

165 FERC ¶ 61,088  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Cheryl A. LaFleur and Richard Glick.

ISO New England Inc.  
New England Power Pool Participants Committee

Docket Nos. ER18-1770-000  
ER18-1770-001

ORDER ACCEPTING TARIFF REVISIONS

(Issued November 9, 2018)

1. On June 11, 2018, pursuant to section 205 of the Federal Power Act,<sup>1</sup> ISO New England Inc. (ISO-NE), joined by the New England Power Pool (NEPOOL) Participants Committee (collectively, Filing Parties), submitted proposed revisions to ISO-NE's Transmission, Markets, and Services Tariff (Tariff) to modify the calculation of the economic life of an Existing Capacity Resource to be the evaluation period in which the net present value of the resource's expected future profit is maximized (Economic Life Revisions). In this order, we accept the Economic Life Revisions, as discussed below.

**I. Background**

2. As part of its Forward Capacity Market (FCM), ISO-NE conducts an annual Forward Capacity Auction (FCA). Each auction is preceded by a multi-step process that begins almost a year prior. The process contains a number of deadlines detailing when information must be provided to ISO-NE or when ISO-NE must send information to market participants to ensure that the process can move to the next step. Under the current Tariff, Existing Capacity Resources<sup>2</sup> that wish to retire or permanently leave the

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> ISO-NE defines "Existing Capacity Resource" as "any resource that does not meet any of the eligibility criteria to participate in the [FCA] as a New Capacity Resource." *See* ISO-NE, Tariff, § I.2.2, Definitions (112.0.0).

FCM may elect to submit Retirement<sup>3</sup> or Permanent<sup>4</sup> De-List Bids, respectively. When Existing Capacity Resources wish to submit either Retirement or Permanent De-List Bids (generally referred to here as “De-List Bids”), they must include at least five years of cash flow estimates to justify their De-List Bid in the FCM.<sup>5</sup>

3. The Filing Parties state that, once Existing Capacity Resources submit a De-List Bid, ISO-NE’s Internal Market Monitor (Market Monitor) reviews the bid to determine whether the bid price is consistent with competitive bidding behavior using a two-step method. First, the Market Monitor determines the expected remaining economic life of the resource seeking to de-list by measuring the number of Capacity Commitment Periods<sup>6</sup> that the resource could continue to operate profitably. Second, the Market Monitor calculates the competitive de-list price (i.e., the Retirement or Permanent De-List Bid price) as the lowest capacity payment at which the resource would be no worse off financially by retaining its Capacity Supply Obligation in the FCA in which it is seeking to de-list and operating for its remaining economic life, relative to instead exiting the FCM before the Capacity Commitment Period associated with that FCA.

## II. Filing

4. The Filing Parties explain that, after a recent review, the Market Monitor determined that the current economic life calculation may overstate the true economic life of the Existing Capacity Resource in some cases, and such overestimation could result in a higher De-List Bid price than a De-List Bid price consistent with competitive bidding

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<sup>3</sup> ISO-NE defines “Retirement De-List Bid” as “an Existing Capacity Resource seeking to specify a price at or below which it would retire all or part of a Generating Capacity Resource from all New England Markets beginning at the start of a particular Capacity Commitment Period....” *See* ISO-NE, Tariff, section III.13.1.2.3.1.5, Permanent De-List Bids and Retirement De-List Bids (56.0.0).

<sup>4</sup> ISO-NE defines “Permanent De-List Bid” as “an Existing Capacity Resource seeking to specify a price at or below which it would not accept a Capacity Supply Obligation permanently for all or part of a Generating Capacity Resource beginning at the start of a particular Capacity Commitment Period....” *See* ISO-NE, Tariff, section III.13.1.2.3.1.5, Permanent De-List Bids and Retirement De-List Bids (56.0.0).

<sup>5</sup> Transmittal, Attachment (Testimony of Hemant Patil) at 4 (Patil Testimony).

<sup>6</sup> ISO-NE defines “Capacity Commitment Period” as “the one-year period from June 1 through May 31 for which obligations are assumed and payments are made in the [FCM].” *See* ISO-NE, Tariff, section I.2. 2, Definitions (112.0.0).

behavior.<sup>7</sup> The Filing Parties explain that, under the current Tariff, the Market Monitor calculates an economic life for an Existing Capacity Resource's De-List Bid as equal to the maximum time period for which the Existing Capacity Resource's net present value of cumulative future expected cash flows is positive.<sup>8</sup> Specifically, the economic life calculation assumes that an Existing Capacity Resource that earned positive cash flows in the earlier years would continue to operate and sustain negative cash flows in later years as long as its overall cumulative cash flows remain positive.<sup>9</sup> The Filing Parties state that this assumption is not consistent with competitive behavior because a profit-maximizing resource would elect to retire and keep the maximum of its cumulative cash flows rather than incur losses.<sup>10</sup>

5. Therefore, the Filing Parties propose to modify the economic life calculation to reflect that a competitive resource facing years of continual losses will seek to exit the FCM before incurring those losses that reduce its cumulative profits. The Filing Parties state that the proposed Economic Life Revisions reflect that the expected economic life of an Existing Capacity Resource will be the period that maximizes the net present value of the resource's expected cumulative future profits.<sup>11</sup>

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<sup>7</sup> Transmittal at 4; Patil Testimony at 4-5.

<sup>8</sup> The Filing Parties explain that the Market Monitor calculates the net present value of the Existing Capacity Resource's net operating profit less its capital expenditures and the expected value of the resource at the end of the evaluation period. Transmittal at 4-5 (citing ISO-NE, Tariff, section III.13.1.2.3.2.1.2.C, Permanent De-List Bid and Retirement De-List Bid Calculation of Remaining Economic Life (56.0.0)).

<sup>9</sup> Patil Testimony at 6-7 ("Consider a resource that expects positive \$5 million of cash flows in year one and negative cash flows of \$3 million in year two and each subsequent year. The current Tariff calculation would yield an economic life of two years because the resource could operate for two years with resulting cumulative cash flows of \$2 million – positive \$5 million in year one plus negative \$3 million in year two. This assumption is inconsistent with how a competitive supplier would operate a resource. In this example, the supplier would not choose to operate its resource beyond year one and incur the negative cash flows of \$3 million in year two. Instead, it would choose to exit the FCM after year one in order to maximize its cumulative cash flows at \$5 million.").

<sup>10</sup> Transmittal at 4-5; Patil Testimony at 5.

<sup>11</sup> Transmittal at 4-5. The Filing Parties note that, to facilitate this change, minimal Tariff revisions are required. Specifically, the Filing Parties propose to revise

6. The Filing Parties state that, for some Permanent and Retirement De-List Bids, the Economic Life Revisions will not impact a resource's previously determined economic life and thus, in such instances, the bid prices used in the FCA will be unchanged. However, the Filing Parties state that in cases where the proposed changes affect the economic life determination, the relative estimated competitive Permanent or Retirement De-List Bid price will be decreased. The Filing Parties assert that, in such cases, the reduction in the De-List Bid price is consistent with the objective of the bid review process, i.e., determining the minimum price required for the resource to "break even" over the duration of its economic life if it retains an obligation in the coincident auction.

7. The testimony supporting the Economic Life Revisions explains that the Filing Parties are proposing these revisions at this time because a large supplier submitted Retirement De-list Bids for four Existing Generating Capacity Resources totaling about 2,000 MWs for the thirteenth FCA (FCA 13), and, given the "significant size" of these De-List Bids, they could have adverse implications for the competitiveness of the FCA.<sup>12</sup> Filing Parties request an effective date of August 10, 2018 for the Economic Life Revisions, so that the revised calculation may be applied for FCA 13 to be held in February 2019.

**A. Notice of Filings and Responsive Pleadings**

8. Notice of the Economic Life Revisions was published in the Federal Register, 83 Fed. Reg. 28,219 (2018), with interventions and protests due on or before July 2, 2018. On June 12, 2018, New England States Committee on Electricity filed a motion to intervene. On June 20, 2018, Calpine Corporation and Dominion Energy Services, Inc. filed motions to intervene. On June 27, 2018, NextEra Energy Resources, LLC filed a motion to intervene, and NEPOOL filed supplemental comments. On June 29, 2018, NRG Power Marketing LLC and GenOn Energy Management, LLC jointly and Eversource Energy Service Company individually filed motions to intervene. On July 3, 2018, New England Power Generators Association, Inc. (NEPGA) filed an untimely motion to intervene and protest. On July 17, 2018, ISO-NE and NEPOOL separately filed answers to NEPGA's protest.

9. On August 9, 2018, Commission staff issued a deficiency letter (Deficiency Letter) requesting additional information from ISO-NE. On September 10, 2018, ISO-NE submitted its response to the Deficiency Letter (Deficiency Response). Notice of the Deficiency Response was published in the *Federal Register*, 83 Fed. Reg. 46,938 (2018),

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the last sentence of Tariff section III.13.1.2.3.2.1.2.C to strike the word "maximum" and replace the word "non-negative" with "maximized." *Id.*

<sup>12</sup> Patil Testimony at 7-8.

with interventions and protests due on or before October 1, 2018. On October 1, 2018, NEPGA filed a protest to the Deficiency Response.

### 1. Pleadings

10. In its protest, NEPGA asks the Commission to reject the Filing Parties' proposal and direct ISO-NE and the Market Monitor to bring their proposal to the stakeholder process with the intention that the revisions would become effective at the beginning of the process for the fourteenth FCA (FCA 14).<sup>13</sup> NEPGA contends that there was little meaningful stakeholder discussion that would allow stakeholders to determine whether the Economic Life Revisions accurately capture suppliers' views on retirement decisions.<sup>14</sup> NEPGA argues that the requested effective date for the proposal violates the filed rate doctrine and the rule against retroactive ratemaking or, in very least, significantly disrupts market expectations.<sup>15</sup> NEPGA does not address whether the proposed economic life methodology is just and reasonable, stating instead that that issue is a "separate question" that can be considered in a separate proceeding after FCA 13.<sup>16</sup>

11. NEPGA claims that, during stakeholder meetings, the Market Monitor stated that ISO-NE may need to seek waivers of the relevant deadlines in the mitigation rules in the Tariff to apply these changes to FCA 13 but notes that ISO-NE has not sought any waivers in this proceeding.<sup>17</sup> NEPGA asserts that, instead, the timing of the proposed revisions indicates that the Market Monitor applied the existing mitigation rules to the Retirement De-List Bids, concluded that one of the mitigated offers may be marginal, and only then retroactively sought to change the FCA 13 mitigation rules.<sup>18</sup> Specifically, NEPGA asserts that the Market Monitor has determined that one of the De-List Bids, as mitigated, may be marginal in FCA 13 under the existing Tariff. NEPGA contends that, if one of these De-List Bids is marginal, the Economic Life Revisions will retroactively reduce the FCA clearing price because the Market Monitor may mitigate a supply offer.<sup>19</sup>

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<sup>13</sup> Protest at 2.

<sup>14</sup> *Id.* at 6.

<sup>15</sup> *Id.* at 5-7.

<sup>16</sup> *Id.* at 4.

<sup>17</sup> *Id.* at 3.

<sup>18</sup> *Id.* at 4-5.

<sup>19</sup> *Id.* at 4.

NEPGA claims that the Filing Parties and the Market Monitor are requesting retroactive changes to rules that have already been applied to FCA 13 De-List Bids in violation of the filed rate doctrine (i.e., the proposed changes impact existing offers without proper notice).<sup>20</sup> NEPGA argues that the Economic Life Revisions should be applied on a prospective basis only, consistent with Commission precedent denying refunds that occurred after a complaint's refund effective date.<sup>21</sup>

12. Even if the Economic Life Revisions do not violate the filed rate doctrine, NEPGA claims that the Tariff revisions significantly disrupt market expectations to a degree that outweighs the benefits of the proposed revisions. NEPGA states that ISO-NE and the Market Monitor have not provided evidence that the revisions will result in a calculation that is more consistent with competitive bidding behavior, other than stating that “a supplier will not continue to be invested in a resource and sustain negative cash flow.”<sup>22</sup> NEPGA argues that, given the potentially significant impact on market participant confidence in the FCM, ISO-NE should better justify the proposed revisions with evidence that demonstrates that the revisions properly balance the interests of market participants.<sup>23</sup> NEPGA contends that the Economic Life Revisions do not provide enough benefits to outweigh negative impacts on market participants' FCM expectations, are not consistent with the competitive bidding behavior of market participants, and that ISO-NE did not provide sufficient discussion of this proposal in ISO-NE's stakeholder process.

13. In its answer, ISO-NE states that NEPGA has not argued that the Economic Life Revisions are unjust and unreasonable nor does NEPGA demonstrate that a market participant would continue to operate and invest in a resource that produces negative cash flows.<sup>24</sup> ISO-NE states that, contrary to NEPGA's claims regarding the filed rate doctrine, the Economic Life Revisions will only apply prospectively (i.e., not until FCA 13 is held in February 2019). ISO-NE acknowledges that the Economic Life

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<sup>20</sup> *Id.* at 5.

<sup>21</sup> *Id.* at 5-6 (citing *NEPGA v. ISO New England Inc.*, 161 FERC ¶ 61,193, at PP 11-12 (2017) (finding that PER charges incurred after the refund effective date are not subject to refund because “consistent with the notice requirement of FPA section 206, any application of a new PER Adjustment would have to apply prospectively from the date of the Complaint.”)).

<sup>22</sup> Protest at 6.

<sup>23</sup> *Id.* at 7.

<sup>24</sup> ISO-NE Answer at 3-5.

Revisions are being filed after the De-List Bids for FCA 13 have been submitted but argues that the benefit of these revisions outweigh any harm from settled market expectations.<sup>25</sup>

14. Specifically, ISO-NE explains that, left unchanged, the current methodology could lead to incorrect De-List Bid prices that could ultimately inflate the clearing price for FCA 13. ISO-NE states that the benefit of avoiding inflated clearing prices outweighs any impacts on settled market expectations, especially as the Economic Life Revisions only impact the De-List Bid of a single market participant. ISO-NE states that submission of Retirement De-List Bids is only the beginning of the de-list review process, noting that De-List Bids are frequently revised in consultation with the Market Monitor.<sup>26</sup> ISO-NE adds that its stakeholder process for approval of the Economic Life Revisions was compliant with its Participants Agreement and NEPGA's arguments requesting additional stakeholder process should be rejected.<sup>27</sup>

## **2. Deficiency Letter, Deficiency Response and NEPGA Protest**

15. On August 9, 2018, a Deficiency Letter was issued seeking additional information on ISO-NE's Economic Life Revisions. The Deficiency Letter sought additional information on how the Economic Life Revisions, as proposed to apply to FCA 13, are consistent with ISO-NE's timelines provided in various sections of its Tariff, as well as how the Economic Life Revisions may impact certain deadlines and Tariff provisions.<sup>28</sup> The Deficiency Letter included questions relating to the notice provided to market participants regarding the Economic Life Revisions, including how market participants were able to evaluate or respond to changed prices based on the Economic Life

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<sup>25</sup> *Id.* at 4-5.

<sup>26</sup> *Id.* at 5-7.

<sup>27</sup> *Id.* at 8 (citing *ISO-NE Participants Agreement*, section 11, [https://www.iso-ne.com/staticassets/documents/2015/10/parts\\_agree.pdf](https://www.iso-ne.com/staticassets/documents/2015/10/parts_agree.pdf)).

<sup>28</sup> See e.g., ISO-NE, Tariff, § I.2. 2, Definitions (112.0.0) (defining "Existing Capacity Resource"), § III.13.1.2.3.2.1 Static De-List Bids and Export Bids, Permanent De-List Bids, and Retirement De-List Bids at or Above the Dynamic De-List Bid Threshold (56.0.0), § III.13.1.2.3.2.1.1.2 Review of Permanent De-List Bids and Retirement De-List Bids (56.0.0), § III.13.1.2.4 (a) Retirement Determination Notification for Existing Capacity and Qualification Determination Notification for Existing Capacity (56.0.0), § III.13.1.2.4.1 Participant-Elected Retirement or Conditional Treatment (56.0.0).

Revisions.<sup>29</sup> The Deficiency Letter also included questions regarding the benefits of the proposed Economic Life Revisions and specific applications of calculating a resource's maximized cash flow.<sup>30</sup>

16. On September 10, 2018, ISO-NE submitted the Deficiency Response. ISO-NE explains that the submission deadline was for purposes of submitting the De-List Bids, which were not changed by the Economic Life Revisions. ISO-NE further explains that the Market Monitor applied the Economic Life Revisions only to Retirement De-List Bids that were mitigated by the Market Monitor.<sup>31</sup> In response to questions about the relevant timelines, ISO-NE states that the Retirement Determination Notifications relating to mitigated De-List Bids issued to the market participant included two prices: one using the Economic Life Revisions and one using the calculation under the existing Tariff. In response to what Tariff provisions generally support the application of the economic life calculation, ISO-NE states that the Tariff requires the Market Monitor to identify and address market design flaws, specifically under Appendix A, section III.A.1.1 and III.A.2.1(a) of the Tariff. Therefore, ISO-NE states that part of the core functions of the Market Monitor is to address market design flaws, which includes addressing the existing economic life calculation that is incorrect.<sup>32</sup>

17. With respect to the notice provided to market participants, ISO-NE asserts that it provided a Market Monitor memo on April 16, 2018 explaining the Economic Life Revisions and that they would be applied to FCA 13.<sup>33</sup> ISO-NE states that market participants were able to determine how the Economic Life Revisions would impact their De-List Bids based on this information.<sup>34</sup> ISO-NE answers that it is not necessary to provide an opportunity for market participants to withdraw or otherwise adjust their submitted De-List Bids because the Economic Life Revisions do not adjust information

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<sup>29</sup> Deficiency Letter at 2-4.

<sup>30</sup> *Id.* at 4-5.

<sup>31</sup> Deficiency Response at 1.

<sup>32</sup> *Id.* at 3.

<sup>33</sup> *Id.* at 4.

<sup>34</sup> *Id.* at 5.

submitted by market participants in support of their bids, but rather only how ISO-NE evaluates the bids.<sup>35</sup>

18. ISO-NE explains that the Economic Life Revisions correct an error in the current economic life calculation that may result in certain resources receiving a higher De-List Bid price that may cause the resource to retire. ISO-NE states that a retirement under this scenario could lead to inefficient market outcomes and potentially raise total costs to procure capacity resources because other resources with higher capacity costs will receive Capacity Supply Obligations from the FCA. ISO-NE also explains that, without the Economic Life Revisions, suppliers may also be able to submit inflated De-List Bid prices, thus incentivizing suppliers with larger portfolios of resources to exert supplier-side market power. ISO-NE provides a numerical example in which its current economic life calculations inflated the De-List Bid price by \$2.5/kW-month for a resource that requires \$11 million in revenue to “break even” under the current economic life calculation, but \$8 million under the Economic Life Revisions. Under these assumptions, ISO-NE explains that, if the De-List Bid calculated under the Economic Life Revisions example represents the marginal bid, the current economic life calculation has the potential to raise consumer costs by roughly \$900 million. ISO-NE adds that, if this supplier has market power, the supplier may use this inflated price to raise the prices for the remainder of its portfolio.<sup>36</sup>

19. In its protest to the Deficiency Response, NEPGA reiterates its arguments that the proposed Economic Life Revisions as applied to FCA 13 violate the filed rate doctrine and fail to properly balance equities and interests.<sup>37</sup> NEPGA argues that the Market Monitor’s assertion that the currently-effective economic life calculation is “incorrect” results from the Market Monitor’s belief that market participants must use the same commercial judgment as the Market Monitor. NEPGA claims that the Market Monitor failed to provide evidence in support of this view. NEPGA concludes that differences in commercial judgments do not lead to uncompetitive market outcomes and, therefore, do not justify applying the proposed changes to FCA 13.<sup>38</sup>

20. NEPGA also claims that both ISO-NE and the Market Monitor failed to provide Market Participants with notice of the proposed Economic Life Revisions. Specifically,

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<sup>35</sup> ISO-NE states that the Economic Life Revisions only impact the years applied to the De-List Bids, not the cash flow data submitted by market participants. *Id.* at 5.

<sup>36</sup> *Id.* at 8-9.

<sup>37</sup> Supplemental Protest at 1.

<sup>38</sup> *Id.* at 3-4.

NEPGA alleges that market participants have been denied the ability to make fully informed decisions in submitting Retirement De-List Bids for FCA 13 under the proposed Economic Life Revisions, which it argues will interfere with the competitiveness and the efficiency of the FCA.<sup>39</sup> NEPGA also argues that accepting the proposed Economic Life Revisions would cause market participants to conclude that they cannot rely on FCA rules remaining unchanged, which would create uncertainty regarding the FCM construct. NEPGA argues that, if the Economic Life Revisions are accepted, a market participant is placed in the impossible position of assessing the risk that market rules will change mid-course.<sup>40</sup> Finally, NEPGA asserts that the Economic Life Revisions, if accepted, could cause a marginal proxy or actual De-List Bid to clear the FCA below a competitive offer price, thus adversely impacting all capacity suppliers.<sup>41</sup>

### **III. Discussion**

#### **A. Procedural Matters**

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the timely, unopposed motions to intervene serve to make the entities that filed them parties to these proceedings. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2018), the Commission will grant NEPGA's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

22. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2018), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept ISO-NE's and NEPOOL's answers because they provided information that assisted us in our decision-making process.

#### **B. Substantive Matters**

23. As discussed below, we find the proposed Economic Life Revisions just and reasonable and therefore accept them, to become effective on August 10, 2018, as requested. The Economic Life Revisions will help ensure a competitive outcome for FCA 13, as well as future FCAs, by avoiding the potential that capacity resources will receive inflated FCA clearing prices. By revising the Tariff to prevent an overestimation

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<sup>39</sup> *Id.* at 5-6.

<sup>40</sup> *Id.* at 6-7.

<sup>41</sup> *Id.* at 7-8.

of the true economic life of an Existing Capacity Resource in certain circumstances, and the inflated De-List Bid prices that such an overestimation would cause, the Economic Life Revisions will ensure a De-List Bid price consistent with competitive bidding behavior. We find that it is just and reasonable to consider as part of the Economic Life calculation that a rational resource, in exercising competitive bidding behavior, would seek to exit the market, or retire, before it starts incurring consecutive losses.

24. Contrary to NEPGA's assertions, the Economic Life Revisions do not represent a violation of the filed rate doctrine or constitute retroactive ratemaking. The Commission has determined that De-List Bids are "inputs to the wholesale rate" and are not "the ultimate rate under section 205" until filed with the Commission after the auction has cleared.<sup>42</sup> As such, we find that the filed rate doctrine does not attach here because the De-List Bids are merely inputs to the wholesale rate. In addition, this finding is consistent with the Tariff requirement that ISO-NE submit various FCA-related filings with the Commission for review under FPA section 205. These requisite filings include the determinations of the Market Monitor regarding each De-List Bid<sup>43</sup> and the FCA results.<sup>44</sup> We conclude that these Tariff provisions put market participants on notice that De-List Bids are subject to change and therefore, represent an independent basis for concluding that there is no violation of the filed rate doctrine.<sup>45</sup>

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<sup>42</sup> *ISO New England Inc.*, 155 FERC ¶ 61,029, at P 85 (2016) ("Like the process proposed herein for Retirement Bids, the existing Market Monitor bid mitigation rules for static De-List Bids involve ISO-NE's submission of the bids with the Commission, and subsequently an additional filing of the ultimate rate(s) under section 205 once the auction has completed"), *order on reh'g & compl.*, *ISO New England Inc.*, 161 FERC ¶ 61,115, at P 13 (2017) ("The bids entered under the ISO-NE Forward Capacity Market...are inputs to the wholesale rate of ISO-NE...the settlement and its subsequent tariff iterations do not constitute Petitioners' rates to the extent they participate in the Forward Capacity Auction.").

<sup>43</sup> See ISO-NE, Tariff, section III.13.8.1(b), Filing of Certain Determinations Made By the ISO Prior to the Forward Capacity Auction and Challenges Thereto (19.0.0) (relating to the section 205 filing detailing Permanent and Retirement De-List Bids).

<sup>44</sup> See ISO-NE, Tariff, section III.13.8.2, Filing of Forward Capacity Auction Results and Challenges Thereto (19.0.0).

<sup>45</sup> ISO-NE submitted its FPA section 205 informational filing detailing Permanent and Retirement De-List Bids for FCA 13 in Docket No. ER18-2047-000. In the context of Static De-List Bids, the Commission has addressed whether a De-List Bid is properly mitigated in advance of the relevant auction. See *ISO New England Inc.*,

25. We also find that the Economic Life Revisions represent a prospective change to the Tariff and, therefore, do not constitute retroactive ratemaking, because they are effective on August 10, 2018, before FCA 13 commences on February 4, 2019.<sup>46</sup> As the Commission has previously determined, there is a difference between upsetting the expectations of market participants and retroactive ratemaking.<sup>47</sup> Where protestors have asserted that proposed Tariff revisions would disrupt settled expectations mid-course and harm market participants who relied on the existing Tariff in calculating prices and entering into contracts, the Commission has considered a “balancing of interests” or “balancing of equities” in determining the appropriate outcome.<sup>48</sup> Thus, in certain circumstances, the Commission has accepted revisions where the benefits outweighed any settled expectations, and we do so here.<sup>49</sup>

26. In this proceeding, ISO-NE argues that the benefits of the Economic Life Revisions include the prevention of inflated De-List Bids that occur because (1) the current methodology fails to adequately reflect competitive market behavior; or (2) a market participant may attempt to exercise market power through its De-List Bid. ISO-NE argues that the Economic Life Revisions would therefore ensure competitive market outcomes and prevent severe market distortions. At the same time, NEPGA argues that applying the Economic Life Revisions to FCA 13 would harm settled market expectations because it would reduce market participant confidence in the FCM, deny

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132 FERC ¶ 61,044 at 25 (2010) (the Commission determined ISO-NE’s Market Monitor correctly calculated static de-list bids by excluding certain costs from resources’ going-forward costs).

<sup>46</sup> ISO-NE states that the Retirement Determination Notifications for FCA 13, relating to mitigated De-List Bids, included two prices for the impacted market participant: one using the Economic Life Revisions and one with the economic life calculation under the existing Tariff. Deficiency Response at 1-2.

<sup>47</sup> See *ISO New England Inc.*, 148 FERC ¶ 61,185, at P 29 (2014), *reh’g denied*, 150 FERC ¶ 61,129 (2015).

<sup>48</sup> See *id.* (explaining that the Commission accepted proposed tariff revisions after conducting a balancing of interests and determining that proposal’s benefits, which included preventing consumers from paying “for non-existent capacity or [the possibility of] fac[ing] a multi-year capacity shortfall,” outweighed “market participants’ reliance upon the existing FCM rules.”); see also *ISO New England Inc.*, 145 FERC ¶ 61,095, at P 29 (2013) (noting the Commission has used this balancing test to accept or reject proposed tariff revisions).

<sup>49</sup> See *ISO New England Inc.*, 145 FERC ¶ 61,095 at P 29; *ISO New England Inc.*, 148 FERC ¶ 61,185 at P 29.

market participants the opportunity to make fully informed decisions on whether to submit De-List Bids, and could result in lower, uncompetitive auction clearing prices.

27. In conducting a balancing of the interests here, we are mindful of the importance of not disrupting settled expectations based on existing market rules. We conclude, however, that under these specific facts, the benefits of the proposed Economic Life Revisions outweigh potential disruptions to market participants' settled expectations and harm caused by reliance on the existing FCM rules. For this reason, we find that the specific benefits of implementing the Economic Life Revisions, including ensuring competitive market outcomes for FCA 13, outweigh the concerns articulated by NEPGA. NEPGA's arguments related to harm or disruption to settled expectations are without evidentiary support and provide an insufficient record to conclude that the Economic Life Revisions have an impact on De-List Bid determinations to an extent that outweighs the benefits of the Economic Life Revisions demonstrated in this proceeding.

28. Further, we find that the benefits described by ISO-NE outweigh the mere possibility that clearing prices could be lower as a result of a FCA 13 implementation of the Economic Life Revisions. The fact that the clearing price could be relatively lower if the Economic Life Revisions are approved is not relevant to the determination of the appropriate economic life and related De-List Bid for a capacity resource. Rather, a De-List Bid should reflect a market participant's actual, supported going-forward costs, indicating the break-even point where it is indifferent about taking on a capacity supply obligation. As to the expectations of market participants when they submitted De-List Bids, we find that the cash flow data submitted by market participants to support their De-List Bids should remain the same regardless of whether the economic life methodology changes.

29. Additionally, we find no merit in NEPGA's arguments related to the stakeholder process. While we acknowledge that the stakeholder review was expedited, the record reflects that ISO-NE met its burden for stakeholder review of the Economic Life Revisions under its Participants Agreement.<sup>50</sup>

30. Based on the foregoing, we find that the proposed Economic Life Revisions are just and reasonable and, accordingly, accept them.

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<sup>50</sup> ISO-NE Answer at 7-8 (citing *ISO-NE Participants Agreement*, section 11, available at [https://www.iso-ne.com/static-assets/documents/2015/10/parts\\_agree.pdf](https://www.iso-ne.com/static-assets/documents/2015/10/parts_agree.pdf)).

The Commission orders:

The Economic Life Revisions are hereby accepted, to become effective on August 10, 2018, as requested, as discussed in the body of this order.

By the Commission. Chairman Chatterjee is dissenting with a separate statement attached.

Commissioner McIntyre is not voting on this order.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England Inc.  
New England Power Pool Participants Committee

Docket No. ER18-1770-000  
ER18-1770-001

(Issued November 9, 2018)

CHATTERJEE, Chairman, *dissenting*:

I respectfully dissent from the majority's decision to permit the implementation of ISO-NE's proposed Economic Life Revisions at this point in the thirteenth Forward Capacity Auction (FCA 13) process. While I am not opposed to making the proposed change effective for FCA 14, I conclude that, for both policy and legal reasons, it is not just and reasonable to implement the proposed revisions in FCA 13.

Implementing these tariff revisions for FCA 13 will disrupt settled market expectations mid-course and harm market participants who relied on the existing tariff in calculating prices and entering into contracts. In particular, allowing the proposed rule change to take effect for FCA 13 will alter the consequences of economic decisions that certain market participants have already made about the conditions under which their units will retire. These market participants reviewed their economic position in light of the existing rules and chose to submit De-List Bids in reliance on these existing rules. Today's action denies market participants the opportunity to make a fully informed decision about whether to submit a De-List Bid.

I also find it troubling that ISO-NE submitted this proposal to modify the economic consequences of those De-List Bid decisions *after* ISO-NE was able to calculate what the economic consequences would be under the existing rules. This change would achieve a specific price-oriented outcome based on information ISO-NE possesses due to its unique role as both system operator and auction administrator.

In addition to my concern that implementing this kind of rule change after the relevant deadlines have passed is not an equitable way of conducting business, the legal basis of the order is questionable at best. This case raises very serious questions about when and how the rule against retroactive ratemaking applies in the context of an auction driven by inputs that are established according to deadlines in a filed tariff.

For these reasons, I respectfully dissent.

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