.

⁵⁰ The Filing Parties' January 29, 2007 Compliance Filing, Attachment 3 at 21 (Marc D. Montalvo Test.).

congestion paying load serving entity that acquires the load serving obligation associated with the awarded Allocated LFTR.⁵¹

99. We find unpersuasive Constellation's allegation that no benefit exists from awarding Allocated LFTRs to default service providers and that such an expansion of eligibility would lead those entities to speculate on congestion. Given that awarding of Allocated LFTRs to default service providers is limited to the factual circumstances where there is no congestion paying load serving entity with a prospective five-year load-serving obligation for its load, and where the default service attests to a minimum five-year power supply commitment, we find that these requirements are sufficient to prevent abuse.

100. Additionally, we expect ISO-NE's market monitor will evaluate activities in the allocation process for signs of abuse. Further, we fail to see how expanding access to energy and capacity to default service providers (i.e., entities with a state mandated default service obligation) is inconsistent with the Final Rule's Guideline 5 requirement to ensure that load serving entities are awarded sufficient LTTRs to meet their reasonable needs. Indeed, the Commission finds that customers would benefit from having a default service provider receive Allocated LFTRs in the event there is no competitive supplier to serve their load. Therefore, the Commission denies Constellation's protest and accepts the limited allowance for default service providers to be eligible for Allocated LFTRs.

F. Guideline 6

[An LTTR] held by a [Load Serving Entity] to support a service obligation should be re-assignable to another entity that acquires that service obligation.

101. The Commission stated that Guideline 6 is intended to comply with section 217(b)(3)(A) of the FPA, which requires transmission rights to be transferable to successors ensuring that the rights follow migrating load. Noting that rules governing the reassignment of firm transmission rights that follow migrating load already exist, Order No. 681 provides transmission organizations and stakeholders flexibility to determine the specific rules. In Order No. 681, the Commission states that this reassignment issue relates to transmission rights that are allocated preferentially to a load serving entity in accordance with Guideline 5 and not to rights acquired by a load serving

⁵¹ ISO-NE's Market Rule, Section III. 7.6.3 "Term of Allocated [LTTRs] LTTRs".

entity via auction or direct assignment of funding an upgrade.⁵² Guideline 6 also allows for the trading of transmission rights.

1. Proposal

a. Transfer of Allocated LFTRs

102. Under the LTTR Proposal, an Allocated LFTR must be held for the duration of its term, unless it is: (i) sold in an FTR Auction; (ii) sold in the FTR secondary trading market; or (iii) transferred to a congestion paying load serving entity that acquires the load-serving obligation associated with the Allocated LFTR.

103. A congestion paying load serving entity that acquires a Real-Time Load Obligation due to the transfer of a load-serving obligation may opt to accept a pro rata share of the associated Allocated LFTRs held by the original congestion paying load serving entity for the remainder of the term of the Allocated LFTRs where the Allocated LFTRs sink in the associated Load Zone or at the associated Node for an Asset Related Demand. The Filing Parties state that the transfer is required to comply with the provisions applicable to the secondary trading of other FTRs.

104. The Filing Parties further explain that the renewal right for the portion of an Allocated LFTR will also be transferred to the new congestion paying load serving entity, subject to continuing eligibility. However, notwithstanding the foregoing, the renewal right for an Allocated LFTR will expire if the eligible entity sells the Allocated LFTR in whole or in part in an FTR Auction or on the secondary market.

b. Comments and Protests

105. No party filed comments, protests, or interventions with respect to the Guideline 6 proposal.

c. Commission Determination

106. The Commission finds that the proposal meets the requirements of Guideline 6 by providing for reassignment of Allocated LFTRs to follow migrating load. Consistent with Order No. 681, the Allocated LFTRs are tradable, and are subject to recall if the load migrates. Additionally, the Filing Parties state that ISO-NE will publish information that will be available to all Market Participants, which should enable a load serving entity that acquires load to determine if the surrendering load serving entity has Allocated

⁵² Order No. 681 at P 357.

LFTRs available for potential transfer.⁵³ We note that the Filing Parties did not specify where this information will be published. We therefore direct the Filing Parties to make this information available on OASIS. ISO-NE's tariff further provides that renewal rights for the transferred Allocated LFTRs will also be transferred and may be exercised by the receiving load serving entity at the renewal date provided that the receiving load serving entity meets the eligibility requirements.⁵⁴

107. For these reasons, we find that the proposal satisfies the requirements of Guideline 6 by permitting reassignment of Allocated LFTRs to another entity that acquires the associated service obligation.

G. Guideline 7

The initial allocation of the [LTTR] shall not require recipients to participate in an auction.

108. Guideline 7 does not preclude a transmission organization from using an auction to allocate long-term firm transmission rights; rather, it only precludes requiring a load serving entity to submit a winning bid in an auction in order to acquire an LTTR. The Final Rule described some methods for allocating LTTRs that comply with Guideline 7.

1. Proposal

109. As part of the LTTR Proposal, both Allocated LFTRs and Auctioned LFTRs would be made available through an auction process. Separate auctions would be held for LTTRs and short-term FTRs. LTTR auctions would take place on an annual basis, while short-term FTR auctions would be conducted on a monthly basis following completion of the annual auctions. Auctioned LFTRs would have one-year terms and would be made available in a series of consecutive one-year terms for a period of up to five years. Buyers and sellers of Auctioned LFTRs would pay or be paid the market-clearing price for the respective points of receipt and delivery on a monthly basis in the effective year of the Auctioned LFTR. Short-term FTRs would continue to have a term of one month.

⁵³ The Filing Parties' January 29, 2007 Compliance Filing, Attachment 3 at 15 (Marc D. Montalvo Test.).

⁵⁴ ISO-NE's Transmission, Markets, & Services Tariff, Section III.7.6.11 "Renewal of Allocated LFTR Awards."

110. According to the Filing Parties, 25 percent of the network capability of the transmission system would be reserved for Allocated LFTRs during each LTTR Auction Period. For the first year of an LTTR Auction Period, 50 percent of the network capability would be made available in the LTTR auction, followed by smaller percentages of network capability in years two through five of 20 percent, 15 percent, 10 percent and five percent, respectively. The residual network capability following the completion of each LTTR auction would be made available in the monthly short-term FTR auctions.

111. For the first year of each LTTR Auction Period, separate auctions would be conducted for both on-peak and off-peak LTTRs. LTTRs offered in the subsequent LTTR auctions would be 24-hour rights that include both on-peak and off-peak periods. Both Auctioned LTTRs and Allocated LFTRs may be reconfigured into monthly on-peak short-term FTRs and monthly off-peak short-term FTRs for resale in the monthly short-term FTR auctions.

112. Under the proposal, each entity that satisfies the applicable eligibility criteria will be eligible to submit LFTR Nominations. According to the Filing Parties, ISO-NE will determine the simultaneous feasibility of all outstanding Allocated LFTRs and of all LFTR Nominations in the LFTR allocation process in a manner that maximizes the total MW amount of Allocated LFTRs that may be awarded. When LFTR Nominations are infeasible, awards of Allocated LFTRs will be prorated as necessary to ensure feasibility while maximizing the MW amount of feasible LFTR Nominations. Prior to the LFTR auction for the relevant LFTR Auction Period, ISO-NE will notify each of the requesting eligible entities of the MW quantity and receipt and delivery points for each feasible LFTR Nomination. The Filing Parties also state that the MW amount of a feasible LFTR Nomination is required to be the amount for each year of the five-year term of the relevant LFTR Auction Period, and the feasible LFTR Nominations will be binding upon each eligible requesting entity.

113. The Filing Parties explain that ISO-NE will determine a market value for each effective year of the five-year term of a feasible LFTR Nomination. ISO-NE will preload all feasible LFTR Nominations into the LFTR auction for each year of the relevant LFTR Auction Period. The market value for Allocated LFTRs will be established by the market clearing price for the points of receipt and delivery, as determined in the LFTR auction conducted in the year that the LFTR Nomination was made, for the effective year of the Allocated LFTR to be awarded. In addition, both Allocated LFTRs and Auctioned LFTRs may be sold into an FTR auction by the applicable FTR holder and may also be sold on the secondary market.

114. The Filing Parties claim that this market value determination serves two purposes. First, it avoids the problem of having other Auction Revenue Right Holders (the other

load serving entities that have also funded the embedded costs of the transmission system through the payment of Regional Network Service rates) subsidize the entity receiving Allocated LFTRs. The Filing Parties state that this method allows for an appropriate determination of the amount of Auction Revenue Right compensation that the requesting entity will have to forego in order to compensate all other congestion paying load serving entities for the long-term rights received under the allocation process. The Filing Parties explain that any shortfall between the market value of the Allocated LFTR (as determined by the LFTR Auction) and the amount of Auction Revenue Right funds that the acquiring entity has in its own account must be paid in cash by the acquiring entity into the fund of collected Auction Revenue Right revenue. Thus, according to the Filing Parties, other Auction Revenue Right Holders will not be paying for a benefit they have not received, but which instead has been received by the entity acquiring Allocated LFTRs. The Allocated LFTR MW amount will be fixed over the term and the amount paid by the congestion paying load serving entities (i.e., the amount of foregone Auction Revenue Right revenues) in each year will be equal to the market values for each year of the five-year term of the Allocated LFTRs awarded to such entity. The Filing Parties also assert that the valuation process for Allocated LFTRs will provide a clear market value for use of the applicable location on the transmission system on a “congestion-hedged basis.”

115. With respect to Guideline 7, the Filing Parties contend that eligible entities would not be required to submit a bid of any kind in an auction in order to obtain Allocated LFTRs, and that the LTTR auction results would not determine whether an eligible entity receives an Allocated LFTR. Rather, they claim that the LTTR auction results would simply be used to determine the appropriate market value of the right that the eligible entities are acquiring so that they can pay for the benefit they are receiving. The Filing Parties argue that allowing any class of market participants to have rights to particular congested paths at values either above or below the market-determined price would create cross-subsidies and incentives for inefficient decisions.

2. Comments and Protests

116. DC Energy states that the Filing Parties’ proposal is superior to other alternatives discussed in the stakeholder process and is compatible with the existing FTR markets. DC Energy contends that the proposal allows load serving entities to acquire FTRs without participating in the FTR auctions while the auctions determine a fair market value for each path in the system. DC Energy asserts that the proposal is a natural extension to the existing short-term transmission hedge market.

117. NEPS assert that, under the proposal, a load serving entity can be assured of obtaining an Allocated LFTR only if it is willing to commit in advance to pay as much as any other market participant is willing to pay. They argue that exposing a load serving

entity to such risks is the very essence of requiring participation in an auction. They contend that the proposal would ensure that load serving entities will be able to obtain Allocated LFTRs only if they are willing to pay auction-based prices that are determined after their binding nominations of Allocated LFTRs are submitted, and those prices may dramatically exceed the load serving entities' allocation of Auction Revenue Rights. Thus, they argue, the combination of auction pricing and New England's zonally socialized Auction Revenue Right structure would fail to ensure that New England load serving entities are able to obtain LTTRs without participating in an auction. NEPS argue that the Filing Parties' proposal is economically indistinguishable from requiring load serving entities to obtain LTTRs as auction price-takers in the first instance, and is virtually no different from what load serving entities can accomplish today by participating in successive annual auctions as price-takers.

118. NEPS state that, in the stakeholder discussions, it proposed that recipients of Allocated LFTRs be required to "pay" for the rights by forgoing a predictable percentage of their Auction Revenue Right revenues. NEPS argue that the simplest way to implement this approach would be to reduce the Allocated LFTR holder's peak demand, for Auction Revenue Right revenue allocation calculation purposes, by the MW quantity of the Allocated LFTR. This, NEPS assert, would offer a much more stable and predictable base from which load serving entities can make long-term power supply decisions.

119. NEPS state that, in response to opposition by ISO-NE and other market participants with short-term business models, it offered some variations of its original proposal to address their concerns. NEPS assert that these variations would result in an increase in the amount to be paid by Allocated LFTR holders, while still maintaining the predictability needed in order to support long-term investments. Accordingly, NEPS proposed changing the Auction Revenue Right allocation in New England from a peak demand (MW) basis to an energy (MWh) basis, and requiring the holder of an Allocated LFTR to forgo the Auction Revenue Right revenue associated with a 100 percent load factor LTTR.

120. NEPS explain that its proposal provides knowledge up front as to the percentage of its Auction Revenue Rights that the load serving entity would have to forfeit to receive the Allocated LFTRs, which is critical to allow load serving entities to plan and to hedge the congestion-related risks of their resources on a portfolio basis. NEPS argue that ISO-NE's proposal would prevent load serving entities from planning and seeking to hedge their congestion risks on a portfolio basis, because the percentage of Auction Revenue Right revenues to be forgone (and, in certain circumstances, the additional cash required) to obtain a given Allocated LFTR would not be known until after the auction is conducted, and even after the auction results are known, the percentages would be fixed for only a five-year period.

3. Answers

121. The Filing Parties argue that their proposal is fully compliant with the LTTR Orders and maintains market efficiency by establishing a fair, market-based valuation of such rights. They contend that NEPS misinterpret the LTTR Guidelines and wrongly assume that the LTTR Guidelines prohibit the payment of a market value for the allocation of LTTRs. Furthermore, the Filing Parties argue that NEPS's proposed alternative pricing methodology would require subsidization from other market participants that could potentially distort competitive market results and create inequities.

122. The Filing Parties contend that neither the LTTR Guidelines, the LTTR Orders, nor the EAct of 2005 place any prohibition on the use of an auction to determine the market value of LTTRs. In support, the Filing Parties refer to Order No. 681, in which the Commission explained that Guideline 7 "only precludes requiring a load serving entity to submit a winning bid in an auction in order to acquire long-term firm transmission rights."⁵⁵ The Filing Parties argue that the primary purpose of the LTTR Guidelines with respect to this issue is to ensure that load serving entities with long-term load-serving obligations receive priority in acquiring long-term transmission rights, and they assert that their proposal satisfies this objective.

123. The Filing Parties disagree with NEPS's assertion that the combination of auction-based valuation and New England's socialized Auction Revenue Right structure fails to ensure that load serving entities will be able to obtain LTTRs without participating in an auction. The Filing Parties argue that the current Auction Revenue Right structure has no applicability to the eligibility requirements for obtaining allocated LTTRs. Further, they state that the crediting of Auction Revenue Right revenues against payment obligations for Allocated LFTRs will occur following the allocation of LTTRs and is not dependent on the Auction Revenue Right revenue allocation process.

124. The Filing Parties assert that allowing rights to transmission paths at prices above or below the market-value price will create subsidies for Allocated LFTR recipients and incentives for inefficient decisions. They claim that the methodology advocated by NEPS will do just that. Because Auction Revenue Rights are zonal in nature -- and thus reflect the aggregate value of all transmission paths -- the Filing Parties predict that using NEPS's methodology for allocating LTTRs will result in undervaluation of the LTTRs, effectively requiring other market participants to make up the difference. The Filing Parties also argue that any methodology that allows market participants to pay less than the market value for transmission rights will adversely affect investment decisions.

⁵⁵ The Filing Parties' March 7, 2007 Answer at 9 (citing Order No. 681 at P 385).

125. Contrary to NEPS's assertions, the Filing Parties argue that the Commission has clearly indicated that several different approaches may satisfy Guideline 7, depending on the existing market designs in the different Regional Transmission Organizations. The Filing Parties point out that the New England Auction Revenue Right and transmission cost allocation mechanisms are not based on a source, sink and fixed quantity paradigm and are not linked to any concept of historical use, as they are in PJM. Therefore, the Filing Parties question NEPS's assertion that the only permissible use of an auction with respect to the allocation of LTTRs is in the PJM market design, under which Auction Revenue Rights may be converted into firm transmission rights that correspond to the sources and sinks of their respective Auction Revenue Rights.

126. NEPS complain that the methodology proposed by the Filing Parties forces market participants to become "price takers," but the Filing Parties assert the LTTR guidelines do not require Allocated LFTRs to be priced in advance of their allocation. The Filing Parties assume that NEPS' primary concern in this matter is that market participants will not be able to learn the price and reject the Allocated LFTR if they conclude that the price is too high. The Filing Parties state: "The LTTR Package does not and cannot provide this flexibility without creating the possibility that other FTRs would be rendered infeasible, thereby harming other Market Participants."⁵⁶ The Filing Parties further state that "price certainty" as used in Order No. 681 actually refers only to the full-funding requirement of Guideline 2, and this fact discredits NEPS's argument for price certainty with regard to Guideline 7 and their objection to auction-based pricing that the Filing Parties propose.

127. The Filing Parties also disagree with NEPS's assertion that the auction-based pricing methodology does not work as a generation-siting incentive for small public power load serving entities with geographically dispersed load serving obligations. Project sponsors, the Filing Parties point out, will be eligible to receive incremental Auction Revenue Rights based on the investment. Additionally, the Filing Parties feel that the market rules should provide incentives for market participants to develop resources in the most efficient and cost effective locations and should not subsidize or promote inefficient decisions to site facilities in costly locations.

128. The Filing Parties urge the Commission to reject NEPS's claim that the use of auctions to value LTTRs will encourage the exercise of market power, gaming or market manipulation. The Filing Parties argue that there is no discernable economic rationale for a purchaser of FTRs at an auction to bid up the value of an FTR path in order to harm a

⁵⁶ The Filing Parties' March 7, 2007 Answer at 12.

recipient of Allocated LFTRs. NEPS's argument exposes a misunderstanding of the design of the auctions, the Filing Parties claim, since clearing prices are not set by the highest bid, but rather by the bid value of the marginal FTRs.

129. NEPS responded to the Filing Parties' Answer reasserting their objection to the pricing of Allocated LFTRs on the basis of auctions to be held later. This approach, they argue, forces a load serving entity that seeks an Allocated LFTR to be either an auction price-taker or to participate actively in an auction. According to NEPS, this is the central flaw in the Filing Parties' proposal -- that a load serving entity is required to take part in an auction, either actively or passively, in order to obtain long-term transmission rights, which is expressly contradictory to the requirements of Order Nos. 681 and 681-A. NEPS argue that the Filing Parties' proposed structure simply trades one type of price risk for another, and thus fails to provide "price certainty."

130. NEPS state that they are not advocating for the adoption of PJM's Auction Revenue Right allocation mechanism, as the Filing Parties imply. Instead, NEPS state that they are making the point that the auction-based pricing mechanism for LTTRs combined with New England's zonally-socialized Auction Revenue Right approach is not just and reasonable, and a non-auction-based mechanism for valuing Allocated LFTRs must be established. Further, NEPS assert that the Filing Parties did not identify any valid flaws in NEPS's alternative pricing proposal. NEPS disagree with the Filing Parties' characterization of the alternative proposal as "an arbitrary, administrative valuation of the LTTRs."⁵⁷

131. NEPS also disagree with the Filing Parties' argument that NEPS's alternative proposal would effectively force subsidization from other market participants. NEPS state that, under their proposal, there is no entitlement that Auction Revenue Right revenues will reach a specific dollar value or that there will accordingly be a difference to make up if the Auction Revenue Right revenues are less than that dollar value.

132. With regard to the issue of establishing proper pricing incentives for the construction of new facilities, NEPS contend that this issue is irrelevant to the current discussion because many entities, including NEPS, are transmission-dependent systems that cannot respond to such incentives.

4. Commission Determination

133. With respect to Guideline 7, the Commission agrees with NEPS that the Filing

⁵⁷ NEPS's March 22, 2007 Answer at 6.

Parties' proposal does not satisfy the guideline because it effectively requires the load serving entity to submit a winning bid in an auction to obtain LTTRs and, as a result, exposes the load serving entity to unacceptable auction price risk. Accordingly, the Commission will reject the proposal and require the Filing Parties to submit a new proposal, revised in accordance with the guidance presented below.

134. In Order No. 681, the Commission recognized that in some organized markets, hedging specific generation resources with financial transmission rights is not the prevailing approach.⁵⁸ This is particularly true in regions, such as New England, that have adopted a business model based on substantial divestiture of generation and broad implementation of retail choice policies. The Commission stated that it did not intend for the LTTR Orders to prevent these regions from continuing to use such a business model, if they choose to do so.

135. Nevertheless, in Order No. 681, the Commission found that if ISO-NE's allocation process was as described in that proceeding by NEPS, and did not permit a direct conversion of auction revenue rights into corresponding firm transmission rights, it would not meet the requirements of Guideline 7 for allocating long-term firm transmission rights and would have to be modified.⁵⁹ Given that the Filing Parties' proposal largely retains the core features of the existing mechanism for allocating FTRs -- a combination of auction-based pricing and zonally socialized Auction Revenue Rights -- it is inconsistent with Order No. 681's requirement to provide load serving entities with the ability to obtain point-to-point long-term transmission rights that will hedge particular long-term power supply arrangements without having to purchase the rights in an auction.⁶⁰

136. With respect to Guideline 7, the Filing Parties assert that eligible entities will not be required to submit a bid of any kind in an auction in order to obtain Allocated LFTRs, and that the LTTR auction results will not determine whether an eligible entity receives an Allocated LFTR. Rather, they claim that the LTTR auction results will simply be used to determine the appropriate market value of the right that the eligible entities are acquiring so that they can pay for the benefit they are receiving.

⁵⁸ Order No. 681 at P 119.

⁵⁹ *Id.* P 392.

⁶⁰ *Id.* P 119.

137. However, NEPS claim that the Filing Parties' proposal would, in fact, require load serving entities that wish to acquire LTTRs to participate in an auction and, therefore, does not meet the requirements of Guideline 7. The Commission agrees. The purpose of Guideline 7 is to ensure that load serving entities can obtain LTTRs without being exposed to the price risk inherent in a process that makes either the award of LTTRs or the price that the load serving entity must pay for the awarded LTTRs subject to the outcome of an auction where the results are not known to the load serving entity at the time it makes a binding commitment to acquire the LTTRs. The Commission determined in the LTTR Orders that protecting load serving entities from this price risk is necessary to facilitate the load serving entities' planning and financing of large generation facilities and other long-term power supply arrangements, and thereby meet the requirements of EAct 2005.⁶¹

138. The Filing Parties support their approach with language from P 385 of Order No. 681, which states that "[Guideline 7] does not preclude a transmission organization from using an auction to allocate long-term firm transmission rights; it only precludes requiring a load serving entity to submit a winning bid in an auction in order to acquire long-term firm transmission rights." However, their reliance on this language is misplaced because, under their proposal, the load serving entity must participate in the auction as a "price-taker." The Filing Parties argue that, by participating as a price-taker, the load serving entity does not have to submit a bid of any kind and, therefore, the proposal satisfies Guideline 7. However, in reality, participating in the auction as a price-taker is the same as submitting a bid with no upper bound. Under the Filing Parties' proposal, participation as a price-taker is the mechanism that is used to ensure that the auction will identify the load serving entity as the winning bidder for the LTTRs that the load serving entity commits to acquire. In other words, under the Filing Parties' proposal, participation as a price-taker in the auction ensures that the load serving entity will be a winning bidder in the auction. This exposes the load serving entity to virtually unlimited price-risk and places the proposal in direct violation of Guideline 7.

139. The Filing Parties further argue that allowing any class of market participants to have rights to particular congested paths at values either above or below the market-determined price would create cross-subsidies and incentives for inefficient decisions. Although we disagree with these arguments, we need not address them here. These and similar arguments were considered and rejected in Order No. 681.⁶² Thus, raising them here constitutes a collateral attack on the Final Rule.

⁶¹ See, e.g., *Id.* P 388-389.

⁶² Order No. 681 at P 385-390.

140. Given that the Filing Parties' proposal would require load serving entities that seek LTTRs to participate in an auction in a manner that does not satisfy the fundamental requirements of Guideline 7, the Commission will reject the proposal and require the Filing Parties to work with stakeholders to develop a revised proposal that meets these requirements. To assist the Filing Parties and stakeholders in their deliberations, the Commission provides guidance, as discussed below. However, in so doing we emphasize that it is not our intent to limit the options that may be considered, or to require the market participants in New England to abandon their preferred business model. Rather, we describe below two optional alternative approaches to LTTR allocation which, if implemented correctly, would allow load serving entities to obtain LTTRs without being exposed to unacceptable *post hoc* auction price risk, while allowing other market participants to continue to operate under the current business model.

141. The first approach would be to offer LTTRs with a fixed price, known in advance for the full term of the LTTRs, to load serving entities that meet eligibility requirements. The fixed price, which should be specific as to the source and sink of the LTTRs, could be based on the results of one or more recent auctions, recently observed congestion costs, or other readily quantifiable measure of the value of the LTTRs. If the Filing Parties propose to include in the price an element that is not readily quantifiable, such as an inflation adjustment, an option premium or other markup, they will bear the burden of fully supporting this pricing feature in their filing. The Commission notes that the fixed price approach need not provide for an allocation of Auction Revenue Rights whose revenues are guaranteed to offset the fixed price. In this respect, the approach would be consistent with ISO-NE's current market design and, thus, does not eliminate all price risk.⁶³ It does, however, place an upper bound on the load serving entity's cost exposure that is known and quantified in advance. The load serving entity knows that its LTTR acquisition cost cannot exceed the fixed price over the term of the LTTRs, and that the revenues generated by the load serving entity's share of Auction Revenue Rights can only serve to reduce the net price that it ultimately pays. Thus, while the risk of a price increase is eliminated, the "risk" or uncertainty of the extent of a price reduction remains.

142. A second possible approach would be to make LTTRs available to eligible load serving entities, with the price of the LTTRs determined through annual auctions, and to provide the load serving entities with an allocation of annual Auction Revenue Rights sufficient to offset the price of the LTTRs as determined in the auctions. This approach would be similar to that currently used by PJM, but would be applied to only the subset of load serving entities that request and receive Allocated LFTRs. The Commission

⁶³ Indeed, a benefit of this approach is that it does not require a change in the existing rules for allocating Auction Revenue Rights.

recognizes that there may be difficulties in implementing this approach in New England, as noted by the Filing Parties in their pleadings. However, as discussed below, the Commission believes that these difficulties can be overcome.

143. The first difficulty is that, other things being equal, any change in Auction Revenue Right allocations will result in some cost shifting among load serving entities and other market participants. This likely will be a point of contention among stakeholders as the new proposal is being developed. Although innovative design features can be incorporated to minimize cost shifting, in the end, some stakeholders may be required to assume a greater share of costs.

144. A second difficulty is that, given that load serving entities will not be required to compete in an auction in order to receive LTTRs, a method must be found to fairly allocate scarce transmission capacity between load serving entities seeking LTTRs and market participants that prefer short-term FTRs. Other transmission organizations have solved this problem by allocating Auction Revenue Rights based on the location of load serving entities' actual resources and loads during a recent historical reference period. However, as the Filing Parties note, due to the significant amount of retail access, allocation mechanisms in New England are not now linked to any concept of historical use of the transmission system. The Commission recognizes that this presents at least two implementation problems.

145. First, allocation criteria for LTTRs must be developed that do not depend on historical power supply relationships. A possible option for New England would be to use the eligibility criteria that the Filing Parties propose to apply to load serving entities that seek LTTRs. Among other things, these criteria include a requirement that the load serving entity is either (1) a congestion paying load serving entity that has a prospective Real-Time Load Obligation and a power supply commitment of at least five years in duration, or (2) a load serving entity that has a state-mandated default service obligation. Power supply commitments must be in the form of ownership of, or a contract with, an existing capacity resource and must be specific as to points of receipt and delivery. The Commission believes that such specific criteria effectively limit the availability of LTTRs to the small subset of load serving entities in New England that have a business model of long-term load serving and supply commitments, and therefore provide a suitable alternative to historical power supply relationships as a basis for allocating scarce transmission rights to market participants.

146. Second, implementing a new Auction Revenue Right allocation rule that would apply to *all* load serving entities would likely require a costly and time consuming redesign of market rules and associated software, and almost certainly would lead to contentious stakeholder debate. However, these problems can be greatly minimized by limiting the application of the new Auction Revenue Right allocation rules to only those

load serving entities that choose to become LTTR holders which, as noted above, will likely be only a small subset of load serving entities. In principle, this would require that Auction Revenue Rights be allocated first to LTTR holders at a level that reflects the price of the LTTRs. The remaining Auction Revenue Rights would then be allocated to other market participants according to the rules that are currently in place. Limiting the application of the new rules in this way would greatly simplify the redesign of existing rules and software systems to accommodate LTTRs.⁶⁴

147. The Commission emphasizes that it is presenting these two approaches only as options that the Filing Parties and stakeholders may wish to consider in the process of developing a revised proposal. Indeed, the innovative approaches described by NEPS may provide an additional basis on which to redesign the proposal. However the Filing Parties choose to proceed, the Commission will require a revised proposal to be filed within 90 days of the date of this order.

H. Transmission Planning and Expansion

148. In Order No. 681, the Commission required each transmission organization to implement a planning process that would accommodate the long-term rights that are awarded by ensuring that they remain feasible over their entire terms. The Commission found that this is essential in order to meet the full funding requirement of Guideline 2.⁶⁵ Additionally, in Order No. 681, the Commission required that each transmission organization make its planning and expansion practices and procedures publicly available.⁶⁶

⁶⁴ Another possible approach would be to allocate LTTRs *directly* to Load Serving Entities, based on the Load Serving Entities' historical resources and loads, and thereby eliminate the allocation of Auction Revenue Rights to LTTR holders. This would be a logical approach for a transmission organization that had not already implemented Auction Revenue Rights. However, Auction Revenue Rights already exist in New England, and a reallocation of Auction Revenue Rights to accommodate LTTRs would likely be more consistent with the existing market design than eliminating Auction Revenue Right allocation altogether for a subset of Load Serving Entities.

⁶⁵ Order No. 681 at P 453.

⁶⁶ *Id.* P 454.

1. Proposal

149. The LTTR Package modifies the transmission planning and expansion procedures set forth in ISO-NE's Tariff. In order to facilitate the implementation of LTTRs in New England, section II.48 Regional System Planning process of the ISO-NE Tariff has been revised to incorporate the need to preserve the ongoing feasibility of LTTRs that have been allocated or auctioned. Additionally, section II. 48 of the ISO-NE Tariff has been revised to provide that the Regional System Plan baseline will account for upgrades or expansions funded by transmission customers (such as Elective Transmission Upgrades) to support their long-term power supply arrangements.

150. The Filing Parties explain that the LTTR Package includes revisions to section II.46 (System Planning, Additions And Modifications) of the ISO-NE Tariff, which are intended to provide that where an upgrade to preserve ongoing feasibility of a long-term firm transmission right is identified pursuant to the Regional System Planning process, the cost allocation of such an upgrade will be treated as a Regional Benefit Upgrade or a Local Benefit Upgrade in accordance with the existing Schedule 12 (Transmission Cost Allocation On And After January 1, 2004), Schedule 12C (Determination of Localized Costs On And After January 1, 2004) and Attachment N (Procedures For Regional System Plan Upgrades) of the ISO-NE Tariff.

2. Comments

151. No party filed comments, protests, or interventions with respect to the Filing Parties' proposal on ISO-NE's Regional System Planning process.

3. Commission Determination

152. We find that ISO-NE's Regional System Planning process meets the requirements of Order No. 681. The Filing Parties propose to revise the Regional System Planning process to include LTTR feasibility needs in the publication of its needs assessment on ISO-NE's website.⁶⁷ In addition, the Filing Parties propose to modify ISO-NE's Tariff to treat LTTR Related Upgrades as regional or local benefit in accordance with its cost allocation procedures.⁶⁸ Therefore, we find that the rules contained in the Regional System Plan process of the ISO-NE Tariff, Manuals, Participants Agreement and other

⁶⁷ ISO-NE, Transmission, Markets, & Services Tariff, Section II. 48 "Regional System Planning Process" (e) "Publication of Needs Assessment and Response Thereto".

⁶⁸ *Id.* at Section II. 46 "System Planning, Additions And Modifications".

relevant documents that address ISO-NE's planning process are sufficiently public and satisfy Order No. 681's requirements.⁶⁹

I. Transmission Outage Information Disclosure

1. Proposal

153. The LTTR proposal does not include provisions modifying ISO-NE's existing Information Policy. We note that the Commission has previously approved ISO-NE's Information Policy, which establishes procedures regarding the appropriate disclosure of information received, created and distributed in connection with the operation of and participation in the markets administered by ISO-NE.⁷⁰ The Information Policy permits stakeholder committees, ISO-NE, and Governance Participants to share information with an understanding of how this information will be used and appropriate confidentiality maintained. ISO-NE's Information Policy includes provisions governing the disclosure of transmission outage data.

2. Comments/Protests

154. Constellation requests that the Commission direct the Filing Parties to provide additional transparency with respect to transmission outage information so that the market can better evaluate the potential for congestion shortfalls and provide ISO-NE with improved ability to determine when to require that outages be rescheduled. Constellation specifically asks the Commission to direct ISO-NE to modify its proposal to adopt a reporting mechanism that would provide the data described in Constellation's original transparency provision.⁷¹

⁶⁹ We note that corresponding changes (*e.g.*, provisions replacing the temporary QUA process with the permanent process that provides Incremental Auction Revenue Rights) should be reflected in relevant documents such as ISO-NE's Financial Transmission Rights Manual M-06 Revision: 5, Effective August 1, 2005. *See* ISO-NE's Financial Transmission Rights Manual located at http://www.iso-ne.com/rules_proceeds/isone_mnls/index.html.

⁷⁰ On April 22, 2005, *ISO New England Inc.*, Docket No. RT04-2-009 was accepted under delegated authority.

⁷¹ *See* Constellation's February 20, 2007 Protest at 22.

3. Answers

155. The Filing Parties argue that Constellation's proposal falls outside the scope of this proceeding and could require amendments to ISO-NE's Information Policy.⁷² The Filing Parties argue that, as such, Constellation would be required to file a section 206 complaint showing that the Information Policy is unjust and unreasonable and that the proposed substitutions are in fact just and reasonable. The Filing Parties argue that implementation of Constellation's proposal would require substantial resources from ISO-NE. Finally, the Filing Parties cannot be certain that a majority of stakeholders would even support Constellation's proposal – which may implicate commercially sensitive information – since there has not yet been a vote.⁷³

156. Constellation responds with the argument that the Filing Parties are incorrect in their claim that this matter falls outside the scope of this proceeding. The issue of whether placing an unlimited amount of risk on Auction Revenue Right holders is just and reasonable is before the Commission, and Constellation contends that one of the reasons this is not just and reasonable is the lack of timely and transparent information about transmission outages. Therefore, Constellation argues there is a connection between the Filing Parties' proposal and their request for changes to the Tariff to ensure timely and transparent information on transmission outages. Constellation also contends that the Filing Parties are incorrect to suggest that the requested information raises confidentiality concerns.

4. Commission Determination

157. Since neither section 217 of the FPA nor Order No. 681 address the issue of transmission outage information disclosure, the Commission finds that Constellation's protest in this matter is beyond the scope of this proceeding. Accordingly, the Commission will not mandate any specific outage reporting requirements in this proceeding.

⁷² ISO-NE's Transmission, Markets & Services Tariff, Attachment D, Information Policy.

⁷³ At its December 8, 2006 meeting, the NEPOOL Participants Committee voted in favor of a significantly scaled-back version of the proposal for which Constellation now seeks Commission approval. However, as the Filing Parties state, the inclusion of the proposal was not required by the LTTR Guidelines, and therefore priority was given to the development of required Tariff revisions to be filed in compliance with Order No. 681. The Filing Parties' March 7, 2007 Answer at n 36.

J. Financial Assurance Requirements

1. Proposal

158. As part of the Filing Parties' Guideline 5 proposal, an entity must demonstrate that it meets "the applicable requirements of the ISO New England Financial Assurance Policy"⁷⁴ in order to be eligible to submit nominations for, to be awarded, or to renew Allocated LFTRs. The ISO-NE Financial Assurance Policy is a credit review procedure used to assess the financial ability of an FTR applicant. The requirements include, among other things, that an applicant submit financial assurance – which can take the form of a cash deposit or letter of credit – prior to participation in the FTR auction (monthly and long-term).

159. The Filing Parties note that the financial assurance requirements for the LTTR Package are complex and as a result, significant changes are required to the financial assurance platform. The Filing Parties also note that the current financial assurance platform is being replaced to support the requirements for the Forward Capacity Market (FCM). The inter-dependency of both projects on this new platform puts the platform development on what the Filing Parties describe as a "critical path." The Filing Parties assert that as a result of FCM project resource constraints, and the need for a stakeholder working group to develop the financial assurance requirements for the LTTR Package, the financial assurance system design and implementation cannot begin prior to October 2007.⁷⁵ The Filing Parties also indicate that the Financial Assurance Qualification process will require the design and development of new processes and procedures.⁷⁶

2. Comments/Protests

160. NEPS are concerned that eligibility for Allocated LFTRs is tied to Financial Assurance Requirements that are not specified in the filing and are still under development. NEPS state that it cannot comment on, and the Commission cannot assess, the reasonableness of eligibility criteria that are tied to Financial Assurance Requirements that have not yet been established or reviewed.

⁷⁴ The Filing Parties' January 29, 2007 Compliance Filing at 35; *see also* ISO-NE, FERC Electric Tariff No. 3, General Terms and Conditions, Section I, Exhibits 1A, 1B and 1C.

⁷⁵ The Filing Parties' January 29, 2007 Compliance Filing at 59.

⁷⁶ *Id.* at 60.

3. Answers

161. The Filing Parties argue that the acceptance of the proposed eligibility criteria for Allocated LFTRs should not be conditioned on filing revisions to ISO-NE's Financial Assurance Policy. The Filing Parties contend that, contrary to NEPS's assertion, the acceptability of the LTTR Package will guide the development of Financial Assurance Policy modifications. The Filing Parties will be filing detailed proposed amendments to ISO-NE's Financial Assurance Policy, and those amendments will be subject to section 205 review. The Filing Parties explain that the review process will afford NEPS and others an opportunity to raise any concerns they might have about modified financial assurance requirements.

4. Commission Determination

162. The Commission reserves decision on any amendment to the current ISO-NE Financial Assurance Policy until such time as the Filing Parties provide full and adequate explanation of the proposed revisions as part of an FPA section 205 filing. The Filing Parties explain that Commission approval of the LTTR Package drives the modification of the current Financial Assurance Policy and explain that detailed proposed amendments will be filed and subject to FPA section 205 review.⁷⁷ We agree. A future filing will provide NEPS, and any other interested party, with an opportunity to raise any concerns about the modified financial assurance requirements. We recognize that any amendments to the Financial Assurance Policy will need to be carefully reviewed. This decision is consistent with prior precedent where the Commission has found that creditworthiness

⁷⁷ We note that in Order No. 890, *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007), the Commission determined that transmission providers with existing credit policies are required to demonstrate compliance with all aspects of Order No. 890 or to show that departures are consistent with, or superior to, the terms and conditions of the *pro forma* OATT, as modified by Order No. 890. *Id.* P 1660. In Order No. 890, the Commission required public utility transmission owners whose transmission facilities are under the control of RTOs and ISOs to make any necessary tariff filings required to comply with the Final Rule by October 11, 2007. *Id.*

requirements can have a significant impact on the overall operation of the market and can affect the ability of market participants to compete on a fair and equal basis.⁷⁸

163. Notwithstanding our approval or rejection of any component of the Filing Package here, any proposed changes to the ISO-NE Financial Assurance Policy that are filed in compliance with ISO-NE's FPA section 205 obligations will undergo Commission review to determine that they are consistent with Commission policy⁷⁹ and improve the transparency of credit procedures, establish appropriate collateral requirements, and better align ISO-NE's financial assurance requirements with its risk exposures.

164. Accordingly, we direct the Filing Parties to inform the Commission on the status of stakeholder progress in developing detailed revisions to ISO-NE's Financial Assurance Policy as part of the quarterly report ISO-NE commits to file (for informational purposes) until the agreed upon amendments are filed pursuant to section 205 of the FPA.⁸⁰

The Commission orders:

(A) The Filing Parties' LTTR Proposal is hereby approved except as discussed in the body of this order.

(B) ISO-NE is directed to modify Section III of its Transmission, Markets, & Services Tariff to include provisions requiring it to publish, on OASIS, information that will be available to all Market Participants on (a) addition of new generating resources to the list of radial facilities and (b) Allocated LFTRs available for potential transfer, within 90 days of the date of this order.

⁷⁸ See, e.g., *Outback Power Marketing, Inc. v. PJM Interconnection, L.L.C.*, 104 FERC ¶ 61,079 (2003). *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1656.

⁷⁹ E.g., *Policy Statement on Credit-related Issues For Electric OATT Transmission Providers, Independent System Operators and Regional Transmission Organizations*, 109 FERC ¶ 61,186, at P 22-24 (2004) (Policy Statement); *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007).

⁸⁰ The Filing Parties' January 29, 2007 Compliance Filing at 64.

(C) The Filing Parties are directed to file a revised proposal, which addresses the requested changes to their LTTR proposal relating to Guidelines 4 and 7, within 90 days of the date of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.