

138 FERC ¶ 61,196
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

ISO New England Inc.

Docket No. ER12-757-000

ORDER ACCEPTING INFORMATIONAL FILING

(Issued March 15, 2012)

1. On January 3, 2012, ISO New England Inc. (ISO-NE) submitted an informational filing reporting on the qualification of capacity resources to participate in the sixth Forward Capacity Auction (FCA)¹ for the 2015-2016 Capacity Commitment Period (Informational Filing).² In this order, the Commission accepts the Informational Filing.

I. Background

A. Forward Capacity Market

2. ISO-NE operates a forward market for capacity, in which capacity resources compete to provide capacity to New England on a three-year-forward basis by participating in an annual FCA. Providers whose capacity clears the FCA acquire Capacity Supply Obligations, which they must fulfill three years later. The Forward

¹ The sixth FCA is scheduled to begin on April 2, 2012.

² On February 29, 2012, ISO-NE filed an errata to the original Informational Filing, which it describes as ministerial. ISO-NE states that it inadvertently omitted the static de-list bid for an Existing Import Capacity Resource, VJO-Phase I/II, from Attachment E. ISO-NE states that the errata corrects this omission and recognizes that this inclusion of VJO-Phase I/II's de-list bid increases the reported amount of static de-list bids ISO-NE reported by 39 MW; however, it does not change the total number of resources that qualified to participate in FCA 6.

Capacity Market (FCM) market rules³ require ISO-NE to submit to the Commission an informational filing no later than 90 days prior to each FCA. That filing must include, *inter alia*, the details of the resources accepted or rejected in the qualification process for participation in the FCA and the load zones to be modeled for the FCA. ISO-NE also issues a Qualification Determination Notification (QDN) to each resource informing it as to whether it has or has not qualified to participate in the FCA.

3. As part of the qualification process for a new generation resource, ISO-NE performs an initial interconnection analysis, including an analysis of overlapping interconnection impacts, to determine the amount of capacity that the resource could provide by the start of the associated Capacity Commitment Period.⁴ If, as a result of that initial interconnection analysis, ISO-NE determines that the interconnection facilities and upgrades identified in the qualification process that are necessary to enable the new generating resource to provide capacity cannot be implemented before the start of the Capacity Commitment Period, that resource is not qualified for participation in the FCA.⁵

4. Additionally, ISO-NE determines which capacity zones will be modeled in the FCA by determining whether certain zones are import-constrained or export-constrained.⁶ If a capacity zone is determined to be import-constrained, that is, an area that has insufficient generation and transmission-import capability to meet both local demand and reserve requirements, then that zone is modeled separately in the auction, and the clearing price in that zone may diverge from the clearing price in the rest of the region. In contrast, an export-constrained load zone is one in which, after serving local load, the available resources exceed the area's transmission capability to export excess energy.

B. Informational Filing

5. ISO-NE states in the Informational Filing that the Installed Capacity Requirement (ICR) for the 2015-2016 Capacity Commitment Period is 34,498 MW.⁷ After accounting

³ See ISO-NE Transmission, Markets, and Services Tariff (Tariff), section III.13.8.1(a).

⁴ Tariff, section III.13.1.1.2.3.

⁵ Tariff, section III.13.1.1.2.3(c).

⁶ Tariff, section III.13.8.1(a)(iv).

⁷ ISO-NE submitted the 2015-2016 ICR value filing in Docket No. ER12-756-000, and it was accepted by delegated letter order on February 23, 2012. The 34,498 MW ICR value does not reflect a reduction of 1,042 MW per month in capacity requirements

for 1,042 MW per month of Hydro Quebec Interconnection Capability Credits (HQICCs), the net amount of capacity that ISO-NE must procure in the FCA to meet the ICR is 33,456 MW. De-list bids totaling 435 MW will be submitted into the FCA.⁸ Additionally, 17 existing resources submitted Non-Price Retirement Requests. ISO-NE states that it qualified 134 MW of New Generating Capacity Resources, 1,820 MW of New Import Capacity Resources, and 521 MW of New Demand Resources after de-rating. Overall, the qualification process for FCA 6 resulted in 154 new projects, totaling 2,474 MW, and 36,257 MW⁹ of existing resources competing to provide 33,456 MW (after accounting for HQICCs) to the New England control area for the 2015-2016 Capacity Commitment Period.

6. ISO-NE's Internal Market Monitor (IMM) accepted a total of 40 new resources, providing approximately 2,175 MW that offered capacity at prices below 0.75 times the Cost of New Entry (CONE).¹⁰ However, the IMM determined that 251 MW of offers below 0.75 times CONE were inconsistent with the long run average costs net of expected non-capacity revenues and therefore, pursuant to section III.13.1.3.5.6.2 of the Tariff, will be considered out-of-market (OOM) Capacity.¹¹

II. Procedural Issues

relating to HQICCs.

⁸ Existing resources may opt out of an auction by submitting de-list bids for amounts of capacity they are willing to remove from the FCA at various prices for an entire Commitment Period (or Periods depending on the type of De-List Bid submitted). See Tariff, section III.13.2.3.2(b), (c), and (d).

⁹ As discussed later in the order, the actual amount of total qualified existing generating capacity resources for 2015-2016 will now be 32,207 MW, while the overall existing qualified resources will be 36,260 MW because ISO-NE erroneously set the Moretown LG facility capacity value at 0 MW instead of the correct 3.017 MW value.

¹⁰ The breakdown of the 40 new resources is as follows: four New Generating Capacity Resources totaling 18 MW, nineteen New Import Capacity Resources totaling 1,820 MW, and seventeen New Demand Resources totaling 338 MW.

¹¹ Informational Filing at 5 and 24. Pursuant to section III.13.1.1.2.6 of the Tariff, in order to determine whether a resource's offer price is consistent with its costs, the IMM reviews any offer submitted by a new capacity resource below 0.75 times CONE.

7. Notice of the Informational Filing was published in the *Federal Register*, with interventions and protests due on or before January 18, 2012.¹² GenOn Parties,¹³ Northeast Utilities Service Company, and Dominion Resources Services, Inc. filed timely motions to intervene. Maine Public Utilities Commission (Maine PUC) filed a notice of intervention and protest. Green Mountain Power Corporation (Green Mountain), EP Energy Massachusetts, LLC (EPEM), NRG Companies (NRG),¹⁴ Verso Maine Energy, LLC (Verso), First Wind Energy, LLC (First Wind), Alliance to Protect Nantucket Sound (Alliance), and New England Power Generators Association, Inc. (NEPGA), filed timely motions to intervene and protests or comments. The New England Power Pool Participants Committee (NEPOOL) and Exelon Corporation (Exelon) moved to intervene out of time. On February 13, 2012, ISO-NE filed an answer to the protests. On February 22, 2012, NEPGA filed an answer, and on February 28, 2012, Alliance filed two answers to ISO-NE's answer.

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely-filed unopposed motions to intervene and the notices of intervention serve to make the entities filing them parties to this proceeding. We will grant the motion to intervene out-of-time by NEPOOL and Exelon, given their interest in this proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers filed by ISO-NE, NEPGA, and Alliance because they have provided information that has assisted us in our decision-making process.

III. Information Request

10. On January 30, 2012, Commission staff issued a letter requesting additional information (Information Request) regarding the inputs and determinations for FCA 6 included in ISO-NE's informational filing to be provided within 14 days. On

¹² 76 Fed. Reg. 14,964 (2011).

¹³ The GenOn Parties are GenOn Energy Management, GenOn Canal, LLC, and GenOn Kendall, LLC.

¹⁴ The NRG Companies are NRG Power Marketing LLC, Connecticut Jet Power LLC, Devon Power LLC, Middletown Power LLC, Montville Power LLC, and Norwalk Power LLC.

February 13, 2012, ISO-NE filed its response (ISO-NE Response to the Information Request).

11. Notice of the ISO-NE Response to the Information Request submission was published in the *Federal Register*, 77 Fed. Reg. 10,739 (2012), with interventions and protests due on or before February 22, 2012. None was filed.¹⁵

12. In its response to the Information Request, ISO-NE first details the stability and transfer analysis conducted by a working group consisting of ISO-NE, Central Maine Power (CMP) and consultants from RLC Engineering. Second, ISO-NE responds to the question of how many of the resources in NEMA will be commercial by the 2015-2016 Capacity Commitment Period. Third, ISO-NE provides detailed information regarding the reports and analyses performed by ISO-NE to reject the Cape Wind and Meriden facilities for FCA 6, including the factors that led to Meriden's failure to qualify for FCA 6. Fourth, ISO-NE states that Alliance has not yet made a request to obtain the requested confidential information under the procedures set forth in ISO-NE's Information Policy. Additionally, ISO-NE provides further justification for the treatment of confidential information, specifically with regard to Cape Wind's QDN.

IV. Discussion

A. Modeling of NEMA Load Zone

13. In its Informational Filing, ISO-NE states that only two Capacity Zones will be modeled in FCA 6: Maine, and the remainder of the ISO-NE region (Rest of Pool).¹⁶ ISO-NE also states that neither the Connecticut nor the Northeast Massachusetts/Boston (NEMA) Load Zones will be modeled as a separate Capacity Zone because the existing resources in each Load Zone were greater than the corresponding Local Sourcing Requirements plus any (1) Export Bids, or (2) Administrative Export De-List Bids, which may be exporting capacity through the import-constrained Load Zone. According to ISO-NE, the existing resources in NEMA total 3,331 MW of capacity while the Local Source Requirement (the amount of capacity that would have to be available within a zone) is 3,289 MW.

¹⁵ In NEPGA's answer to ISO-NE's answer to the protests, NEPGA also addressed ISO-NE's response to the Information Request. On February 28, 2012, Alliance also filed an answer to ISO-NE's request for confidential treatment of Attachments 1-3 to ISO-NE's response to a Commission information request in addition to an answer to ISO-NE's answer.

¹⁶ The Rest of Pool Capacity Zone includes Massachusetts, Connecticut, Rhode Island, New Hampshire, and Vermont.

1. NEPGA Protest

14. NEPGA protests that the Informational Filing fails to consider important details regarding the actual resource capacity of the NEMA load zone. NEPGA states that there is only a 42 MW margin between meeting the Local Sourcing Requirement in NEMA and having a deficiency.¹⁷ NEPGA states that, at the January 11, 2012 Markets Committee meeting, ISO-NE stated that there were approximately 428 MW of resources in New England that cleared in FCA 1 that have not yet become commercial and are not expected to become commercial, and thus ISO-NE has the right to terminate them.¹⁸ NEPGA states that it is clear that there are in excess of 70 MW of these resources located in the NEMA area.¹⁹ NEPGA argues that with such a small margin between the Local Sourcing Requirement and existing capacity resources in NEMA, and knowledge that these resources are subject to termination rights with the potential to create a local deficiency, ISO-NE erred in failing to model the NEMA capacity zone to determine if a separate capacity zone is required. NEPGA argues that “[i]f this is not in violation of the actual terms of the Tariff, it is certainly in violation of the spirit of the Tariff, contrary to efficient operation of markets, and could jeopardize reliability in the region.”²⁰

15. NEPGA states that while ISO-NE has not exercised its right to initiate terminations of these resources, ISO-NE is aware it will ultimately have to terminate the resource obligations of those 70 MW. NEPGA argues that if these resources are not terminated prior to FCA 6 or the NEMA capacity zone is not modeled separately in

¹⁷ NEPGA Protest at 5.

¹⁸ *Id.* See Tariff, section III.13.3.4(d) (If a project sponsor does not achieve commercial operation, “then the ISO ... shall have the right, through a filing with the Commission, to terminate the resource’s Capacity Supply Obligation for any future Capacity Commitment Periods and the resource’s right to any payments associated with that Capacity Supply Obligation in the Capacity Commitment Period.”).

¹⁹ *Id.* NEPGA bases its assertion that more than 70 MW of these resources are in NEMA on discussions at the January 11, 2012 Markets Committee meeting (*see*, http://www.iso-ne.com/committees/comm_wkgrps/mrks_comm/mrks/mtrls/2012/jan10112012/index.html, Agenda Item A.05.A) and a review of CSO status information provided by ISO-NE in its FCA 5 Information Posting (*see*, http://www.iso-ne.com/markets/othrmrks_data/fcm/cal_results/ccp15/fca15/fca5_monthly_ob.xlsx).

²⁰ *Id.* at 6.

FCA 6, it should be expected that there will be inadequate existing capacity and inadequate price signals to ensure sufficient new resources will clear to satisfy the Local Sourcing Requirement. NEPGA argues that if the Commission fails to order ISO-NE to redress this deficiency, the artificially suppressed clearing price of the NEMA zone will fail to send the appropriate price signals to the market to obtain the supply needed to satisfy the NEMA capacity requirement. Further, NEPGA argues that if prices were allowed to separate by zone, depending on how much new capacity is approved and clears, then the NEMA zone would clear at prices reflective of the new resources that are needed. NEPGA is requesting that the Commission reject the Informational Filing and require ISO-NE to model the NEMA capacity zone to reflect ISO-NE's expectation that existing resources will be inadequate in FCA 6 to satisfy the NEMA capacity requirement.²¹

2. ISO-NE Answer

16. ISO-NE states that NEPGA is essentially requesting that the Commission order ISO-NE to exercise authority it does not possess under its Tariff. Sections III.12.4(b)(i) and III.12.4(b)(ii) of the ISO-NE Tariff states that, if the total amount of capacity to be compared to the export-adjusted Local Sourcing Requirement is greater than the export-adjusted Local Sourcing Requirement for the relevant load zone, the load zone will not be modeled as a separate capacity zone. ISO-NE explains that this mathematical decision is "not discretionary" and that the Tariff does not establish a "margin" below which ISO-NE must model a zone.²² ISO-NE states that, because the existing resources in NEMA exceed the Local Sourcing Requirement, the market rules preclude ISO-NE from modeling the NEMA zone as a separate zone in FCA 6. Additionally, ISO-NE notes that its obligation to model separate capacity zones is not affected by whether ISO-NE has knowledge of the quantity of existing capacity that is subject to possible termination rights under section III.13.3.4(c) of the Tariff.

17. Additionally, ISO-NE states that the Tariff is clear on its right to terminate an eligible resource's Capacity Supply Obligation for any future Capacity Commitment periods.²³ Specifically, termination is triggered only if a project sponsor has successfully covered its Capacity Supply Obligation for two capacity commitment periods, but has not yet achieved commercial operation. Under this provision, ISO-NE explains that it could not terminate those resources eligible for termination in NEMA before the start of the third Capacity commitment period (June 1, 2012). Further, ISO-NE states that under its

²¹ *Id.* at 6-7.

²² ISO-NE Answer at 22.

²³ *See* Tariff, section III.13.3.4.

Tariff,²⁴ it is required to continue monitoring the affected project sponsor's compliance with its critical path schedule until it either achieves commercial operation, or until two Capacity Commitment Periods have lapsed. ISO-NE argues that as long as the affected Project Sponsors continue to submit achievable reports, early resource termination would be inappropriate and inconsistent with the market rules. ISO-NE also notes that the resources that are eligible for termination are small, demand response resources that have demonstrated that there is a possibility that they will be available. Thus, ISO-NE asserts that, until June 1, 2012, it is required to model all existing capacity resources; otherwise, it would be violating the Tariff by depriving project sponsors the opportunity to achieve commercial operation. Therefore, ISO-NE urges the Commission to reject NEPGA's requests.

3. NEPGA Answer to ISO-NE's Answer

18. NEPGA, in its answer to ISO-NE's answer, states that ISO-NE has not satisfactorily addressed the Commission's inquiry as to the qualification of capacity resources in NEMA, either in ISO-NE's answer to the protest or in ISO-NE's response to the Commission's information request. NEPGA also states that a filing was made by ISO-NE on January 31, 2012,²⁵ in which ISO-NE proposes to model four zones for the region, beginning with FCA 7. NEPGA asserts that modeling four zones would solve the problem of potentially insufficient capacity in NEMA, and therefore urges the Commission to order ISO-NE to implement the plan to model four zones in time for FCA 6.

4. Commission Determination

19. For the reasons stated below, we reject NEPGA's arguments. While the margin of 42 MW between NEMA's local sourcing requirement and total amount of capacity may be small, we find that ISO-NE followed the provisions of its Tariff when it performed the necessary analysis to determine what load zones would be modeled. Under ISO-NE's Tariff,²⁶ ISO-NE is not permitted to model an import-constrained Load Zone as a separate Load Zone if the total amount of capacity projected to be available in the Load Zone before the start of the Capacity Commitment Period exceeds – by any amount, no matter how small – the Load Zone's Export-adjusted Local Sourcing Requirement. ISO-NE's Tariff does not provide for an acceptable margin below which ISO-NE must be

²⁴ See Tariff, section III.13.3.

²⁵ See ISO New England, Inc. and New England Power Pool Participants' Committee, Docket No. ER12-953-000.

²⁶ See Tariff, section III.12.4.

required to model a zone. We agree with ISO-NE's answer in that NEPGA is essentially requesting the Commission to order ISO-NE to exercise authority it does not possess under its Tariff.

20. With respect to determining how and when to terminate a resource's capacity supply obligation for future capacity commitment periods, again, we agree with ISO-NE that the result NEPGA seeks is beyond the scope of authority provided by the ISO-NE Tariff. ISO-NE is unable to determine whether or not a resource should be terminated before the Tariff-imposed timeframe (June 1, 2012). Until then, resources are modeled based on previous data that reports those resources as able to cover their capacity supply obligation. The Commission will not order ISO-NE to act outside the bounds of its Tariff.

21. Also, with respect to NEPGA's assertion that ISO-NE's decision not to model NEMA as a separate capacity zone could jeopardize reliability in the region, we note that, pursuant to section III.11 of the Tariff, if ISO-NE determines that a region may have potential near-term power supply reliability problems, it may issue a request for proposals and enter into contracts with resources to maintain near-term reliability in that region. Thus, if ISO-NE determines that NEMA will face reliability concerns closer to the 2015-2016 Capacity Commitment Period, the Tariff provides it with tools to address that problem. Furthermore, as ISO-NE explains, the resources that are eligible for termination are small, demand response resources that have demonstrated that there is a possibility that they will be available prior to June 1, 2012.

B. Meriden Facility

22. ISO-NE did not qualify a proposed 510 MW combined cycle facility in Meriden, Connecticut (the Meriden Facility), based on its finding that certain transmission upgrades identified by the Overlapping Impacts test,²⁷ conducted as part of the annual FCA certification process, cannot be completed until after the start of FCA 6.²⁸

1. NRG Comments

²⁷ The Overlapping Impacts test is intended to determine if proposed New Generating Capacity or new active Demand Resources provide incremental capacity to the system. This means that proposed New Generating Capacity will be qualified at the level at which it can operate without redispatch of other capacity resources. *See* ISO-NE Planning Procedure 10, § 5.7.

²⁸ NRG Protest at 7-8.

23. NRG, the developer of the Meriden Facility, argues that there is insufficient explanation as to why the Meriden Facility went from fully deliverable in FCAs 2, 3, 4, and 5 to entirely undeliverable for FCA 6. NRG requests that the Commission direct ISO-NE to explain what caused the Meriden Facility's deliverability to drop from 510 MW to 0 MW in one year.

24. NRG argues that ISO-NE has not sufficiently justified its finding that it would be impossible to complete upgrades necessary to make the Meriden Facility deliverable to be completed in time for the 2015-2016 Capacity Commitment Period.²⁹ NRG argues that while ISO-NE's tariff gives ISO-NE substantial discretion to conduct its affairs in a reasonable manner, it is not clear that ISO-NE followed its own Tariff and manuals in its evaluation of the Meriden Facility. NRG states that it appears that in conducting the Overlapping Impacts test, ISO-NE determined that certain transmission facilities owned by Northeast Utilities needed to be re-conducted in order to enable the Meriden Facility to be deliverable. NRG contends that while ISO-NE states it consulted with Northeast Utilities to determine whether upgrades could be completed in time, ISO-NE did not provide any details relating to this consultation.

25. NRG also requests that the Commission direct ISO-NE to consider recent changes to the pool of resources for FCA 6 before rendering a final decision on the Meriden Facility.³⁰ NRG states that the NEPOOL Markets Committee reported at its January 10, 2012 meeting that 428 MW of capacity resources that cleared as "new" capacity in FCA 1 have yet to achieve commercial operation and were candidates for termination by ISO-NE by May 31, 2012. NRG is concerned that continuing to account for these resources after they have cleared may have skewed ISO-NE's analyses that resulted in the rejection of the Meriden Facility. NRG requests that the Commission direct ISO-NE to conduct a revised Overlapping Impacts test removing the resources that are not in commercial operation from consideration.

2. ISO-NE Answer

26. In its answer, ISO-NE further supports its finding that NRG's Meriden Facility did not qualify for FCA 6 because it did not pass the Overlapping Impacts test. ISO-NE states that the Meriden Facility *qualified* in the previous FCAs, but it has failed to *clear* in an FCA. ISO-NE explains that, under the rules of the FCM, until a facility clears in an FCA, the facility is considered a New Generating Capacity Resource,³¹ and is thus

²⁹ *Id.* at 8-9.

³⁰ *Id.* at 10-11.

³¹ *See* Tariff, section III.13.1.1.1.1.

required to be analyzed under the Overlapping Impacts test to determine if the facility can provide incremental capacity. According to ISO-NE, the network model utilized in the Overlapping Impacts test for each qualification period is updated in order to capture the most up-to-date information. Any change to the input assumptions – impedances, rates, updates to the load distribution – can have an impact on the results.

27. In the case of the Meriden Facility, ISO-NE states that a change in the load distribution from FCA 5 to FCA 6 had the most significant impact on the deliverability of the facility. Specifically, ISO-NE explains that the load distribution reported by the Transmission Owners and used in FCA 6 was appreciably different than the one used in FCA 5 because of two factors: (1) a change in the methodology used to allocate loads; and (2) a change in the distribution³² of loads within each Transmission Owner's service territory and on individual pieces of equipment located within load serving substations. ISO-NE states that loads decreased in the southern part of Connecticut while loads in the Greater Hartford area increased, causing a large impact on the qualification of the Meriden facility. According to ISO-NE, the analysis indicated that the 1670 (Southington – Black Rock – Berlin 115 kV) and 1771 (Southington – Berlin 115 kV) transmission lines would be overloaded after the addition of NRG's Meriden facility for FCA 6. The changes in loading between FCA 5 and FCA 6 result in an overload of the lines with the addition of the Meriden Facility.³³

28. ISO-NE states that contrary to NRG's protest, ISO-NE determined, in consultation with the affected transmission owner, Northeast Utilities, that the fixes to the overhead lines could not be placed prior to the start of the 2015-2016 Capacity Commitment Period, due to the extent of the upgrades, and the necessity of with obtaining state siting approval and possible permits from the U.S. Army Corps of Engineers. Northeast Utilities informed ISO-NE that the fixes would not be a simple line re-conductoring as NRG claims, but rather a complex re-build to structures that would require significant upgrades located in an area containing wetlands.³⁴

3. Commission Determination

³² ISO-NE states that it is not uncommon that load shifts occur at the distribution level to account for changes in residential and commercial power consumption. In addition, transmission system upgrades will result in the re-distribution of loads. ISO-NE Answer at 18, fn. 37.

³³ *Id.* at 19-20.

³⁴ *Id.* at 20-21.

29. We find that ISO-NE's extensive answer and accompanying data sufficiently detail why the Meriden Facility qualified for FCAs 2, 3, 4, and 5, but not FCA 6. Because the Meriden Facility never cleared in any of the previous FCAs, ISO-NE properly considered it in FCA 6 to be a new generating resource, which must be studied as such before each auction. ISO-NE found, while conducting its Overlapping Impacts analysis, that there had been significant redistribution of load in Connecticut. Because of this redistribution, ISO-NE found that the addition of Meriden's 510 MW of capacity would overload two transmission lines in Connecticut as a result of both the new methodology and natural load redistribution. Therefore, ISO-NE determined that the Meriden Facility could not qualify for FCA 6.

30. Additionally, ISO-NE explains that it consulted Northeast Utilities – the transmission owner – before issuing the QDN to the Meriden Facility. In consultation with Northeast Utilities, ISO-NE determined that the needed upgrades to the overhead lines could not be in place prior to the start of the 2015-2016 Capacity Commitment Period. In contrast to NRG's claim that these upgrades would be a simple re-conductoring of the lines, ISO-NE and Northeast Utilities determined that a more complex re-build was needed. As ISO-NE explains, significant upgrades to structures would be necessary, some of which would be located in wetlands, requiring the proper siting approval and permits to construct the upgrades. Given this explanation, we reject NRG's request that ISO-NE conduct another Overlapping Impacts analysis since the affected lines will not have the necessary upgrades in place by the 2015-2016 Capacity Commitment Period.

31. In light of the foregoing, we conclude that NRG's Meriden Facility was properly examined and agree with ISO-NE's determination that the Meriden Facility did not qualify for FCA 6. Therefore, we also reject NRG's request that we direct ISO-NE to conduct a revised Overlapping Impacts analysis.

C. Facilities in Maine Not Qualified as a Result of Constraints on the Orrington-South Interface

32. ISO-NE did not qualify several renewable projects in Maine to participate in FCA 6 on the basis that the construction of those projects would violate the transfer limits of the Orrington-South interface, which connects Maine and southern New England. Multiple parties addressed this issue.

1. VERSO Comments

33. Verso argues that ISO-NE's determination not to qualify Bucksport G5, a 25 MW renewable biomass electric generation facility under construction, from the capacity market is unjust. Verso states that ISO-NE's determination, coupled with its alleged failure to complete its analysis of how a new transmission facility, the Maine Power

Reliability Project (MPRP), will improve the transfer limits at the Orrington-South interface, constitutes a violation of its Tariff.³⁵

34. Verso argues that ISO-NE cannot disqualify Bucksport G5 while ignoring the effect of the MPRP on Orrington-South's interface transfer limits. Verso points to a tariff provision stating that ISO-NE, in preparing an Informational Filing, has a duty to consider the existing and proposed transmission lines that it determines will be in service by the start of the 2015-2016 Capacity Commitment Period.³⁶ Verso also states that ISO-NE must identify the transmission interface limits it used in its analysis in accordance with the Tariff.³⁷ Further, Verso argues that the root of ISO-NE's decision to reject Maine resources from FCA 6 is its own failure to complete an analysis of how the MPRP will improve the Orrington-South interface transfer limits.³⁸

35. Verso requests that the Commission order ISO-NE to qualify Bucksport G5, or, in the alternative, require ISO-NE to complete its analysis of the MPRP's impacts on the Orrington-South interface limits, basing its analysis on completion of the MPRP transmission upgrades before June 1, 2015, and then reconsider Bucksport G5's qualification in that light.³⁹ Verso argues that, while it may be difficult to determine the exact increase in transfer capability of the MPRP (a projected transfer capability of around 700 MW), it is far simpler to determine that the transfer capability has increased to allow 109 MW of renewable resources to provide capacity value.⁴⁰ Verso notes that FCA 6 is scheduled to start April 2, 2012, and that ISO-NE should have no problem completing its analysis immediately. Additionally, Verso states that ISO-NE should accept Verso's resources in the auction because its qualification package is sufficient but for its improper exclusions as a result of ISO-NE's alleged failure to fully consider the effects of the MPRP.⁴¹

³⁵ Verso Protest at 12. *See* ISO-NE Tariff at section III.13.8.1.

³⁶ *Id.* at 13, *citing* Tariff at section III.13.8.1(a)(iii).

³⁷ *Id.* at 13, *citing* Tariff at section III.13.8.1(a)(ii).

³⁸ *Id.* at 15.

³⁹ *Id.* at 19.

⁴⁰ *Id.* at 18. The 109 MW of renewable resources rejected include Bucksport G5 and nine other resources in Maine north of the Orrington South interface.

⁴¹ *Id.* at 19.

36. Verso states that there is recent precedent allowing ISO-NE to properly re-evaluate erroneous determinations documented in its annual informational filings without affecting the timing of the FCA. Verso states that the Commission found that erroneous determinations by ISO-NE's IMM warranted a waiver of the general qualification deadline to allow ISO-NE to consider expeditiously all appropriate information in reaching its qualification determination for FCA 5.⁴²

2. Maine PUC Comments

37. Maine PUC argues that significant delays in determining transfer limits impair the ability of renewable resources to qualify for the FCM. In its comments, Maine PUC states that there were nine new Maine renewable resource projects that did not qualify to participate in the FCA 6.⁴³ Maine PUC argues that resources that had previously not been qualified for the FCA because of the Orrington-South transmission constraint should be able to know in advance of the qualification deadline whether the completion of the MPRP will allow them to qualify for the FCA 6.⁴⁴ Maine PUC states that the only information provided to these resources is that they did not qualify due to the Orrington-South transmission constraint, and that the necessary transmission upgrades needed to qualify them would not be completed by the 2015-2016 delivery year.

38. Maine PUC requests that the Commission direct ISO-NE to complete its stability analysis of the MPRP by March 1, 2011,⁴⁵ and determine whether any of the megawatts of the rejected resources can participate in FCA 6.⁴⁶ Maine PUC states that ISO-NE has

⁴² *Id.*, citing *ISO New England Inc.*, 135 FERC ¶ 61,147 (2011).

⁴³ The resources that did not qualify are Verso Maine Energy, LLC's Bucksport G5 project; Black Bear Hydro Partners, LLC's Stillwater B Hydro project, Orono A Hydro project and the Orono B Hydro project; Champlain Wind, LLC's 27 wind turbines on Bowers Mountain; Evergreen Wind Power II, LLC's Oakfield Wind project; Evergreen Wind Power III, LLC's Rollins Wind project; Evergreen Wind Power V, LLC's Stetson Wind I project; Stetson Wind II, LLC's Stetson II wind project; Blue Sky East, LLC's Bull Hill Wind project; and Quantum Utility Generation, LLC's Noble Passadumkeag Wind park project. Maine PUC Comments at 2-4.

⁴⁴ Maine PUC Comments at 5-6.

⁴⁵ Maine PUC states in its Comments that ISO-NE complete its stability analysis by March 1, 2011, not March 1, 2012, as the Commission believes is intended.

⁴⁶ *Id.* at 6. Maine PUC states that ISO-NE started this stability analysis over a year ago, and the date for completion has been pushed back several times.

suggested in committee meetings that transfer capacity may not be increased to the level of the projected thermal transfer limits and that ISO-NE indicated it was undertaking a stability analysis to determine actual transfer limits. However, Maine PUC states, this analysis was due to be completed in the second quarter of 2011, the date for completion has been pushed back several times, and the ISO-NE staff now projects that the results of the stability analysis will be presented to the planning advisory committee in February or March of 2012. Maine PUC states that resources should be able to know in advance of the qualification deadline whether the MPRP produces the level of projected transfer limits. Maine PUC argues that if ISO-NE determines that the MPRP does increase the transfer limit of the Orrington-South interface, the delay in making this determination should not prevent those resources from participating in FCA 6. If, however, the stability analysis shows that the transmission limit is not increased, then Maine PUC states that ISO-NE should indicate whether there are any low-cost fixes that would increase transfer limits.⁴⁷ Further, Maine PUC argues that the Commission should require ISO-NE to supplement its Informational Filing with the results of the stability analysis.

3. First Wind Comments

39. First Wind states that it understands that the MPRP is not a guarantee of either increased transfer limits, or qualification in the FCA; however, First Wind asserts that ISO-NE's inability to complete the transmission analysis to determine the new interface limits does not seem an appropriate reason to disqualify a project under the required qualification analysis.⁴⁸

4. ISO-NE Answer

40. ISO-NE states that because the Orrington-South interface continues to pose stability limitations, the protesters incorrectly characterize the MPRP as a solution that would allow Maine resources north of Orrington-South to qualify for participation in FCA 6.⁴⁹

41. ISO-NE first states that it properly applied the Overlapping Impacts analysis and that the MPRP will not increase transfer capability at Orrington-South in an amount sufficient to qualify new resources. ISO-NE states that these resources did not qualify because, as explained in the QDNs provided to the relevant resources, transmission upgrades beyond the MPRP are necessary for these resources to satisfy the Overlapping

⁴⁷ *Id.* at 6-7.

⁴⁸ First Wind Comments at 3-4.

⁴⁹ ISO-NE Answer at 16.

Impacts analysis qualification requirement.⁵⁰ ISO-NE also states that, since the MPRP has been certified to be in service by the 2015-2016 Capacity Commitment Period, the upgrades at Orrington-South referred to in the Informational Filing assume that the MPRP is in service.⁵¹ Further, ISO-NE states that any upgrades needed would be in addition to the MPRP.

42. ISO-NE further asserts that Maine PUC, Verso, and First Wind incorrectly state that the resources were not qualified because of delays in determining the transfer limits resulting from the MPRP.⁵² ISO-NE states that the transfer capability added by the MPRP is not sufficient for the projects to qualify under the Overlapping Impacts analysis for FCA 6. Further, ISO-NE states that the transfer analysis it conducted shows that the Orrington-South operational interface limit will be increased to approximately 1,350 MW as a result of the MPRP and that it would need to increase to approximately 1,640 MW to deliver the existing bottled-in resources.⁵³ In response to Verso,⁵⁴ ISO-NE states that to qualify an additional 109 MW, the Orrington-South operational interface limit would have to increase further to approximately 1,749 MW.

43. In response to Maine PUC's request that ISO-NE should "indicate whether there are any low-cost fixes that would increase the transfer limits,"⁵⁵ ISO-NE states that the FCM qualification process is not the appropriate mechanism to identify this type of information.⁵⁶ ISO-NE states that the Tariff allows a new generating resource to request a preliminary Overlapping Impacts analysis pursuant to Schedules 22 or 23 of the ISO-NE Tariff, which will identify potential upgrades necessary to qualify for participation in the FCA.⁵⁷ Further, ISO-NE states that none of the Maine resources

⁵⁰ *Id.* at 2. ISO-NE attached the QDNs that it issued to each resource to the privileged version of its informational filing, for which it seeks confidential treatment.

⁵¹ *Id.* at 14.

⁵² Maine PUC Comments at 5.

⁵³ ISO-NE Answer at 13.

⁵⁴ Verso Protest at 3.

⁵⁵ Maine PUC Protest at 6.

⁵⁶ ISO-NE Answer at 15.

⁵⁷ *Id.*, citing section 7.3 of Schedule 22 of the ISO-NE Tariff.

north of Orrington-South that did not qualify for FCA 6 have requested a preliminary Overlapping Impacts study.

5. Commission Determination

44. We find that ISO-NE has provided sufficient information with respect to those resources that did not qualify for the FCA in Maine. Despite claims by protesters that the MPRP was the inhibiting factor in ISO-NE's ability to determine a resource's ability to qualify, we concur with ISO-NE's assessment that the protesters erred in their understanding of the benefits of the MPRP. As ISO-NE explains, the MPRP was designed to ensure the continued reliability of Maine's transmission system and its ability to serve load; it was not designed with the purpose or intention of increasing transfer capability to a level sufficient for the Maine resources to qualify for FCA 6. Instead, as ISO-NE states, any increases in transfer capability are an ancillary benefit of the additional transmission infrastructure.⁵⁸ We find that ISO-NE has adequately demonstrated that the MPRP will not increase the transfer capability at the Orrington-South interface in an amount sufficient to qualify any new resources, including those who protest the Informational Filing.

45. Furthermore, ISO-NE clarified that additional transmission upgrades beyond the MPRP are necessary for the project to meet the Overlapping Impacts criteria and cannot be expected to be in place prior to the June 1, 2015 start of the Capacity Commitment Period. These upgrades are separate and apart from the MPRP, and are not the "low-cost" fixes described by Maine PUC. Therefore, ISO-NE's determination that the Maine resources did not qualify for FCA 6 is not dependent upon the status of the MPRP studies; rather, the Maine resources failed to qualify for the FCA due to the necessity to complete complex upgrades at the Orrington-South interface. Nevertheless, in response to the protesters' requests to require ISO-NE to complete its studies of the MPRP ahead of its proposed timeline, we note that ISO-NE states that the results of the various studies of the MPRP will be presented to the New England stakeholders at the March 2012 meetings of the Reliability and Planning Advisory Committees.⁵⁹

⁵⁸ *Id.* at 8.

⁵⁹ While we are accepting ISO-NE's Informational Filing, we encourage ISO-NE and its stakeholders to explore ways to improve transparency and communication of information in future qualification processes, so as to ensure clarity and reduce uncertainty with regard to timely requests for interconnections studies, deadlines for completion of project studies, and project completion dates.

D. Confidentiality for Cape Wind Project Information

46. When ISO-NE made its informational filing with the Commission, it filed two versions: a public version, and a separate “privileged” version for which it seeks confidential treatment. ISO-NE requested confidential treatment of the information included in Confidential Attachment 1 (to the privileged version), which contains the QDNs sent to resources that were not qualified to participate in the FCA. ISO-NE states that this was “commercially sensitive information,” and requested confidential treatment for this information in accordance with section 388.112 of the Commission’s regulations, 18 C.F.R. § 388.112 (2011).⁶⁰

47. One of the projects that did not qualify for participation in the FCA was the Cape Wind Associates, LLC (Cape Wind) offshore wind project off the coast of Massachusetts.

1. Alliance Comments

48. Alliance states that the public version of ISO-NE’s Informational Filing does not provide any information regarding ISO-NE’s determination that Cape Wind will result in the overloading of a transmission line. Alliance suggests that the confidential QDN that ISO-NE issued to Cape Wind may provide new information regarding transmission upgrades required for Cape Wind. Alliance argues that ISO-NE’s request for confidential treatment of certain information related to the Cape Wind project is supported by nothing more than the bare assertion that Attachment I contains “commercially sensitive information.”⁶¹ Alliance states that without reviewing Attachment I, Alliance or other interested persons cannot verify ISO-NE’s assertion about commercial sensitivity.⁶² Alliance notes that section 388.112(a) of the Commission’s regulations⁶³ require a party seeking confidential treatment of information to demonstrate why confidentiality is necessary. Alliance argues that ISO-NE has failed to explain the nature of the information at issue, or justify confidential treatment under the Freedom of Information Act (FOIA), and does not meet the requirements of section 388.112(a) of the Commission’s regulations. Alliance states that granting ISO-NE’s request for confidential treatment would be contrary to law and the public interest because it denies

⁶⁰ Informational Filing at 6.

⁶¹ Alliance Comments at 4.

⁶² *Id.* at 1.

⁶³ 18 C.F.R. § 388.112(a) (2011).

Alliance and other interested parties a meaningful basis to contest the request for confidential treatment for this information.⁶⁴

49. Alliance states that the Commission has previously denied requests for confidential treatment where, the request was both unsupported by specific allegations and contested by interested persons.⁶⁵ Alliance further argues that, previously, the Commission has applied a two-part test used by the United States Court of Appeals for the District of Columbia Circuit in *Critical Mass Energy Project v. Nuclear Regulatory Comm'n*.⁶⁶ Alliance states that under this test, commercial or financial information is deemed confidential if disclosure of the information is likely to “(i) impact the Government’s ability to obtain necessary information in the future; or (ii) cause substantial harm to the competitive position of the person from whom the information was obtained.”⁶⁷ Alliance argues that ISO-NE’s request for confidential treatment fails both prongs of this test. Alliance states that ISO-NE fails the first prong of the test because filing such information is not voluntary and the Commission has continuing authority to require the filing of detailed information regarding the transmission upgrades for generator interconnections. Additionally, Alliance argues that ISO-NE fails the second prong of the test because no competitive harm will befall the person from whom the information is obtained, namely, ISO-NE.⁶⁸ Finally, Alliance states that Cape Wind will not suffer competitive harm from the release of the requested information.

2. ISO-NE Answer

50. ISO-NE states, in its answer, that Alliance’s request for confidential information is improper and should be denied. ISO-NE argues that the information provided in Attachment I is commercially sensitive. ISO-NE states that the determinations Alliance seeks are based on information submitted by a Project Sponsor and contain information specific to a resource, including: (1) the outcome of the resource’s initial interconnection analysis; (2) the outcome of the resource’s Overlapping Interconnection Impacts analysis;

⁶⁴ Alliance Comments at 5-6.

⁶⁵ *Id.* at 5, citing *New York Independent System Operator, Inc.*, 129 FERC ¶ 61,103, at P 29-30 (2009), *reh’g denied*, 130 FERC ¶ 61,029, at P 16-18 (2010) (*NYISO*).

⁶⁶ 830 F.2d 278, 282 (D.C. Cir. 1987) (*Critical Mass*), on hearing *en banc*, 975 F.2d 871 (D.C. Cir. 1997).

⁶⁷ Alliance Comments at 6, *citing Critical Mass*, 830 F.2d at 282.

⁶⁸ Alliance Comments at 6-7.

and (3) an analysis of the resource's critical path schedule. ISO-NE states that it is not required by its Tariff to include the QDNs in its informational filing regarding the FCA qualification process each year, but does so to enable the Commission to know the basis for ISO-NE's determination in the event that a resource challenges its qualification status. ISO-NE further argues that commercially sensitive information is provided to it confidentially by project sponsors with the expectation that such information will not be made public. ISO-NE argues that the release of information relating to transmission upgrades associated with Cape Wind, major equipment orders, and financing for the project could cause competitive harm to the project sponsors, and should be deemed commercially sensitive. To release this material, ISO-NE asserts, would be unjust and unreasonable.⁶⁹ ISO-NE states that the Commission has previously required it to make its informational filing regarding de-list bids rejected by the IMM "in a manner that appropriately protects the confidentiality of that information."⁷⁰

51. Additionally, ISO-NE argues that public disclosure of this information beyond the resources who received the notifications regarding FCA 6 qualification is contrary to Commission precedent. ISO-NE states that the treatment given to Cape Wind's QDN in this proceeding is consistent with that of similar information in the five previous FCAs. ISO-NE states that in the proceeding on the informational filing for the first and third FCAs, the Commission ruled that ISO-NE and the affected party submitting sensitive cost information were permitted to exchange information on a confidential basis.⁷¹ ISO-NE also notes that, in the previous five FCAs, it has submitted under seal both the IMM's bid analysis and the qualification determinations examining the initial interconnection analysis and the analysis of overlapping interconnection impacts. ISO-NE argues that, contrary to the claims of Alliance, ISO-NE's request for confidential treatment is consistent with the informational filings for the previous five FCAs, and should be honored for FCA 6.⁷²

52. Finally, ISO-NE states that Alliance's request relates to matters that are outside the scope of the instant proceeding and should be denied by the Commission. ISO-NE observes that the comments submitted by Alliance do not allege that public disclosure of the information in Attachment I is needed to determine whether ISO-NE administered the

⁶⁹ See, *ISO New England Inc.*, 120 FERC ¶ 61,087, at P 61 (2007).

⁷⁰ ISO-NE Answer at 26, citing *ISO New England Inc.*, Order on Informational Filing, 128 FERC ¶ 61,266, at P 79 (2009).

⁷¹ ISO-NE Answer at 27, citing *ISO New England Inc.*, 120 FERC ¶ 61,087, at P 61 (2007) and *ISO New England Inc.*, 128 FERC ¶ 61,266 (2009).

⁷² ISO-NE Answer at 27-29.

FCA in accordance with the rules. Instead, ISO-NE argues that Alliance's request is irrelevant to the central issue of this proceeding in its broad request for all information related to the Cape Wind facility. ISO-NE notes that the Commission has previously rejected attempts to broaden the scope of the proceeding on informational filings and

should similarly do so in the instant filing.⁷³ ISO-NE concludes that if, as Alliance admits, it is Alliance's intent to rely upon the information it seeks to have considered 'public' in order to advance its position in other, pending litigation,⁷⁴ ISO-NE suggests that Alliance exercise its discovery rights in that litigation to properly obtain this information, rather than improperly seeking to expand the scope of this limited proceeding.⁷⁵

53. Additionally, in its Response to the Information Request, ISO-NE states that Alliance has not made a request for confidential information to ISO-NE itself under ISO-NE's Information Policy, as set forth in Attachment D, Section C of its Tariff.

3. Alliance's Answers to ISO-NE's Answer and ISO-NE's Request for Confidential Treatment

54. In its answer to ISO-NE's answer, Alliance asserts that the Commission's prior grant of confidential treatment to parts of similar Informational Filings by ISO-NE does not create a precedent for confidential treatment since the requests for confidential treatment in those earlier proceedings were not contested. Alliance also states that the Commission has held that it intends to preserve the confidentiality of only certain cost information provided to ISO-NE by existing generators. Alliance contends that it is not seeking cost information, but rather information related to the upgrades that will be required for Cape Wind and the reasons why Cape Wind failed to qualify for the FCA. Alliance also argues that the fact that it is seeking this information for a reason unrelated to the FCA qualification process is neither an attempt to broaden the scope of that process, nor a reason not to grant Alliance access to the information it seeks. Alliance further states that ISO-NE's suggestion that Alliance could obtain this information through litigation does not change the Commission's legal obligations under FOIA.⁷⁶

55. Reiterating its emphasis on FOIA principles, Alliance further argues that the information in question does not fall within Exemption 4 of FOIA, which exempts from

⁷³ See *ISO New England, Inc.*, 132 FERC ¶ 61,044, at P 30 (2010) ("the only issue in this proceeding is whether ISO-NE conducted the qualification process for the fourth Forward Capacity Auction in accordance with its FCM rules. We find that ISO-NE has done so, and we will therefore order no further relief.").

⁷⁴ Alliance states in its Comments at 5, n.11 that it is participating in the Federal environmental review process in connection with Cape Wind.

⁷⁵ ISO-NE Answer at 29-31.

⁷⁶ Alliance Answer to ISO-NE Answer at 4-6.

disclosure “commercial or financial information obtained from a person and privileged or confidential.”⁷⁷ Alliance states that ISO-NE is legally required to file this information with the Commission, and that ISO-NE’s request for confidential treatment may not be granted unless disclosure of the information is likely to: (i) impair the Commission’s ability to obtain necessary information in the future; or (ii) cause substantial harm to the competitive position of the person from whom the information was obtained.⁷⁸ Alliance states that ISO-NE has not met its obligation to show that the information that it wishes to keep confidential meets this test. Instead, Alliance asserts that “conclusory claims about commercial sensitivity” are insufficient.⁷⁹

56. Alliance further notes that information regarding the specific upgrades required for Cape Wind has previously been publicly disclosed in proceedings before the Massachusetts Department of Public Utilities and in the Federal environmental review process performed under the National Environmental Policy Act (NEPA). Thus, Alliance argues, if Attachments 1-3 contain no new information related to the upgrades required for Cape Wind, there is no basis for granting confidential treatment. If, on the other hand, Attachments 1-3 describe additional upgrades or provide new information, Alliance states that disclosure of that information is in the public interest so as to ensure that all of the environmental impacts of the project are considered during the NEPA review process in a timely fashion.⁸⁰

4. Commission Determination

57. We reject Alliance’s arguments concerning the confidential treatment of information relating to Cape Wind.

58. Section 388.112(a) of the Commission’s regulations provides that “[a]ny person submitting a document to the Commission may request privileged treatment by claiming that some or all of the information contained in a particular document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act,

⁷⁷ *Id.* at 7, citing to 5 U.S.C. § 552(b)(4) (2006).

⁷⁸ Alliance Answer to ISO-NE Answer at 7, citing *National Parks & Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974) (*National Parks*); see also *United Techs. Corp., Pratt & Whitney Div. v. United States DOD*, 601 F.3d 557, 559 (D.C. Cir. 2010).

⁷⁹ Alliance Answer to ISO-NE Answer at 10.

⁸⁰ Alliance Answer to ISO-NE’s Request for Confidential Treatment at 2.

5 U.S.C. 552.”⁸¹ FOIA, in turn, exempts from disclosure “commercial and financial information obtained from a person and privileged or confidential.”⁸²

59. This information was received from ISO-NE, a “person.” We further find that the information in question also falls within the definition of “commercial or financial information.” ISO-NE describes this information as including such items as “(1) the outcome of the resource’s initial interconnection analysis; (2) the outcome of the resource’s Overlapping Interconnection Impacts analysis; [and,] (3) an analysis of the resource’s critical path schedule, including dates on which the resource can be expected to reach certain milestones such as obtaining major permits, project financing, major equipment orders, substation site construction, major equipment delivery, and major equipment testing.”⁸³ This information is related to the Cape Wind project’s commercial operations, because Cape Wind was required to submit this information to ISO-NE as part of its application to qualify to participate in the FCA. Further, several of these items (such as information related to project financing and equipment orders) can be presumed to contain financial information.

60. The only remaining question is whether this information is “privileged and confidential.” As the court stated in *Critical Mass*, *supra*:

Turning to the “confidential” nature of this information, the precedent that guides us establishes two prime requirements. First, the agency must demonstrate that the information it seeks to shield “would customarily not be released to the public by the person from whom it was obtained.” ... Second, the agency must demonstrate that “disclosure will harm a specific interest that Congress sought to protect by enacting the exemption.”⁸⁴

61. As ISO-NE articulates in its answer, commercially sensitive information was provided by resources confidentially, with the expectation that such information will not be made public. ISO-NE further notes that if “information relating to transmission upgrades associated with Cape Wind and major equipment orders and financing for the project” is released, “other market participants may exploit this competitive

⁸¹ 18 C.F.R. § 388.112(a) (2011).

⁸² 5 U.S.C. § 552(b)(4) (2006). The Commission’s regulations incorporate this FOIA exemption at 18 C.F.R. § 388.107(d) (2011).

⁸³ *Id.* at 25.

⁸⁴ *Critical Mass*, 830 F.2d at 282, citations omitted.

information.”⁸⁵ The Commission finds that ISO-NE has made a sufficient showing that this information would customarily not be released – and in fact historically, has not been released – to the public by ISO-NE, i.e. the person from whom the information was obtained. As ISO-NE notes, “[t]he treatment that [it] has accorded the Cape Wind QDN in this proceeding is consistent with its treatment of such information in the five previous FCAs.”⁸⁶ The information was and, for all previous FCAs, has been provided to ISO-NE by project sponsors on a confidential basis, based both on previous FCA qualification processes, and on the competitive harm that a project sponsor could reasonably anticipate if this information were publicly released.

62. Additionally, we find that release of the confidential information here could harm a specific interest that Congress sought to protect by enacting exemption 4 of FOIA. ISO-NE operates the FCM to procure capacity for New England consumers under just and reasonable rates, terms and conditions, as required by the Federal Power Act. If capacity resources could not provide information to ISO-NE in a manner that protects commercially- and financially-sensitive information, they might be hesitant to disclose all relevant information, which could, in turn, complicate ISO-NE’s ability to adequately evaluate such resources and qualify them to participate in the FCM.

63. Further, under the first prong of the *National Parks* standard, *supra*, disclosure of this information is likely to impair the Commission’s ability to obtain necessary information in the future, since both ISO-NE and resources will be reluctant to provide qualification information to the Commission to the fullest extent possible, given the possibility that such information may be disclosed. As to meeting the second prong of the *National Parks* test – whether disclosure will cause substantial harm to the competitive position of the person from whom the information was obtained – this prong can never apply to ISO-NE itself, since ISO-NE is not a private enterprise that competes with other private enterprises. However, in any case, it would apply to the resources that are the original source of the confidential information, all of whom are private enterprises competing with one another to sell capacity, and who could be harmed commercially by the disclosure of this information.

64. Thus, we find that ISO-NE’s request to submit QDNs for Cape Wind (and other projects) to the Commission on a confidential basis appropriately falls within exemption 4 of FOIA, and we reject Alliance’s request that we deny confidential treatment to this information.

⁸⁵ ISO-NE Answer at 27.

⁸⁶ *Id.*

E. Other Issues**1. Green Mountain Comments**

65. Green Mountain is the Lead Market Participant for the Moretown LG facility,⁸⁷ and states that Moretown LG's Qualified Capacity was understated at 0 MW, rather than 3.017 MW based on the median of the most recent Seasonal Claimed Capability ratings⁸⁸ and requests that the Commission approve this capacity.

2. ISO-NE Answer

66. ISO-NE acknowledges in its answer that Green Mountain Power is correct in its claim that the qualified capacity value for the Moretown LG facility should be 3.017 MW, and not the 0 MW value reported in the Informational Filing.

67. Additionally, with this change, ISO-NE notes that the total amount of qualified existing generating capacity resources for the 2015-2016 Capacity Commitment Period will increase by 3 MW to 32,207 MW, and the overall existing qualified resources reported in the Informational Filing will increase to 36,260 MW.

3. Commission Determination

68. The Commission accepts the change in the Moretown LG facility qualified capacity value from the originally reported value of 0 MW to the modified, correct value of 3.017 MW. ISO-NE has indicated in its answer that it is in accord with this change, and we direct ISO-NE to make it. Furthermore, we recognize the increase in the total amount of qualified existing generating capacity resources for 2015-2016 will now be 32,207 MW, while the overall existing qualified resources will be 36,260 MW.⁸⁹

⁸⁷ Green Mountain Comments at 2. Moretown LG is a non-intermittent landfill gas facility located in Vermont.

⁸⁸ *Id.* at 2. See Market Rule 1, Section III.13.1.2.

⁸⁹ We additionally note here that EPDM, in its comments, stated that it wishes to elect the IMM's determination of its bid price, and, pursuant to EPDM's request, we recognize that election.

The Commission orders:

ISO-NE's Informational Filing is hereby accepted for filing.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.