

130 FERC ¶ 61,235
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

ISO New England Inc.

Docket Nos. ER08-633-001
ER08-633-002

ORDER DENYING REHEARING AND ON INFORMATIONAL FILING

(Issued March 24, 2010)

1. In this order, the Commission denies rehearing of its earlier order accepting the results of ISO New England Inc.'s (ISO-NE's) first Forward Capacity Auction, for the 2010-2011 Capacity Commitment Period.¹ The Commission also accepts an informational filing with regard to the proration provisions of that Forward Capacity Auction.

I. Background

2. As discussed in the June 20, 2008 Order, ISO-NE and its stakeholders have developed a Forward Capacity Market (FCM), pursuant to which ISO-NE makes capacity payments to resources that provide capacity to the New England region, and capacity resources compete to be selected to provide capacity on a three-year forward basis through a Forward Capacity Auction held every year. ISO-NE conducted its first Forward Capacity Auction on February 4-6, 2008, and, on March 3, 2008, submitted a filing containing the results of this auction to the Commission, pursuant to section III.13.8.2 of Market Rule 1 of its Transmission, Markets and Services Tariff (ISO-NE Tariff). The Commission accepted ISO-NE's filing in the June 20, 2008 Order.

3. The PSEG Power Companies (PSEG), the Connecticut Department of Public Utility Control (CT DPUC), and the Connecticut Attorney General (CTAG) filed petitions for rehearing of the June 20, 2008 Order. CT DPUC filed an answer to PSEG's

¹ *ISO New England Inc.*, 123 FERC ¶ 61,290 (2008) (June 20, 2008 Order).

petition for rehearing, and ISO-NE and the New England Power Pool Participants Committee (NEPOOL) filed answers to CT DPUC's rehearing request. CT DPUC then filed an answer to ISO-NE's and NEPOOL's answers.

4. On November 18, 2008, ISO-NE made an informational filing notifying the Commission of the results of its proration determination. Notice of ISO-NE's filing was published in the *Federal Register*, with motions to intervene, notices of intervention, comments and protests due by December 9, 2008.² PSEG and CT DPUC filed protests to ISO-NE's proration filing, and ISO-NE filed an answer to those protests.

II. Discussion

A. Procedural Issues

5. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a request for rehearing unless otherwise ordered by the decisional authority. We are not persuaded to accept ISO-NE's answer to the protest and will, therefore, reject it. Because Rule 713(d), 18 C.F.R. § 385.713(d) prohibits an answer to a request for rehearing, those answers, and the answer to those answers, are also rejected.

B. Issues Related to the Use of the Transmission Security Analysis

6. ISO-NE's Forward Capacity Auction resulted in the New England region remaining a single capacity zone, which was based on the Installed Capacity Requirement (ICR),³ a resource adequacy standard.⁴ Therefore, the capacity price in Connecticut was the same as the capacity clearing price for the rest of New England.

² 73 FR 75422 (2008).

³ The ICR is the level of capacity required to meet the reliability requirements in the New England control area, such that the probability of disconnecting non-interruptible customers due to resource deficiency will be no more than once in ten years, on average. *See* ISO-NE Tariff § III.12. The Local Sourcing Requirement (LSR) is a related standard that requires resource adequacy within a specific zone: it is defined as the minimum amount of capacity that must be electrically located within an import-constrained Load Zone to satisfy reliability requirements. ISO-NE Tariff §§ III.12.2; III.12.2.1.

⁴ As the Commission stated in the June 20, 2008 Order, resource adequacy is "[t]he ability of the electric system to supply the aggregate electrical demand and energy

(continued...)

7. During the Forward Capacity Auction, de-list bids were submitted for Norwalk Harbor Unit 1 and Norwalk Harbor Unit 2 (the Norwalk Harbor units), owned by NRG Power Marketing (NRG). ISO-NE rejected those de-list bids, under the procedures set forth in section III.13.2.5.2.5 of its Tariff, which provides that ISO-NE shall review each Dynamic De-List Bid to determine whether the capacity associated with that bid is needed for reliability reasons, and concluded that the Norwalk Harbor units were needed for reliability. Section III.13.2.5.2.5 provides that:

The capacity shall be deemed needed for reliability reasons if the absence of the capacity would result in the violation of any [North American Electric Reliability Corporation (NERC)] or [Northeast Power Coordinating Council (NPCC)] (or their successors) criteria, or ISO New England System Rules.⁵

Section III.13.2.5.2.5.1 then provides for the capacity associated with those de-list bids to be compensated on the basis of the de-list bid.

8. ISO-NE states that maintenance of the transmission security margin for the Connecticut sub-area required the rejection of the Norwalk Harbor de-list bids, because allowing either of the Norwalk Harbor Units to leave the market would have resulted in the inability of the Connecticut sub-area to meet the "Area Transmission Requirements" specified in ISO Planning Procedure No. 3.⁶ Therefore, ISO-NE rejected the attempts of the two Norwalk Harbor units to de-list from the auction, and stated that those units would receive just and reasonable compensation for providing capacity during the 2010-2011 Capacity Commitment Period.⁷ In the June 20, 2008 Order, the Commission

requirements of the customers at all times, taking into account scheduled and reasonably expected unscheduled outages of system elements." June 20, 2008 Order, 123 FERC ¶ 61,290 at P 26 n.26, *citing* Northeast Power Coordinating Council (NPCC) Document A-07.

⁵ ISO-NE Tariff, § III.13.2.5.2.5.

⁶ *See* testimony of Stephen Rourke, Attachment C to FCA Results Filing (Rourke Testimony), at 7, 16.

⁷ ISO-NE subsequently permitted Norwalk Harbor Unit 2 to de-list. *See* http://www.iso-ne.com/committees/comm_wkgrps/mrks_comm/mrks/mtrls/2009/may292009/a1a_pseg_dynegy_presentation_05_29_09.ppt.

accepted the Forward Capacity Auction results filing, to include ISO-NE's determination regarding the Norwalk Harbor units.

1. Requests for Rehearing

9. CT DPUC raises general challenges to ISO-NE's use of the Transmission Security Analysis⁸ in assessing the reliability need for the Norwalk Harbor units. It asserts that the Transmission Security Analysis improperly imposes a new resource adequacy standard on the FCM, rather than the appropriate resource adequacy standards, ICR and LSR. Because CT DPUC views the Transmission Security Analysis as a resource adequacy standard, it further states that, for the same reason that it challenges the Commission's acceptance of the ICR on the basis that the Commission lacks jurisdiction over resource adequacy,⁹ it is similarly challenging the Commission's acceptance of the Transmission Security Analysis.

10. CT DPUC argues that the Transmission Security Analysis does not measure system security, which CT DPUC defines as the system's ability to withstand disturbances. Rather, CT DPUC argues, an appropriate standard for system security would measure the types of contingencies identified in NPCC Document A-2, namely, short-term operational problems. CT DPUC points to ISO-NE's statement that "system security" includes local voltage and stability concerns, and states that the Commission did not address how the Transmission Security Analysis's treatment of fungible MWs of capacity anywhere in Connecticut makes the Norwalk Harbor facilities necessary for voltage stability or other short-term operational needs. Rather, CT DPUC argues that this is because the Transmission Security Analysis does not measure localized aspects of transmission security.

11. CT DPUC further asserts that the Transmission Security Analysis is, on a practical level, virtually indistinguishable from the ICR/LSR standards, which it states are the only measures of resource adequacy permitted under FCM. CT DPUC states that, like ICR/LSR, the Transmission Security Analysis treats all MWs in Connecticut as substitutable, both measures use boundaries defined by the same constraints (the State of Connecticut), and both measures assume that capacity is fully deliverable within the sub-

⁸ The Transmission Security Analysis examines operating conditions for an extreme seasonal peak demand hour to determine units that must be retained for reliability. See June 28, 2008 Order, 123 FERC ¶ 61,290 at P 19 n.21.

⁹ CT DPUC's challenge to the Commission's jurisdiction over resource adequacy in prior orders was resolved in *Connecticut Department of Public Utility Control v. FERC*, 569 F.3d 477 (D.C. Cir. 2009) (*CT DPUC v. FERC*).

region. Thus, CT DPUC argues that the Transmission Security Analysis functions like a resource adequacy measure – i.e., as a planning measure to forecast future capacity needs. In describing its view of the difference between the two standards, CT DPUC states that the ICR/LSR standards define capacity needs based on a set of events, with probabilities to determine whether those events will occur, while the Transmission Security Analysis is a snapshot of a single hour. CT DPUC states that, for this reason, the Transmission Security Analysis is not a useful tool for planning, and the Commission has blurred the line between reliability planning and operational planning by accepting ISO-NE's misuse of the Transmission Security Analysis, a short-term operational assessment tool, as a planning measure to forecast system security. CT DPUC states that the Commission's acceptance of ISO-NE's use of the Transmission Security Analysis will require (a) load to procure more capacity resources than necessary for resource adequacy, as measured by the ICR/LSR standards, and (b) Connecticut customers to pay more for capacity than customers in the rest of New England. CT DPUC argues that this outcome is inconsistent with those elements of FCM specifying that ISO-NE should not purchase more capacity for New England than required by ICR/LSR. CT DPUC further states that ISO-NE has erroneously found that use of the Transmission Security Analysis is required by NPCC standards and ISO-NE Planning Procedures.

12. CT DPUC then addresses specific aspects of ISO-NE's use of the Transmission Security Analysis to reject the Norwalk Harbor units' de-list bids. In particular, CT DPUC takes issue with the following determinations made by ISO-NE, and accepted by the Commission:

- a) *The exclusion of 342 MW of Real-Time Emergency Generation (RTEG) resources from the Transmission Security Analysis.* CT DPUC states that RTEG resources are capacity resources like all others, which must respond when called by ISO-NE or face penalties, and that it is discriminatory to treat these resources differently from others.
- b) *The assumption that 33 percent of Connecticut's peaking capacity is unavailable for the Transmission Security Analysis.* CT DPUC states that the Commission has no evidentiary basis to hold that derating Connecticut's peaking facilities' capacity by 33 percent is reasonable, based solely on ISO-NE's engineering judgment (since, CT DPUC argues, the Commission may not delegate its decision-making to outside authorities), and that the Commission failed to consider new information about the performance of Connecticut's peaking facilities. CT DPUC additionally states that ISO-NE's reliance on its Planning Procedure No. 3 is incorrect.
- c) *The use of ISO-NE's forced outage rate for other generation capacity resources.* CT DPUC states that the Commission had no evidentiary basis to conclude that the forced outage (EFORD) rating of 5.62 percent that ISO-NE used to adjust the available capacity of non-peaking Connecticut resources was reasonable, and the Commission did not address its concern that use of probabilistic average generator

outage rates is inappropriate in deterministic studies. CT DPUC asks the Commission to require ISO-NE to provide data and order hearing procedures to resolve these disputed issues of material fact.

- d) *The acceptance of obsolete data to measure the performance of demand response capacity resources, even though updated data was available.* CT DPUC states that ISO-NE used “stale” data on the performance of demand resources that did not reflect information from 2007. CT DPUC argues that the Commission should have rejected ISO-NE’s availability assumptions and instead ordered ISO-NE to recalculate its analysis.
- e) *The exclusion of reliability benefits from the Cross Sound Cable connecting Connecticut to the New York control area from the Transmission Security Analysis.* CT DPUC states that the Commission’s exclusion from the Transmission Security Analysis of the benefits provided by the Cross Sound Cable cannot be excused merely because ISO-NE and NYISO cannot yet calculate those benefits. CT DPUC states that section 5.0 of NPCC Document A-2 requires that ISO-NE and NYISO determine the transmission transfer capabilities between ISO-NE and NYISO and consider anticipated transfers of power in the design of these facilities. CT DPUC points to the testimony of an ISO-NE witness in another proceeding that CT DPUC sought to lodge in this proceeding, which CT DPUC alleges shows that the Cross Sound Cable provides reliability benefits to New England. CT DPUC asks the Commission to reconsider its denial of CT DPUC's motion to lodge this testimony.

13. CT DPUC further argues that ISO-NE’s use of the Transmission Security Analysis in its reliability review is not required by NERC, NPCC guidance documents, ISO-NE Planning Procedures, or FCM rules, as a way to ensure reliability, because, according to CT DPUC, the Transmission Security Analysis is not a basic system reliability review. CT DPUC states that ISO-NE did not reject the NRG facilities’ de-list bids based on their contribution to area voltage or stability based on current operating guides and procedures or their contribution to thermal transmission reliability, which, according to CT DPUC, are the only potentially relevant NPCC criteria. Similarly, CT DPUC asserts that ISO-NE did not report how it performed such analyses or explain how its Transmission Security Analysis assessments are related to the Transmission Design Criteria in Section 5.0 of NPCC Document A-2 or Section 3 of ISO-NE’s Planning Procedure 3.¹⁰ Thus, CT DPUC argues, the Commission erred by accepting the rejection of the Norwalk Harbor units' de-list bids without a showing that those units made a specific contribution to local system security.

¹⁰ CT DPUC Request for Rehearing at 21 nn.88-89.

14. CT DPUC states that the Commission previously required ISO-NE to show that a particular generator is needed to ensure reliability,¹¹ but did not hold ISO-NE to that standard here. CT DPUC additionally argues that the Commission can't justify use of the Transmission Security Analysis solely because ISO-NE used it previously, because in those previous uses, ISO-NE was only planning for one year rather than three years ahead, and for a smaller footprint (southwest Connecticut rather than all of Connecticut). Also, CT DPUC argues that many of those prior RMR proceedings were settled, not litigated.

15. CT DPUC further argues that the Commission should not have accepted the de-listing of the Norwalk Harbor units without considering those facilities' specific reliability contributions. It states that the Transmission Security Analysis is not an appropriate measure for this question, since it is simply a measure of the aggregate capacity of all resources. CT DPUC also asserts that ISO-NE did not report the results of voltage/stability/thermal analyses of Connecticut's transmission system, and therefore the Commission cannot point to specific evidence showing that the Norwalk Harbor facilities will contribute to area voltage/stability. It further states that the fact that the Commission found that upgrades for the electrically remote Lake Road 2 facility are likely to eliminate the need for one of the Norwalk Harbor facilities shows that the two facilities are interchangeable, and thus, the Norwalk Harbor units do not serve local reliability needs.

16. CT DPUC also argues that the Commission has refused to consider whether these particular facilities' characteristics, such as their forced outage rate and ramp time, make them ill-suited to serve as reliability resources. CT DPUC takes issue with the Commission's position that such questions need not be considered now, because later reconfiguration auctions may make the reliability need for these units unnecessary: it argues that the Commission must decide now whether the Norwalk Harbor units will be able to meet reliability needs. CT DPUC therefore states that the Commission should either grant rehearing, or should set the Transmission Security Analysis issue for full hearing procedures. Either way, CT DPUC asks the Commission to ensure that ISO-NE treats future problems differently, by giving RTEG resources credit for their capacity needs, and giving full credit for peakers' actual performance value and the ability of prospective resources to provide reliability.

17. CTAG adopts CT DPUC's arguments. It also states that the Commission erred in accepting ISO-NE's use of Transmission Security Analysis to reject the de-list bids of the

¹¹ *Id.* at 21 n.90, citing *Bridgeport Energy LLC*, 114 FERC ¶ 61,265, at P12 (2006) (requiring showing of "a reliability need for that specific generator"); *PPL Wallingford Energy LLC*, 115 FERC ¶ 61,015, at P 31 (2006) (setting ISO-NE's reliability determination for hearing because "this determination was not specific to these units").

Norwalk Harbor units for reliability reasons, and asserts that this decision was arbitrary and capricious and violates section 206 by permitting unreasonable practices affecting rates. CTAG asserts that it continues to oppose the Forward Capacity Auction as a ratepayer-subsidized windfall for generators, and argues that the Commission's acceptance of these de-list bids will burden Connecticut ratepayers with the costs of maintaining reliability units even after implementation of the FCM, which was intended to put an end to separate reliability contracts.

2. Commission Ruling

18. We deny CT DPUC's request for rehearing. As noted above, CT DPUC's challenge to the Commission's jurisdiction over resource adequacy was recently rejected by the U.S. Court of Appeals for the D.C. Circuit. The court directly addressed the question of whether "the Federal Energy Regulatory Commission has jurisdiction to review . . . the Installed Capacity Requirement (ICR)," and held that it did, because "[the ICR] falls within the Commission's jurisdiction over practices affecting wholesale rates."¹²

19. The Commission has subsequently interpreted the court's decision in *CT DPUC v. FERC* to include reliability considerations, stating that in that decision, "the D.C. Circuit held that it was within the Commission's jurisdiction to review ISO New England's annual calculation of the minimum amount of wholesale electric capacity that must be available to assure reliable service in the New England region."¹³

20. In the June 20, 2008 Order, we found that, in its implementation of the February 2008 Forward Capacity Auction, ISO-NE properly relied on both transmission system security and resource adequacy criteria. We noted that NPCC defines reliability as having two elements: system security (the ability of the system to withstand

¹² *CT DPUC v. FERC*, 569 F.3d at 478-79 (D.C. Cir. 2009), *cert. denied*, 175 L. Ed. 2d 882, 2010 U.S. LEXIS 261, 78 U.S.L.W. 3392 (U.S. 2010). The court also discussed prior cases dealing with the Commission's jurisdiction, including *Municipalities of Groton v. FERC*, 587 F.2d 1296 (D.C. Cir. 1978), and noted that, similarly "the Commission may directly establish prices for capacity . . . even for the express purpose of incentivizing construction of new generation facilities. That the Commission may do so directly would seem to include the power to do so indirectly by setting a target for capacity demand and using a market mechanism to locate the price appropriate to that quantity." *CT DPUC v. FERC*, 569 F.3d at 482.

¹³ *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719-A, FERC Stats. & Regs. ¶ 31,292, at P 45 (2009).

disturbances, such as electric short circuits or unanticipated loss of system elements) and resource adequacy (the ability of the system to meet the aggregate electrical demand and energy requirements of the customers at all times).¹⁴ Broadly put, resource adequacy is a measure of the system's ability to meet its customers' demand over a long term, whereas system security is a measure of the system's ability to respond and adjust to sudden, brief, short-term disruptions.

21. We expressly denied CT DPUC's request that the Commission reject ISO-NE's use of the Transmission Security Analysis in conducting the Forward Capacity Auction, stating that "ISO-NE is required to comply with NPCC reliability standards, including assessing the effect of allowing a capacity resource to de-list on system security."¹⁵ ISO-NE's Tariff establishes that "capacity shall be deemed needed for reliability reasons if the absence of the capacity would result in the violation of any NERC or NPCC (or their successors) criteria, or ISO New England System Rules."¹⁶ We concluded that ISO-NE is required to follow the ISO-NE Tariff in determining the ICR and LSR and conducting the Forward Capacity Auction, including making reliability determinations for de-list bids submitted during the auction, ensuring compliance with NPCC reliability standards, and assessing the effect of allowing a capacity resource to de-list on system security.

22. In its request for rehearing, CT DPUC has provided no reason for us to revisit this ruling. CT DPUC is correct in stating that ISO-NE calculates the ICR to establish the resource adequacy standard, and therefore, how much capacity it must purchase in the Forward Capacity Market. ISO-NE's determination that the Norwalk Harbor units may not be permitted to de-list, however, is not related to the amount of capacity that ISO-NE must purchase to satisfy the resource adequacy standard; rather, it is the result of reliability determinations that ISO-NE is obligated to make by its Tariff. The Reliability Review Rule, section III.13.2.5.2 of ISO-NE's Tariff, provides that ISO-NE must review each de-list bid to assess whether the capacity associated with that bid is needed for reliability, determined by whether the absence of that capacity would violate system rules. And, as ISO-NE stated in its original filing, it applied the criteria set forth in its Tariff, and determined that "[t]he acceptance of the Dynamic De-List Bids for either of the Norwalk Harbor Units would have resulted in the inability of the Connecticut sub-area to meet the 'Area Transmission Requirements' specified in Section 3 of ISO New England Planning Procedure No. 3 ('PP 3'). . . . After the completion of the auction, . . .

¹⁴ June 20, 2008 Order, 123 FERC ¶ 61,290 at P 26-27, citations omitted.

¹⁵ *Id.* P 29.

¹⁶ ISO-NE Tariff, § III.13.2.5.2.5.

the transmission security margin was 38 MW, still insufficient to allow either of the Norwalk units to de-list for the 2010 Capacity Commitment Period."¹⁷

23. There is no current Tariff requirement mandating that reliability determinations be based solely upon a resource adequacy standard. Thus, CT DPUC cannot argue that ISO-NE erred by applying a transmission security analysis to find that it would violate its own Tariff to permit the Norwalk Harbor units to de-list, given that such de-listing would have resulted in the inability of the Connecticut sub-area to meet the "Area Transmission Requirements" specified in Section 3 of ISO New England Planning Procedure No. 3.

24. In the June 20, 2008 Order, we addressed CT DPUC's assertions that ISO-NE erred in (a) excluding RTEG resources from the Transmission Security Analysis;¹⁸ (b) assuming that 33 percent of Connecticut's peaking capacity is unavailable;¹⁹ (c) employing an unsupported forced outage rating to represent generator performance;²⁰ (d) failing to use updated data to model the performance of demand response capacity resources;²¹ and (e) excluding reliability benefits from the Cross Sound Cable.²²

¹⁷ Testimony of Stephen Rourke, Attachment C to FCA Results Filing (Rourke Testimony), at 7.

¹⁸ June 20, 2008 Order, 123 FERC ¶ 61,290 at P 50, footnote omitted ("We find that ISO-NE's choice to exclude RTEG resources in assessing the reliability need for the Norwalk Harbor units, although conservative, is justified. . . . [T]he exclusion of RTEG resources from reliability determinations is consistent with the directive of section 3 of PP-3, which requires design studies, used for planning purposes, to 'assume power flow conditions with . . . resource conditions that reasonably stress the system.' RTEG resources are brought on line only when ISO-NE calls an OP-4 emergency to address a severe capacity deficiency").

¹⁹ *Id.* P 46-47, noting that CT DPUC's witness Russell's basis for disagreeing with the 33 percent figure is based solely on his assertion that it is "inconceivable" that the operation of the units has not improved in the past 30 years.

²⁰ *Id.* P 47 noting that CT DPUC's witness Mr. Russell fails to establish that ISO-NE's assumptions on generator availability (for peaking and non-peaking units) violate section III.13.2.5.2.5 of ISO-NE's tariff, NPCC Reliability Criteria (section 5 of NPCC-2), or ISO-NE's Planning Procedures (specifically, section 3 of Planning Procedure 3), which incorporate the NPCC reliability standards.

²¹ *Id.* P 48, noting that the 2007 demand resource availability factors were not available when the LSR and ICR calculations were performed for the first FCA. Further, ISO-NE committed to the use of updated availability data in modeling the reconfiguration

(continued...)

CT DPUC has provided no new information to convince the Commission that we should overturn our prior decision.²³

25. Importantly, ISO-NE and NEPOOL have conducted a stakeholder process to “address the interrelated issues of: application of the transmission security analysis and its parameters, how Capacity Zones and Local Sourcing Requirements are established and aligning the standards to be used in establishing those zones and requirements with those used in performing reliability reviews,”²⁴ which has resulted in a filing of new proposed tariff provisions on February 22, 2010, docketed as Docket No. ER10-787-000. That filing is the proper forum for the arguments offered here by CT DPUC. With regard to its request for rehearing here, however, CT DPUC has not shown that the assumptions used by ISO-NE violate the current tariff provisions, planning procedures, or reliability criteria, and absent such a showing, we will not grant rehearing on this question. We therefore reject CT DPUC’s request to lodge testimony from another proceeding, or open further evidentiary proceedings on this question.

26. As to CTAG's request for rehearing, CTAG explicitly states that it is challenging the use of separate reliability contracts to compensate generators who are not permitted to de-list for reliability reasons, on the basis that the elimination of such contracts was the fundamental rationale of the FCM. While this is an accurate statement of the reasons behind the creation of the FCM, all parties recognized when they entered into the FCM settlement that, at least in the short term, "there might be a need to retain some resources

auctions – that is, if the updated models show that changes to demand resource availability assumptions resolve the need for the Norwalk Harbor Units, the de-list bids would be approved and the units will not be retained for the 2010 Capacity Commitment Period.

²² *Id.* P 52, footnotes omitted, finding it reasonable for ISO-NE not to consider capacity that might be available over the Cross Sound Cable because ISO-NE “does not know the amount of additional tie reliability benefits, if any, that would be available over the Cross Sound Cable when emergency assistance is required because it and the New York Independent System Operator have not found a way to calculate any additional benefits isolated to the Cross Sound Cable.”

²³ For example, as we stated in the June 20, 2008 Order, “addressing the derating of peaking units, the CT DPUC would have ISO-NE revise assumptions that it admits that ISO-NE has employed previously in similar analyses.” June 20, 2008 Order, 123 FERC ¶ 61,290 at P 46.

²⁴ *See ISO New England Inc.*, 126 FERC ¶ 61,115, at P 21 (2009).

for reliability that would have to be compensated on an out-of-market basis. Consequently, the FCM settlement provided that ISO-NE may reject a de-list bid (i.e., prohibit that resource from de-listing) if it is needed for reliability and that the resource will be compensated at a just and reasonable rate."²⁵ CTAG's request for rehearing in this case is, therefore, an untimely collateral attack on the Commission's acceptance of the FCM settlement, and we reject it on that basis.

C. Issues Related to Proration

1. ISO-NE's Original Filing and Later Informational Filing

27. Under the FCM, ISO-NE is required to procure no more than the total ICR for the New England region in the auction. For the first three auctions, however, ISO-NE's tariff creates a capacity price "collar," so that the price paid to resources may not go more than a certain amount higher than, or a certain amount lower than, the previously determined Cost of New Entry (CONE) parameter. The lower bound of this collar is 60 percent of CONE. Section III.13.2.7.3(b) of the Tariff provides that if, during the auction, the clearing price for capacity falls to 0.6 times CONE, capacity offers are prorated, as follows:

Where the Capacity Clearing Price reaches 0.6 times CONE, . . . the total payment to all listed capacity resources during the associated Capacity Commitment Period shall be equal to 0.6 times CONE times the Installed Capacity Requirement . . . applicable in the Forward Capacity Auction. Payments to individual listed resources shall be prorated based on the total number of MWs of capacity clearing in the Forward Capacity Auction . . . Suppliers may instead prorate their bid MWs of participation in the Forward Capacity Market by partially de-listing one or more resources. . . . Any proration shall be subject to reliability review.²⁶

28. In its filing, ISO-NE stated that, in compliance with the Tariff, in the Forward Capacity Auction it procured capacity equal to the ICR, which was 32,305 MW. It then stated that, if the price floor was reached, a capacity resource could choose its method of proration: it could either sell ISO-NE all of its capacity that had received a capacity

²⁵ *ISO New England Inc.*, 125 FERC ¶ 61,102, at P 3 (2008) (citing section H of the FCM Settlement Agreement in Docket Nos. ER03-563-000 *et al.* (March 6, 2006)).

²⁶ ISO-NE Tariff, § III.13.2.7.3(b).

supply obligation at a prorated price; or it could sell a prorated quantity of MW at the clearing price.²⁷ But ISO-NE also noted, pointing to the reliability review that would govern proration, that "[d]ue to the relatively small transmission security margin in the Connecticut sub-area, it is highly unlikely that the ISO will allow proration based on quantity for resources within the Connecticut sub-area."²⁸

29. PSEG argued, in its protest to ISO-NE's filing, that ISO-NE should clarify that if, for reliability reasons, a resource is not permitted to prorate its quantity, then that resource should be permitted to receive the non-prorated clearing price for that quantity.

30. The Commission rejected this argument, explaining that PSEG's preferred adjustment violated the Tariff and the FCM Settlement:

PSEG's suggestion would violate section III.13.2.7.3(b) of the ISO-NE Tariff and the [settlement leading to the establishment of the FCM], which prohibit ISO-NE from purchasing more capacity than what is equal to the ICR times the clearing price. To ensure this result, ISO-NE is required by the FCM Settlement and the FCM rules to prorate either the price or capacity obligation of resources that cleared in the auction. Thus, to conform to this provision in the FCM rules, ISO-NE must prorate all capacity resources, including those in Connecticut.²⁹

31. The Commission then pointed out that the FCM settlement and rules also require prorating decisions to be subject to a reliability review. We explained that "[r]esources [that are not allowed to prorate quantity for reliability reasons] will still prorate; the reliability review simply means that they must prorate their price (rather than having the option to prorate the amount of capacity they provide)."³⁰

32. Subsequently, on November 18, 2008, ISO-NE made an informational filing notifying the Commission that it had performed a reliability review of all the proration elections made by capacity resources for the Forward Capacity Auction, and, as anticipated, it had determined that all elections could be accepted except for resources

²⁷ ISO-NE transmittal letter at 4-5, footnotes omitted.

²⁸ Rourke Testimony at 19.

²⁹ June 20, 2008 Order, 123 FERC ¶ 61,290 at P 74.

³⁰ *Id.* P 75.

located in Connecticut. It stated that in Connecticut, 5,859 MW of capacity sought to prorate; however, because this would have reduced resources in that area by 320 MW, which would have caused a shortfall in the transmission security requirement, no resources in Connecticut were allowed to prorate quantity.³¹

33. PSEG and CT DPUC filed comments on the informational filing. PSEG again stated that the end result of ISO-NE's proration ruling – that Connecticut units would be paid a lower rate than units located elsewhere in ISO-NE, even though the locational value of those Connecticut units is higher relative to units in other parts of New England – was inconsistent with the FCM's goal of recognizing and compensating the value of resources on a locational basis. CT DPUC asserted that ISO-NE did not provide sufficient information as to the nature of its reliability review for the Commission to be able to decide whether ISO-NE properly performed this reliability review, and reiterates its challenge to the use of the Transmission Security Analysis (discussed above) in reliability reviews. CT DPUC also requests the following:

The Commission should direct ISO-NE before it seeks to shed capacity in a reconfiguration auction (1) to allow the Norwalk Harbor facilities to de-list and (2) to give Connecticut generation resources an opportunity to prorate. The Commission should also clarify that ISO-NE should permit generators to prorate their FCM capacity if the Commission modifies its prior order accepting the Transmission Security Analysis and permits [the Norwalk Harbor units] to de-list or if any other development before the first Commitment Period modifies the reliability need in Connecticut.³²

2. Request for Rehearing

34. PSEG states that due to ISO-NE's ruling, it will be required to offer all of the capacity from its Connecticut generators at the prorated price. On rehearing, it first asserts that the Commission's interpretation of "proration" is contrary to the meaning of section III.13.2.7.3(b) of the Tariff. PSEG challenges the Commission's interpretation of section III.13.2.7.3(b) as creating two separate types of proration – price proration, and quantity proration. PSEG asserts that "the tariff [only] contemplates proration of

³¹ ISO-NE informational filing, dated November 8, 2008, at 2.

³² CT DPUC comments on November 8 filing at 8.

megawatt quantity."³³ To support this argument, it points to the following statement in section III.13.2.7.3(b):

Where the Capacity Clearing Price reaches 0.6 times CONE, *offers* shall be prorated such that no more than the Installed Capacity Requirement is procured in the Forward Capacity Auction, as follows: the total payment to all listed capacity resources during the associated Capacity Commitment Period shall be equal to 0.6 times CONE times the Installed Capacity Requirement applicable in the Forward Capacity Auction.³⁴

35. PSEG argues that this language shows that the tariff intended only to prorate supply offers in such a way as to ensure that ISO-NE did not procure more capacity than ICR. PSEG asserts that "[p]rice proration is introduced in the tariff only as an equivalent *means* of achieving the same financial impact on loads as reducing quantity but is dependent upon the quantity reduction being available"³⁵ and thus is "only an administrative convenience."³⁶

36. PSEG states that this interpretation is necessary because, if the opposite interpretation were accepted (namely, that this tariff section created the opportunity for two types of proration, price proration and quantity proration), the language of the tariff would mean that "any [price or megawatt] proration shall be subject to reliability review," which would make no sense, since price proration has no reliability impacts.

37. PSEG additionally argues that, even assuming *arguendo* that the tariff provides for two separate types of proration, the tariff provides that suppliers, rather than ISO-NE make this choice. PSEG points to section III.13.2.7.3(b)'s statement that "[s]uppliers may instead [of accepting price proration] prorate their bid MWs of participation in the Forward Capacity Market by partially de-listing one or more resources," and claims that this demonstrates that the intention of this provision is to leave the choice with the supplier. PSEG further states that prior to the changes filed in Docket No. ER07-1338-000, proration was not subject to the "reliability review" process, and that the resource owner's "flexibility" to choose the type of proration it wished to accept must therefore

³³ PSEG request for rehearing at 5.

³⁴ ISO-NE Tariff, § III.13.2.7.3(b) (emphasis added by Commission).

³⁵ PSEG request for rehearing at 5.

³⁶ *Id.*, emphasis in original.

have remained absolute, so that if the resource selects quantity proration and that is not allowed, price proration should not be imposed on the resource.³⁷

38. PSEG also argues, more broadly, that the Commission's June 20, 2008 Order unduly discriminates between those capacity resources that may choose between price proration and megawatt proration, and those who may not. It points out that in many ways, resources that can choose whether to prorate price or quantity are in a superior position to those who cannot choose (for example, resources that choose to prorate quantity can in some cases resell that excess capacity to other buyers). Moreover, PSEG argues that the Commission's interpretation of section III.13.2.7.3(b) is inconsistent with the policy goals of the FCM. PSEG states that the FCM was intended to provide incentives for resources to either locate or remain in constrained areas, and, in order to achieve that goal, to permit resources locating there to be compensated in a manner that reflects their value to the constrained area.

39. Finally, PSEG states that, regardless of how the Commission interprets the proration provisions of section III.13.2.7.3(b), it should still direct ISO-NE to pay resources needed for local reliability requirements in Connecticut a higher price that reflects their contribution to Connecticut's generation adequacy requirements, even if those resources do not seek to de-list. In its original protest, PSEG said that ISO-NE should pay all Connecticut resources that are not allowed to prorate the full \$4.50/kw-month for all of their commitment. The Commission's June 20, 2008 Order stated that such a directive would violate the provision of section III.13.2.7.3(b) that prohibits ISO-NE from purchasing more capacity than ICR times the clearing price. But, PSEG argues, section III.13.7.2.1(a) allows resources that elect multi-year obligations to be paid that clearing price for the full multi-year period, which could end up being more than ICR times 0.6 CONE. PSEG argues that any de-listing proration request, whether occurring during the auction process (because a resource seeks to de-list) or several months later (because a resource must prorate some of its capacity), is, in practice, a de-listing request at the \$4.50/kw-month price. Accordingly, PSEG argues that these costs should be fully allocated to the reliability region that benefits from those resources.³⁸

³⁷ PSEG request for rehearing at 8.

³⁸ In its protest to ISO-NE's November 8, 2008 information filing, PSEG makes similar arguments to those it makes in its request for rehearing here.

3. Commission Ruling

a. PSEG Rehearing Request

40. The Commission rejects PSEG's request for rehearing. We reject PSEG's arguments that section III.13.2.7.3 (b) of the tariff should be interpreted to mean, in essence, that suppliers may elect price proration rather than quantity proration, even when that election could result in reliability violations.

41. As we stated in the June 20, 2008 Order, proration must occur until the total payment to all listed capacity resources is equal to the clearing price multiplied by the ICR, as specified in section III.13.2.7.3(b). Section III.13.2.7.3 (b) also specifies that all proration is subject to reliability review. In the original order accepting the FCA results, the Commission found that if quantity proration leads to the violation of reliability criteria, including the transmission security margin, resources may only prorate price.³⁹ PSEG's arguments in its request for rehearing do not compel us to change our interpretation of these proration provisions of section III.13.2.7.3 (b). Under the current FCM market rule, when the clearing price reaches 0.6 times CONE and a reliability review does not allow for quantity proration, the ISO must engage in price proration to avoid violating its tariff requirement that the total payment to all listed capacity resources is equal to the clearing price multiplied by the ICR.⁴⁰ This logic also requires us to reject PSEG's argument that if ISO-NE does not permit quantity proration, it should also not require price proration. When a reliability violation would occur due to a quantity proration, the current tariff language does not allow ISO-NE to meet the requirement that total payment to listed resources equals ICR multiplied by 0.6 times CONE without price proration, and such an interpretation would violate the requirements of section III.13.2.7.3 of the Tariff. Moreover, PSEG's argument that capacity proration imposed on it by ISO-NE is "in practice" equivalent to a de-listing request, and should therefore be compensated similarly, is incorrect. Under the current market rules, de-listing and proration occur at different points during the overall process of obtaining capacity, and

³⁹ June 20, 2008 Order, 123 FERC ¶ 61,290 at P 74-75.

⁴⁰ As noted by PSEG, a statement regarding reliability review was added to section III.13.2.7.3(b) by an ISO-NE filing in Docket No. ER07-1338-000. ISO-NE inserted new language into the section to ensure that the proration provision (which is intended to ensure relative market stability during the initial years of FCM) does not adversely affect reliability. No party protested the addition of that language to section III.13.2.7.3(b), and it became part of the ISO-NE Tariff when the Commission accepted ISO-NE's proposed Tariff changes on October 30, 2007. *See ISO New England Inc.*, 121 FERC ¶ 61,106 (2007).

are governed by different tariff provisions, including the provisions governing compensation for bids that cannot de-list and bids that are required to prorate. It would thus violate the tariff to compensate proration as if it were governed by the de-listing tariff provisions.

42. We note, again, that ISO-NE and its stakeholders have made a filing with the Commission that may result in revised market rules on this issue. Under the existing market rules, however, it is our view that ISO-NE is complying with section III.13.2.7.3 to the extent that it is prohibiting quantity proration to maintain reliability. The Commission therefore rejects PSEG's request for rehearing of the June 20, 2008 Order.

b. Informational Filing

43. In its comments to ISO-NE's November 8, 2008 informational filing, PSEG sought to ensure that the informational filing was governed by our ruling on PSEG's then-pending rehearing request; we confirm that this is the case. CT DPUC, in its comments on the November 8, 2008 informational filing, primarily argues that ISO-NE did not provide sufficient information for the Commission to determine whether ISO-NE appropriately found that quantity proration would not be available to suppliers in Connecticut. We reject this view.

44. ISO-NE expressly stated that megawatt proration would not be available to resources in Connecticut, because such proration would violate the transmission security requirement. CT DPUC has not stated that megawatt proration in Connecticut would not violate the transmission security requirement. Rather, this protest regarding proration appears to be a continuation of CT DPUC's argument against the legitimacy of the use of the Transmission Security Analysis generally, which we have already addressed above.

45. We accept ISO-NE's informational filing, for the reasons discussed above.

The Commission orders:

(A) The requests for rehearing are denied, as discussed above.

(B) The Commission accepts ISO-NE's November 8, 2008 Informational Filing, as discussed above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.