

128 FERC ¶ 61,266
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

ISO New England Inc.

Docket No. ER09-1424-000

ORDER ON INFORMATIONAL FILING

(Issued September 18, 2009)

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1. On July 7, 2009, ISO New England Inc. (ISO-NE) submitted an informational filing reporting on, among other things, the qualification of capacity resources to participate in the third Forward Capacity Auction¹ for the 2012-2013 Capacity Commitment Period and the de-list bids that those resources have submitted (July 7 Filing).² In this order, we accept ISO-NE's informational filing, as discussed in this order.

I. Background

A. The Forward Capacity Market

2. On March 6, 2006, ISO-NE filed a Settlement Agreement establishing the framework for New England's Forward Capacity Market (FCM).³ 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, 2007,⁴ and the remainder on June 5, 2007.⁵ In the June 5 Order, the Commission accepted market rules that outline the rights and obligations of listed and de-listed capacity resources.⁶

3. Section III.13.8.1(a) of the FCM Rules requires ISO-NE to submit to the Commission an informational filing no later than 90 days prior to each Forward Capacity Auction. The information required to be filed includes the details of the resources accepted or rejected in the qualification process for participation in the Forward Capacity Auction. ISO-NE states⁷ that 32,636 MW of existing generating capacity resources,

¹ The third Forward Capacity Auction is scheduled for October 5, 2009.

² On July 30, 2009, ISO-NE filed an amendment to the July 7 Filing, which corrected several minor clerical errors in the original filing.

³ *See generally, Devon Power LLC*, 115 FERC ¶ 61,340 (2006), *order on reh'g*, 117 FERC ¶ 61,133 (2006).

⁴ *ISO New England Inc.*, 119 FERC ¶ 61,045 (2007) (April 16 Order), *order on reh'g*, 120 FERC ¶ 61,087 (2007).

⁵ *ISO New England Inc.*, 119 FERC ¶ 61,239 (2007) (June 5 Order).

⁶ Under the FCM Rules, all existing resources participate in the Forward Capacity Auction, although existing resources may submit de-list bids to opt out of the capacity auction. *See* section III.13.2.3 of ISO-NE's tariff, Market Rule 1.

⁷ *See* Informational Filing at 4-6.

2,164 MW of existing import capacity resources,⁸ and 2,809 MW of existing demand resources, totaling 37,609 MW of existing capacity will participate in the Forward Capacity Auction. De-list bids totaling 1,196 MW will be submitted into the Forward Capacity Auction. ISO-NE states that it qualified 3,675 MW of new generating capacity resources, 2,422 of new import capacity resources, and 555 MW of new demand resources.⁹ The net amount of capacity to be purchased in the third Forward Capacity Auction to meet the Installed Capacity Requirement of 32,879 MW, after deducting 914 MW of interconnection capability credit associated with Hydro-Quebec Interconnection Capacity Credits, is 31,965 MW.

4. ISO-NE's Market Monitor (Market Monitor) reviews the bids of Existing Generating Capacity Resources that seek to permanently or statically de-list by bidding above 1.25 times the Cost of New Entry (CONE) and 0.8 times CONE, respectively, to determine whether those bids are consistent with the resource's net-risk adjusted going forward costs and opportunity costs (Going-Forward Costs). If the Market Monitor rejects such a de-list bid, the informational filing must include the Market Monitor's determination, and its own estimate of the resource's Going-Forward Costs.¹⁰ At that point, a resource may either elect to (a) use the Market Monitor's estimate as an alternate de-list bid in the auction, or (b) challenge that alternate bid before the Commission prior to the Forward Capacity Auction.¹¹ 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 filing.

B. Concurrent Proceedings

5. On August 19, 2009, the Commission issued an order instituting an expedited paper hearing pursuant to section 206 of the Federal Power Act (FPA), and requiring both

⁸ ISO-NE states that its calculation of existing import capacity resources is contingent on the Commission's denial of a pending complaint in *Connecticut Municipal Electric Energy Corporation, et al. v. ISO-NE*, Docket No. EL09-60-000. *Id.* at 5. The Commission is denying that complaint concurrently with this order.

⁹ ISO-NE states that, of these new resources, 845 MW of new generating capacity resources and two MW of new import capacity resources withdrew, and 168 MW of new demand resources were derated, after qualification. *Id.*

¹⁰ ISO-NE tariff, section III.13.1.2.3.2.1.1.

¹¹ The resource may also choose to abandon its attempt to de-list, and participate in the auction as a price taker.

ISO-NE and Dominion Resources Services, Inc. (Dominion) to provide further information regarding ISO-NE's rejection of separate de-list bids submitted by Dominion's four Salem Harbor Station units as well as the combination rates proposed by ISO-NE.¹² On August 26, 2009, ISO-NE and Dominion filed statements. On September 2, 2009, both ISO-NE and Dominion filed replies to the other party's August 26 statements. The Mirant Parties (Mirant), the PSEG Companies (PSEG), and the Conservation Law Foundation (CLF) also filed reply comments, while the Massachusetts Attorney General (Mass AG) filed reply comments and a protest. Additionally, on August 28, 2009, Boston Generating, LLC (Boston Generating) filed a motion to intervene out of time.

II. Procedural Issues

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2009), we will grant Boston Generating's motion to intervene out of time. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

III. Discussion

7. As referenced in our August 19 Order, multiple parties protest ISO-NE's July 7 Filing. In the August 19 Order, we addressed the issues raised in the protest filed by the Mass AG. In addition to resolving the questions regarding Dominion's Salem Harbor Units, we now address the issues raised by the protests submitted by Dominion, Indicated Suppliers,¹³ the Cape Light Compact (Cape Light), and CLF.

8. The Commission accepts ISO-NE's informational filing, as discussed below.

A. Salem Harbor Units

1. ISO-NE's July 7 Filing

9. As discussed in the August 19 Order, ISO-NE stated in its filing that it rejected the static de-list bids submitted by the four resources at Dominion's Salem Harbor Station because the de-list bids were not consistent with those units' Going-Forward Costs. ISO-NE states that, in part, the Market Monitor rejected the de-list bid of each Salem Harbor unit because the unit sought to depreciate certain capital costs over a shorter period (three

¹² *ISO New England Inc.*, 128 FERC ¶ 61,167 (2009) (August 19 Order).

¹³ The Indicated Suppliers are Mirant, PSEG and the NRG Companies.

years) than the period that the Market Monitor considered appropriate (seven years or, in one case, fifteen years). ISO-NE also adjusted several line items by re-categorizing them from production costs to Going-Forward Costs.

10. In addition to the issues affecting the individual Salem Harbor Units, ISO-NE explained that each Salem Harbor unit included in its Going-Forward Costs all of the costs of the Salem Harbor Station that are, in fact, common to all four units.¹⁴ ISO-NE states that this practice would be appropriate if only one of the Salem Harbor units receives a Capacity Supply Obligation¹⁵ and the Salem Harbor Station must be operated to support that single resource. If, however, multiple Salem Harbor Units receive Capacity Supply Obligations, the resources would over-recover common costs.

11. Because this issue had not come up previously and was not addressed in ISO-NE's tariff, the Market Monitor developed alternate bids intended to prevent the over-recovery of common station costs for most two-, three-, and four-unit combinations for the Salem Harbor Station.¹⁶ ISO-NE states that to develop the alternate bids, the Market Monitor determined the Going-Forward Costs of various multi-unit combinations based on information provided by Dominion.

12. In addition, ISO-NE calculated de-list bids for each of the Salem Harbor Station's resources (i.e., single unit bids) that include the Station's entire common costs. ISO-NE provides these alternate bids for each Salem Harbor unit, asserting that the Market Monitor considers these bids to accurately reflect that unit's Going-Forward Costs; however, they would apply only if that unit and no other Salem Harbor unit receives a Capacity Supply Obligation.¹⁷ ISO-NE states that these alternate bids will not be used in

¹⁴ ISO-NE defined common costs as those "costs that must be incurred to operate the station but are independent of how many of the station's resources are operating [, including but not limited to] administrative costs, utilities, property and building maintenance, [and] property taxes." July 7 Filing at 12 n.41.

¹⁵ ISO-NE has stated that the Salem Harbor units will only receive a Capacity Supply Obligation if ISO-NE finds that the units are needed for reliability and rejects their de-list bids. ISO-NE August 26 Statement at 4-5. Dominion does not dispute this statement.

¹⁶ The combination rate price provided for different combinations of units range from \$4.404/kW-month to \$8.097/kW-month. *Id.* at 13.

¹⁷ For Salem Harbor Unit 1, the Market Monitor reduced the de-list bid from \$20.214/kW-month to \$19.755/kW-month, and for Salem Harbor Unit 2 the Market Monitor reduced the de-list bid from \$20.602/kW-month to \$20.035/kW-month. In

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the Forward Capacity Auction, but would become the basis for capacity payments if more than one Salem Harbor unit is needed for reliability and acquires a Capacity Supply Obligation.

2. ISO-NE's and Dominion's August 26 Statements

a. ISO-NE's August 26 Statement

i. Depreciation Periods

13. In its August 26, 2009 Statement, ISO-NE explains that its Market Monitor's use of depreciation periods of seven and fifteen years is appropriate and Dominion's use of three years is not just and reasonable. ISO-NE bases this conclusion not only on the cost support supplied for the Salem Harbor de-list bids, but also on the historical context in which the Market Monitor determined to adjust the depreciation rates. It states that the Commission has taken care, in prior orders establishing compensation for units that were not allowed to de-list for reliability reasons, to ensure that such payments do not guarantee cost recovery to resources or provide opportunities for resources to alternate between cost-based and market-based compensation in order to earn returns that are above costs.¹⁸ ISO-NE also points to the Commission's statements that "[t]he de-list bid of any resource that lacks market power typically reflects its Going Forward Costs for the commitment year"¹⁹ and that "it is not reasonable to allow a resource that will remain in the capacity market in future years to toggle between cost-based and market-based compensation since a resource that could receive market prices when they exceed its costs and cost-based prices in the other years would be virtually guaranteed to earn revenues above costs over time."²⁰ ISO-NE argues that similarly here, Dominion seeks

addition, for both of these units, because these reduced bids are above the auction starting price of \$9.836/kW-month, ISO-NE stated that the alternate de-list bid for these two units would be \$9.836/kW-month. For Salem Harbor Unit 3, the Market Monitor reduced the de-list bid from \$6.720/kW-month to \$6.558/kW-month, and for Salem Harbor Unit 4 the Market Monitor reduced the de-list bid from \$7.644/kW-month to \$5.937/kW-month. July 7 Filing at 14-16.

¹⁸ ISO-NE August 26 Statement at 3, *citing ISO New England Inc.*, 125 FERC ¶ 61,102, at P 35 (2008) (Reliability Compensation Order) ("[A] just and reasonable market design ensures that resources are provided the opportunity to recover their costs, not a guarantee that they will recover those costs.").

¹⁹ Reliability Compensation Order, 125 FERC ¶ 61,102 at P 40.

²⁰ *Id.* P 46.

both assured cost recovery and the opportunity to return to the market after Dominion has depreciated its capital investments under the accelerated schedule it has proposed.

14. ISO-NE further asserts that, although Dominion has stated that its management's judgment is that three years is the appropriate depreciation period, it is not aware of a depreciation study submitted by Dominion, and notes that it is Dominion's burden to demonstrate that a three-year depreciation period is appropriate. ISO-NE also states that Dominion's course of conduct and public statements are not consistent with that stated judgment. ISO-NE points to statements by Dominion that it intends to keep the Salem Harbor Units in operation for multiple years and the fact that Dominion is spending \$10 to \$15 million to install equipment to reduce mercury emissions to comply with state regulations going into effect in 2012,²¹ which ISO-NE believes indicates Dominion's intent to operate beyond the 2012-2013 commitment period. ISO-NE also points out that Dominion has chosen to submit a static de-list bid (seeking to remove its capacity from the market for only one year) rather than a permanent de-list bid. According to ISO-NE, if Dominion is permitted to use this accelerated recovery period for Salem Harbor based solely on its management's judgment at a time when it anticipates that those units may be needed for reliability, Dominion will obtain precisely the guaranteed cost recovery and excessive returns for the Salem Harbor Units that the Commission has previously sought to eliminate.

15. Thus, ISO-NE argues, the Market Monitor properly considered the expected useful life of the assets based upon amortization periods for similar assets and the expected service life of the unit. In its evidentiary submission, ISO-NE sets out the process followed by Dominion in supporting its bids, and by the Market Monitor in evaluating Dominion's submissions.²² ISO-NE then states that, while Dominion maintained that a three-year depreciation period was appropriate because it reflected its management's judgment as to the useful economic life of the Salem Harbor Units, ISO-NE used a different standard – namely, the useful life (not the useful economic life) of the investment and of the resource. According to ISO-NE:

The useful life is the proper standard to use in de-list bids because permitting arbitrarily short depreciation periods would provide an incentive for resources to submit Static De-List Bids when capital expenditures are needed in the hope

²¹ ISO-NE August 26 Statement at 7, citing Attachments B and C to that Statement (local news articles from July 2008).

²² Affidavit of David LaPlante, *et al.*, Attachment A to ISO-NE August 26 Statement, redacted version (LaPlante Affidavit) at 8-9.

that the resource would be retained for reliability and the capital expenditure will be recovered in a short period of time. Dominion's decision to seek a Static De-List Bid . . . rather than a Permanent De-List Bid indicates that Dominion wishes to keep open the option of operating the unit[s] in the future.²³

16. ISO-NE points to guidance from the Internal Revenue Service (IRS) to support its position that generally, the appropriate depreciation period for such an item would be fifteen years.²⁴ However, given that Salem Harbor Units 1, 2 and 3 are coal plants over 50 years old, and the expected life of a coal plant is usually 50 - 60 years, fifteen years appeared too long; and, since Dominion did not indicate that it intended to retire the unit in the near future, three years appeared too short. Thus, the Market Monitor considered seven years, rather than three years, to be the appropriate period for depreciation of the capital improvements to Salem Harbor Units 1, 2, and 3. Salem Harbor Unit 4, however, is a 37-year-old steam turbine oil-fired power plant, and the Market Monitor considered that, since such assets usually have a useful life of 50 years, the full fifteen-year depreciation period was appropriate.²⁵

ii. **Infra-Marginal Rents and Peak Energy Rents Issues**

17. ISO-NE then states that Dominion's original submittal for Unit 4 included two items that increased the Going-Forward Costs: projections of infra-marginal rents and peak energy rents,²⁶ which resulted in "negative infra-marginal rents" and thus increased

²³ *Id.* at 12.

²⁴ See Attachment D to ISO-NE August 26 Statement, IRS Publication 936 at 107 (2009), *How To Depreciate Property*, defining "Industrial Steam and Electric Generation and/or Distribution Systems" as including "assets . . . used in the production and/or distribution of electricity with rated total capacity in excess of 500 Kilowatts . . . for use by the taxpayer in its industrial manufacturing process or plant activity and not ordinarily available for sale to others," and stating that the appropriate recovery period for such items, under the Modified Accelerated Cost Recovery System, is 15 years.

²⁵ LaPlante Affidavit at 18.

²⁶ Infra-marginal rents is what a unit can expect to earn in the ISO-NE markets, e.g. energy and ancillary services markets and is defined as "annual infra-marginal rents, in dollars. This value shall be calculated by subtracting all submitted cost data representing the cumulative actual cost of production from the Existing Generating

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its Going-Forward Costs. ISO-NE states that the Market Monitor reviewed Dominion's submitted production costs for Unit 4 for reasonableness, and concluded that the production costs were not reasonable, given the limited hours of operation of Unit 4. ISO-NE states that, when resources operate in the ISO markets, they are guaranteed to receive their production costs,²⁷ and thus the only times when a resource would not recover its production costs would be when the owner itself scheduled the resource or if the resource must be run out-of-merit for testing, which would not be compensated by the market. ISO-NE states that production costs that exceed revenues are unusual, especially in light of Unit 4's limited operation. Therefore, the Market Monitor set Dominion's proposed infra-marginal rents figure to zero in the de-list bid spreadsheet, which assumes that there would be sufficient infra-marginal rents to offset the peak energy rents deduction. ISO-NE further notes that Dominion has adjusted its production cost statements in its July 22 protest, and, assuming that Dominion confirms and explains this change, ISO-NE will recalculate the de-list bid for Unit 4.

iii. Combination Rates

18. As discussed in the Commission's August 19 Order, the Market Monitor developed combination bids intended to prevent the over-recovery of common station costs for most two, three, and four unit combinations for the Salem Harbor Station.²⁸ ISO-NE states in its August 26 Statement that to develop the combination bids, the Market Monitor used the separate de-list bids that it had previously calculated for each Salem Harbor unit, as well as information provided by Dominion representing the synergies of labor costs across the different combinations of units. ISO-NE further states that it considered the costs associated with Station Capital Blankets not to be cumulative for multiple units, and so kept that cost constant regardless of the unit combinations. The

Capacity Resource's total ISO market revenues." Peak Energy Rents is defined as "resource-specific annual peak energy rents, in dollars." ISO-NE tariff, section III.13.1.2.3.2.1.2. Higher infra-marginal rents and peak energy rents would make the Going-Forward Costs lower.

²⁷ ISO-NE states that a unit would not be dispatched unless either (a) its fuel and variable costs were equal to or lower than the Locational Marginal Price, or (b) the resource is needed for reliability, in which case it is made whole through Net Commitment Period Compensation payments. LaPlante Affidavit at 21.

²⁸ See August 19 Order, 128 FERC ¶ 61,167 at P 4-5. ISO-NE states that while these combination bids would not be used in the auction, it proposed to use these alternate combination bids as the basis for compensation if more than one of the Salem Harbor units was needed for reliability. ISO-NE August 26 Statement at 26.

incremental core costs of the station was assumed to be a catch-all category of Going-Forward Costs for all units, and ISO-NE therefore also kept those costs constant regardless of unit combination.

19. ISO-NE states that its tariff does not provide a specific method for developing such combination bids, but that the Market Monitor used the method described above to comply with the tariff's directive that resources seeking to de-list in the auction recover only their Going-Forward Costs and no more. ISO-NE further adds that it and its stakeholders will consider rule changes to address similar situations in the future, as directed by the Commission.²⁹ It further states that, if more than one Salem Harbor unit is retained for reliability, but then one or more of those resources are later released from that reliability commitment, the eventual capacity payments will be based only on those resources retained for reliability during the delivery year.³⁰

b. Dominion's August 26 Statement

20. In its statement, Dominion points out that the areas of disagreement between it and ISO-NE with regard to the calculation of the unit-specific Going-Forward Costs for each Salem Harbor unit are "limited," in that, with regard to Units 1, 2, and 3, the primary disagreement concerns the depreciation period for certain capital costs, and with regard to Unit 4, the depreciation period for certain capital costs and the peak energy rents and infra-marginal rents issues.³¹

i. Depreciation Periods

21. With regard to the appropriate depreciation period for the Salem Harbor Units, Dominion states that it used a three-year amortization period based on

²⁹ ISO-NE August 26 Statement at 29, *citing* August 19 Order at P 27.

³⁰ Finally, ISO-NE also clarifies an earlier statement that the Market Monitor's alternative de-list bids for Units 1 and 2 are \$9.836/kW-month, rather than the Market Monitor's estimate of those units' Going-Forward Costs. ISO-NE states that the de-list bids for those units will continue to be the Market Monitor's estimate of their Going-Forward Costs, but that because those estimates are above the starting price for the Forward Capacity Auction of \$9.836/kW-month, that price is the highest at which those units can be entered into the auction. *Id.* at 30.

³¹ Dominion August 26 Statement at 3.

[M]anagement's judgment regarding the useful economic life of the Salem Harbor Units, including management's assessment of (1) the future physical status of the units; (2) current market conditions; and (3) future challenges impacting the life of the units, including the uncertain nature of future environmental and other regulatory restrictions.³²

22. Dominion stresses that Units 1, 2, and 3 are coal units over 50 years old, and that it is attempting to plan their operating future in uncertain times during which they may face multiple restrictions. It also states that Unit 4 is an oil-fired unit that is nearly 40 years old, and that it is seldom dispatched in ISO-NE's markets. On this basis, Dominion concludes that a longer depreciation period would ignore the probable useful economic life of the Salem Harbor units, and would prevent Salem Harbor from recovering costs that could be avoided if the units were allowed to de-list. Dominion states that the use of a seven-year or fifteen-year depreciation period would place Dominion at risk of not recovering the costs of these necessary capital expenditures if the economic life of the plants turns out to be three years or less; in that scenario, Dominion would be left with significant stranded costs. Specifically with regard to one of the environmental upgrades required for Unit 4, the addition of Selective Non-Catalytic Reduction technology, Dominion states that the Market Monitor assumed that adding such technology would extend the useful economic life of Unit 4 for fifteen years. But in reality, according to Dominion, Unit 4 is unlikely to earn either capacity revenues or significant energy revenues, and this factor led Dominion to determine that a three-year depreciation period is more appropriate for this unit.

ii. **Infra-Marginal Rents and Peak Energy Rents Issues**

23. With regard to the calculation of infra-marginal rents for Unit 4, Dominion states that in its view, Unit 4 cannot be reasonably expected to earn positive infra-marginal rents in the energy markets, due to the fact that it is rarely dispatched in the energy market, and has rarely been dispatched for reliability in the last two years. In projecting the infra-marginal rents for Unit 4, Dominion further states that it is likely to have a negative infra-marginal rents, since it is required to operate periodically for stack testing under its air permit and to maintain ratings for capacity and reactive power support under ISO-NE rules and procedures. To perform this required testing, Unit 4 is usually self-scheduled out of merit – that is, when the market clearing price is less than Unit 4's variable operating cost. On this basis, Dominion concludes that Unit 4 will actually incur

³² Affidavit of James Hayes, Attachment A to Dominion August 26 Statement, redacted version (Hayes Affidavit) at 6.

costs, rather than earn revenue, for any operation of the unit, and that this is a type of Going-Forward Cost that Dominion must factor into Unit 4's de-list bid.

24. Dominion states that it calculated Unit 4's projected negative infra-marginal rents on the basis of two separate Seasonal Claimed Capability Audits (winter and summer), and the resulting expenses were deducted from revenue to determine a net estimated cost – i.e., the excess of expenses over revenues – for future Seasonal Claimed Capability Audits on Unit 4.³³ However, Dominion states that in its July 22, 2009 protest to the information filing, it has adjusted this cost downward.³⁴

25. With regard to the peak energy rents deduction for Unit 4, Dominion states that the peak energy rents value is subtracted from the infra-marginal rents calculation, under the FCM market rules at section III.13.1.2.3.2.1.1, and that Dominion properly subtracted the peak energy rents amount from the presumed infra-marginal rents. Dominion believes that this credit was mistakenly dropped from the calculation of Going-Forward Costs when the Market Monitor zeroed out Unit 4's infra-marginal rents calculation.

iii. Combination Rates

26. With regard to the combination rates, Dominion states that it was unable to fully reconcile or determine the assumptions underlying the Market Monitor's proposed combination rates. It therefore proposed alternative combination rates in its July 22, 2009 protest. Dominion states that the combination rates will vary because property taxes for the station vary based on the particular units used, in that the City of Salem imposes property taxes and payments in lieu of taxes only on units that are actually operating. Dominion also states that labor costs will vary similarly depending on which units are used. Dominion agrees, however, that some common costs will remain constant across all combinations.

27. Dominion asserts that the combination rates that it proposed differ from the Market Monitor's proposal primarily due to the parties' different views on the appropriate depreciation periods for all units and the peak energy rents and infra-marginal rents adjustments for Unit 4. Dominion also states that the Market Monitor excluded operating

³³ *Id.* at 8.

³⁴ *Id.* at 9.

costs associated with the combination rate that would be charged if Units 1, 2, and 3 (i.e., the three coal units) were used for reliability.³⁵

3. ISO-NE's and Dominion's September 2 Reply Statements

28. Both ISO-NE and Dominion filed reply statements on September 2, 2009.

29. ISO-NE states that the Market Monitor has changed its position on de-list bids for Salem Harbor Units 1, 2, 3 and 4, in light of the explanation and cost support submitted by Dominion in its August 26 Statement. The Market Monitor is revising its de-list bid for Unit 4 in accordance with the revised cost support submitted by Dominion with regard to infra-marginal rents and peak energy rents adjustments. ISO-NE will also modify the stand-alone and combination de-list bids for Units 1, 2, 3, and 4 to reflect the property tax and contribution agreements with the City of Salem, and the fact that the costs related to the Activated Carbon Injection system increase with the number of units retained for reliability, as explained by Dominion. ISO-NE states that the change in the property tax assumptions increases the single unit and combination bids. It further states that Dominion has clarified the amount of core costs for the entire station and the incremental core costs contained in the single-unit bids and applicable to the combination bids. ISO-NE states that while the single unit bids already accounted for the correct amount of core costs, the Market Monitor has recalculated each combination bid so that the total core cost would be represented in the final, revised bid. ISO-NE states that, with these changes, the revised de-list bids are consistent with each unit's Going-Forward Costs.

30. ISO-NE further states that it has determined not to modify its position regarding the appropriate depreciation periods for Dominion's capital costs, for the reasons set forth in its prior pleadings. It adds, however, that at this point, its Market Monitor and

³⁵ ISO-NE stated previously that, in developing combination scenarios, it had not utilized all combination scenarios involving Units 1 and 2, because the high de-list bids for these units made it likely that reliability needs would be met by retaining Salem Harbor Units 3 and 4, which have lower de-list bids. ISO-NE Answer to Protests, filed August 2, 2009, at 4. ISO-NE further states that, in the event that a unit combination not set forth in the Informational Filing is needed for reliability, "that unit combination will be addressed in the FCA Results Filing," *id.* at 11.

Dominion "have resolved all issues related to the single and combination bids except the question of the appropriate depreciation rate."³⁶

31. Dominion in its reply statement confines its remarks to the issue of the appropriate depreciation periods for the Salem Harbor Units. It states that the Commission has previously approved the use of management's estimate of the economic life of a resource as a justification for a depreciation period.³⁷ It further states that it based its choice of a three-year depreciation period on past and expected market conditions, including an assessment of past and future capacity prices, and expected regulatory and environmental challenges facing Salem Harbor, keeping in mind that it was seeking to predict market conditions for a number of years beyond the start of the commitment period on June 1, 2012.

32. Dominion points out that in the first and second Forward Capacity Auctions, supply resources were effectively paid \$4.254/kW-month and \$3.119/kW-month, respectively, due to the over-supply of capacity. Dominion states that the expectation is that the third Forward Capacity Auction will also stop at the price floor of \$2.95/kW-month, and the price paid to supply resources is again expected to be diluted due to over-supply. Dominion states that this downward track of capacity prices is not sufficient to allow the Salem Harbor Units economically to stay in the FCM in the future. Dominion notes that it is undisputed that the Salem Harbor Units' Going-Forward Costs greatly exceed the auction clearing prices, and this does not take into consideration any contribution toward fixed costs. Thus, Dominion asserts that its judgment that the economic life of the Salem Harbor Station is uncertain at best is supported by New England market conditions and economics. Additionally, it is attempting to plan for Salem Harbor's operating future in uncertain times, and will need to consider expected operating and maintenance costs of the individual units, fuel strategy, future environmental regulations (at both the state and federal level) and local/state support of continued operation.

³⁶ Answering Affidavit of David LaPlante, *et al.*, Exhibit A to ISO-NE September 2, 2009 Response to Dominion's Statement, redacted version (LaPlante Answering Affidavit) at 3, ¶ 4.

³⁷ Dominion September 2 Reply Statement at 3, *citing Virginia Electric and Power Co.*, 15 FERC ¶ 61,052, at 61,107 (1981) ("[t]he estimated service lives used to fix the proper depreciation to be reflected in rates must be a management decision which takes into account not only the physical condition of the particular facilities, but also the future generation mix, i.e. the manner in which the units are planned to be used in the future, the way in which they will be operated, and their position in the overall load scheduling curve").

33. Dominion further asserts that ISO-NE errs in assuming that Dominion is counting on one or more of the Salem Harbor Units being selected to receive a reliability contract, and that in fact, it is entirely unclear whether this will happen, or whether, even if it does, ISO-NE will be able to find other reliability solutions before the delivery year arrives. Thus, there is a risk that Dominion's investment in the Salem Harbor Units will be stranded. Dominion also states that if investments in necessary capital improvements are incorporated in Salem Harbor's bids for the 2012-2013 year and that unit is taken for reliability, under the FCM Market Rules those costs become sunk or fixed and may not be included in subsequent de-list bids in future auctions. Additionally, Dominion would have to know that the Salem Harbor Units would be selected to provide reliability in auctions beyond the 2012-2013 year, to ensure that all sunk costs are recovered. Dominion asserts that these facts refute ISO-NE's argument that the use of the economic life of the Units as the appropriate metric for depreciation will lead to precisely the guaranteed cost recovery and excessive returns that the Commission has labored to eliminate. Dominion states that the Salem Harbor units seek only the opportunity to recover their costs, and that a depreciation period longer than three years would unfairly prevent Salem Harbor from doing so. Finally, Dominion believes that such disparate treatment between its standard three-year depreciation period and ISO-NE's different depreciation periods for different units is incongruous with ISO-NE's statement that it considered the useful life of Unit 4.

4. Additional Reply Comments

34. Mirant states that clear and transparent market rules governing the amortization periods to be used in de-list bids should be developed and a schedule of recovery periods included in ISO-NE's tariff, so as to help prevent future disputes such as these. They further argue that ISO-NE's view of the useful life of such plants' time frames is not appropriate when it comes to calculating bid caps for plants that operate on a merchant basis and face market risk as to whether they will receive any payments in future years. Mirant states that while, of course, "there are no guarantees in a competitive market such as ISO-NE's," generators that are forced to accept capacity obligations requiring capital investments must be given a reasonable opportunity to recover their investment, and ISO-NE's proposal does not provide this opportunity.³⁸

35. In particular, Mirant states that since "the fact that Dominion submitted static (i.e., non-permanent delist bids) instead of permanent de-list bids was apparently a significant factor in ISO-NE's determination that longer amortization periods were appropriate . . . [u]nder ISO-NE's logic, then, capital investments on units submitting permanent de-list

³⁸ Mirant Reply Comments at 2.

bids should be eligible for shorter periods of recovery – based perhaps on a reasonable estimate of the shortest time that it would take for alternative transmission or generation solutions to be put in place (i.e., 1 to 3.5 years)."³⁹ Mirant points out that this is, in fact, the procedure in PJM, and therefore asks the Commission to direct ISO-NE to develop a fixed amortization schedule for de-list bids, with separate, shorter, amortization periods applicable to units submitting permanent de-list bids.

36. PSEG states that ISO-NE's tariff does not authorize the Market Monitor to calculate alternative Going-Forward Costs for multi-unit resources. PSEG states that ISO-NE is acting outside the authority of the tariff by allowing the Market Monitor to calculate Going-Forward Costs differently than is provided for in the tariff and "to pay resources whose de-list bid has not offered into an FCM auction at a rate divorced from the FCM process."⁴⁰ PSEG disagrees with ISO-NE's assertion that it has "unbounded authority"⁴¹ to recalculate Going-Forward Costs as it sees fit. PSEG contends that Dominion provided the information required by the tariff and that ISO-NE has no support for its re-calculation of the alternate de-list bids in neither the tariff nor Commission precedent. Furthermore, PSEG states that there is no basis in ISO-NE's tariff to calculate bids that are (a) not eligible to set the clearing price; (b) not allowed to bid into the auction; or (c) used as the basis for paying resources needed for reliability purposes. PSEG concludes, therefore, that ISO-NE's treatment of the Salem Harbor de-list bids is outside the authority of the tariff and should be rejected by the Commission.

37. Also, PSEG argues that ISO-NE has not provided sufficient proof that paying a unit based on its costs as a stand-alone unit would result in a rate that is not just and reasonable. PSEG contends that a just and reasonable rate is one that falls within a zone of reasonableness and may be determined through more than one methodology. PSEG believes that, unless ISO-NE can demonstrate that the summation of the Salem Harbor Units' Going-Forward Costs exceed the full cost-of-service of the units taken for reliability purposes, those rates should be considered within the zone of reasonableness and should be paid their full cost of service. Further, PSEG states that it would be discriminatory to pay some units needed for reliability purposes their full cost of service while other units providing the same service would receive a much lower avoided cost rate. Accordingly, PSEG argues that if the Commission does choose to exercise its section 206 rights in this matter, it should rule that all units needed for reliability purposes should be paid their full cost of service.

³⁹ *Id.* at 4.

⁴⁰ PSEG Reply Comments at 4.

⁴¹ *Id.*

38. Finally, PSEG addresses the disputed depreciation issue between ISO-NE and Dominion. PSEG agrees with ISO-NE that the determination of the depreciation period is case-specific and should depend on surrounding facts. However, PSEG disagrees with ISO-NE in its contention that the burden to support the proposed Static De-List bid rests with the owner of the unit (in this case, Dominion). PSEG argues that ISO-NE's statements are inconsistent with the tariff. PSEG also states that, when determining the appropriate amortization period, ISO-NE should consider the profitability of the units using various amortization periods. PSEG states that "profit calculations are an integral part of ISO-NE's calculation of the appropriate de-list bid."⁴² PSEG believes ISO-NE has sufficient information to evaluate Salem Harbor's profitability over the next several years, and should integrate this figure into its determination of an appropriate amortization period.

39. In its protest, Mass AG argues that the submissions by ISO-NE and Dominion are "still insufficient to demonstrate the appropriate [Going-Forward Costs] of the Salem Harbor units."⁴³ Mass AG states that ISO-NE fails to provide the necessary information to support their methodology used to adjust Salem Harbor's historical costs for normalization and other adjustments. Therefore, Mass AG requests that the Commission find the supplemental statements provided by ISO-NE and Dominion to be deficient and require both entities to file additional cost support information. Further, Mass AG notes that Dominion's revised infra-marginal rents calculation for Unit 4 raises serious concerns as to the accuracy and reliability of all of the submitted worksheets. Mass AG believes that all of these values should therefore be audited to ensure their accuracy.

40. Mass AG, however, does believe that ISO-NE's methodology for rectifying the depreciation schedule of Dominion's capital improvements to the Salem Harbor Station is appropriate. Mass AG states that Dominion's arguments about the useful life of the units and their ability to recover investment costs is contradictory to good utility practice. Mass AG states that the Commission should not allow such costs to be depreciated on a three-year schedule unless Dominion submits a permanent de-list bid.

41. CLF, in its reply comments, states that it shares ISO-NE's implied conclusion that Dominion is attempting to engage in an improper gaming strategy. CLF finds the discontinuity between Dominion's reasons for using an accelerated three-year depreciation period and the fact that it submitted Static De-List bids instead of Permanent De-List bids to be "jarring."⁴⁴ CLF states that Dominion is trying to employ a "heads I

⁴² *Id.* at 11.

⁴³ Mass AG September 2 Protest at 1.

⁴⁴ CLF September 2 Comments at 1.

win, tails you lose" strategy⁴⁵ in which Dominion seeks to recover its capital costs over a three-year period without any statement or commitment to retiring the units after the accelerated depreciation period, leaving it the very real option of re-entering the market with a fully depreciated asset. Further, CLF questions Dominion's commitment to environmental regulations due to the vague and insufficient information it has provided as to its environmental compliance obligations.

42. CLF also states that it is concerned with the lack of a mechanism for the Market Monitor to review the prudence or necessity of a capital investment that is used in the calculation of de-list bids. CLF states that the actions of Dominion with regard to lowering certain costs in its de-list bid calculations with regard for Salem's Unit 4 should motivate the Commission to investigate, since there is no mechanism to ensure the justness and reasonableness of costs used in the calculation of rates. CLF recommends that (a) the Commission reject Dominion's proposed accelerated depreciation schedule of three years; (b) the Commission initiate an audit as to the accuracy and propriety of the numbers used in Dominion's filings; and (c) the Commission grant Dominion the ability to have its de-list bids treated as permanent de-list bids, or, in the alternative, the Commission, *sua sponte*, should treat Dominion's bids as permanent de-list bids.

5. Commission Determination

43. The Commission finds ISO-NE's revised stand-alone static de-list bids for the Salem Harbor Units, as filed in its September 2 Statement, to be just and reasonable.⁴⁶ As ISO-NE explains, its Market Monitor did not realize that Dominion's submission already included core costs in the calculation of the individual de-list bids, and thus incorrectly included an additional amount of core costs in the unit de-list bids. Therefore, it was reasonable for ISO-NE to adjust the individual static de-list bids to account for the misunderstanding related to total station core costs. In addition, as Dominion explains, due to Salem Harbor Unit 4's service hours related to conducting summer and winter Seasonal Claimed Capability Audits, the production costs and market revenues were affected, resulting in a negative infra-marginal rents. Thus, we agree with ISO-NE that the adjustments to infra-marginal rents are reasonable. Further, according to the FCM Market Rules, the Going-Forward Costs formula allows an estimated peak energy rents credit to be added back into the Going-Forward Cost calculation. ISO-NE incorrectly eliminated the peak energy rents credit from the Going-Forward Costs calculation when zeroing out the infra-marginal rents calculation for Unit 4. Therefore, the Market

⁴⁵ *Id.*

⁴⁶ ISO-NE September 2 Statement at 3.

Monitor's subtraction of the peak energy rents from the infra-marginal rents and the resultant impact on the de-list bid for Unit 4 is reasonable.

44. We also find that Dominion's use of a standard three-year depreciation rate is not just and reasonable, and that ISO-NE's adjustments to the depreciation rates are just and reasonable. As we have stated previously, while resources are provided the opportunity to recover their costs, they are not guaranteed that they will recover those costs. By using a shorter depreciation period, Dominion will recover its costs more quickly, with no guarantee that it leave the market after the 2012-2013 capability year. Dominion submitted static de-list bids, which remove the Salem Harbor Units from the capacity market only for a one year period, with no commitment to leave the market at any specific time. Therefore, if Dominion's de-list bids are accepted, resources that anticipate that their static de-list bids will be rejected, but their units might be retained for reliability reasons, could recover capital costs on an accelerated basis. This would allow resources to re-enter the market once their capital investment costs are amortized and obtain market rates in the future. Dominion contends that it was its management's assessment of various factors that led to the use of a three-year depreciation period for all Salem Harbor units. One such factor that Dominion discusses is the current economic market conditions that predict declining clearing prices from the FCM and make it uneconomical for the Salem Harbor Units to stay in the FCM in the future. However, this reason also would discourage new generating units from entering the market. Nevertheless, if ISO-NE determines that Salem Harbor generation is required for reliability purposes in 2012, Salem Harbor could also be required for reliability purposes beyond 2013.

45. We believe the appropriate depreciation period should reflect the useful service life of the Salem Harbor Units. Dominion's use of a short depreciation period suggests that the useful life of the units is not long enough to recover the costs of improvements it claims are necessary, which would indicate that a permanent de-list bid would be more appropriate if the units will not continue to run. On the other hand, Dominion also states that Salem Harbor has conducted a series of tests on Unit 4 to investigate the future feasibility of using other types of fuel.⁴⁷ Thus, Dominion has explored repowering Unit 4 rather than ruling out the possibility that Unit 4 will return to service. The proposed three-year amortization period is also contrary to what Dominion has stated in public forums.⁴⁸ Thus, Dominion's expected useful life of the Salem Harbor Units may not be as short as the depreciation period that Dominion proposes in its de-list bids. In addition, based on the IRS' publication related to depreciation periods, the classification and age of the Salem Harbor Units indicate a three-year depreciation period is not reasonable. For

⁴⁷ Dominion's August 26 Affidavit at 9.

⁴⁸ ISO-NE August 26 Statement at Exhibits B and C.

example, Salem Harbor Unit 4 is 37 years old, but the IRS classifies steam turbine oil fired power plants, such as Unit 4, as having useful life of at least 50 years.⁴⁹ We find that ISO-NE has also substantiated its depreciation periods and thus the depreciation expenses.

46. Dominion, on the other hand, has made broad claims about environmental legislation that could affect the Salem Harbor Units. While we appreciate Dominion's concerns, we note that this is not a concern that only Dominion faces. Rather, in a market, all resources are subject to such unknowns and risks. Dominion's situation is not unique and thus it should not receive preferential treatment. Dominion's concerns in this respect are speculative and do not warrant its recovery of its capital costs more quickly and does not justify use of a three-year amortization period. On the other hand, the seven-years estimated useful life for Salem Harbor Units 1, 2, and 3 proposed by ISO-NE is a more reasonable period to determine the long-term economic conditions in the New England region and any future impacts from environmental and other regulatory restrictions on the coal-fired generators at Salem Harbor.

47. Thus, for all the reasons explained above, we accept ISO-NE's proposed seven-year depreciation period for the capital costs associated with Salem Harbor Units 1-3 and a 15-year depreciation period for the capital costs associated with Salem Harbor Unit 4.

48. As we stated in the August 19 Order, ISO-NE did not provide appropriate cost support for its proposed combination bids and Dominion did not demonstrate why over-recovery of its common costs would not be unjust and unreasonable.⁵⁰ However, based on the information provided during the paper hearing proceeding, we find ISO-NE's proposed solution to the Salem Harbor common costs' issue just and reasonable, on a one-time basis, as explained below.

49. We agree with ISO-NE that it would not be just and reasonable for Salem Harbor to over-recover its common costs if more than one unit is required for reliability purposes. In fact, Dominion is not opposed to the use of combination rates, as evidenced by its willingness to propose revised combination rates, but rather takes issue with the actual combination rates that ISO-NE's Market Monitor calculated.⁵¹ We recognize that ISO-NE has acted beyond the language of its tariff by proposing these combination rates. However, because it would be unreasonable for resources to over-recover their common

⁴⁹ LaPlante Affidavit at 18.

⁵⁰ August 19 Order, 128 FERC ¶ 61,167 at P 25-26.

⁵¹ Dominion's July 22 Protest at 20 and Dominion's August 26 Statement at 2.

costs, and given the lack of tariff language covering a situation that has not previously arisen, we also recognize that the Market Monitor sought to negate any potential over-recovery in the upcoming auction, and in this way to avoid unjust and unreasonable rates.

50. In the Reliability Compensation Order, in which the Commission determined that resources that sought to de-list but were required to provide reliability service would be compensated by their de-list bids, the Commission concluded it was not just and reasonable to give generators the opportunity to switch at will between cost- and market-based rates:

[I]t is not reasonable to allow a resource that will remain in the capacity market in future years to toggle between cost-based and market-based compensation since a resource that could receive market prices when [those prices] exceed its costs and cost-based prices in the other years would be virtually guaranteed to earn revenues above costs over time. Providing a resource with a cost-based backstop would also blunt incentives for the resource to minimize its costs.⁵²

Dominion's position would, in essence, create just such protections. Dominion could have chosen to submit a non-price retirement, in which case it would have been permitted to retire the Salem Harbor Units. But it did not do that; there may still be economic value in operating the Salem Harbor Units. A fundamental element of the Forward Capacity Market is that a resource may choose when and how it wishes to participate in the capacity market. When it does so however, the resource and not its ratepayers, must assume the consequences, i.e., the risks as well as the benefit, of that choice.

51. Dominion, and PSEG in its reply comments, suggest that ISO-NE is seeking unfairly to place on Dominion the risk that, after the 2012-2013 year, none of the Salem Harbor Units will receive capacity payments from ISO-NE (through reliability contracts, or otherwise). The Commission already addressed this issue in the Reliability Compensation Order, stating that "if the mitigated bid *accurately* reflects the resource's going forward costs, the mitigated bid reflects the minimum price at which the resource could profitably provide capacity without exercising market power."⁵³ ISO-NE and Dominion have both presented their support for their view as to the appropriate level of Going-Forward Costs for the Salem Harbor Units. We, nonetheless, find ISO-NE's

⁵² Reliability Compensation Order, 125 FERC ¶ 61,102 at P 46.

⁵³ *Id.* P 39 n.29 (emphasis added).

support substantially more convincing and we therefore find that ISO-NE's Market Monitor's proposed combination rates are reasonable.⁵⁴

52. The Market Monitor used the Going-Forward Costs, as explained above, to create rates for the most likely combination of resources that might be required for reliability purposes. These alternate de-list bids would not be used in the Forward Capacity Auction, but would be used as the basis for compensation if more than one of the Salem Harbor Station resources receives a Capacity Supply Obligation in the Forward Capacity Auction. Further, ISO-NE has adjusted the combination rates to take into account the city tax agreements Dominion has with the City of Salem. These property taxes vary based on the particular units included in each combination, and so it is reasonable to reflect this in the combination rates. Also, it was reasonable for the Market Monitor to adjust the combination rates associated with the Activated Carbon Injection installation project that creates a cost difference depending on how many coal units are considered.

53. Thus, due to the nature of the rates, we accept ISO-NE's proposed combination rates for the Salem Harbor Units' de-list bids in question for the October 2009 Forward Capacity Auction. In the August 19 Order, we directed ISO-NE to work with its stakeholders to address its treatment of similar common cost situations prior to the October 2010 Forward Capacity Auction and provide tariff revisions that will address a long-term solution.

54. The arguments made by Mirant and PSEG in their reply comments do not persuade us to view this matter differently. Mirant argues that generators that are required to provide capacity for reliability reasons must be given a reasonable opportunity to recover the costs of capital investments necessary for that participation. But, as Mirant acknowledges, "there are no guarantees in a competitive market such as ISO-NE's,"⁵⁵ and what Mirant and PSEG are seeking is, in fact, a guarantee of cost recovery. Resources such as the Salem Harbor Units, which chose to participate in the market by submitting a static de-list bid (rather than seeking to withdraw from the market through a permanent de-list bid or a non-price retirement request) have indicated through that choice that they wish to retain the option of participating in the market beyond the 2012-2013 capability year. Dominion must, therefore, believe that there is at least a possibility that this will prove to be an economically beneficial choice, and to underwrite that belief with ratepayer dollars is neither necessary, nor consistent with the principles of the FCM.

⁵⁴ Table 1 of LaPlante Affidavit at 10.

⁵⁵ Mirant Reply Comments at 2.

55. Mirant additionally asks the Commission to require ISO-NE to place in its tariff a fixed amortization schedule for de-list bids, with shorter amortization periods applicable to units submitting permanent de-list bids. Mirant may raise this issue in ISO-NE's stakeholder process. We will not, however, circumvent that stakeholder process by requiring ISO-NE to grant the specific relief Mirant seeks.

56. PSEG similarly states in its comments that the compensation for a unit that is needed for reliability should be based on that unit's full cost of service. This position is contrary to the FCM tariff and market rules, which provide unequivocally that (a) resources must submit static de-list bids that reflect their Going-Forward Costs (as defined in the tariff);⁵⁶ (b) if the Market Monitor disagrees with the resource's view of its Going-Forward Costs, the Market Monitor will provide its own estimate of those costs;⁵⁷ (c) the resource is at that time able to either use the Market Monitor's estimate as an alternate de-list bid, or challenge the Market Monitor's estimate before the Commission;⁵⁸ and (d) if a unit does not clear the auction, but is required for reliability, its compensation will be based on its static de-list bid.⁵⁹ These rules were clear to all resources before they made their choices as to how they wished to participate in the October 2009 Forward Capacity Auction, and any resource not wishing to comply with them could have withdrawn from the auction by submitting a non-price retirement bid or a permanent de-list bid. We will not, therefore, entertain PSEG's suggestion at this late date in the proceeding that we revisit the FCM market rules and impose full cost-of-service pricing.

57. PSEG also argues that ISO-NE's tariff does not permit ISO-NE to set any rate for the Salem Harbor Units, other than each single unit's Going-Forward Costs (each of which includes all of the common costs of Salem Harbor). The Commission has already addressed this problem, stating that, while ISO-NE may not have the authority under its tariff to develop a solution to the problem of how to allocate the common costs, "the Commission does have that authority" under the remedial authority granted to it by section 206 of the Federal Power Act (FPA), 16 U.S.C. § 824e (2006).⁶⁰ If, as urged by PSEG, ISO-NE took the position that "the tariff only authorizes [Going-Forward Costs]

⁵⁶ ISO-NE tariff, section III.13.1.2.3.2.1.

⁵⁷ *Id.*, section III.13.1.2.3.2.1.1.

⁵⁸ *Id.*, section III.13.8.1(a)(iv).

⁵⁹ *Id.*, section III.13.1.2.3.2.4.

⁶⁰ August 19 Order, 128 FERC ¶ 61,167 at P 26 n.19.

bids based on a *single* unit's avoidable costs,"⁶¹ and so allowed each individual Salem Harbor unit to submit a de-list bid including all of the common costs of the station, it would be opening the door to the possibility of unjust and unreasonable rates. This is because the de-list bid submitted by each Salem Harbor unit will also be the basis for compensation paid to any of the units that are required for reliability; thus, if each unit is allowed to submit a de-list bid that includes all the common costs, and two or more Salem Harbor Units are required for reliability, then Dominion will have recovered the common costs of the Salem Harbor Units twice. This would be an unjust and unreasonable result and a violation of the principle that each unit should recover its Going-Forward Costs, and no more.

58. We stress that, under the solution that ISO-NE has devised, Dominion appears to face no risk of under-recovery of the common costs of the Salem Harbor Station. If none of the Salem Harbor Units is required for reliability, this matter becomes moot. If one of the Salem Harbor Units is required for reliability, the de-list bid for that unit will include all of the common costs of the Salem Harbor Units. If more than one of the Salem Harbor Units is needed for reliability, all of the common costs of the Salem Harbor Units will still be recovered through the compensation paid to those multiple units. And ISO-NE has committed to calculate the appropriate de-list bids for a combination that is different from any of those set forth in its informational filing, if such a combination is ultimately selected to provide reliability, to allow Dominion to fully recover its common costs.⁶² Moreover, if more than one of the Salem Harbor Units is originally selected to provide reliability, but one of the units is released from that obligation before the 2012-2013 year, ISO-NE has stated that it will make reliability payments based on the Going-Forward Costs of the unit or units that are still retained for reliability reasons.⁶³

59. We further note that this *ad hoc* solution will not affect any party other than Dominion in the October 2009 Forward Capacity Auction. ISO-NE's market monitor has shown, without contradiction, that none of the Salem Harbor Units will likely be taken through the normal auction process, and the only relevance of the alternate de-list bids developed for those units by the Market Monitor will be if one or more of the units are needed for reliability.⁶⁴ Therefore, the Salem Harbor de-list bids have no potential to set the clearing price that will be paid to other resources. Further, ISO-NE states that it and

⁶¹ PSEG Reply Comments at 2 (emphasis in original).

⁶² ISO-NE August 6 Answer at 11.

⁶³ LaPlante Affidavit at 29.

⁶⁴ *Id.* at 7.

its stakeholders will seek to develop changes to the FCM market rules to address similar situations in the future, as directed in the Commission's August 19 Order.⁶⁵

60. Therefore, the Commission finds that this is an appropriate situation for the Commission to exercise its section 206 authority to ensure just and reasonable rates, and determine that ISO-NE has arrived at a reasonable *ad hoc* solution to the question of the appropriate allocation of the Salem Harbor common costs.⁶⁶ While the Commission normally is reluctant to exercise that authority and order extra-tariff relief, we will do so in a situation such as this one, where adherence to the letter of the tariff would clearly and plainly create unjust and unreasonable results, and where, as here, the solution devised by ISO-NE will bring about a reasonable allocation of the Salem Harbor common costs.⁶⁷

61. With regard to the issues raised by the Mass AG, the Commission does not agree that the information provided by Dominion was insufficient or insufficiently accurate to allow the Market Monitor to determine the Going-Forward Costs for the Salem Harbor Units, and we will therefore not require further evidentiary submissions by Dominion. Nor will we require auditing of the information that Dominion has already provided, as Mass AG and CLF request. We are not persuaded that there is a sufficient reason to do so. Similarly, we will not grant CLF's request that the Commission grant Dominion the ability to have its de-list bids treated as permanent de-list bids (or, in the alternative, that the Commission itself should declare Dominion's bids to be permanent de-list bids). Once a resource has chosen how it intends to participate in the Forward Capacity Auction (i.e., as a price taker through a de-list bid, or through a non-price retirement request), and acts accordingly, it is bound by that choice. Any other determination would encourage

⁶⁵ *Id.* at 28-29.

⁶⁶ Sections 205 and 206 of the FPA confer upon the Commission the responsibility to ensure that rates and charges for transmission and wholesale power sales by public utilities, including any rule, regulation, practice or contract affecting them, are just and reasonable and not unduly discriminatory or preferential. Section 206(a) gives the Commission authority over rate and charges by public utilities for jurisdictional sales as well as "any rule, regulation, practice or contract affecting such rates and charges" to make sure that they are just and reasonable and not unduly discriminatory or preferential. 16 U.S.C. § 824e (2006).

⁶⁷ See *Pennsylvania-New Jersey-Maryland Interconnection*, 92 FERC ¶ 61,282, at 61,955 (2000) ("Section 206 of the FPA confers the Commission with broad remedial authority to require [implementation of a] plan to remedy undue discrimination. . . . Under section 206, the Commission can determine just and reasonable rates and practices when faced with undue discrimination.").

gaming and second-guessing, which would impair ISO-NE's ability to conduct the auction and ensure the reliability of the system.

B. Capacity Imports

1. Indicated Suppliers Protest

62. Indicated Suppliers states that ISO-NE should not treat Import Capacity Resources as Existing Resources unless they have a multi-year contract. The Indicated Suppliers note that ISO-NE has included 2,164 MW of Import Capacity Resources as Existing for purposes of the third Forward Capacity Auction and 2,422 MW of new Import Capacity. According to Indicated Suppliers, these Existing Capacity Resources were also treated as existing resources for purposes of calculating the Installed Capacity Requirement. Indicated Suppliers state that for the third Forward Capacity Auction, ISO-NE did not limit classifying Import Capacity Resources as "existing" to those imports that are subject to a long-term, multi-year contract to supply capacity through the end of the relevant Capacity Supply Period. Indicated Suppliers state that this approach is contrary to the tariff, which states:

Capacity associated with a multi-year contract entered into before the Existing Capacity Qualification Deadline to provide capacity in the New England Control Area from outside of the New England Control Area for a period including the whole Capacity Commitment Period shall participate in the Forward Capacity Auction as an Existing Import Capacity Resource.⁶⁸

63. Indicated Suppliers argue that, based on this tariff provision, the threshold characteristic for treating Import Capacity Resources as "existing" is the multi-year contract. According to Indicated Suppliers, ISO-NE has not demonstrated that all of the imports treated as "existing" are in fact associated with multi-year contracts committing them to New England as required by the tariff. Therefore, Indicated Suppliers argue that because the auction mechanics rely heavily on the distinction between new and existing resources in establishing the prices, ISO-NE should be required to conform its treatment of qualified capacity for the third Forward Capacity Auction to the provisions of the tariff.

⁶⁸ Indicated Suppliers Protest at 12, *citing* ISO-NE tariff, section III.13.1.3.1.

2. ISO-NE Answer

64. ISO-NE states that Indicated Suppliers' claim that import resources can be classified only as "existing" if the resources are subject to multi-year contracts contravenes the intention of section III.13.1.3.1 of the tariff and neglects to incorporate the terms and conditions of section III.13.1.3.3 of the tariff. ISO-NE states that this section of the tariff regarding the qualification process for Existing Import Capacity Resources provides that in addition to proof of multi-year contracts, import resources can be qualified as "existing" if they submit proof of ownership or direct control over one or more External Resources. Therefore, ISO-NE claims that, contrary to the assertions of the Indicated Suppliers, the threshold characteristic for qualification of Import Capacity Resources as existing resources, is not only a multi-year contract, but also if resources can demonstrate ownership or control of an External Resource.

65. ISO-NE also states that this same issue will be addressed in an upcoming stakeholder process and believes that Indicated Suppliers' concerns would be more appropriately addressed in that forum. Therefore, ISO-NE requests that any Order in this proceeding not prejudge the outcome or the substance of the stakeholder process on this issue.

3. Commission Determination

66. The Commission rejects Indicated Suppliers' protest related to capacity import resources. Contrary to Indicated Suppliers' assertions, ISO-NE's qualification of certain import capacity as "existing" resources is in compliance with its tariff. As ISO-NE explains, pursuant to section III.13.1.3.3 of the tariff, import resources can be qualified as existing resources if they have multi-year contracts or proof of ownership or direct control over one or more External Resources. Therefore, ISO-NE was not required to limit the classification of Import Capacity Resources as "existing" to only those imports that are subject to a long-term, multi-year contract to supply capacity through the end of the relevant Capacity Supply Period as Indicated Suppliers contend. Further the current New England stakeholder process to review the FCM rules will include review and discussion of the qualification of existing import capacity resources. Thus, there is no need for the Commission to act now and encourage Indicated Suppliers to circumvent the ISO-NE stakeholder process. Rather, we encourage Indicated Suppliers to raise any additional concerns it may have in that forum.

C. New Resources Approved at 0.75 Times CONE

1. Indicated Suppliers Protest

67. Indicated Suppliers argue that ISO-NE's acceptance of New Capacity Supply Resources with offers below 0.75 times CONE is unsubstantiated. Indicated Suppliers note that ISO-NE accepted a total of 3,733 MW of new capacity offers at below 0.75

CONE. Indicated Suppliers state that the "foundational tenet of the [FCM] design is that new resources participating in the capacity auction are expected to provide the price signal by which the auction will determine the price for all capacity required"⁶⁹ so as to "ensure that new resources are unable to artificially lower the clearing price by participating in the auction at below their true cost."⁷⁰ Indicated Suppliers state that the tariff requires that New Resources seeking to offer bids into the auction below 0.75 CONE,⁷¹ must adequately demonstrate that the offer is consistent with the resource's all-in long run average cost.⁷² Indicated Suppliers argue that ISO-NE has provided only cursory information with regard to the offers from new entrants below 0.75 times CONE that it accepted into the auction. Indicated Suppliers contend that there are a number of new resources whose bids were approved by the Market Monitor that are questionable on their face given the technology and the costs to construct as widely understood in the industry. They point to biomass facilities as an example of such resources.

68. Indicated Suppliers state that it is unclear how the Market Monitor calculates Net Long Run Average Costs since ISO-NE has not provided any information to support its results. Indicated Suppliers argue that given the significant quantity of resources that the Market Monitor has approved to offer at these low price levels, the possible impact on clearing prices could likewise be significant and long-lasting, further confounding the objectives of the FCM. Indicated Suppliers therefore ask the Commission to require ISO-NE to provide significantly more information concerning how such determinations for new resources that submitted prices less than 0.75 CONE were made, and at a minimum, whether the Market Monitor has determined, via independent study or otherwise, the long-run average costs for these new entrants and their expected revenues other than capacity revenues.

2. ISO-NE Answer

69. ISO-NE states in its answer that Indicated Suppliers do not cite to any tariff requirements supporting their position, nothing in the tariff requires it to provide the information requested by Indicated Suppliers, and it has met its burden by providing all

⁶⁹ Indicated Suppliers Protest at 12.

⁷⁰ *Id.* at 13.

⁷¹ For the third Forward Capacity Auction, 0.75 times CONE is equal to \$3.688/kW-month.

⁷² ISO-NE tariff, Section III.13.1.1.2.6.

the information required by section III.13.8.1 of the tariff.⁷³ ISO-NE also argues that, in seeking further information that is not required under the tariff, Indicated Suppliers' argument is a collateral attack on the FCM market rules and should be rejected.

3. Commission Determination

70. The Commission rejects Indicated Suppliers' protest and denies the requested relief to require ISO-NE to submit more information regarding its determinations for new resources that submitted prices less than 0.75 times CONE. ISO-NE's Market Monitor reviewed all offers below 0.75 times CONE and made the determinations of acceptable offers and that information was reported to the Commission as required by section III.13.8.1 of the tariff. Further, Indicated Suppliers have provided no compelling argument or evidence that the new resources approved by the Market Monitor are not reasonable,⁷⁴ and therefore we will not require ISO-NE to submit any further information.

D. Cape Light's Protest

1. Cape Light's Comments

71. Cape Light submitted comments on ISO-NE's process for communicating with and training auction market participants during the auction qualification process. Cape Light explains that it participated in the first two Forward Capacity Auctions as an energy efficiency resource and has both times qualified to offer its resources into the capacity auction at a price below the threshold of 0.75 times CONE. However, Cape Light's bid

⁷³ ISO-NE Answer at 19.

⁷⁴ We do not consider Indicated Suppliers' statements regarding the costs of new biomass facilities to constitute proof that those facilities are deliberately under-stating their Going-Forward Costs. Indicated Suppliers state that some biomass facilities have accepted offer prices of under \$3.69/kW-month when "it is well understood in the industry" that the costs of such resources are significantly higher, and point to the Bridgeport Energy II facility, which qualified to participate in the auction at a price of \$5.625/kW-month in the February 2008 Auction, but in the summer of 2008 responded to a Connecticut state process to develop more generation by offering a cost-of-service price of \$11.34/kW-month. Indicated Suppliers Protest at 14 n.16. A unit's cost of service for one purpose may not be the same as the Going-Forward Costs on which a resource's bid into the FCM should be based, particularly given the fact that the Going-Forward Costs category is designed to reflect costs that would otherwise be avoided absent a Capacity Supply Obligation for the resource, and is not designed to recover long-term fixed costs.

for the third auction, which was also below 0.75 times CONE, was rejected by the Market Monitor on the basis that the bid was inconsistent with Cape Light's long-run average costs. Cape Light states that it neither received timely notification of the Market Monitor Qualification Determination letter or the letter itself, nor did it have access to the letter outside of a limited period during the Forward Capacity Auction Commitment Period. Yet, Cape Light states that it did receive a letter from ISO-NE System Planning, indicating that Cape Light could offer its capacity resource into the capacity auction at a price below the threshold of 0.75 times CONE. Cape Light argues that it is crucial that market participants receive consistent and timely notices of communications regarding Qualification Determinations. Cape Light requests that the Commission order ISO-NE, on a going-forward basis, to provide consistent communications regarding Qualification Determinations as well as appropriate and timely notice of and access to Qualification Determinations to market participants.

72. Cape Light asserts that it "is aware that the [Market Monitor's May 29 letter] will likely not have a material impact on the Cape Light's participation in the upcoming auction and is therefore not challenging the determination."⁷⁵ It then addresses and seeks to rebut the findings made by the Market Monitor. Cape Light further suggests that, because the data it submitted for the third Forward Capacity Auction is similar to the data it submitted for the first two auctions, the criteria used by the Market Monitor may have changed. Cape Light states that such changes to the qualification process have not been reflected in the FCM market rules. While Cape Light states that it welcomes improvements in the FCM qualification process, and encourages ISO-NE to continue to refine this process, it also states that Cape Light, as a market participant, requires timely notice of any changes in qualification procedures in order to comply with such procedures. Cape Light requests that the Commission order ISO-NE, on a going-forward basis, to provide appropriate notice of changes to relevant criteria and changes to the application of relevant criteria to market participants.

2. ISO-NE Answer

73. In its answer, ISO-NE states that Cape Light's comments on the ISO's Informational Filing are incorrect, and that Cape Light does not mention that ISO-NE sent an e-mail to Cape Light also on May 29, 2009, notifying Cape Light that its Qualification Determination was available on-line.⁷⁶ ISO-NE explains that the e-mail explicitly states that Cape Light would be able to view the status of its offers for below 0.75 CONE in the Supply Offer screen of the Forward Capacity Tracking System

⁷⁵ Cape Light protest at 7.

⁷⁶ ISO-NE Answer at 20, *citing* Attachment A of its Answer.

program. Therefore, ISO-NE states that Cape Light's claim that it did not receive timely notification of the status of its offer below 0.75 times CONE is incorrect.

74. ISO-NE also addresses Cape Light's argument that ISO-NE's Market Monitor has applied new criteria or refined the application of relevant existing criteria. ISO-NE states that the cost-benefit criteria detailed in the tariff have not changed since the first and second Forward Capacity Auctions and that the application of those criteria also has not changed. Rather, ISO-NE explains that the Market Monitor raised additional clarifying questions with market participants to better understand the specific definition of costs and benefits provided in support of offers below 0.75 times CONE. ISO-NE argues that these additional questions aid the Market Monitor in determining whether offers are consistent with the resource's long run average costs. ISO-NE states that Cape Light's claims are inaccurate and should be dismissed.

75. Finally, ISO-NE addresses Cape Light's request for improved communication between ISO-NE and auction market participants. ISO-NE states that the current communication process it employs works well and within the requirements of the tariff so a Commission mandate on the communication process is not necessary.

3. Commission Determination

76. In response to Cape Light's concerns, we find that ISO-NE should review its notification practices to ensure that multiple notices are coordinated, as discussed below. According to Cape Light, it received notification from the Market Monitor on May 29, 2009 that indicated that Cape Light's bid was not consistent with the project's anticipated long run average costs and so Cape Light would not be allowed to offer its capacity resource into the capacity auction at a price below the threshold of 0.75 times CONE. However, the concurrent May 29, 2009 correspondence from ISO-NE's System Planning department suggested that Cape Light was qualified to participate in the forward capacity auction with an offer below 0.75 times CONE. To avoid confusion in the future, ISO-NE should review its notification processes to ensure that its notices are coordinated so that ISO-NE's qualification determinations clearly indicate when they are subject to final confirmation by the market monitor or clarification through the forward capacity tracking system data.

77. We accept ISO-NE's explanation that the qualification process for resources has not changed since the last auction, but the Market Monitor has the authority to further refine the information it requests in order to make its determinations. Because Cape Light states that it is not challenging the Market Monitor's determination to reject its bid which was less than 0.75 times CONE, we will not address that determination.

E. Issues Raised by CLF**1. CLF Protest**

78. CLF protests the instant filing, and argues that if the Commission does not allow ISO-NE to apply an alternate rate that avoids over-recovery in the event that more than one Salem Harbor resource acquires a Capacity Supply Obligation in the Forward Capacity Auction, then CLF protests the Market Monitor-determined static de-list bids calculated for those units because they improperly include all of the resource's common costs, and should be rejected. CLF states that environmental compliance costs are included in calculating common costs shared among the units of a generation resource.

79. CLF also argues that the Commission should deny ISO-NE's request for protected treatment of information used to calculate Going-Forward Costs and de-list bids. CLF argues that other parties are put at a disadvantage and unable to substantially participate when they lack the information that is the subject of the proceeding. CLF proposes that ISO-NE and the affected parties craft Protective Orders and/or Non-Disclosure Agreements to resolve this issue. CLF requests that this proceeding be set for hearing.

2. Commission Determination

80. The issues that CLF raises with regard to protected treatment of the information submitted by Dominion have already been addressed in the Commission's August 19 Order. We stated there that the Commission has previously considered this question and ruled that generators would be permitted to provide cost support information on a confidential basis.⁷⁷ The Commission will not revisit this determination here. As discussed above, ISO-NE has been able to use the material provided by Dominion, and ISO-NE and Dominion have both been able to provide sufficient publicly-available material for the Commission to properly evaluate this matter. Thus, we deny CLF's request for relief.

⁷⁷ August 19 Order, 128 FERC ¶ 61,167 at P 30, *citing ISO New England Inc.*, 120 FERC ¶ 61,087, at P 61 (2007) ("[E]xisting generators are expected to provide to the Market Monitor support for its estimates of its costs in determining its de-list bid; however, that material information is provided confidentially with the expectation that it will not be made public. . . . We will therefore require ISO-NE, when making its informational filing . . . to include only that information on which the Market Monitor relied in making its determination. . . . in a manner that appropriately protects the confidentiality of that information.").

The Commission orders:

ISO-NE's informational filing is hereby accepted.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.