122 FERC ¶ 61,018
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

ISO New England Inc. Docket Nos. ER08-190-000
ER08-190-001

ORDER ACCEPTING INFORMATIONAL FILING

(Issued January 11, 2008)

1. On November 6, 2007, ISO New England Inc. (ISO-NE) filed an informational filing regarding the qualification of capacity resources to participate in the first Forward Capacity Auction (FCA). In this order, we accept ISO-NE's Informational Filing.

I. BACKGROUND

A. The Forward Capacity Market (FCM)

2. On March 6, 2006, ISO-NE filed a Settlement Agreement establishing the framework for New England's Forward Capacity Market (FCM).[1] On February 15, 2007, ISO-NE filed revisions to its market rules to implement the FCM. The Commission accepted a portion of the market rules on April 16, 2007,[2] and the remainder

[1] *See generally Devon Power LLC*, 115 FERC ¶ 61,340 (2006) (FCM Settlement Order), *order on reh'g*, 117 FERC ¶ 61,133 (2006) (FCM Rehearing Order).

[2] *ISO New England Inc.*, 119 FERC ¶ 61,045 (April 16 Order), *order on reh'g*, 120 FERC ¶ 61,087 (2007).

on June 5, 2007.[3] In its June 5 Order, the Commission accepted market rules which outline the rights and obligations of listed and de-listed capacity resources.[4]

1. The Instant Filing

3. The first FCA is scheduled for February 4, 2008. Section III.13.8.1(a) of the FCM rules requires ISO-NE to make an Informational Filing with the Commission no later than 90 days prior to each FCA. The Informational Filing is required to include the locational capacity requirements of the FCA based upon the topology of the transmission system, including whether it is appropriate to model separate Capacity Zones. In addition, the FCM Rules also require ISO-NE to determine the appropriate Capacity Values for Demand Resources, as well as specifying the resources accepted or rejected in the qualification process for participation in the FCA. For de-list bids rejected by the Internal Market Monitoring Unit (INTMMU) the Informational Filing must include the INTMMU's determination of the resource's net-risk adjusted going forward costs and opportunity costs.[5] A resource with a rejected de-list bid may re-submit a revised de-list bid consistent with the INTMMU's determination, subject to Commission review.[6] Pursuant to section III.13.8.1(b), any comments or challenges to ISO-NE's determinations must be filed with the Commission no later than 15 days from the date of the Informational Filing.

4. The Forward Capacity Market (FCM) created by the Settlement Agreement was intended to be solely a physical market, rather than a financial market, with tangible assets backing obligations. The Settlement Agreement established that the amount of capacity to be procured would equal the Installed Capacity Requirement (ICR) and that each and every physical resource that seeks to offer into the FCA would be available and capable of providing incremental capacity to the system. To ensure that new generating

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[3] *ISO New England Inc.*, 119 FERC ¶ 61,239 (2007) (June 5 Order), *reh'g pending*.

[4] Under the FCM Rules, all existing resources participate in the FCA, although existing resources may submit de-list bids to opt out of the capacity auction. *See* section III.13.2.3(c). Existing Generating Capacity Resources may opt out of the capacity market by submitting a de-list bid.

[5] Section III.13.1.2.3.2.1.1.

[6] *Id.*

resources would be capable of providing incremental capacity to the system, the qualification process includes an analysis of overlapping interconnection impacts.[7] The Settling Parties were also concerned about the potential exercise of market power through physical or economic withholding by existing capacity resources in New England to raise prices, and a similar potential for the exercise of monopsony power by sellers that could offer artificially low-priced resources to seek to depress capacity prices. Therefore, the FCM Rules require the INTMMU to assess existing generators' de-list bids that are above certain price thresholds and offers for new resources below certain price thresholds.[8]

2. Existing and Proposed Transmission Lines and Transmission Interface Limits

5. Pursuant to section III.13.8.1(a)(iii) of the FCM Rules, ISO-NE is required to provide the existing and proposed transmission lines that it determines will be in service by the start of the Capacity Commitment Period[9] associated with the FCA. The initial threshold for transmission projects to be considered in service is determined by transmission projects demonstrating that they are meeting certain milestones in their particular critical path schedule.

6. The Informational Filing also identifies the transmission interface limits used in the process of determining the Local Sourcing Requirements and the Maximum Capacity Limit used in selecting the Capacity Zones modeled in the FCA.[10] Pursuant to section III.12.5, ISO-NE determined the transmission interface limits using network models that include existing and proposed transmission lines that ISO-NE concludes will be in service no later than the first day of the relevant Capacity Commitment Period. The following transmission interface limits were used in the process of calculating the Local Sourcing Requirements and Maximum Capacity Limit: the transmission interface limit from Maine to New Hampshire of 1,575 MW; the transmission interface limit of the

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[7] *See* section III.13.1.1.2.3. ISO-NE states here that "[u]nder this process, [it] is in essence performing an analysis to ensure that new resources will be able to provide capacity and energy into the system without reducing the ability of other resources to also provide these services." Informational Filing at 3.

[8] *See* sections III.13.1.2.3.2.1.1 and III.13.1.1.2.6.

[9] The February 2008 Auction will procure capacity in support of the 2010-2011 Capability Year which extends from June 1, 2010 to May 31, 2011.

[10] *See* section III.13.8.1(a)(ii).

Boston import area of 4,900 MW; and the transmission interface limit of the Connecticut import area of 2,500 MW.[11]

3. Local Sourcing Requirements and Maximum Capacity

7. ISO-NE is required by the FCM Rules to provide the Local Sourcing Requirement[12] and Maximum Capacity Limit[13] for each modeled import-constrained and export-constrained Capacity Zone. As detailed in ISO-NE's ICR Filing,[14] these values are used to determine the amount of capacity needed in each Load Zone.

8. ISO-NE found that the 2010/2011 Capability Year Local Sourcing Requirements for the Connecticut and Northeast Massachusetts/Boston (NEMA) Load Zones are 7,017 MW and 2,246 MW, respectively.[15] The Maximum Capacity Limit for the Maine export-constrained Load Zone is 3,855 MW.[16]

4. Capacity Zones

9. For each import-constrained Load Zone, ISO-NE determines the total amount of capacity projected in the Load Zone prior to the Capacity Commitment Period as set forth in section III.12.4(b). If the total amount of the projected capacity is greater than the Local Sourcing Requirement for the relevant Load Zone plus any (i) Export Bids or (ii) Administrative Export De-List Bids, the Load Zone will not be modeled as a separate

[11] Informational Filing at 9.

[12] The Local Sourcing Requirement is the minimum amount of capacity that must be electrically located within an import-constrained Load Zone.

[13] The Maximum Capacity Limit is the maximum amount of capacity that can be procured in an export-constrained zone to meet the ICR. *See* section III.12.2.

[14] ISO New England and New England Power Pool, Filing of Installed Capacity Requirements, Hydro Quebec Interconnection Capability Credits and Related Values for the 2010/2011 Capability Year, Docket No. ER08-41-000 (filed October 11, 2007) (ICR Filing).

[15] Informational Filing at 10.

[16] *Id.*

Capacity Zone.[17] Additionally, pursuant to section III.12.4(c) adjacent Load Zones that are neither export-constrained nor import-constrained are modeled as a single Capacity Zone. ISO-NE contends that because there is sufficient existing capacity (existing resources exceed Local Sourcing Requirements) in each potential import-constrained area, Connecticut and NEMA will not be modeled as separate Capacity Zones in the FCA. Thus, there are no Local Sourcing Requirements modeled in the FCA.

10. ISO-NE states that in accordance with section III.12.4(a), because Maine is export-constrained, the Maine Load Zone will be modeled as a separate Capacity Zone.

5. Capacity Value of Demand Resources

11. Section III.13.8.1(a)(v) requires that ISO-NE's Informational Filing provide the multiplier applied in determining the Capacity Value of a Demand Resource, as described in section III.13.7.1.5.1. Section III.13.7.1.5.1 provides the calculation for determining the Capacity Value of a Demand Resource, as well as, in this particular case, the specific values to be used for the first FCA, which are based on reserve margin and peak transmission and distribution losses from the 2007-2008 Power Year. This multiplier provides Demand Resources an additional credit for capacity based upon the fact that these resources, in contrast to generators, reduce line losses and the need for a reserve margin. For the first FCA, the value of the ICR divided by the 50/50 summer system peak load forecast[18] shall be 1.143, and one plus the percent average avoided peak transmission and distribution losses shall be 1.08. Therefore, the overall multiplier applied in determining the Capacity Value of a Demand Resource shall be 1.234.

6. Resources Accepted and Rejected

12. ISO-NE is required by section III.13.8.1(a)(vi) to list the resources that are accepted and rejected in the qualification process to participate in the FCA. ISO-NE is also required to provide the INTMMU's determination with respect to offers or bids submitted during the qualification process, including an explanation of reasons for

[17] As ISO-NE notes in its filing at 11, neither Connecticut nor the NEMA Load Zones' fit these criteria. For example, in the Connecticut Load Zone, there are 7,637 MW of existing resources and the Local Sourcing Requirement is 7,017, plus 100 MW of capacity associated with an Administrative De-List Bid, brings its total to 7,117 MW. In NEMA, the existing resources are 3,424 MW and the Local Sourcing Requirement is 2,246 MW.

[18] The 50/50 peak load figure implies that this value has a 50 percent chance of being exceeded.

rejecting de-list bids. ISO-NE states that Lead Participants for existing resources were notified of their resource's qualified capacity on April 23, 2007. Each Project Sponsor or Lead Market Participant of a potential new capacity resource was sent a qualification determination notification on October 2, 2007.

13. ISO-NE states that it has reviewed all resources seeking to participate in the FCA. These resources include Existing and New Generating Capacity Resources, Import Capacity Resources and Demand Resources, as well as new resources opting to be treated as existing resources (an election applicable for the first FCA that allows a new resource to be a "price taker" in the FCA.) Pursuant to the FCM Rules, ISO-NE must include the results of the INTMMU's review of certain offers and bids, *e.g.*, Existing Generating Capacity Resources that seek to Permanently or Statically de-list above 1.25 times the Cost of New Entry (CONE) and 0.8 times CONE, respectively, and new resources that seek to offer below 0.75 times CONE.

14. With respect to existing resources, the FCM Rules require that all such resources are entered into the FCA at their sum Qualified Capacity absent: (1) a demonstration by the Lead Market Participant that a lower capacity level is appropriate, or (2) the submittal of a de-list bid which was accepted.[19]

15. New resources, whether generating, import, or demand, are required by the FCM Rules to demonstrate that they will be completed by the beginning of the relevant Capacity Commitment Period. Project Sponsors of New Generating Capacity Resources are required by the FCM Rules to submit in their New Capacity Qualification Packages sufficient information about each project so that ISO-NE can perform an interconnection study in order to ensure that, if selected, the project can interconnect and provide incremental capacity to the system. ISO-NE states that the interconnection study includes an analysis to determine whether the New Generating Capacity Resources have overlapping interconnection impacts with other New or Existing Generating Capacity Resources.

16. ISO-NE states that 33,053 MW of existing and 6,102 MW of new resources have qualified to participate in the first FCA. The net amount of capacity to be purchased in the FCA to meet the ICR, after deducting the 1,400 MW of interconnection capability credit associated with Hydro-Quebec Interconnection Capacity Credits, is 32,305 MW.[20]

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[19] Pursuant to section III.13.2.5.2.5, all de-list bids are also subject to reliability review.

[20] Informational filing at 5.

B. Interventions, Protests, and Comments

17. Notice of ISO-NE's November 6, 2007 filing was published in the *Federal Register*, with interventions and protests due on or before November 21, 2007.[21]

18. Timely motions to intervene were filed by the NRG Companies (NRG), the PSEG Power Companies (PSEG), and the Calpine Corporation (Calpine).

19. Timely motions to intervene and protests or comments were filed by NEPOOL Participants Committee (NEPOOL), the Massachusetts Municipal Wholesale Electric Company (MMWEC), the Connecticut Department of Public Utility Control (CT DPUC), Exelon New Boston, and Competitive Power Ventures, Inc. (CPV). ISO-NE and NEPOOL filed a motion for leave to answer the protests, and answers. CPV subsequently filed a motion for leave to file an answer, and an answer to ISO-NE's and NEPOOL's answers. MMWEC filed a motion for leave to reply and a reply to ISO-NE's answer. ISO-NE filed a motion for leave to respond and a reply to MMWEC's answer. The Maine Public Utilities Commission (Maine Commission) filed a motion for leave to intervene out of time and protest. ISO-NE filed a motion for leave to respond and an answer to the Maine Commission's protest.

20. Notice of ISO-NE's November 21, 2007 filing was published in the *Federal Register*, with interventions and protests due on or before December 10, 2007.[22] None was filed.

II. DISCUSSION

A. Procedural Issues

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2007)), the notices of intervention and the timely-filed unopposed motions to intervene serve to make the entities filing them parties to this proceeding. The Maine Commission's motion to intervene out-of-time is granted, given the early stage of the proceedings, the parties' interest 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) (2007), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept ISO-NE's and NEPOOL's answers to

[21] 72 Fed. Reg. 65322 (2007).

[22] 72 Fed. Reg. 67926 (2007).

the protests, and CPV's answer to ISO-NE's and NEPOOL's answers, and MMWEC's and ISO-NE's replies because they have provided information that assisted us in our decision-making process.

B. Analysis

23. The Commission accepts ISO-NE's informational filing. We now address the specific issues raised by the protesters.

1. CPV's Protest with Regard to Its New Bedford Plant and the Maine Commission's Protest with Regard to the Stetson Wind Farm

a. ISO-NE's Rejection of CPV New Bedford and the Stetson Wind Farm

24. The FCM market rules, approved in the Commission's April 16 Order, provide that a new generating capacity resource seeking to participate in the Forward Capacity Auctions must provide preliminary information to ISO-NE, including the type of generator, expected summer and winter capacity, expected commercial operation date, interconnection status and the point of interconnection, site control, and a critical path schedule for construction. ISO-NE requires this information to determine the feasibility of the project becoming operational by the commencement of the capacity commitment period, and also to enable ISO-NE to conduct "an initial interconnection analysis to identify the system impacts of interconnecting the generator and whether transmission upgrades needed to interconnect the project . . . could be completed prior to the capacity commitment period."[23] Only projects that are "qualified" by ISO-NE may participate in the first Forward Capacity Auction, to be held on February 4, 2008.

25. CPV submitted the required preliminary information with regard to its New Bedford project. ISO-NE stated in its filing that it was rejecting the project from qualifying to participate in the Forward Capacity Auction because:

> The overlapping impact analysis identified that three transmission lines in the NSTAR and National Grid service territories would be overloaded after the addition of [the] CPV New Bedford Generation Facility project. The ISO has determined that the upgrades associated with the transmission projects cannot be reasonably expected to be completed by the start of the

[23] CPV protest at 4, *citing* Market Rule 1, section III.13.1.1.2.3.

Capacity Commitment Period beginning June 1, 2010.[24]

26. ISO-NE rejected the proposed Stetson Wind Farm in Maine from participation in the Forward Capacity Auction for similar reasons:

> The overlapping impact analysis determined that one interface internal to the Maine Load Zone would be overloaded after the addition of the Stetson Wind Farm project. The ISO has determined that the upgrades associated with the transmission project cannot be reasonably expected to be completed by the start of the Capacity Commitment Period beginning June 1, 2010.[25]

b. CPV's Protest and Related Answers

i. CPV's Protest

27. CPV asserts that ISO-NE has improperly used an overlapping interconnection impacts analysis which, according to CPV, is not the same as the "overlapping interconnection impacts" test referenced in section III.13.1.1.2.3(f) of the FCM market rules. Section III.13.1.1.2.3(f) provides (emphasis added):

> Where, as a result of the initial interconnection analysis, the ISO determines that because of overlapping interconnection impacts, New Generating Capacity Resources that are otherwise accepted for participation in the Forward Capacity Auction in accordance with the other provisions and requirements of this Section III.13.1 cannot provide the full amount of capacity that they each would otherwise be able to provide (*in the absence of the other proposed resources*), those New Generating Capacity Resources will be accepted for participation in the Forward Capacity Auction on the basis of their Queue Position . . . , with priority given to resources that entered the queue earlier.

28. CPV states that the test contained in section III.13.1.1.2.3(f) refers to the overlapping impacts of new capacity resources as such new resources affect one another, rather than to the overlap of the impacts of new and existing resources. Thus, CPV asserts that instead of testing the impact of a proposed new resource against other proposed resources, as required by section III.13.1.1.2.3(f), ISO-NE is improperly testing

[24] ISO-NE November 6 filing at 24.

[25] *Id.* at 25-26.

the impact of a proposed new resource against both new and existing resources. According to CPV, the overlapping interconnection impacts test used by ISO-NE in the qualification process studies "whether a New Generating Capacity Resource can be interconnected without violating reliability criteria with all existing generators at full output."[26] This test is found in ISO-NE's Planning Procedure No. 10 (PP-10), which is not part of ISO-NE's filed rate. Thus, CPV argues, ISO-NE is failing to comply with the terms of section III.13.1.1.2.3(f), and is also violating the filed rate doctrine.

29. CPV states that the Commission's order approving the FCM market rules supports this interpretation, since the Commission stated that:

> In determining the amount of capacity a new generating capacity resource can provide, ISO-NE will evaluate that capacity in relation to other *proposed* generating capacity resources. ISO-NE may determine that the presence of *another proposed generating capacity resource* prevents a new proposed generating capacity resource from providing its full amount of capacity. This is known as "overlapping impacts." The proposed rules on FCM contain a provision for dealing with overlapping impacts. Section III.13.1.1.2.3(f) proposes that in such instances, new generating capacity resources will be accepted for participation in the Forward Capacity Auction on the basis of their position in the interconnection queue, with priority given to resources that entered the queue earlier.[27]

According to CPV, this language demonstrates that the Commission contemplated that under section III.13.1.1.2.3(f), ISO-NE would test a proposed resource only against other proposed resources, rather than against proposed and existing resources.[28]

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[26] CPV protest at 7.

[27] April 16 Order at P 25, footnotes omitted, emphasis added. Similarly, in its order on rehearing of the FCM Rules, the commission stated that section III.13.1.1.2.3(f) addresses "instances where multiple new generating capacity resources produce overlapping system impacts" to determine which capacity resources may participate in the FCA. *ISO New England Inc.*, 120 FERC ¶ 61,087, at P 111 (2007).

[28] CPV also asserts that ISO-NE has stated to stakeholders that it relied on section II.B.c.3 of the FCM Settlement as authority for establishing an "incremental capacity" deliverability qualification standard, under which ISO-NE would determine whether new resources are incremental to existing resources.

(continued)

30. CPV also asserts that in using this test, ISO-NE has imposed a new deliverability standard on proposed resources, rather than using the deliverability standard currently in place. CPV states that the deliverability standard for new generators is currently the Minimum Interconnection Standard (MIS),[29] which, CPV claims, provides that ISO-NE must study whether a new generating resource violates reliability criteria *with* redispatch of other generation in an amount up to the full output of the interconnecting generator. CPV claims that, in imposing this new deliverability standard here, ISO-NE's actions also violate the compliance obligations placed on it in *New England Power Pool*,[30] a 2004 order in Docket No. ER04-433-000, *et al*., in which ISO-NE directed ISO-NE to meet its obligations under Order No. 2003[31] by filing revisions to its tariff that would enable generators to qualify for capacity payments by meeting a zonal deliverability requirement that had higher interconnection obligations than MIS. CPV states that ISO-NE's silent imposition of a new deliverability standard in this informational filing has not met this obligation. CPV acknowledges that ISO-NE has obtained an extension of time until the

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CPV argues, however, that this standard is not to be found in section II.B.c.3, which states that if an initial interconnection analysis is required for a specific resource, ISO-NE and its Reliability Committee will work out specific details for that initial interconnection analysis and selection criteria "for multiple projects when only a subset of such projects can be selected in the [Forward Capacity Auction] due to overlapping interconnection impacts." CPV states that this provision addresses the same situation as that addressed in section III.13.1.1.2.3(f) of the FCM market rules.

[29] ISO-NE Open Access Transmission Tariff (OATT), section II.47.1, schedule 22:

> Minimum Interconnection Standard (MIS) shall mean the minimum criteria required to permit the Interconnection Customer to interconnect in a manner that avoids any significant adverse effect on the reliability, stability, and operability of the New England Transmission System, including protecting against the degradation of transfer capability for interfaces affected by the unit.

[30] 109 FERC ¶ 61,155 (2004) (November 2004 Order).

[31] *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

third quarter of 2008 to comply with the November 2004 Order,[32] but it asserts that by using the overlapping impacts test without going through a stakeholder process and developing and filing appropriate new tariff provisions, ISO-NE is in violation of the November 2004 Order's compliance obligations.

31. Finally, CPV states that the small number of large combined cycle generation or other baseload generation in the qualification process is inconsistent with the goal of meeting the New England region's long-term reliability needs. CPV states that, of the 2961 MW of new generation that have qualified as eligible to participate in the first Forward Capacity Auction, the majority of qualifying resources are peaking units, and only about 10 percent are combined cycle plants that could be considered intermediate or base load generation. CPV states that a "systemic failure" to attract such large scale projects to the capacity market year after year could ultimately become a significant reliability concern, as existing baseload generation retires, system load grows, or new baseload generation fails to come on line. CPV therefore asks the Commission to direct ISO-NE's market monitor to investigate and file a report on the question of whether market rules providing three years or less between the Forward Capacity Auction and the commitment period for which that auction obtains capacity acts as a barrier for longer lead-time units (such as combined cycle generation, which takes between two and three years to build, and which places considerable risk on developers) seeking to participate in the FCM.

ii. ISO-NE's and NEPOOL's Answers

32. ISO-NE, in its answer, first states that "dire consequences" will ensue if the Commission accepts CPV's argument that ISO-NE cannot consider existing resources when it performs its overlapping impacts analysis, stating that, in that case:

> The ISO will be required to re-run the analysis for all proposed new resources that were rejected, for those resources that qualified but will be required to perform upgrades, and possibly for those resources that withdrew based on the results of the analyses as implemented. This will require significant additional time, resulting in the postponement of the first [FCA]. Worse, when the auction is run, it will include resources unable to provide incremental capacity to the system. Consumers will pay for

[32] CPV protest at 14, *citing* Notices of Extension of Time, Docket No. ER04-433-000 *et al*., issued January 5, 2005, June 26, 2006, and June 28, 2007.

> capacity that is not useful to them, and the reliability of the system will be a casualty.[33]

33. ISO-NE asserts that its use of the overlapping impacts test is not, as CPV argues, a violation of the filed rate doctrine. It acknowledges that it bases its decision regarding the qualification of new generating resources on the overlapping impacts test contained in section III.13.1.1.2.3(f), and on section 5.7 of PP-10, which provides the following description of how to conduct the overlapping impact analysis:

> Using the information contained within the Show of Interest form including the information provided pursuant to an active Interconnection Request under the [Small or Large Generator Interconnection Procedures] as appropriate, the analysis of overlapping interconnection impacts under FCM is intended to determine if proposed New Generating Capacity provides *incremental* capacity to the system. *This means that proposed New Generating Capacity will be qualified at the level at which it can operate without re-dispatch of other capacity resources as described in Section 5.7.1*. . . .
>
> If the ISO determines that because of overlapping interconnection impacts, New Generating Capacity Resources that are otherwise accepted for participation in the FCA cannot provide the full amount of capacity that they each would otherwise be able to provide in the absence of the other proposed resources, those New Generating Capacity Resources will be accepted for participation in the FCA on the basis of their Queue Position, as described in Schedules 22 and 23 of Section II (Open Access Transmission Tariff) of the Tariff, with priority given to resources that entered the queue earlier.[34]

34. ISO-NE states that the policy decision to procure only as much capacity as necessary for New England does not permit the selection in the FCA of resources that cannot provide incremental capacity to the system. ISO-NE states that section III.13.1.1.2.3(f) clearly contemplates fulfillment of the FCM core principles, rather than the comparison of overlapping impacts among new resources, and that the type of analysis that would be performed under CPV's interpretation of section III.13.1.1.2.3(f) – i.e., studies of the overlap of the impacts of new resources – would only be useful if each

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[33] ISO-NE answer at 3.

[34] ISO-NE answer at 8-9, *citing* PP-10, section 5.7, emphasis added.

such new resource was not required to interconnect and provide incremental capacity. ISO-NE states that CPV's interpretation of section III.13.1.1.2.3(f) "would turn the core principles of the FCM and this provision of the FCM Rules on their heads and permit inclusion of capacity resources in the FCA that consumers would pay for but from which they would receive no benefit because they duplicate and potentially displace the capacity provided by existing resources."[35]

35. To support its argument that, in drafting the FCM market rules, it intended to require the analysis of all impacts of interconnections (rather than just impacts among new resources), ISO-NE points to the statement in its transmittal letter that the FCM was intended to be a forward market for physical resources, not financial obligations, and that it would procure only enough capacity to maintain system reliability. Therefore, ISO-NE stated in the transmittal, new capacity resources must submit information that allows ISO-NE to conduct studies that determine:

> whether the proposed new resource can interconnect to the system without causing violations of system reliability or safety standards and whether the new resource, if interconnected, would cause overlapping impacts[36] with other new *or existing* resources and therefore not provide incremental capacity to the New England electricity system.[37]

ISO-NE further stated that the initial information provided by new entrants would "require[] a resource-specific interconnection analysis . . . and an overlapping impacts analysis, which requires detailed planning studies that must be done by analyzing *multiple combinations of proposed new and existing units*."[38]

36. ISO-NE disagrees with CPV's argument that its overlapping impact analysis, and use of PP-10, is either a violation of the filed rate or a new deliverability standard. ISO-NE states that, as required, it will consider a new deliverability standard in the proceedings in Docket No. ER04-433-000, *et al*. Rather, according to ISO-NE, its use of the overlapping impact analysis to disqualify CPV New Bedford was done pursuant to the FCM market rules approved by the Commission. ISO-NE further asserts that PP-10 is not a new rate (filed or unfiled), but rather, simply provides "amplifying detail for

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[35] ISO-NE answer at 9-10.

[36] FCM settlement, section 11.II.B.C.c (footnote in original).

[37] Transmittal, February 15 filing, ISO New England, Inc., Docket No. ER07-546-000, February 15 filing at 10, emphasis added.

[38] *Id.*, emphasis added.

application of the filed rate," i.e., the overlapping impact test in the FCM Rules.[39] ISO-NE points out that in a previous case, the Commission did not require the filing of manuals containing general operating procedures with the Commission as tariff provisions, stating that "[t]he statutory directive [of section 205(c)] must reasonably be read to require the recitation of only those practices that affect rates and services significantly,"[40] and that similarly here, PP-10 merely implements the filed FCM Rules and does not "significantly affect rates and services." ISO-NE states that CPV's protest here is in reality an impermissible collateral attack on the Commission's acceptance of the FCM market rules, and should be rejected on that basis.

37. ISO-NE and NEPOOL both note that, during the process that concluded in the development of the FCM Rules, CPV had the opportunity to challenge or seek clarification of any aspect of those rules with which it disagreed, and it did not do so. NEPOOL states that it would not object if, for future auctions, the Commission ordered the inclusion of PP-10, or a more specific expression of the overlapping impacts test, in the tariff. However, NEPOOL urges the Commission to clearly and immediately confirm the standards that ISO-NE should be using to qualify resources for the first FCA (scheduled to take place starting on February 4, 2008), and notes that it might not be possible for ISO-NE to proceed with that auction on schedule if the Commission requires it to use different standards.

38. Finally, with regard to CPV's argument that the annual auction schedule should be adjusted to accommodate the time required to develop combined cycle generation, ISO-NE states that the three-year advance auction provision was explicitly approved in the FCM market rules. Moreover, ISO-NE states, the INTMMU will be evaluating the auction schedule to determine whether it creates unintentional barriers to entry for certain units, and will reflect that finding (if made) in the annual markets report filed with the Commission. Therefore, ISO-NE argues, CPV's contentions regarding adjustment of the auction schedule are premature at this time, and will be better considered after the parties' experience of the initial auctions.

iii. CPV's Answer to ISO-NE's and NEPOOL's Answers

39. CPV filed an answer to ISO-NE's and NEPOOL's answers, in which it reiterates that ISO-NE has not identified language in the FCM Settlement or the FCM market rules

[39] ISO-NE answer, at 17.

[40] *Id*. at 18, *citing Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,163, at P 656, 658 (2004).

that establish a new intra-zonal deliverability standard for new capacity resources that would require those resources to be able to serve the system without redispatch. According to CPV, ISO-NE has failed in its argument that this departure from the filed rate (which CPV again identifies as the MIS standard which allows redispatch of existing generation) is permissible because it was contemplated by the core principles of the FCM and described in the FCM market rules transmittal letter. CPV also states that PP-10 does more than merely implement the FCM market rules, and must therefore be filed with the Commission.

40. However, CPV states that it too is concerned that the first FCA proceed on schedule, and would be amenable to allowing the auction to proceed based on the overlapping interconnection impacts test used by ISO-NE, provided that the Commission direct ISO-NE to submit proposed rules governing intrazonal deliverability in time for Commission approval by the second FCA.

41. Finally, CPV requests that, with regard to its claim that the three-year lead time contained in the FCM auction schedule does not accommodate the development of large combined cycle generation, the Commission direct the INTMMU to study and report back to the Commission whether there is evidence after the first auction that the auction timelines are too short to accommodate the participation of large combined cycle generators and other long-lead-time generation plants, and require the INTMMU to recommend any changes it finds appropriate.

iv. ISO-NE's Answer to CPV's Answer

42. ISO-NE filed a response to address CPV's request to allow the first FCA to proceed on schedule as long as the Commission directs ISO-NE to file market rules regarding intrazonal deliverability to FERC to be implemented in time to be used in the second FCA (scheduled for December 1, 2008). ISO-NE argues that CPV's request should be denied because it ignores the fact that ISO-NE and stakeholders have previously committed to, and the Commission has approved, addressing intrazonal deliverability as part of the interconnection queue process already underway that will culminate in an October 1, 2008 filing.

43. ISO-NE argues that the purpose of its June 21, 2007 prioritization filing was to take a comprehensive look at all of the important and competing outstanding issues needing the attention of ISO-NE and stakeholders and to allow interested parties to participate in determining the order and timing in which those issues would be

addressed.[41] ISO-NE states that in the June 21, 2007 prioritization filing it specifically observed that:

> Of all the issues presented for resolution with FCM, it is the ISO's expectation that the joint issues of deliverability and the queue will require the most thought, stakeholder input and ISO resources to address. The current plan is that interconnection queue redesign will take place during the third quarter of 2007 through the third quarter of 2008. This schedule will allow implementation of a redesigned queue process, if approved, for application in the third FCA. The ISO expects formulation of solutions to occur in the second quarter of 2008 and culminating in a Commission filing during the third quarter of 2008. *This process will also include consideration of the question of intrazonal deliverability*, which the Commission has required the ISO to consider and which is closely related to the interconnection queue issue in the FCM.[42]

ISO-NE notes that the Commission approved ISO-NE's prioritization plan and schedule on October 19, 2007 without any comments from CPV.

44. ISO-NE states that the Commission should reject CPV's collateral attack on the prioritization process and the schedule that resulted since CPV's proposal would require the hurried evaluation of deliverability rules in a vacuum, without full consideration of interconnection queue redesign, which is interrelated with deliverability. ISO-NE notes that development of a deliverability standard relates to the type of product (capacity or energy) that a resource is capable of providing to the system, and contemplates that a resource compensated as a capacity resource will achieve full intrazonal deliverability. ISO-NE states that the queue redesign issue addresses the related situation where several resources seeking to qualify for the FCA cannot all meet the deliverability standard applicable to capacity resources because of transmission limitations, and it is necessary to rely on a method for selecting among the proposed resources. ISO-NE argues that this method necessarily will take into account intrazonal deliverability, and thus the issues should be resolved together.

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[41] ISO New England Inc., Compliance Filing Setting Forth Prioritization of Issues and Requesting Technical Conference, Docket Nos. ER07-546-002, ER07-547-001, and RM06-8-000 (June 21, 2007).

[42] *Id*. at 9 (emphasis added).

v. The Maine Commission's Protest

45. The Maine Commission makes similar arguments to CPV in its challenge to the Commission's rejection of the Stetson Wind Farm. The Maine Commission states that the overlapping interconnection impacts test contained in section III.13.1.1.2.3 does not permit ISO-NE to reject the qualification of a new generator because, when that new generator is combined with existing generators, it will overload an interface. The Maine Commission also argues that the use of PP-10 to authorize ISO-NE's action is improper, since PP-10 is not the filed rate.

46. The Maine Commission further states that the effect of ISO-NE's determination with regard to the Stetson Wind Farm, and ISO-NE's procedures, rules and zonal boundaries generally, should be reexamined in the context of the operation of those procedures, rules and boundaries to disqualify renewable resources from participation in the FCM. The Maine Commission states that it recognizes that the purpose of the overlapping impacts analysis is to ensure that new capacity provides incremental benefits to the zone in which the capacity is offered, but argues that ISO-NE's process requires additional refinement to avoid discouraging renewable resources from locating in northern New England. The Maine Commission suggests that the working group already evaluating interconnection queue issues should address whether this requirement is consistent with the existing MIS deliverability standard, and whether PP-10 gives preference to existing generation over new generation and thus creates a barrier to entry into the FCM market. The Maine Commission states that "[w]hile the intent . . . to ensure that new capacity actually provides value [] is laudable, this should be a market function rather than occurring by administrative fiat,"[43] and that, if renewable resources such as the Stetson Wind Farm provide value to Maine and the rest of New England, the market should determine how much value its capacity provides.[44] The Maine Commission asks the Commission to qualify the Stetson Wind Farm for participation in the first FCM, or, in the alternative, to require a reexamination of PP-10 as part of the queue stakeholder process to better enable renewable generators to participate in the FCM.

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[43] Maine Commission protest at 9.

[44] The Maine Commission also raises issues specific to the Orrington Interface (the congested interface in question), and to the question of whether Maine should have two energy and capacity zones rather than its single zone. The Maine Commission states that at some future time, it may request that this option be further explored or implemented.

vi. ISO-NE Answer to the Maine Commission's Protest

47. In its answer, ISO-NE reiterates its position regarding CPV's protest. Specifically, ISO-NE contends that the failure to consider existing resources when performing the overlapping impacts test would erroneously include resources in the auction that are unable to provide incremental capacity to the system. Further, in response to the Maine Commission's argument that to the extent that they warrant disqualification of renewable generation from participating in the FCM, the current procedures, rules, or zonal boundaries should be reexamined, ISO-NE contends that this requested treatment is not a feature of either the FCM Settlement Agreement or the subsequent FCM Rules. ISO-NE notes that any prospective changes to the rules for participation in the FCA would have to be vetted through a stakeholder process. Last, in response to the Maine Commission's comments regarding the Orrington-South interface, ISO-NE notes that "infrequent" export constraints do not provide a justification for disregarding their existence when determining if a resource provides incremental capacity.

c. Commission Ruling

i. Use of Overlapping Impacts Test

48. While CPV and the Maine Commission would have us find that the omission of the three words "and current existing" from the parenthetical in section III.13.1.1.2.3(f) is a violation of the filed rate doctrine, leading to us require ISO-NE to rerun its overlapping impacts test, we decline to do so. The Commission finds that ISO-NE did not violate the filed rate doctrine when it performed the overlapping impacts test with regard to the CPV and Stetson projects by considering both existing resources and other proposed new resources. As stated elsewhere in this order, the intent of the overlapping impacts test is to verify that resources selected in the FCA provide incremental capacity to the system. This necessitates the consideration of both new and existing resources. Section III.13.1.1.2.3(f) does reference the overlapping impacts of new capacity resources as such new resources affect one another. However, comparative effects of new capacity resources is conducted in the context of the "initial interconnection analysis." An interconnection analysis by definition considers both new and existing resources. Moreover, ISO-NE's February 15th transmittal letter made clear to all parties that this was the way in which ISO-NE intended to administer the overlapping impacts test. Therefore, we find that ISO-NE was not precluded from considering both existing and other proposed resources when it conducted an overlapping impacts analysis of the CPV and Stetson projects, and we thus find that ISO-NE did not violate the filed rate doctrine.

49. However, assuming *arguendo* that the tariff provision as written did, in fact, preclude ISO-NE from considering existing resources, so that in considering existing

resources ISO-NE did violate the filed rate, we find that we should not order ISO-NE to re-run the entire qualification process and not use existing resources, for the reasons that follow.

50. We find that ISO-NE ran the overlapping impacts test as it (and we) intended the test to be run (namely, including the consideration of existing resources) and consistent with the underlying purposes of the FCM Rules, as reflected in PP-10 and in ISO-NE's February 15th transmittal letter to the Commission. Therefore, as we explain below in more detail, we will not require ISO-NE to re-run the overlapping impacts test in the manner requested by CPV and the Maine Commission. Re-running the test would delay the FCA and will result in the inclusion of resources in the FCA that are incapable of providing incremental capacity to the system.[45] However, although we are not finding that ISO-NE violated section III III.13.1.1.2.3(f), in order to prevent future similar misunderstandings, we expect ISO-NE to amend the language at issue, so that the tariff on file is consistent with ISO-NE's earlier actions, PP-10, the February 15th transmittal letter, and the underlying purpose of the FCM.

51. As ISO-NE explains, in its February 15th transmittal letter, it stated that new capacity resources must submit information that would allow ISO-NE to determine "whether the proposed new resource can interconnect to the system without causing violations of system reliability or safety standards and whether the new resource, if interconnected, would cause overlapping impacts with other *new or existing* resources and therefore not provide incremental capacity to the New England electricity system."[46] In that same transmittal letter, ISO-NE stated that the information provided by new capacity resources would "require[] a resource-specific interconnection analysis . . . and an overlapping impacts analysis, which requires detailed planning studies that must be done by analyzing *multiple combinations of proposed new and existing units*."[47]

52. This language clearly signals, that, notwithstanding the omission of words to that effect in the version of section III.13.1.1.2.3(f) which ISO-NE actually submitted to the

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[45] As noted elsewhere, CPV states in its answer that, in the interest of not delaying the first FCA, it would be amenable to allowing the auction to proceed based on the overlapping interconnection impacts test as used by ISO-NE, but only provided that the Commission directs ISO-NE to submit proposed rules governing intrazonal deliverability in time for Commission approval by the second FCA.

[46] February 15th Transmittal Letter at 10 (footnote omitted and emphasis added).

[47] *Id.* (emphasis added).

Commission, ISO-NE intended to include existing units in its overlapping impacts test – an intention that it fulfilled when it conducted the test that led to the rejection of the resources at issue in this proceeding. In addition, PP-10 also evidences ISO-NE's intent to consider existing resources in its analysis of overlapping impacts, which CPV and the Maine Commission concede (albeit an analysis which they also claim to be of no consequence, given that PP-10 is not a filed rate). Section 5.7 of PP-10 describes how ISO-NE is to conduct the overlapping impacts test (emphasis added):

> Using the information contained within the Show of Interest form including the information provided pursuant to an active Interconnection Request under the [Small or Large Generator Interconnection Procedures] as appropriate, the analysis of overlapping interconnection impacts under FCM is intended to determine if proposed New Generating Capacity provides *incremental* capacity to the system. This means that proposed New Generating Capacity will be qualified at the level at which it can operate without re-dispatch of *other capacity resources* as described in Section 5.7.1.

We agree with ISO-NE that this language signals an intent to consider existing resources as well as new resources in the overlapping impacts analysis – which is precisely what ISO-NE did.

53. We also agree with ISO-NE that the insistence of CPV and the Maine Commission to exclude consideration of existing resources from the overlapping impacts test is inconsistent with the core principles of the FCM Rules. The failure to model existing resources would lead to the inclusion of capacity resources in the FCA that consumers would pay for, but from which they would receive no benefits, because those resources would duplicate, and potentially displace, capacity already provided by existing resources. As discussed elsewhere in this order, the FCM is a physical market whose objective is to procure sufficient capacity to satisfy the ICR. Importantly, we note that neither CPV nor the Maine Commission disputes this fundamental aspect of ISO-NE's position. They also do not dispute ISO-NE's finding that the outlined transmission upgrades would be necessary for each of their prospective resources to provide incremental capacity to the system.

54. Thus, we are presented with an unusual situation: we agree with ISO-NE that its inclusion of existing resources in the overlapping impacts test is proper and is supported by the language of PP-10, its earlier transmittal letter to us submitting the FCM Rules, and the core principles of the FCM Rules. The "outlier," so to speak, is the actual language of the tariff provision describing the overlapping impacts test; the omission of

three words ("and current existing") has led to the request that we find that ISO-NE has violated its tariff.[48]

55. Under these circumstances, we decline to elevate form over substance, and further compound these earlier comparatively minor errors, by granting the request of CPV and the Maine Commission that we order ISO-NE to re-run the overlapping impacts test without consideration of existing resources. We do not believe that the filed rate doctrine (or any provision of the FPA) supports, much less compels, this result, as it would require that we ignore the fact that ISO-NE simply erred in submitting an incorrect, and inconsistent, tariff sheet and could lead to, among other things, a delay in the first FCA, the use of a test that we did not intend to be conducted, and, ultimately, ratepayer responsibility for units that are incapable of providing capacity, potentially jeopardizing system reliability. In short, we cannot countenance a situation where the inadvertent omission of three words from hundreds of pages of FCM Rules leads to unjust and unreasonable results.

56. Even if we were to conclude that ISO-NE violated the language of section III.13.1.1.2.3(f), that fact alone would not warrant our ordering ISO-NE to re-run its overlapping impacts test. With respect to the remedies available to the Commission, the Commission's discretion is at its "zenith."[49] And here, where the re-running of the overlapping impacts test would amount to implementing an error and lead to results that are inconsistent with the core principles of the FCM Rules, the Commission will exercise its broad remedial discretion.

57. Finally, assuming *arguendo* that ISO-NE did violate its own tariff provision, in a recent order also involving the FCM Rules, we acknowledged that it may be appropriate

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[48] It may be that ISO-NE's omission of "and current existing" resources from the version of section III.13.1.1.2.3(f) that it submitted for filing was an inadvertent error. If so, we acknowledge that we compounded that when we accepted for filing the language submitted to us (*see* April 25 Order at P 25).

[49] As has been stated many times, "the breadth of agency discretion is . . . at [its] zenith when the action assailed relates primarily not to the issue of ascertaining whether conduct violates the statute, or regulations, but rather to the fashioning of . . . remedies." *Connecticut Valley Electric Co. v. FERC*, 208 F.3d 1037, 1043 (D.C. Cir. 2000), *citing Towns of Concord v. FERC*, 955 F.2d 67, 72-73, 76 n.8 (D.C. Cir. 1991); *accord Consolidated Edison Co. of New York, Inc. v. FERC*, No. 06-1025, slip op. at 8-10 (D.C. Cir. Dec. 18, 2007) (rejecting claim that Commission *must* order remedial relief).

to waive a tariff provision where (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) a concrete problem needs to be remedied; and (4) the waiver will not have undesirable consequences.[50] Here, we find that the omission of the three words "and current existing" from section III.13.1.1.2.3(f) was an error made in good faith, as the omission is not consistent with the core principles of the FCM Rules, PP-10, the February 15th Transmittal letter, or ISO-NE's actual conduct of the overlapping impact test. Second, we find that a waiver would be of limited scope, as it will impact only the first FCA.[51] Third, we find that granting a waiver would remedy a concrete problem by allowing the first FCA to go forward on time and consistent with the results of the properly-run overlapping impacts test. Finally, we find that not only would granting the waiver *not* produce undesirable consequences, but, in fact, is the means by which we can prevent the undesirable consequences of a delay in the first FCA and forcing ISO-NE to re-run the overlapping impacts test inconsistently with the core principles of the FCM Rules. To the extent necessary, therefore, we grant a waiver of section III.13.1.1.2.3(f) with respect to the conduct of the overlapping impacts test.

ii. Deliverability Issue

58. We reject CPV's position that the "overlapping impacts test" is the same thing as the test for "deliverability," which, as CPV correctly points out, is currently the MIS standard contained in the ISO-NE tariff. It is accurate to state, as CPV does, that in both the proceedings in Docket No. ER04-433, and in its approval and implementation of the FCM, the Commission has been concerned with the problem, discussed above, that under the MIS standard, generators may obtain the incentive of receiving capacity payments, without actually constructing new capacity that is useful to the system.[52] And, as noted

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[50] *Central Vermont Pub. Serv. Corp.*, 121 FERC ¶ 61,225, at P 28 (2007).

[51] As we explain below, we expect ISO-NE to act to reverse its earlier error.

[52] As the Commission stated in the November 8 Order:

> Under the Minimum Interconnection Standard, an interconnection applicant is required to demonstrate that the interconnection of its unit to the NEPOOL PTF will not degrade the existing transfer capability of the PTF and non-PTF. If this test is satisfied, the interconnected generator gains full market rights. For example, it becomes eligible to receive [capacity] payments as [a capacity] supplier and to participate in the operating reserves market.

(continued)

in the November 8 Order, the Commission anticipated in 2004 that the then-ongoing Locational Installed Capacity (LICAP) proceedings (the predecessor to today's FCM) would address the same problem, stating that "[w]hile the proposed LICAP market is intended to address some of these issues, particularly interzonal deliverability . . . the Commission believes that deliverability must be addressed at the zonal level in the context of generator interconnections."[53]

59. Separately from the Commission's requirement that ISO-NE consider deliverability at the zonal level in the LICAP proceedings, in Docket No. ER04-433 the Commission required ISO-NE to file "a mechanism that will ensure generators meet an intrazonal deliverability test in order to qualify as a [capacity] resource."[54] This is the filing that ISO-NE must make by the third quarter of 2008, and, as noted in ISO-NE's response, the outcome of that proceeding may or may not resemble the current interconnection study process as set forth in the FCM Rules and PP-10. In light of ISO-NE's commitment to address intrazonal deliverability as part of the interconnection queue process in the aforementioned filing, we will also deny CPV's request to only proceed with the first FCA if the Commission requires ISO-NE to submit proposed rules governing intrazonal deliverability in time for Commission approval by the second FCA. As ISO-NE notes, CPV's request would ignore specific Commission approval of ISO-NE's prioritization filing,[55] which is currently being followed by the New England stakeholders.

iii. Additional Issues Raised by CPV's and the Maine Commission's Protests

60. Finally, with regard to both CPV's arguments that the Commission should require further investigation of whether the three-year cycle of the FCM is insufficient to permit the participation of combined cycle units, and the Maine Commission's statement that the FCM procedures should be evaluated to see if they improperly discourage the participation of renewable resources, we note that at this moment, ISO-NE and its market participants are preparing for the first Forward Capacity Auction. We will not now second-guess the rules developed for the FCM before it has even been implemented. If,

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November 8 Order at P 6.

[53] *Id*. at P 44.

[54] *Id*. at P 43.

[55] *ISO New England Inc.*, 121 FERC ¶ 61,070 (2007).

once the FCM has been commenced, parties raise broad issues that would enable improvements to the FCM, we will consider those issues at a more appropriate time.

2. MMWEC's Protest with Regard to its Stony Brook Plant

a. MMWEC's Protest

61. In the Informational Filing, ISO-NE rejected the inclusion of MMWEC's proposed 280 MW gas-fired Stony Brook Energy Center Phase II unit for the first FCA. The basis for the rejection was that the power flow portion of the initial interconnection analysis determined that (based on ISO-NE's model) five transmission lines and one transformer in the Northeast Utilities service territory would be overloaded with the addition of this unit. Further, ISO-NE states that the upgrades associated with this project cannot reasonably be expected to be completed by the start of the 2010-2011 Commitment Period.

62. MMWEC disputes ISO-NE's determination that its unit is not qualified for participation in the FCM for the 2010-2011 Commitment Period. MMWEC requests that the Commission issue an order reversing ISO-NE's determination which would allow MMWEC to bid the unit into the first FCA in February 2008. Alternatively, MMWEC states that if the Commission agrees with MMWEC but finds that it is infeasible for ISO-NE to revise its analysis in time for the auction, then the Commission should direct ISO-NE to conduct future qualification determinations in the revised manner detailed below.

63. MMWEC (supported by the affidavit of its witness Whitfield Russell) contends that ISO-NE's analysis is inconsistent with applicable North American Electric Reliability Corporation (NERC) or Northeast Power Coordinating Council (NPCC) criteria, and applies standards that are incorrect and overly conservative. Further, MMWEC alleges that ISO-NE's discussion of the Stony Brook unit fail to address chronic transmission overloading issues in this area, issues that are not the result of the introduction of the Stony Brook unit. MMWEC contends that ISO-NE's disqualification of the Stony Brook unit is based upon the application of planning criteria (which are, in any case, violated even without the addition of the Stony Brook unit) and fails to account for the use of operating procedures that enable existing generators to operate despite the pre-existing violations. MMWEC also notes that ISO-NE's disqualification of this unit has purely economic consequences, rather than reliability impacts, since if and when the unit is interconnected, it (and the transmission system) will operate in accordance with applicable reliability criteria and thus the market, rather than ISO-NE's qualification process, should determine the future of this project.

i. Conservatism in Analysis

64. MMWEC states that it has not had access to all of the materials furnished to the Commission in support of the Informational Filing. MMWEC states, however, that it has reviewed a draft of the ISO's Feasibility Study Report (FSR) (undertaken pursuant to the ISO's Large Generator Interconnection Procedures), on which, it notes, ISO-NE's determination was based. MMWEC contends that the Feasibility Study Report employs unduly conservative models and variables, which are not required by (and in some cases are inconsistent with) applicable reliability criteria and prevailing industry practice. As an example, MMWEC notes that section 4.1 of the September 10, 2007 version of PP-10 (adopted to support the FCM auction) states that both short-term emergency (STE) and long-term emergency (LTE) ratings will be used in conducting transfer/interface limit analyses. MMWEC states that STE ratings are to be used for contingencies where loading can be reduced below LTE within 15 minutes, yet the FSR provides neither an indication that STE ratings were used nor a justification for failing to use them. MMWEC contends that because many of the modeled overloads are relatively minor, the use of STE ratings where appropriate could have eliminated a number of those overloads.

65. Further, MMWEC notes that the FSR appears to model dispatch cases and contingencies more severe than are required by applicable reliability criteria, and fails to model mitigating system responses that are permitted by those criteria. MMWEC contends that the most severe overloads modeled in the FSR result from the loss of local generation combined with the loss of both circuits on a single tower. MMWEC contends that these modeled overloads result from the occurrence of three contingencies (one generation contingency and two transmission contingencies). MMWEC notes that it appears that ISO-NE's analysis of the new Stony Brook unit's FCM qualifications considers the loss of both circuits on a single tower to be a single contingency event, while industry standards generally treat the loss of two circuits on a single tower as either an N-2 event or double contingency (if both circuits are lost simultaneously) or an N-1-1 event if they are lost in series.

66. MMWEC contends that the treatment of the loss of two circuits on a single tower as a single N-1 contingency is unreasonable and inconsistent with industry standards. MMWEC argues that NERC treats such an outage as severe, listing it under Category C, an event resulting from the loss of two or more elements. As such, MMWEC argues that because such losses are considered more severe and less probable, NERC standards allow the dropping of firm load, the curtailment of firm transfers, or generator tripping, following a Category C event, so long as the consequences of these actions are planned or controlled. He maintains that the FSR contains no indication that ISO-NE considered such options in evaluating the new Stony Brook Unit. Thus, he contends that ISO-NE's failure to model loss of load or other options permitted by applicable NERC standards,

following the loss of two circuits on a single tower, biased ISO-NE's determination against qualification of the new Stony Brook Unit.

67. In addition, MMWEC states that the FSR also fails to exercise flexibility permitted by applicable NERC standards with respect to post-contingency curtailment of firm trans-regional power transfers. MMWEC states that the Springfield, MA-area 115 kV transmission network is a parallel pathway supporting and backing up loads in northwest Connecticut, which are normally fed from a 345 kV substation in North Bloomfield, CT. As such, MMWEC explains that NERC standards would permit ISO-NE to curtail power flows from Massachusetts to Connecticut under the contingencies that ISO-NE modeled.

ii. Operating Procedures to Address Existing Conditions

68. MMWEC contends that the FSR fails to note that the transmission-system weaknesses and planning-criteria violations are existing conditions and will continue to exist until the transmission system is upgraded even in the absence of the new Stony Brook Unit. MMWEC states that existing generators are permitted to operate (and, by extension, to participate in the FCM auction) because ISO-NE and NU have operating procedures in place that allow ISO-NE to operate the system reliably, notwithstanding the existing planning-criteria violations. MMWEC argues that ISO-NE's qualification determination is unreasonable and should be reversed because it does not address the availability of such operating procedures, which should enable the new MMWEC unit to operate reliably consistent with existing generators. MMWEC also maintains that ISO-NE's approach in this case is inconsistent with ISO-NE Planning Procedure No. 3, which recognizes the "aspirational" nature of planning criteria and the need to adjust to departures from those criteria while planned facilities are being built. In support, MMWEC cites the following language from Planning Procedure No. 3:

> Because of the long lead times required for the planning and construction of generation and transmission facilities…, it is necessary that criteria for planning and design vary in some respects from the System Rules used in actual operations. The intent is to have the system operate at the level of reliability that was contemplated at the time it was designed. For this reason, it is necessary that the design criteria simulate the effects of the equipment outages which may be expected to occur in actual operation. Nevertheless, it should be recognized that in actual operations, it may not always be possible to achieve the design level of reliability due to delays in construction of critical facilities, excessive forced outages, or loads exceeding the predicted levels.

69. MMWEC argues that in light of needed transmission improvements in this area, it is ISO-NE's current operating procedures which allow for the system to meet operating reliability criteria. Thus, he argues that until the planned transmission upgrades are completed, any evaluation of the reliability consequences of interconnecting the new Stony Brook Unit should be based upon the application of operating reliability criteria and system operating procedures.

iii. Springfield Area Transmission Improvements

70. MMWEC states that if ISO-NE's determination as to the new Stony Brook Unit is upheld, it is concerned that the identified transmission deficiencies in the Springfield area will persist, and as a consequence, the new Stony Brook Unit may be shut out of subsequent FCM auctions. MMWEC argues that the Commission needs to take actions in this proceeding to ensure that needed infrastructure upgrades are completed as quickly as possible. MMWEC notes that the Springfield transmission infrastructure problems are troubling in that the need for transmission reinforcements in Western Massachusetts and the nature of the needed reinforcements have been known for years by both ISO-NE and Western Massachusetts Electric Company.[56] MMWEC argues that the projected in-service dates for these required upgrades have slid, and it is unknown when they will be placed in-service, contending that there will be at least a ten-year interval between the time when the transmission reinforcement need was identified and the in-service date of the needed facilities.

71. Further, MMWEC contends that insofar as it is aware, there has been no specific action by or from ISO-NE in response to the slippage in the in-service dates of these upgrades. MMWEC notes that the lack of progress is particularly discouraging given that in return for the assumption of this "obligation to build," New England consumers have been required to pay return on equity (ROE) incentive increases both to reward RTO participation (50 additional basis points) and, separately, to reward new transmission construction (100 additional basis points).

72. MMWEC continues by referencing previous proceedings in which it argued for an enforcement mechanism for ISO-NE in the event that needed infrastructure was not being completed in a timely manner. MMWEC notes that the Commission declined to include any such mechanisms. Highlighting Section 48.6 of the ISO-NE RTO Open Access

[56] Western Massachusetts Electric Company is the subsidiary of Northeast Utilities that provides transmission service in the affected part of the Commonwealth.

Transmission Tariff (OATT), MMWEC states that the Commission established that ISO-NE was already obliged to inform the Commission of instances in which the needed transmission was not being constructed. MMWEC states that to the best of its knowledge, no such report has been provided to the Commission.

73. MMWEC also notes that while waiting for the needed transmission reinforcements to be built in this area, consumers in this region in the meantime have been saddled with costly Reliability Must Run (RMR) agreements.[57] Further, MMWEC argues that if the transmission improvements at issue in Springfield are not implemented prior to the commencement of the FCM auctions, the current RMR generators in this part of the Commonwealth may seek to perpetuate their RMR agreement coverage.

74. MMWEC argues that it is not inconceivable that the new Stony Brook Unit might be shelved if there is no way to ensure that needed transmission improvements are not completed, let alone completed in a timely manner. However, assuming that the Commission rejects MMWEC's challenge to ISO-NE's determination of the Stony Brook Unit's FCM qualifications, MMWEC asks that the Commission direct ISO-NE to enforce vigorously the obligation to build contained in Section 48.6 of its OATT and the New England TOA with respect to the needed transmission upgrades. Further, and to reinforce that requirement, MMWEC asks the Commission to direct ISO-NE to investigate and to prepare periodic status reports, consistent with Section 48.6 of its OATT, to be filed with the Commission and served on the parties, concerning the construction of the Western Massachusetts Reliability Upgrades referenced in the RTEP Project Listing as of 2003, or any subsequently-identified upgrades relevant to the ISO-NE's FCM qualification determination for the new Stony Brook Unit. MMWEC argues that the reports should include (a) a detailed explanation of ISO-NE's understanding as to why the Springfield 115 kV Reinforcements have not been completed and the actions that remain to be taken in order to complete these identified infrastructure improvements; and (b) a detailed statement of the schedule (including milestones and benchmarks) leading to the completion of the Springfield 115 kV Reinforcements.

b. ISO-NE's Answer

75. In its answer, ISO-NE states that MMWEC inappropriately seeks to expand the scope of this proceeding beyond its intended purpose as prescribed in the FCM Rules and its protest should be rejected. Further, ISO-NE contends that the portions of MMWEC's

[57] MMWEC states that according to ISO-NE's data, the aggregate Annual Fixed Revenue Requirements for these RMR contracts is nearly $56 million, which translates to $8.64/kW-month.

pleading where it requests that the Commission direct ISO-NE to ensure that the upgrades are "implemented as soon as possible" is essentially a complaint cast as comments and a protest. Thus, ISO-NE states that MMWEC's challenge is beyond the scope of this proceeding, and ought to be raised in a complaint initiated in a separate proceeding.

76. To support its conclusion to not include the new Stony Brook Unit in the FCA, ISO-NE states that the FCM Rules provide that in order for a resource to qualify to participate in the FCM, it must demonstrate that it is able to interconnect to the system, and that its interconnection will not negatively affect other resources' ability to provide incremental capacity. ISO-NE states that the Settlement Agreement contemplated that the NEPOOL Reliability Committee would adopt standards applicable to the qualification process and would specifically create an initial interconnection analysis to determine whether new resources could interconnect and provide incremental capacity to the system. Thus, ISO-NE states that the NEPOOL Reliability Committee subsequently adopted PP-10.

77. Further, ISO-NE notes that the FCM Rules required that a new resource must meet the requirements of the large or small generator interconnection procedure, as applicable. As such, ISO-NE notes that the FCM Rules, as approved by the Commission and implemented in accordance with such rules, set forth certain reliability standards captured within the Planning Procedures, applicable to the FCM qualification process. ISO-NE notes that these reliability standards are not subject to challenge or change in this proceeding, only whether ISO-NE has properly applied the reliability standards to a resource.

78. ISO-NE states that it has properly based its decision regarding the new Stony Brook Unit on planning procedures which represent appropriate reliability standards while MMWEC relies on inapplicable operating procedures. Further, ISO-NE contends that the only appropriate basis for MMWEC to contest ISO-NE's rejection of the new Stony Brook Unit would be that ISO-NE fails to follow the reliability standards set forth in the FCM Rules and applicable to the qualification process. ISO-NE states that it properly followed these procedures. For example, regarding MMWEC's argument that ISO-NE failed to use STE ratings as permitted by PP-10, ISO-NE states that this argument is misplaced, since Planning Procedures Nos. 3 and 5-6 contain the reliability criteria and study conditions used in LGIP studies. ISO-NE notes that the STE ratings cited in PP-10 are only applicable to the evaluation of intra-area transfer limits, and are not applied in the LGIP process.

79. Regarding MMWEC's argument that ISO-NE applied reliability criteria too stringently (failing to model mitigating system responses permitted by those criteria),

ISO-NE states that the analysis of new generation under the LGIP contained in Planning Procedure No. 5-6 calls for a range of reasonably stressed dispatches under which the effect of the new generator should be analyzed. ISO-NE maintains that the severity of dispatches used was consistent with those used in all LGIP studies. Similarly, in response to MMWEC's statement that ISO-NE's analysis of the new Stony Brook Unit improperly considered the loss of both circuits on a single tower to be a single contingency, ISO-NE avers that this assumption is required by Planning Procedure No. 3, which provides that the loss of both circuits on a single tower are counted as a single contingency. ISO-NE contends that this standard is consistent with NPCC standards.

80. In response to MMWEC's argument that ISO-NE's analysis is inconsistent with applicable NERC or NPCC criteria, ISO-NE notes that NERC and NPCC distinguish planning standards from operating criteria, which are to be used for different purposes. ISO-NE states that operating procedures take into account the day to day realities of the current bulk power and transmission systems, and allow the system operator to rely on certain emergency and other actions that are not included or acceptable in planning criteria. By contrast, ISO-NE states that planning procedures generally use more stringent reliability criteria that will ensure a future high level of system security and reliability and appropriately reserve certain actions for use in real-time operations. Accordingly, in support of its decision on the new Stony Brook Unit, ISO-NE states that pointing to operating procedures that provide a work-around for certain system conditions that violate planning criteria does not justify ignoring those conditions when planning the future system. Further, ISO-NE states that although MMWEC concedes that the transmission limitations that prompted the disqualification of the new Stony Brook Unit have been present for years and requests that the Commission direct ISO-NE to ensure the expedited completion of the needed transmission improvements, MMWEC inexplicably relies on the operating procedures to justify ignoring those transmission limitations now in order to qualify this unit for the FCM.

81. ISO-NE notes that due to the need for transmission upgrades, even if existing reliability were applied less strictly to the new Stony Brook Unit, transmission system overloads would still preclude the facility from qualifying for participation in the first FCA. ISO-NE states that the process to bring about the identified upgrades that are required for reliability is ongoing – the process involves a needs analysis and consideration of alternatives with stakeholders, including discussions at the Planning Advisory Committee.

c. MMWEC's Reply

82. In addition to reiterating its prior arguments, MMWEC notes that if the

Commission agrees with ISO-NE that this is the wrong proceeding to consider such issues, then MMWEC asks that the Commission begin a section 206 proceeding on its own motion to investigate the reasons for delay in the transmission upgrades and, if appropriate, to direct ISO-NE to apply its tariff and enforce all relevant contractual commitments to construct new and needed facilities. MMWEC also argues that it is unreasonable and unduly discriminatory for ISO-NE to rely on operating procedures to reduce the need to expedite efforts to complete planned transmission improvements, yet to refuse to take account of the same procedures in determining whether MMWEC's new Stony Brook Unit can participate in the FCM auction. Last, MMWEC contends that the definition of "applicable emergency limits" as applied in Planning Procedure 3 LGIP studies is ambiguous, suggesting that short-term emergency ratings generally may be used where appropriate in conducting the stability assessments, steady state assessments, and transmission transfer capability analyses. MMWEC contends that ISO-NE's failure to use them with respect to its analysis of the new Stony Brook Unit is not adequately explained or supported.

d. Commission Ruling

83. We first note that contrary to its position, MMWEC did have access to all of the materials furnished to the Commission in support of the Informational Filing relevant to its new Stony Brook Unit; as stated in the Informational Filing, the confidential Attachment K contains the notifications sent to resources that were not qualified to participate in the FCA. We also agree with ISO-NE that the approved FCM Rules establish reliability standards (outlined in the Planning Procedures) that are applicable to the FCM qualification process and by themselves are not subject to challenge or change in this proceeding – the application of these standards to a resource is subject to challenge here.

i. Conservatism in Analysis

84. We find MMWEC's contentions that ISO-NE did not correctly follow the FCM procedures for its study of the Stony Brook Unit without merit. Specifically, MMWEC contends that ISO-NE did not properly follow Section 4.1 of PP-10, which states that both STE and LTE ratings will be used in conducting transfer/interface limit analyses. We agree with ISO-NE that MMWEC's position is in error, because the STE ratings cited in PP-10 that MMWEC relies upon to support its position are only applicable to the evaluation of intra-area transfer limits used in the FCM, and are not part of the study process for new generators. Application of STE ratings is an operating procedure, and is not included in the ISO-NE planning procedures for studies of new resources. Similarly, addressing MMWEC's argument that the FSR appears to model contingencies more severe than are required by applicable reliability criteria, we agree with ISO-NE that

NPCC standards and ISO-NE Planning Procedure No. 3 provide that the loss of both circuits on a single tower is counted as a single contingency, and ISO-NE has correctly applied these criteria in its study.

ii. Operating Procedures to Address Existing Conditions

85. As ISO-NE points out in its answer, in arguing its position, MMWEC inappropriately fails to distinguish between the purposes of operating criteria and planning procedures. We note that planning procedures are specifically designed to study the system in the planning time frame, one or more years in the future, and generally use more stringent reliability criteria due to the many uncertainties inherent in longer-term forecasts. Thus, the FCM qualification process studies generators in the planning time frame and appropriately applies planning procedures. Operating criteria are used by system operators in real-time operations, and we agree with ISO-NE that it is not appropriate to consider operator actions, such as dropping load in planning studies. We also note that the referenced section of Planning Procedure No. 3 only alludes to the fact that due to the long lead times required for the planning and construction of generation and transmission facilities the System Rules used in actual operations may vary in some respects from planning and design criteria. That statement does not provide a justification for the opposite argument, *i.e.,* that ISO-NE should "lower the bar" and credit operating criteria when planning the system three years ahead.

iii. Springfield Area Transmission Improvements

86. Regarding the Springfield Area Transmission Improvements, we find that MMWEC's requests are outside the scope of this proceeding. Thus, while we are sympathetic to the issues created by the lack of timely completion of transmission upgrades in this area, we will not grant MMWEC's request that ISO-NE investigate and prepare periodic reports on the status of transmission upgrades. Similarly, addressing MMWEC's answer, we find that the record in this proceeding has not provided adequate support for the Commission to initiate *sua sponte* a section 206 proceeding to investigate the reasons for delay in the transmission upgrades in this area. We encourage the parties to use the stakeholder process to address delays in these transmission upgrades. Despite our findings here, we expect ISO-NE to follow its commitment under section 48.6 of the ISO-NE OATT – i.e., if a Participating Transmission Owner designated by ISO-NE as responsible for constructing upgrades does not build or fails to obtain necessary approvals, ISO-NE "shall promptly file with the Commission a report on the results of the planning process, which report shall include a report from the PTO responsible for the planning, design or construction of such Transmission Upgrade, in order to permit the Commission to determine what action, if any, it should take."

3. CT DPUC Comments

87. In its comments, the CT DPUC addresses ISO-NE's review of offers by new capacity resources that were below 0.75 times CONE. CT DPUC notes that ISO-NE states in its filing that 1185 MW of these resources were rejected by the INTMMU because the participants acknowledged that the offer price did not reflect the long run cost of the resource. CT DPUC alleges that ISO-NE "misspoke" in its implementation of section III.13.1.1.2.6 as under that section, the INTMMU does not "reject" offers below 0.75 times CONE. Instead, CT DPUC cites the tariff to note that for offers that are not consistent with the long run average costs of expected net revenues other than capacity revenues, the clearing capacity from that offer shall be considered Out-of-Market Capacity for purposes of determining the applicability of the Alternative Capacity Price Rule.[58] Thus, CT DPUC states that these resources could participate in the FCA, but as Out-of-Market Capacity, they could trigger the Alternative Capacity Price Rule.

88. CT DPUC also states that upon further discussion with ISO-NE, it appears to CT DPUC that these resources were indeed properly rejected from participation in the FCA on the basis that the INTMMU found that these resources did not have a realistic critical path schedule that would permit their operation by the beginning of the Commitment Period.

89. CT DPUC states that ISO-NE's representation that merchant resources might offer capacity below 0.75 times CONE (offers that do not reflect their net long-run costs) raises a potential market power concern that may need to be addressed in revised Market Rules. CT DPUC notes that during the settlement process, suppliers were concerned that LSEs might exercise monopsony power by offering their capacity below long-run costs. The final Settlement addressed this issue by designating these resources as Out-of-Market and invoking the Alternative Price Rule, placing a floor on the Capacity Clearing Price. However, CT DPUC is concerned that a merchant generator with multiple resources in a capacity zone might offer new resources at unsupported levels below 0.75 times CONE in a deliberate attempt to trigger the Alternative Capacity Price Rule and prevent the FCA

[58] Under the Alternative Capacity Price Rule, if the amount of Out-of-Market Capacity exceeds the amount of New Capacity Required, then the Capacity Clearing Price will be set at the lesser of: (1) $0.01 below the price at which the last remaining New Generating Capacity Resource, New Import Capacity Resource, or New Demand Resource withdrew from the Forward Capacity Auction ("FCA"); or (2) CONE.

from setting a competitive clearing price. CT DPUC requests that ISO-NE initiate a stakeholder process to ensure that the Market Rules will prevent such abuse.

90. In its answer, ISO-NE reiterates that certain offers below 0.75 times CONE were rejected because they were not consistent with the resources' long run average costs. ISO-NE states that these rejected offers will be considered Out-of-Market Capacity that could trigger the Alternative Capacity Price Rule. In response to the requested stakeholder process, ISO-NE states that it has insufficient information at this time to conclude whether this concern ought to be addressed and will address this issue in future stakeholder discussions as appropriate.

91. The Commission recognizes CT DPUC's concern regarding potential for market power abuse by merchant resources that may bid new resources below 0.75 times CONE in an effort to trigger the Alternative Price Rule. However, CT DPUC has not demonstrated that there has been any attempt to exercise market power in this fashion for purposes of this first FCA. Therefore, the Commission will not order the relief that CT DPUC seeks. The Commission encourages ISO-NE and its stakeholders – including CT DPUC and other state organizations – to initiate discussions regarding the current FCM Rules' ability to prevent this type of market power abuse. If those discussions conclude that merchant generators have the potential to exercise market power in these circumstances, ISO-NE and its stakeholders should draft revisions to the FCM Rules to address this issue.

4. Exelon New Boston Comments

92. Exelon New Boston owns an older 350 MW gas-fired generating unit in Boston. Although Exelon New Boston states that it is currently in the process of dismantling the unit, it was previously subject to the FCM Rules and required under ISO-NE's FCM tariff provisions to submit a permanent de-list bid into the FCA. Exelon New Boston states that due to its understanding that pursuant to Section I.3.9 of the ISO-NE Tariff it could retire the unit at anytime and withdraw from the auction process, it submitted a bid of $13.291/kW-month. However, Exelon New Boston notes that on October 2, 2007, ISO-NE notified it that the INTMMU had reduced its bid to $6.27/kW-month, due primarily to a disagreement over the amortization period of capital expenses that Exelon New Boston contends it would need to spend in order to be able to commit the unit for the Capacity Commitment Period year commencing June 1, 2010. On November 1, 2007, Exelon New Boston formally notified ISO-NE that it was converting the unit from Deactivated Reserve to Retired, and ties with the grid have now been severed. Exelon New Boston states that it has now permanently retired the unit, and it should no longer be included in the 2008 FCA.

93. Exelon New Boston also notes that on November 9, 2007, ISO-NE filed revised tariff sheets in Docket No. ER08-199 to make corrections and clarifications and to implement certain Commission determinations required in the FCM tariff provisions. Exelon New Boston states that in proposing these changes, ISO-NE noted that the currently effective version of the FCM Rules does not include important details about the treatment of retired and deactivated resources in the FCA. Exelon New Boston notes that new Section III.13.1.1.1.6(a) of these revisions establishes that any resource that is not retired 45 days prior to the FCA or deactivated by the Existing Capacity Qualification Deadline will be included in the FCA.

94. Exelon New Boston contends that although the Informational Filing indicates that ISO-NE will not include the Exelon New Boston unit in the FCA, the filing includes the INTMMU's bid determination, adding some uncertainty to that statement. Therefore, Exelon New Boston states that out of an abundance of caution, it reserves the right to protest the INTMMU's bid adjustments in the event that the Informational Filing is rejected as it relates to the exclusion of the Exelon New Boston unit and the new proposed language in Section III.13.1.1.1.6(a) of ISO-NE's November 9 FCM filing is rejected and Exelon New Boston finds itself back in the auction process. Specifically, Exelon New Boston requests that any Commission consideration of its protest of the INTMMU's determination be deferred until the earlier of (1) a Commission decision to accept or reject the Informational Filing as it pertains to Exelon New Boston, or (2) a Commission decision to accept or reject new Section III.13.1.1.1.6(a) of the FCM Rules. Exelon New Boston contends that if either the Informational filing or new tariff language is accepted, a formal protest of the bid determination will be unnecessary, since the unit will have been excluded from the FCA.

95. Since we are accepting ISO-NE's Informational Filing in this order, no formal protest is required, and the Exelon New Boston unit will be properly excluded from the February 2008 FCA. Additionally, in the Commission's order in *ISO New England Inc.*, 122 FERC ¶ 61,016, issued on January 8, 2008, the Commission accepted new section III.13.1.1.1.6(a) which establishes that for the first FCA, any resource that is not retired 45 days prior to the FCA or deactivated by the Existing Capacity Qualification Deadline will be included in the FCA.[59]

[59] *ISO New England Inc.*, 122 FERC ¶ 61,016, at P 30 (2007).

The Commission orders:

ISO-NE's Informational Filing is hereby accepted.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.
Deputy Secretary.