

130 FERC ¶ 61,108
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 No. ER09-1424-002

ORDER DENYING REHEARING AND GRANTING CLARIFICATION

(Issued February 18, 2010)

1. In an order issued on September 18, 2009,¹ the Commission accepted an informational filing from ISO New England Inc. (ISO-NE) regarding the qualification of capacity resources to participate in the third Forward Capacity Auction for the 2012-2013 Capacity Commitment Period and the de-list bids that certain resources submitted. In this order, we deny requests for rehearing and grant clarification of the September 2009 Order, as discussed below.

I. Background

A. Forward Capacity Market

2. ISO-NE recently implemented a forward market for capacity, in which resources compete in an annual Forward Capacity Auction to provide capacity to New England on a three-year forward basis.

3. Market Rule 1 of ISO-NE's Transmission, Markets and Services Tariff (Tariff) contains the Forward Capacity Market (FCM) Rules. Section III.13.8.1(a) of the FCM Rules requires ISO-NE to submit to the Commission, no later than 90 days prior to each Forward Capacity Auction, an informational filing that includes the details of the resources accepted or rejected in the qualification process for participation in the Forward Capacity Auction. ISO-NE's Market Monitor (Market Monitor) reviews the bids of Existing Generating Capacity Resources that seek to permanently or statically de-list by bidding above 1.25 times the Cost of New Entry (CONE) and 0.8 times CONE,

¹ *ISO New England Inc.*, 128 FERC ¶ 61,266 (2009) (September 2009 Order).

respectively, to determine whether those bids are consistent with the resource's net-risk-adjusted going forward costs and opportunity costs (Going-Forward Costs). If the Market Monitor rejects such a de-list bid, the informational filing must include the Market Monitor's own estimate of the resource's Going-Forward Costs.² At that point, a resource may either elect to (a) use the Market Monitor's estimate as an alternate de-list bid in the auction, or (b) challenge the Market Monitor's estimate before the Commission before the Forward Capacity Auction. On July 7, 2009, ISO-NE made the required informational filing for the Forward Capacity Auction to be held in October 2009.

B. Prior Proceedings

4. In its July 7, 2009 filing, ISO-NE stated that the Market Monitor rejected the static de-list bids submitted by the four separate resources at Dominion Resource Services, Inc.'s (Dominion) Salem Harbor Station on the basis that the de-list bids were not consistent with those units' Going-Forward Costs. ISO-NE stated that Dominion sought to depreciate certain capital costs for the units over a shorter period (three years) than the period that the Market Monitor considered appropriate (seven years or, in one case, fifteen). In addition, ISO-NE explained that each Salem Harbor unit included in its Going-Forward Costs, all of the costs common to all four units (namely, operating the Salem Harbor Station), which would only be appropriate if just one of the Salem Harbor units receives a Capacity Supply Obligation and the Salem Harbor Station must be operated to support that single resource. However, if multiple Salem Harbor units were to receive Capacity Supply Obligations, those resources would over-recover those common costs. The Market Monitor therefore developed alternate bids for the majority of two-, three-, and four-unit combinations for the Salem Harbor Station, all of which were intended to prevent overpayment of common station costs.

5. On August 19, 2009, the Commission issued an order instituting an expedited paper hearing, pursuant to section 206 of the Federal Power Act (FPA),³ stating that "ISO-NE has failed to provide sufficient cost support for the Market Monitor's alternate bids" with regard to both the common costs issue and the depreciation issue.⁴ We also stated that Dominion likewise failed to explain why, "if more than one of the Salem Harbor units receives a Capacity Supply Obligation on the basis of the de-list bids submitted by those units, such over-recovery would not be unjust and unreasonable."⁵

² ISO-NE tariff, § III.13.1.2.3.2.1.1.

³ *ISO New England Inc.*, 128 FERC ¶ 61,167 (2009) (August 2009 Order).

⁴ *Id.* P 25.

⁵ *Id.* P 26 (footnote omitted).

We set for expedited paper hearing the question of what bids should be used for the de-list bids for the four Salem Harbor units in the October 5, 2009 Forward Capacity Auction.

6. The Commission thus required both ISO-NE and Dominion to provide further information regarding ISO-NE's rejection of separate de-list bids submitted by Dominion's four Salem Harbor Station units, as well as the combination rates proposed by ISO-NE. Both ISO-NE and Dominion provided the requested information.

7. In the September 2009 Order, the Commission accepted ISO-NE's informational filing for the qualification of capacity resources to participate in the third Forward Capacity Auction and the de-list bids that the resources submitted. We accepted as just and reasonable ISO-NE's revised stand-alone static de-list bids for the Salem Harbor Units. We also found that Dominion's use of a standard three-year depreciation rate was unjust and unreasonable, and that ISO-NE's adjustments to the depreciation rates were just and reasonable. Finally, we accepted ISO-NE's proposed combination rates for the Salem Harbor Units' de-list bids in question for the October 2009 Forward Capacity Auction.

C. Requests for Rehearing and Clarification

8. On October 19, 2009, Dominion filed a request for rehearing and clarification of the Commission's September 2009 Order.⁶ On the same date, the PSEG Companies (PSEG) also filed a request for rehearing and clarification.⁷

II. Discussion

9. The Commission will deny the requests for rehearing and grant clarification, as discussed below.

A. Rehearing Requests

1. Dominion

10. Dominion limits its request for rehearing and clarification to the Commission's acceptance of ISO-NE's proposed seven- and fifteen-year depreciation periods to

⁶ Dominion filed its request for rehearing and clarification on behalf of Dominion Energy Marketing, Inc.; Dominion Energy New England, Inc.; and Dominion Energy Salem Harbor, LLC.

⁷ PSEG's request for rehearing was filed jointly by PSEG Energy Resources & Trade LLC and PSEG Power Connecticut LLC.

amortize expected capital costs incorporated into the Salem Harbor de-list bids for the 2012-2013 Capacity Commitment Period. Dominion first argues that the Commission erred in assuming that Salem Harbor's three-year depreciation period would improperly guarantee capital cost recovery under the FCM rules. Dominion states that such a result is impossible under the FCM rules, which require that bids be submitted three years in advance of the Capacity Commitment Period, and limit capital cost recovery incorporated into static de-list bids in subsequent commitment periods. Dominion argues that the Commission failed to recognize that the three-year depreciation period incorporated into Salem Harbor's de-list bids would begin (not end) with the 2012-2013 Capacity Commitment Period.

11. Further, Dominion states that the Commission erred in concluding that Dominion would have submitted a permanent de-list bid if it believed the useful economic life of the Salem Harbor Units supported a three-year depreciation period. Rather, Dominion claims that use of a permanent de-list bid for the 2012-2013 Commitment Period would more appropriately support the use of a one-year depreciation period, since the units would likely retire after the Commitment Period. In addition, Dominion states, the Commission erroneously determined that the submission of static de-list bids demonstrates Dominion's intent to (or ability to) "toggle" between "cost-based" and "market-based" capacity rates. Dominion states that Salem Harbor's use of a static de-list bid is specifically required by the FCM rules, given that those rules assume a three-year economic life beginning from the start of the 2012-2013 Capacity Commitment Period.⁸ According to Dominion, if Salem Harbor followed the rationale of the Commission and submitted a permanent de-list bid for the third Forward Capacity Auction and included a three-year depreciation period for capital costs, it would recover only one-third of its expected capital expenditure and then be forced to permanently leave the capacity market without ever having the opportunity to recover the remaining capital costs.

12. Dominion contends that the Commission's conclusion that acceptance of a shorter depreciation period would allow Dominion to recover its capital costs and re-enter the FCM and obtain market rates in the future is impossible under the FCM rules. Dominion states that if investments in expected capital improvements are incorporated in Salem Harbor's auction bids and the units are taken for reliability needs for the 2012-2013 Capacity Commitment Period, under the FCM Market Rules those costs become "sunk" or "fixed" and may not be included in subsequent de-list bids. Thus, Dominion argues, the fact that the same units could be taken for reliability in subsequent auctions is

⁸ Dominion states that "[d]epreciation of the capital costs required to make the [Salem Harbor] Units available for the 2012-2013 Commitment Period would begin in June of 2012 and continue through the three-year period ending in May 2015." Dominion request for rehearing at 4.

irrelevant. Dominion states that in light of the downward trend in capacity prices in the first three Forward Capacity Auctions, it is unrealistic to assume that the Salem Harbor units could participate as price takers in future auctions, and thus, those units cannot "toggle" between cost-based and market-based compensation.

13. Dominion also argues that in accepting ISO-NE's extended depreciation periods, the Commission failed to consider substantial record evidence regarding the useful economic life of the Salem Harbor Units. In response to the Commission's statements that a three-year amortization period is contrary to what Dominion has stated in public forums and that Dominion has explored repowering Unit 4,⁹ Dominion first challenges the appropriateness of relying on newspaper articles and the relevance of Dominion's evaluation of alternate fuel options for Salem Harbor Unit 4. Dominion then asserts that, read in the proper context, its statements in the press articles are consistent with Salem Harbor's use of a three-year depreciation period, in that Dominion has not expressly represented that Salem Harbor will operate beyond 2012. With regard to its possible repowering of Salem Harbor Unit 4, Dominion argues that it did not state that it is actively pursuing such repowering or that such repowering, if pursued, would allow Salem Harbor to participate in the FCM as a price-taker in the future. Dominion states that in fact, it ultimately concluded that use of the tested paper-based fuel was not feasible.

14. Finally, Dominion states that the Commission's reliance on the purported "useful physical life" of the Salem Harbor Units is not sufficient to overcome substantial evidence demonstrating that the useful economic life of the units supports a three-year depreciation period, particularly where the Commission's application of a useful physical life metric is inconsistent with its acceptance of ISO-NE's proposed depreciation periods. Dominion asserts that, if the Commission is correct that the useful life of Salem Harbor Unit 4 is 50 years, it only has 10 years left of useful life beginning in October 2009, so it is unjust and unreasonable for the Commission to approve a depreciation period of 15 years.

15. Dominion requests that, in the event the Commission does not grant rehearing of its decision to reject Salem Harbor's three-year depreciation period, it should clarify its September 2009 Order by confirming that the Order does not preclude consideration of the useful economic life of a unit in determining an appropriate depreciation period for the amortization of capital costs associated with de-list bids. Dominion asserts that the Commission should clarify that its determination that the appropriate depreciation period should reflect the useful service life of the Salem Harbor units does not preclude a market participant or ISO-NE from demonstrating that the useful economic life of the unit is either longer or shorter than the useful service life. Dominion argues that it is important

⁹ *Id.* at 9 (citing September 2009 Order, 128 FERC ¶ 61,266 at P 44-45).

for the Commission to clarify that a depreciation period may also be supported by an evaluation of the useful economic life of a unit, taking into consideration economic and environmental factors which can impact the period over which a generator should be permitted to depreciate capital costs.

2. PSEG

16. PSEG first argues that the September 2009 Order wrongly determined that the combination Going-Forward Costs rates provided fair compensation to the Salem Harbor Units for providing reliability services. PSEG contends that the mechanism adopted by the September 2009 Order does not provide a reasonable opportunity for the Salem Harbor plant to either recover its costs or earn a profit. PSEG argues that the Commission's reliance on its Reliability Compensation Order,¹⁰ in which the Commission set forth the mechanism by which resources retained for reliability would be compensated, does not support a finding that the combination rates are just and reasonable. PSEG argues that the combination bids will not be bid into the Forward Capacity Auction, and thus cannot clear the auction or receive the auction-clearing price. Thus, PSEG states, the Salem Harbor units would be paid only the combination Going-Forward Costs amount, even when prices in the Forward Capacity Auction clear higher than that amount, but the only time the units could earn a profit or recover fixed costs would be if the market cleared above each unit's bid incorporating all of the common costs of Salem Harbor. PSEG claims that, given that the units are obligated to provide reliability services at the combination rates, this pricing scheme places them at undue risk of never earning a profit or recovering fixed costs.

17. PSEG acknowledges that the Commission has directed ISO-NE to provide a long-term solution to the common costs issue in a subsequent filing. However, PSEG states that even assuming that the end result could be deemed just and reasonable if the Salem Harbor units were paid a break-even rate for one year and given a reasonable opportunity to earn a profit and recover fixed costs in future years, there is no basis upon which to make such a finding when that future rate-setting method has not yet been determined. PSEG argues that the Commission's approval of the use of Going-Forward Costs in the Reliability Compensation Order, *supra*, to pay units needed for reliability purposes was premised on the assumption that the Going-Forward Costs bids would be submitted into the Forward Capacity Auction and that units submitting Going-Forward Costs bids would have the opportunity to realize a profit if higher-priced bids cleared the auction. Thus, PSEG states, the capacity payments to Salem Harbor will be divorced from the capacity market and cannot be justified based on future clearing prices. Additionally, PSEG argues that the Commission cannot sustain its finding that the one-year combination

¹⁰ *ISO New England Inc.*, 125 FERC ¶ 61,102 (2008) (Reliability Compensation Order), *order on reh'g*, 130 FERC ¶ 61,089 (2010).

Going-Forward Costs rates are just and reasonable until it adopts the yet-undetermined mechanism for future Forward Capacity Auctions.

18. PSEG contends that the September 2009 Order improperly conflates Dominion's decision not to submit a permanent de-list bid with the determination that the combination static de-list bids are just and reasonable. PSEG states that this leads to "an inference that unless a unit is willing to leave the market completely, i.e., go out of business, the 'end result' of the rate methodology employed in FCM must be greater than the lower boundary of the zone of reasonableness" of rates.¹¹ PSEG argues that adopting a policy that signals to existing generators that they can expect to receive higher recoveries only if retirements occur will force older, less efficient generating units onto a trajectory toward retirement, even when those units are needed for system reliability.

19. PSEG, therefore, maintains that traditional cost-of-service principles should be used to pay Salem Harbor if multiple units are needed for reliability purposes. PSEG cites to *FPC v. Hope Natural Gas Co.* to support its argument that a rate that is so low as to "cause the company financial distress, i.e., be confiscatory"¹² cannot be just and reasonable.¹³ PSEG further argues that no inference can be drawn as to the justness and reasonableness of a resource's rate from the fact that the resource did not decide to retire – PSEG asserts that a unit might choose or not choose to retire for reasons unrelated to FCM, and that a rate would violate the *Hope* standard if it caused a unit that should be retained under an efficient long-term market design to accept insufficient compensation to continue operating.

20. PSEG further argues that the Commission's reliance on section 206 as the basis for adopting the new combination Going-Forward Costs rates as substitutes for the single Going-Forward Costs rates specified in the existing tariff requires that the Commission first find the existing rates are not just and reasonable, but the Commission failed to make this finding. Also, according to PSEG, the Commission's reliance on the fact that all parties knew the consequences of their bids ahead of time is inconsistent with its exercise of its section 206 authority to modify the tariff. PSEG states that the claim that paying the units a single unit Going-Forward Costs rate if more than one unit was needed for reliability would violate the principle that each unit should recover only its Going-Forward Costs does not apply to the instant facts because it relies on the Reliability Compensation Order. PSEG states that because the combination Going-Forward Costs rates are completely divorced from the market, the payment of amounts in excess of those

¹¹ PSEG request for rehearing at 14-15.

¹² 320 U.S. 591, 603 (1944) (*Hope*).

¹³ PSEG request for rehearing at 15.

calculations cannot be deemed to violate a principle whose adoption was premised upon market participation, and that, therefore, the Commission should compensate the Salem Harbor units on a cost-of-service basis.

21. Finally, similarly to Dominion, PSEG states that the Commission should clarify or, if necessary, determine on rehearing that the calculation of depreciation rates could be based on the economic life of the units. PSEG states that, while it does not oppose the specific determinations in the September 2009 Order regarding the calculation of depreciation for the capital expenditures, it seeks clarification that the findings were not intended to constitute a general determination that the demonstrated economic life of the units would not under any circumstances serve to set the period for depreciation. PSEG asks the Commission to clarify that owners of generators are not foreclosed from presenting evidence of unit economic life and that, when supported by the weight of the evidence, economic life could serve as the basis for depreciation rates.

3. Commission Determination

22. The Commission denies Dominion's and PSEG's requests for rehearing and grants clarification, as described below.

23. Dominion argues that the Commission erred in assuming Salem Harbor's three-year depreciation period would guarantee capital cost recovery. We disagree. Contrary to Dominion's assertions, the Commission does understand that the depreciation period would begin with the 2012-2013 Capacity Commitment Period. However, this does not minimize the fact that Dominion, or other resources, could recover their capital costs on an accelerated basis and then re-enter the market to obtain market rates in the future, whether or not the costs for capital improvements become sunk and may not be included in subsequent de-list bids.

24. As we have stated previously, resources are provided only an opportunity to recover their costs, not a guarantee that they will recover those costs.¹⁴ Thus, Dominion has been given a reasonable opportunity to recover its costs, not a guarantee, which is what Dominion appears to request through its proposed, shortened amortization period. Dominion submitted static de-list bids for the Salem Harbor units and must now accept the consequences of that choice. If Dominion had been convinced that the economic realities would make running the units infeasible, it could have chosen to submit a

¹⁴ See *Bridgeport Energy, LLC*, 113 FERC ¶ 61,311, at P 29 (2005) ("[T]he Commission has no obligation in a competitive marketplace to guarantee Bridgeport its full traditional cost-of-service. Rather, in a competitive market, the Commission is responsible only for assuring that Bridgeport is provided the *opportunity* to recover its costs.").

permanent de-list bid or a non-price retirement request. However, Dominion states that it would not make sense for it to submit a permanent de-list bid for the 2012-2013 Capacity Commitment Period, "if Dominion ultimately decides to remove the Salem Harbor units from the FCM beginning with the 2015-2016 Capacity Commitment Period."¹⁵ Dominion's choice not to submit a permanent de-list bid or non-price retirement request suggests that it is keeping open the possibility that the Salem Harbor units could potentially re-enter the market after the 2015-2016 Capacity Commitment Year.

25. Dominion claims that there is substantial evidence demonstrating that the useful economic life of the units supports a three-year depreciation period. However, we previously found Dominion's evidence unpersuasive, and Dominion has not submitted any new evidence in the instant filing that would justify reconsideration.¹⁶ Dominion's primary support for use of a three-year depreciation period is its assertion that current economic market conditions predict declining clearing prices as a result of the FCM and anticipated environmental legislation, which could adversely affect the Salem Harbor units. But this argument is purely speculative; Dominion does not know how the FCM auction or future legislation will affect its units. Depreciation rates must be based on evidence pertinent to what really is expected to happen, and not on an abstract or unsupported "worst case" scenario.¹⁷ Moreover, there is no indication that any such changes in market conditions would expose the Salem Harbor units to risks not faced by all resources. Dominion's arguments are based on these speculative worst case scenarios rather than reasonable expectations of the units.

¹⁵ Dominion request for rehearing at 5 (emphasis added).

¹⁶ With regard to Dominion's criticism of the use of newspaper articles and public statements as evidence, we note that while the Commission is not directly bound by the Federal Rules of Evidence, federal courts that have analyzed the admissibility of newspaper articles, offered for the truth of statements quoted therein, have considered the importance of balancing probative worth versus risk of prejudice, as well as the applicability of the "party admission" or other hearsay exceptions or exemptions. *See Larez v. Los Angeles*, 946 F.2d 630, 641-45 (9th Cir. 1991). Additionally, we note that Dominion does not refute the accuracy of the quoted statements referenced in either newspaper article (which are also seemingly consistent with public notices, disseminated directly by Dominion, which included the same or similar information), nor were these articles the sole basis for our determination of the depreciation period issue.

¹⁷ *See Memphis Light, Gas & Water Div. v. FPC*, 504 F.2d 225, 234-35 (D.C. Cir. 1974) (explaining, with respect to establishing a depreciation rate, that unsupported speculation cannot substitute for the adequate evidentiary basis upon which a finding must rest).

26. In addition, we disagree with Dominion's assertions that the Commission's application of a physical "useful life"¹⁸ metric is inconsistent with the approved depreciation periods. Dominion argues that Salem Harbor Unit 4 will be 40 years old when the 2012-2013 Capacity Commitment Period begins and that, thus, a 15-year depreciation period is unreasonable. However, as we stated previously, while the useful life of Salem Harbor Unit 4 is *at least* 50 years, there can still be remaining service life available for such a unit.¹⁹

27. Dominion and PSEG have requested that we clarify that in the future, resources may seek to use useful economic life, rather than useful service life, for consideration of proposed depreciation periods. We believe that currently, ISO-NE has shown that it is just and reasonable to use the useful service life as the correct measure of an appropriate depreciation period. In Order No. 618, we stated that "the primary objective of depreciation accounting is to allocate in a systematic and rational manner the cost of property to the periods during which the property is used in utility operations, i.e., over its estimated useful service life."²⁰ According to the Commission's regulations, the events that cause depreciation could include "changes in demand and requirements of public authorities."²¹ We grant clarification to provide that, if any such changes occur that would suggest that using the useful service life of a unit as the measure for depreciation is no longer correct, resources could seek relief through the ISO-NE stakeholder process or else file with the Commission for a review at that time.²²

28. PSEG argues that our reliance on the Reliability Compensation Order is in error, because the mechanism we approved in the September 2009 Order is "divorced from the market" and does not provide a reasonable opportunity for the Salem Harbor units to recover costs or to earn a profit. We reject PSEG's argument, first, because it is an

¹⁸ See Internal Revenue Service Publication 946, *How to Depreciate Property* 6 (July 16, 2009), available at <http://www.irs.gov/pub/irs-pdf/p946.pdf>.

¹⁹ September 2009 Order, 128 FERC ¶ 61,266 at P 45.

²⁰ *Depreciation Accounting*, Order No. 618, FERC Stats. & Regs. ¶ 31,104, at 31,695 (2000).

²¹ Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act, 18 C.F.R. pt. 101.12 (2009).

²² *ISO New England Inc. and New England Power Pool*, 130 FERC ¶ 61,089, at P 35 (2010).

untimely attack on the mechanism for compensating resources needed for reliability that the Commission approved in the Reliability Compensation Order.²³

29. Second, we believe the approved combination bids will provide a reasonable opportunity for Dominion to recover its costs, as ISO-NE's Market Monitor has determined that those bids accurately represent Dominion's Going-Forward Costs, which is the Commission-approved measure for compensation for de-list bids.²⁴ PSEG further states that the Commission cannot find the combination bid mechanism adopted by the September 18 Order, to be just and reasonable because it is unfair to pay the units an amount that, at best, is a break-even rate for the present, in return for a directive to ISO-NE to design a market-clearing mechanism that will provide the units with an opportunity to earn a profit and recover fixed costs at some point in the future. We have previously directed ISO-NE to work with its stakeholders to develop a long term solution in similar common cost situations regarding multiple de-list bids from units sharing common costs,²⁵ and we anticipate that this mechanism, when it is filed by ISO-NE, to the extent feasible will address such situations by allowing bids that represent combinations of multiple units with shared common costs to enter and clear the FCA and will address the overall needs of such units to receive just and reasonable compensation.

30. We disagree with PSEG's speculative argument that our policy will signal to existing generators that they can expect to receive higher recoveries only if retirements occur and that this will place older, less efficient generating units in the position of following a trajectory for retirement even when needed for system reliability, to the detriment of the New England region. As we stated in the Reliability Compensation Order, by design, recovery will vary according to market conditions:

²³ PSEG also alleges that the Commission failed to make an explicit finding that the existing rates were unjust and unreasonable before finding that the combination rates were just and reasonable, as required by section 206. However, in this situation, there were no "existing rates." Under the FCM rules, a resource's static de-list bid that is greater than .8 times CONE is reviewed by the Market Monitor, and is not submitted into the auction until the Market Monitor certifies that the bid is consistent with the resource's Going-Forward Costs. Therefore, until the Market Monitor accepted Dominion's de-list bids for the Salem Harbor units, there were no actual rates, just proposed bids.

²⁴ Reliability Compensation Order, 125 FERC ¶ 61,102 at P 38.

²⁵ August 2009 Order, 128 FERC ¶ 61,167 at P 31 ("We anticipate that new tariff provisions addressing the common costs issue will be filed in time to be implemented for the October 2010 Forward Capacity Auction, whether through a section 205 filing by ISO-NE and its stakeholders or a section 206 filing by ISO-NE.").

The purpose of the New England FCM is to attract and retain sufficient capacity to maintain ISO-NE's Installed Capacity Requirement, and to do so, FCM capacity prices will need to average out over time to the cost of new entry. But while the average price over time can be expected to match the cost of new entry, the prices in individual years will vary with market conditions above and below the average level.²⁶

PSEG has not demonstrated that any existing resources are likely to be forced into retirement, thereby endangering reliability.

31. We disagree with PSEG that a traditional cost-of-service methodology needs to be applied to determine the appropriate compensation if multiple units are needed for reliability under FCM. PSEG has provided no basis for such a statement. Further, we have stated in previous Commission orders that cost-of-service computation is available only in limited instances, namely, when a resource submits a permanent de-list bid or a non-price retirement request.²⁷ The premise of the FCM design is that resources offer bids based on their Going-Forward Costs. PSEG contends that it is discriminatory to pay some units needed for reliability purposes their full cost-of-service, while other units would receive a much lower avoided cost rate. However, this is again an untimely attack against the mechanism for compensating reliability resources that we approved in the Reliability Compensation Order, and we will therefore not consider that argument.

32. We also find that PSEG's reliance on *Hope*, in further seeking to make its cost-of-service argument, is misplaced. A previous case has explained that *Hope* reflects "a superseded cost-of-service paradigm" that "envisioned neither competition among service providers nor any opportunity for them to earn market-based rates."²⁸ Of particular relevance to our conclusion here where there is a competitive market for capacity, the Commission stated that "unlike the regulated markets addressed in *Hope* . . . , competitive markets do not guarantee the opportunity for return of/on investment through cost-based rates. That opportunity is provided through authority to charge market-based rates for services."²⁹ Thus, we continue to view the use of the combination Going Forward Costs rates as just and reasonable.

²⁶ Reliability Compensation Order, 125 FERC ¶ 61,102 at P 43.

²⁷ *Id.* P 47.

²⁸ *Pacific Gas and Electric Co.*, 91 FERC ¶ 63,008, at 65,111 (2000).

²⁹ *Id.*; accord *Bridgeport Energy, LLC*, 113 FERC ¶ 61,311 at P 29.

The Commission orders:

The requests for rehearing are hereby denied and the requests for clarification are granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.