

146 FERC ¶ 61,014
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

ISO New England Inc.

Docket No. ER14-329-000

ORDER ACCEPTING INFORMATIONAL FILING

(Issued January 16, 2014)

1. On November 5, 2013, pursuant to Section III.13.8.1 of ISO New England Inc.'s (ISO-NE) Transmission, Markets and Services Tariff (Tariff), ISO-NE submitted an informational filing reporting on the qualification of capacity resources to participate in the eighth Forward Capacity Auction (FCA)¹ for the 2017-2018 Capacity Commitment Period (Informational Filing). In this order, the Commission accepts the Informational Filing.

I. Background of Forward Capacity Market

2. ISO-NE operates a Forward Capacity Market (FCM), in which capacity resources compete in an annual FCA to provide capacity to New England three years in advance of the relevant Capacity Commitment Period; providers whose capacity clears the FCA acquire capacity supply obligations, which they must fulfill three years later. The FCM rules² require ISO-NE to submit to the Commission an informational filing no later than 90 days prior to each FCA. That filing must include, *inter alia*, the details of the resources accepted or rejected in the qualification process for participation in the FCA and the load zones to be modeled for the FCA. Under Tariff Section III.13.8.1(b), unless the Commission issues an order within 75 days of the filing directing otherwise, the determinations in the Informational Filing will be used in the relevant FCA.

3. As part of the qualification process for a new generation resource and a new import capacity resource, ISO-NE performs an initial interconnection analysis, including an analysis of overlapping interconnection impacts, to determine the amount of capacity

¹ The eighth FCA or "FCA 8" is scheduled to begin on February 3, 2014.

² See ISO-NE Tariff, § III.13.8.1(a) (6.0.0).

that the resource could provide by the start of the associated Capacity Commitment Period.³ For demand response resources, ISO-NE reviews measurement and verification plans and other data required as part of the qualification process.⁴ Each resource must complete the qualification process set out in the Tariff, including submitting certain information to ISO-NE.⁵ ISO-NE then issues a qualification determination notice to each resource, informing it whether it has or has not qualified to participate in the FCA. If ISO-NE determines that all of the requirements that are necessary to enable the new generating resource, new import capacity resource, or new demand response resource to provide capacity cannot be implemented before the start of the Capacity Commitment Period, that resource is not qualified for participation in the FCA.⁶

4. Existing resources may seek to leave the capacity market and avoid a capacity supply obligation by submitting de-list bids. A de-list bid indicates the minimum price at which the resource is willing to take on a capacity supply obligation. Thus, if the final auction price is at or above the resource's de-list bid, the resource is assigned a capacity supply obligation; if the final auction price is below the de-list bid, the resource is not assigned a capacity supply obligation.⁷ A bid below \$1.00/kW-month is called a dynamic de-list bid and is not reviewed in advance by ISO-NE's Internal Market Monitor (IMM). A bid above \$1.00/kW-month is called a static de-list bid and must be reviewed by the IMM in advance of the auction to determine whether the bid is consistent with the resource's net risk-adjusted going forward costs and opportunity costs. If the IMM

³ Tariff, § III.13.1.1.2.3 and § III.13.1.3.5 (21.0.0).

⁴ Tariff, § III.13.1.4.2.5.1.

⁵ Tariff, § III.13.1.

⁶ Tariff, § III.13.1.1.2.3(c).

⁷ Generally, ISO-NE provides four types of de-list bids. A static de-list bid may be submitted by an existing resource into the FCA to remove itself from the capacity market for a one-year period (ISO-NE Tariff, § III.13.1.2.3.1.1). A dynamic de-list bid may be submitted into the FCA at prices of \$1.00/kW-month or lower (ISO-NE Tariff, § III.13.2.3.2(d)). A permanent de-list bid may be submitted by an existing resource into the FCA to permanently remove itself from the capacity market (ISO-NE Tariff, § III.13.1.2.3.1.2). An administrative export de-list bid may be submitted into the FCA to sell capacity outside of the New England control area during the associated capacity commitment period (ISO-NE Tariff, § III.13.1.2.3.1.4). In addition, while this is not termed a de-list bid, a resource may submit a binding Non-Price Retirement Request to retire the entire capacity of a generating capacity resource from the FCM (ISO-NE Tariff, § III.13.1.2.3.1.5).

determines that the static de-list bid is not consistent with those costs, it rejects the static de-list bid. Resources submitting static de-list bids are notified of the IMM's determinations in their qualification determination notifications.

II. Informational Filing

A. FCA 8 Parameters

5. As explained in the Informational Filing, and pursuant to its Tariff,⁸ ISO-NE will model four capacity zones in FCA 8: Maine, Connecticut, Northeastern Massachusetts/Boston, and Rest of Pool. Rest of Pool is composed of Southeastern Massachusetts, Western/Central Massachusetts, Rhode Island, New Hampshire and Vermont. ISO-NE has determined that Maine will be modeled as an export-constrained capacity zone while Connecticut and Northeastern Massachusetts/Boston will be modeled as import-constrained.⁹

6. ISO-NE states in the Informational Filing that the Installed Capacity Requirement (ICR) for the 2017-2018 Capacity Commitment Period is 34,923 megawatts (MWs). After accounting for 1,068 MW per month of Hydro Quebec Interconnection Capability Credits (HQICCs), the net amount of capacity that ISO-NE must procure in the FCA to meet the ICR is 33,855 MW.¹⁰ ISO-NE qualified 61 new capacity resources for the auction totaling 2,126 MW. Overall, the qualification process for FCA 8 resulted in 2,126 MW from new projects and 35,877 MW from existing resources competing to provide 33,855 MWs (after accounting for HQICCs) to the New England control area for the 2017-2018 Capacity Commitment Period. A total of 7,851 MW of de-list bids were submitted for FCA 8, of which, 1,907.024 MW subsequently converted to Non-Price Retirement Requests. In total, 98 existing resources submitted Non-Price Retirement Requests.¹¹

⁸ Tariff, § III.12.4 (8.0.0).

⁹ Informational Filing at 8.

¹⁰ ISO-NE submitted the 2017-2018 ICR value filing in Docket No. ER14-328-000 and it was accepted in *ISO New England Inc.*, Docket No. ER14-328-000 (Dec. 30, 2013) (delegated letter order).

¹¹ Informational Filing at 10-15.

B. Notice of the Filing and Responsive Pleadings

7. Notice of the Informational Filing was published in the *Federal Register*, 78 Fed. Reg. 68,834 (2013) with interventions and protests due on or before November 20, 2013. Timely filed motions to intervene were submitted by the New England Power Pool (NEPOOL) Participants Committee, the New England States Committee on Electricity (NESCOE), GDF Suez Energy North America, Inc., CPV Towantic, LLC. (Towantic),¹² Blue Sky West, LLC, Dominion Resources Services, Inc., Northeast Utilities Service Company, and NRG Companies.¹³ National Grid USA, Massachusetts Electric Company and the Narragansett Electric Company (National Grid) jointly submitted a timely motion to intervene and a request for limited, one-time waiver of the capacity qualification deadlines in ISO-NE's Tariff.¹⁴ The New England Power Generators Association, Inc. (NEPGA) and PSEG Companies¹⁵ (PSEG) each submitted timely motions to intervene and comments. Exelon Generation Company, LLC (Exelon) submitted a timely motion to intervene, protest, and request for confidential treatment.

¹² Towantic states in its motion to intervene that it is developing a combined cycle natural gas electric generating facility and attempted to qualify that facility's full capacity for FCA 8. According to Towantic, on September 27, 2013, ISO-NE's qualification determination notification stated that this Towantic facility was not qualified to participate in FCA 8. Towantic states it is exploring a number of options, including possibly filing with the Commission a request for waiver of certain ISO-NE Tariff provisions to permit the Towantic facility to participate in FCA 8. Towantic Motion to Intervene at 1-2. Towantic has not, however, sought any immediate relief.

¹³ NRG Companies include NRG Power Marketing LLC, GenOn Energy Management, LLC, Connecticut Jet Power LLC, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, NRG Canal LLC, and NRG Kendal LLC.

¹⁴ National Grid states in its motion to intervene that it has filed separately, in Docket No. ER14-311-000, a petition for a limited, one-time waiver of the capacity qualification deadlines in ISO-NE's Tariff to permit the consideration of additional data that National Grid submitted to the IMM regarding two combined heat and power facilities that have been qualified for participation in FCA 8. National Grid Motion to Intervene at 2. The Commission has addressed National Grid's request for a waiver in *National Grid USA*, 145 FERC ¶ 61,283 (2013), and so will not address that request here.

¹⁵ PSEG Companies include PSEG Power LLC, PSEG Power Connecticut LLC, and PSEG Energy Resources & Trade LLC.

8. On December 6, 2013, ISO-NE submitted a motion for leave to file an answer and answer to the comments filed by NEPGA and PSEG, and the protest filed by Exelon. On December 23, 2013, PSEG and Exelon both filed answers to ISO-NE's answer.

III. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely-filed unopposed motions to intervene serve to make the entities filing them parties to the proceeding.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers filed by ISO-NE, PSEG and Exelon in this case because they have provided information that has assisted us in our decision-making process.

B. Substantive Matters

11. We will accept ISO-NE's Informational Filing, because we find that ISO-NE has complied with its obligations under Tariff Section III.13.8.1 to submit information related to its qualification determinations and provide sufficient supporting documentation.

1. NEPGA

a. Comments

12. NEPGA states that the "IMM mitigated a significant percentage of generator static de-list bids in FCA 8 and should explain its reasons for each rejected de-list bid after the February 2014 FCA 8 auction consistent with its obligation to do so under [the] Tariff."¹⁶ NEPGA notes that once the IMM makes its determination accepting or rejecting a resource's static de-list bid, the market participant may: (1) accept the IMM's static de-list price; (2) offer at a price lower than the IMM's static de-list price; (3) withdraw the static de-list bid altogether; or (4) convert its static de-list bid to a non-price retirement request.¹⁷ According to NEPGA, this effectively forces a market participant to either

¹⁶ NEPGA Comments at 1. NEPGA states that in FCA 8, the IMM rejected 29 out of 73 static de-list bids, and according to the IMM, almost all of the rejected static de-list bids were offered by generators. *Id.* 3 nn.3-4.

¹⁷ NEPGA Comments at 6 n.12 (citing Tariff, § 13.1.2.3.2.1).

accept the IMM's determination of a price lower than that at which the market participant offered if it wants to assume a capacity supply obligation, or exit the market unconditionally through retirement. NEPGA notes that these are inefficient outcomes that can occur without any showing that the market participant has, or has any ability to unduly exercise market power, and that a resource that is compelled to exit in this fashion might, in fact, be the marginal resource, in which case the retiring resource's capacity may be replaced by a new resource at a higher clearing price.

13. NEPGA is also concerned that the IMM is substituting its own business judgment for that of market participants.¹⁸ For example, NEPGA states that the IMM substituted its judgment on the value of "P"¹⁹ in many resources' static de-list bids for that of market participants. NEPGA claims that while the Tariff allows market participants to submit a value of P up to the unit's historical demand equivalent forced outage rate (EFORD), the IMM substituted its own assessment of the value of P without informing resource owners of the substitution or providing them an opportunity to challenge its assessment prior to the issuance of qualification determination notifications. According to NEPGA, these actions create an exceedingly difficult business environment for the market participants, with adverse effects on market efficiency, investor confidence, and, potentially, system reliability.

14. NEPGA also states that, in prior FCAs, ISO-NE has published only cursory information on rejected de-list bids, which prevents market participants from having a full understanding of the IMM's decisions. Therefore, as discussed above, NEPGA asks the Commission to require ISO-NE to explain its reasons for each rejected de-list bid after the February 2014 FCA 8 auction consistent with its obligation to do so under the ISO-NE Tariff.²⁰

b. ISO-NE Answer

15. ISO-NE disputes NEPGA's concerns, stating that: (1) ISO-NE has complied with the information posting requirements for prior FCAs; (2) ISO-NE will post the de-list bid information in question after FCA 8 is completed as required by the Tariff; and (3) to the

¹⁸ *Id.* 4-7.

¹⁹ "P" is the risk factor that measures the probability that a unit will experience a long-term outage that results in a significant reduction in its rating for the capacity market, causing the resource not to be able to meet its capacity supply obligation. *See* ISO-NE Answer at 8.

²⁰ NEPGA Comments at 3, 7 n.13 (citing Tariff, § III.13.8.1(a)(viii)).

extent that NEPGA is asking the Commission to modify the Tariff, NEPGA must first submit a section 206 complaint.

16. ISO-NE explains that the Tariff requires the IMM to provide “an explanation of the reasons for rejecting any de-list bids based on the review and the resource’s net-risk adjusted going forward costs and opportunity costs as determined by the [IMM]” and to publish “to the extent possible the components of the bid which were accepted as justified, and shall also identify to the extent possible the components of the bids which were not justified and which resulted in the rejection of the bid.”²¹ ISO-NE further explains that, beginning on June 5, 2012, Commission-approved Tariff amendments required ISO-NE to include this de-list bid information with the Informational Filing on a confidential basis that ISO-NE subsequently makes public “no later than 15 days after the FCA.”²² Regarding FCA 8, ISO-NE states that, consistent with previous FCAs, it will post the additional data requested within 15 calendar days after the completion of FCA 8. ISO-NE notes that because the details of each determination are commercially sensitive, the IMM may only publish a summary of the individual determination, as there are risks arising from generators sharing such confidential information.

17. ISO-NE also argues that NEPGA’s characterization of the value of P applied to de-list bids is incorrect. ISO-NE notes that while a resource’s forced outage rate is the maximum value the Tariff permits for P, the Tariff does not simply allow a resource to submit any value up to its historical forced outage rate; rather, the Tariff requires that each value of P be explained. ISO-NE states that none of the resource owners provided any additional information on how they selected their value of P, even when asked for it.

c. Commission Determination

18. We deny NEPGA’s request that ISO-NE post additional information regarding the IMM’s de-list bid determinations. As ISO-NE notes, the Tariff already requires ISO-NE to post additional details regarding rejected de-list bids, summarized as appropriate to protect confidentiality, within 15 calendar days of the completion of FCA 8; thus, we expect the posting deadline to fall in mid-late February 2014. ISO-NE states its intention to comply with that requirement. To the extent NEPGA believes that ISO-NE’s prior postings have been too cursory or seeks Tariff changes to require more detailed information, those concerns are beyond the scope of this proceeding. Our analysis here is

²¹ ISO-NE Answer at 6 nn.17-18 (citing Tariff, § III.13.8.1(a)(viii)).

²² *ISO New England Inc.*, 139 FERC ¶ 61,178 (2012), *amended by ISO New England Inc.*, Docket No. ER12-1455-001 (Aug. 31, 2012) (delegated letter order).

limited to examining whether ISO-NE complied with the Tariff provisions in submitting the Informational Filing for FCA 8.

2. PSEG

a. Comments

19. PSEG is concerned that ISO-NE's filing provides a misleading portrayal of the expected amount of existing capacity that will actually participate in FCA 8. Specifically, PSEG states that the discussion contained in the Informational Filing on existing resources conflicts with statements made by ISO-NE in a memo issued on October 17, 2013.²³ PSEG notes that the Informational Filing states that the New England region has 35,877 MW of existing capacity that will be competing to provide 33,855 MW for the 2017-2018 Capacity Commitment Period, a 2,022 MW surplus of existing capacity resources, even without considering new capacity resources that have been qualified to participate. However, according to PSEG, in the October 17 Memo ISO-NE represented that, taking into account the Non-Price Retirement Requests of 3,135 MW, the pool would face "a deficiency of 1,547 MW below [the Net Installed Capacity Requirement]."²⁴ PSEG contends that without better and more complete information, market participants cannot be considered to have been provided adequate notice with respect to: (1) whether there will be new capacity needed to meet the Net Installed Capacity Requirement; (2) whether or not administrative pricing rules will be triggered;²⁵ and (3) what impact reliability needs will have on the market outcomes.²⁶ Accordingly, PSEG requests that the Commission direct ISO-NE to supplement the Informational Filing to give market participants a clearer picture of the landscape for FCA 8, especially the capacity available, given the number of retirement notices.²⁷

20. PSEG further contends that ISO-NE's Tariff provisions that govern the treatment of resources that either offer de-list bids or submit Non-Price Retirement Requests and

²³ PSEG Comments at 1-2 (citing Exhibit 1, Update on Resource Conditions for FCA #8 – 2017/2018, October 17, 2013 (October 17 Memo)).

²⁴ *Id.* 2 (citing October 17 Memo).

²⁵ Under the Tariff, in situations of inadequate supply or insufficient competition (as defined in the Tariff), ISO-NE determines the price paid to certain resources. *See* Tariff § III.13.2.8.

²⁶ PSEG Comments at 2.

²⁷ *Id.* 7.

are thereafter retained by ISO-NE to satisfy a local reliability need, constitute an inefficient market design that must be addressed before FCA 8. Under the current Tariff, such resources are kept in the auction and their offers are repriced to zero, effectively making the resources price-takers. PSEG notes that even if a resource has been identified as needed for reliability, a unit that has submitted a Non-Price Retirement Request still has the option to retire, thus leaving the New England region with a potentially unfulfilled reliability need. PSEG states that resources that ultimately elect to retire will appear as “phantom” MWs in the FCA and displace new generation or demand response needed for resource adequacy. Therefore, PSEG believes that the market rules that lead to this scenario create a significant reliability risk to the New England region and result in price suppression for all resources in the market. PSEG notes that ISO-NE has identified and proposed to correct this issue for FCA 9, but has not addressed this for FCA 8.²⁸ Therefore, PSEG requests that the Commission direct ISO-NE to revise the relevant Tariff provisions before the start of FCA 8 so that the results will reflect just and reasonable rates under section 205 of the Federal Power Act (FPA).²⁹ Alternatively, PSEG states that the Commission should, on its own volition, initiate an FPA section 206³⁰ proceeding and make that determination on its own.³¹

b. ISO-NE Answer

21. ISO-NE responds that the October 17 Memo and the Informational Filing reflect different information because they were developed for different purposes. ISO-NE explains that the October 17 Memo was presented to the Reliability Committee to explain the ICR and related requirements values, and how those relate to the Non-Price Retirement Requests, while the Informational Filing contains information and MW values associated with new and existing resources qualified to participate in FCA 8. ISO-NE further explains that Non-Price Retirement Requests are represented as qualified existing capacity resources in the Informational Filing and removal of such retirements occurs outside the qualification process, yet before creation of the auction inputs. Moreover, ISO-NE explains that the existing capacity values in the October 17 Memo represent a snapshot in time of what was expected to be qualified as existing MWs for FCA 8 as of May 2013. ISO-NE states that subsequent to May, through processes provided for under the Tariff, there have been a number of changes to the existing

²⁸ *Id.* 9-10.

²⁹ 16 U.S.C. § 824d (2012).

³⁰ *Id.* § 824e (2012).

³¹ PSEG Comments at 10.

capacity value accounting for: (1) significant project increases; (2) offers composed of separate resources (composite offers); (3) termination of non-commercial resources; and (4) recent changes in resource characteristics as per ISO-NE's asset registration process.³²

22. With regard to PSEG's request that the Commission direct ISO-NE to file Tariff revisions relating to the treatment of resources retained for reliability, ISO-NE states that the Commission should reject this request, arguing that it constitutes an impermissible section 206 complaint. ISO-NE contends that this proceeding is not the appropriate forum for challenges to the Tariff. Even in the context of a section 206 complaint, ISO-NE explains that directing it to make such a filing would be premature and would inappropriately circumvent the stakeholder process. Therefore, ISO-NE states that the Commission should reject PSEG's request that the Commission direct ISO-NE to submit Tariff amendments.

c. PSEG Answer

23. PSEG filed an answer to ISO-NE's response, stating that ISO-NE is seeking to dismiss its legitimate attempt to reconcile two apparently conflicting descriptions of market conditions, and is thereby sending conflicting messages to market participants. PSEG further states that it did not contend that the Informational Filing was inaccurate, but rather, sought data that market participants could not independently verify and that concerns critical information needed to understand the capacity market auction dynamics. PSEG states that ISO-NE has not adequately described why the values presented in the October 17 Memo are not relevant to the MW values that are associated with FCA 8 or why they are so significantly different. PSEG states that "[a] clearer picture of the FCA 8 landscape is needed for the auction to yield a competitive outcome."³³

24. PSEG further asserts that the Tariff provisions governing the treatment of resources that offer de-list bids or submit Non-Price Retirement Requests, but are then retained by ISO-NE to satisfy a reliability need, create a significant reliability risk for the region and the potential for unjust and unreasonable capacity prices. PSEG states that its concern has become more acute because ISO-NE has just announced that Brayton Point, a 1550 MW resource, is needed for reliability and thus may be retained in the FCA 8

³² ISO-NE Answer at 10-11.

³³ PSEG Answer at 3-4.

auction and re-priced to zero, as required by the current rules.³⁴ PSEG states that its intent in raising this concern in response to the Informational Filing is to put the Commission on notice that the operation of these rules could result in auction results that are not competitive, and that if the market rules are not changed, then the Commission may need to address whether the FCA 8 results are just and reasonable. PSEG reiterates that, therefore, the Commission should require ISO-NE to address its concern prior to FCA 8.³⁵

d. Commission Determination

25. We reject PSEG's suggestion that the Commission direct ISO-NE to supplement the Informational Filing to reconcile the values in the Informational Filing with the October 17 Memo. As ISO-NE notes, the information was presented for different purposes and based upon different "snapshots" in time. As ISO-NE stated in its Informational Filing³⁶ and reiterated in its Answer,³⁷ Non-Price Retirement *Requests* are routinely represented as qualified existing capacity resources in the Informational Filing. Those requests are subject to approval under a separate Tariff process. As ISO-NE explains, the removal of the capacity associated with the Non-Price Retirements Requests occurs separately from the qualification process, but before the creation of the auction inputs.³⁸ Thus, the Informational Filing, by design, does not reflect final Non-Price Retirements. Similarly, as ISO-NE explains, the capacity value in the October 17 Memo reflects a calculation of the minimum amount of existing resources that would remain in FCA 8, assuming that all Non-Price Retirement Requests are accepted without reliability violations.³⁹ It too was not intended to reflect a final value of approved Non-Price Retirement Requests.

³⁴ *Id.* 5. PSEG further notes, however, that the question of whether Brayton Point will accept a Reliability Must-Run agreement to stay in the capacity market is not yet resolved, and may not be resolved prior to FCA 8. *Id.* 5 n.16.

³⁵ PSEG notes that a complaint recently filed by NEPGA, and a recent section 205 filing by ISO-NE, are addressing similar market defects that may result in uncompetitive outcomes. *Id.* 6 n.17, citing to *New England Generators Association, Inc. v. ISO New England Inc.*, Docket No. EL14-7-000 (filed October 31, 2013), and *ISO New England Inc.*, Docket No. ER14-463-000 (filed November 25, 2013).

³⁶ Informational Filing at 4 n.17.

³⁷ ISO-NE Answer at 10 n.33.

³⁸ *Id.*

³⁹ October 17 Memo at 1.

26. The record does not support, and indeed PSEG does not allege, that ISO-NE failed to properly follow its Tariff for purposes of developing the Informational Filing here, and we cannot find that the Informational Filing does not comport with the Tariff requirements, based solely on a discrepancy between that filing and the October 17 Memo. We note that, to the extent PSEG has substantive concerns regarding the adequacy of capacity in FCA 8, such concerns are at issue in two pending proceedings, as PSEG itself recognizes.⁴⁰

27. We reject as beyond the scope of this proceeding PSEG's request that the Commission direct ISO-NE to revise its Tariff to address what PSEG characterizes as a market inefficiency related to resources retained for local reliability needs. Indeed, as PSEG states in its answer, its concern is not that ISO-NE has failed to comply with the current tariff provisions; rather, PSEG is arguing that the operation of those Tariff provisions may lead to unjust and unreasonable results. ISO-NE does not seek to change those provisions here, however, and we reiterate that this proceeding is limited to determining whether the Informational Filing comports with ISO-NE's Tariff.

3. Exelon

a. Comments

28. Exelon argues that in rejecting the static de-list bid for Mystic Unit 7 (Mystic 7), the IMM made unsupported and unjustified revisions to the de-list bid submitted by Exelon. Specifically disputing the IMM's treatment of Corporate and Regional Allocations (overhead costs),⁴¹ Exelon argues that the Commission should reject the IMM's mitigation of Exelon's de-list bid and should authorize Exelon to increase the mitigated de-list bid.⁴²

29. Exelon contends that the IMM categorically rejected the inclusion of overhead costs related to the provision of environmental, engineering, project management, financial, human resources, information technology, and legal support in Exelon's de-list bid.

⁴⁰ See n.35 above.

⁴¹ Exelon had also disputed the IMM's treatment of infra-marginal rents but withdrew those arguments in its answer. Exelon Answer at 6.

⁴² Exelon Protest at 2.

30. Exelon explains that it prepared its de-list bid in accordance with ISO-NE's Tariff and pursuant to the "Guidelines for De-list Data Submittals."⁴³ Specifically, Exelon explains that its bid was based on historical costs for Mystic 7 for the 12 months ending May 31, 2013, subject to certain adjustments reflecting expected cost changes. After discussions with the IMM, Exelon explains that the IMM rejected Exelon's de-list bid and established a mitigated de-list bid for Mystic 7. Exelon states that the IMM identified five specific adjustments to its de-list bid, but did not quantify the change to the de-list bid that is attributable to each individual adjustment. Exelon contests the IMM's elimination of 100 percent of the overhead costs, arguing that the IMM arbitrarily ignored the overall reduction (or reallocation) in workload and in associated costs. Moreover, Exelon explains that including such overhead costs in the de-list bid for Mystic 7 also is consistent with Exelon's treatment of similar units in other markets. For example, when select units slated to be retired were required to continue operating for reliability reasons, the Reliability Must Run Agreement with PJM Interconnection, L.L.C. (PJM) for those units, which was approved by the Commission, allowed recovery of overhead costs.⁴⁴ Exelon argues that the IMM's determination unfairly penalizes companies like Exelon that centralize certain corporate functions in order to realize efficiencies and lower costs. Exelon contends that not allowing even a discounted overhead cost reduction under these circumstances arbitrarily ignores the overall reduction (or reallocation) in workload and in associated costs.⁴⁵ Exelon contends that it is reasonable and appropriate to include these overhead costs in the de-list bid for Mystic 7 and the Commission should authorize Exelon to restore the overhead costs reflected in its original de-list bid into FCA 8.⁴⁶

31. Exelon argues that the IMM rejected its bid and adopted a bid based on the IMM's own interpretations and unsupported conclusions regarding the costs of operating Mystic 7 and the IMM's unexplained determination to zero out certain costs. Exelon argues that the IMM's determination does not contain a sufficient "explanation of the reasons that the de-list bid was rejected,"⁴⁷ as required by the Tariff. Exelon argues that absent action by the Commission to restore the costs removed from Exelon's de-list bid by the IMM,

⁴³ Tariff, § III.13.1.2.3.2.1.2; ISO-NE De-list Data Submittals Guideline, Revision 3, April 30, 2013, at p. 10.

⁴⁴ Exelon Protest at 14 n.38 (citing *Exelon Generating Company, LLC*, 135 FERC ¶ 61,190 (2011)).

⁴⁵ *Id.* 19-20.

⁴⁶ *Id.* 16.

⁴⁷ *Id.* 17 (citing Tariff, §III.13.1.2.3.2.1.1.2(b)).

the Commission will effectively ratify the IMM's decision. Additionally, Exelon contends that the Commission cannot simply defer to the IMM without violating the prohibition on delegation of its decisional authority.⁴⁸ Accordingly, Exelon asks the Commission to issue an order directing ISO-NE to restore the costs incorrectly removed from Exelon's de-list bid for the Mystic 7 resource.⁴⁹

b. ISO-NE Answer

32. ISO-NE explains that the IMM carefully reviewed the de-list bid for Mystic 7, and its conclusions were based on that careful review and detailed analysis. ISO-NE notes that Exelon's failure to prepare an analysis of the genuinely avoidable overhead costs for a one-year de-listing of the resources from the capacity market left the IMM with three choices for arriving at an adjusted overhead cost estimate: (1) accept a poorly supported estimate of overhead costs; (2) reject the overhead costs in the absence of information; or (3) make an unsupported determination of the avoidable overhead costs. Given the lack of support for the reduction in overhead costs, ISO-NE states that the IMM did not include them in the determination of the de-list bid. ISO-NE states that the Commission should reject Exelon's current de-list bid price because Exelon has not demonstrated that the de-list bid is consistent with its net risk adjusted going forward costs, as required by the Tariff.⁵⁰

33. ISO-NE states that the IMM properly applied the Tariff regarding Exelon's overhead cost estimates. ISO-NE notes that these costs are typically plant specific. ISO-NE explains that Exelon included substantial overhead costs in its de-list bid related to shared corporate services, and that it did not demonstrate how such costs would be avoided or not incurred in the absence of a capacity supply obligation. For instance, ISO-NE argues that Exelon's inclusion of corporate overhead costs is at odds with its choice of submitting a static de-list bid. ISO-NE contends that Exelon did not carefully determine the avoidable portion of overhead costs from removing Mystic 7 from the capacity market for a single Capacity Commitment Period. ISO-NE states that the overhead allocations were discussed at length by the IMM and Exelon during two telephone conversations (August 13, 2013 and August 23, 2013). ISO-NE explains

⁴⁸ *Id.* 17-18 (citing *Columbia Gas Transmission Corp. v. FERC*, 404 F.3d 459, 462 (D.C. Cir. 2005); *U.S. Telecom Ass'n v. FCC*, 359 F.3d 554, 568 (D.C. Cir. 2004); *Calvert Cliffs' Coordinating Comm., Inc. v. U.S. Atomic Energy Comm'n*, 449 F.2d 1109, 1123 (D.C. Cir. 1971)).

⁴⁹ *Id.* 25-26.

⁵⁰ ISO-NE Answer at 13-14.

that the IMM articulated its concerns and indicated that an analysis of the genuinely avoidable overhead costs for a single Capacity Commitment Period was needed to document the claimed overhead savings. ISO-NE states that Exelon failed to provide such an analysis; instead it simply claimed that it would reduce or reallocate resources equivalent to its allocation of the overhead costs.⁵¹

34. ISO-NE also argues that Exelon's comparison of these overhead costs to the Reliability Must Run agreement accepted in PJM is irrelevant to whether the IMM acted consistently with the ISO-NE Tariff. ISO-NE notes that even if Exelon's claims as to the recovery of overhead costs within PJM are accurate, the IMM must apply the ISO-NE Tariff, including its requirements that de-list bid estimates be appropriately documented by the participant. ISO-NE contends that the IMM acted prudently and properly in administering the ISO-NE Tariff, and in attempting to ensure that Exelon's de-list bid properly represented the genuinely avoidable overhead costs.⁵²

c. Exelon Answer

35. With regard to overhead costs Exelon states in its answer that 2013 was the first year in which it submitted and ISO-NE reviewed a de-list bid for Mystic 7, and the de-list bid for Mystic 7 was the subject of much discussion between ISO-NE and Exelon. Exelon states that it made several revisions to its initial submittal to provide complete and accurate data to ISO-NE, and it has made no misrepresentations to ISO-NE or to the Commission. Exelon continues to view the IMM's rejection of 100 percent of its overhead costs as unreasonable, and asserts that ISO-NE has not identified any specific standards under which to evaluate whether those costs are avoidable. It further states that "the specific matching between the overhead costs and the unit subject to the delist bid that ISO-NE requires places a virtually insurmountable evidentiary burden on a unit owner, effectively precluding overhead costs from ever being considered."⁵³

36. Exelon states that, like many entities that operate resources at multiple locations, it centralizes its overhead expenses and allocates them to individual resources based on a labor ratio or other conventional allocation methodology. However, according to Exelon, ISO-NE is taking the position that simply showing that overhead costs may be reduced if a facility does not receive a capacity supply obligation is inadequate, and only a showing of specific employee reductions demonstrates that such costs are avoidable, and that this

⁵¹ *Id.* 26-31.

⁵² *Id.* 31-32.

⁵³ Exelon Answer at 3.

view penalizes entities like Exelon that seek to centralize functions and thus avoid costs. Exelon further asserts that ISO-NE is seeking to substitute its business judgment for Exelon's, with regard to the level of Exelon's actual costs. Exelon further asserts that PJM has a more mature capacity market and therefore PJM's treatment of overhead costs should provide useful guidance for ISO-NE.

d. Commission Determination

37. The Commission rejects Exelon's request to restore the costs associated with Exelon's allocation of overhead costs to the de-list bid for Mystic 7. We note that the Tariff does allow for such costs to be included in a resource's net risk-adjusted going forward costs, provided that the costs "would be avoided only in the absence of a Capacity Supply Obligation."⁵⁴ It is reasonable to anticipate that some overhead costs might be avoided in the absence of a capacity supply obligation; however, other costs may not be avoided during the one-year Capacity Commitment Period, and a resource needs to demonstrate which costs are, in fact, avoidable. Exelon's primary support for its assignment of production-related corporate overhead costs to Mystic 7 is based on Mystic 7's percentage of total labor costs. Exelon, however, fails to demonstrate that these various corporate overhead cost categories are avoidable in the absence of a capacity supply obligation, as required by the Tariff. Therefore, ISO-NE acted appropriately in rejecting Exelon's request. Additionally, the record reflects that the IMM and Exelon communicated via telephone to discuss the IMM's concerns about the insufficient support for Exelon's allocation of overhead costs and to clarify the type of supportive analysis the IMM sought. According to the IMM, even after these phone conversations, Exelon's analysis still fell short of providing a sufficient justification for the overhead cost allocation. Our review of the confidential material supports the view of the IMM. We therefore conclude that Exelon has not sufficiently documented that the overhead costs Exelon allocated to Mystic 7 are, in fact, avoidable for a one-year de-listing of Mystic 7 from the ISO-NE capacity market.

38. Finally, Exelon cites to a case in the PJM market where Exelon claims to have used a similar cost allocation methodology which was accepted by the Commission.⁵⁵ We do not find this to be a fitting comparison because the units in the PJM market were compensated under a cost-of-service method as part of a negotiated settlement, which is significantly different from the net risk adjusted going forward cost method required for de-list bids under the ISO-NE Tariff.

⁵⁴ Tariff, § III.13.1.2.3.2.1.2.

⁵⁵ See n.44 above.

The Commission orders:

ISO-NE's Informational Filing is hereby accepted for filing, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.