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VIA ELECTRONIC FILING

The Honorable Kimberly D. Bose, Secretary
The Honorable Nathaniel J. Davis, Sr., Deputy Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: ISO New England Inc., Docket No. ER08-633-000

Dear Secretary Bose and Deputy Secretary Davis:

Attached for electronic filing in the above-referenced docket is the *Motion to Strike and Request for Shortened Answer Period and Expedited Consideration of ISO New England Inc.* A copy of the foregoing has been served upon all parties included in the Commission's service list.

If you have any questions or concerns regarding this filing, please feel free to contact me. Thank you for your assistance in this matter.

Respectfully submitted,

/s/ Sherry A. Quirk
Sherry A. Quirk, Esq.

Counsel for ISO New England Inc.

Attachment

cc: Official Service List

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

ISO New England Inc.

) **Docket No. ER08-633-000**

**MOTION TO STRIKE AND REQUEST FOR SHORTENED ANSWER PERIOD AND
EXPEDITED CONSIDERATION OF ISO NEW ENGLAND INC.**

Pursuant to Rule 212 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.212 (2007), ISO New England Inc. (the “ISO”) hereby moves that the Federal Energy Regulatory Commission (“FERC” or “Commission”) strike the comments and protests filed by several parties¹ (“Objecting Parties”) in response to the ISO’s Forward Capacity Auction Results Filing (“FCA Results Filing”) in the above-captioned proceeding. The ISO moves to strike certain arguments of the Objecting Parties because they raise matters that are beyond the scope of the narrow substance of the FCA Results Filing, are an impermissible collateral attack on prior Commission orders, or are an improper attempt to modify fundamental elements of the Forward Capacity Market (“FCM”) Settlement approved by the Commission.² The ISO also requests that the Commission shorten the time period for filing answers to this Motion to ten days from the date of this filing, and issue an order ruling on this Motion by May 27, 2008. Good cause exists to grant these requests, as discussed further below.

¹ Comments of FirstLight Power Resources Management, LLC, FirstLight Hydro Generating Company and Mt. Tom Generating Company LLC, (“FirstLight Comments”); Motion to Intervene and Protest of FPL Energy, LLC, (“FPL Protest”); Motion to Intervene and Protest of the PPL Companies, (“PPL Protest”); Motion to Intervene and Comments of the New England Power Generators Association, Inc., (“NEPGA Comments”); and Motion to Intervene, Protest and Comments of the PSEG Power Companies, (“PSEG Protest”), all filed on April 17, 2008 in *ISO New England Inc.*, Docket No. ER08-633-000.

² *Devon Power, LLC*, 115 FERC ¶ 61,340, *order on reh’g and clarification*, 117 FERC ¶ 61,133 (2006).

On March 3, 2008 the ISO filed the FCA Results Filing with the Commission, which reported the results of the first Forward Capacity Auction (“FCA”)³ in New England. The Tariff allows parties to file objections to this filing with the Commission. In seeking to strike certain arguments, the ISO is not claiming that many of the concerns raised by the Objecting Parties lack validity. Indeed, the ISO will work with the Objecting Parties and the New England Power Pool (“NEPOOL”) to appropriately prioritize the issues and ensure that their proponents have a full opportunity to present their concerns to the stakeholders and the ISO for consideration. After completion of these processes, the opportunity for ISO filings pursuant to Section 205 of the Federal Power Act (“FPA”)⁴ or objecting party filings pursuant to Section 206 of the FPA⁵ will ensure that their concerns are addressed. Rather, the ISO’s objection is that the matters before the Commission in this proceeding are properly limited to comments on the results of the FCA.⁶ Such comments may properly allege an error in the way the auction was administered, or a flaw in the auction results. The ISO is concerned that the Objecting Parties are attempting to use this forum as a means to challenge the design and implementation of the FCM market in circumvention of the New England stakeholder process or Commission orders that have approved the elements of the FCM market design. As this is the first FCA Results Filing, the

³ Capitalized terms used but not otherwise defined in this filing have the meanings ascribed thereto in the ISO New England Inc. Transmission, Markets and Services Tariff (“Tariff”), the Second Restated New England Power Pool Agreement, the Participants Agreement, the March 6, 2006 Explanatory Statement and Settlement Agreement in Docket Nos. ER03-563-000 *et al.* (“Settlement Agreement”), and the February 15, 2007 Filing Containing Revisions to Market Rules Implementing the FCM Settlement Agreement in Docket Nos. ER07-546-000 and ER07-547-000.

⁴ 16 U.S.C. § 824d (2000).

⁵ 16 U.S.C. § 824e (2000).

⁶ ISO Tariff, Section III.13.8.2(c). “Any objection to the Forward Capacity Auction results must be filed with the Commission within 45 days after the ISO’s filing of the Forward Capacity Auction results.”

ISO urges the Commission to carefully limit the scope of this proceeding and prevent each filing of FCA results from becoming a referendum on the FCM. To the extent that the Commission may not grant the ISO's Motion, the ISO reserves its right to respond to the substance of the Objecting Parties' pleadings.

As described further below, the Objecting Parties improperly protest several aspects of the FCM, including, among other things: (1) the calculation of the Cost of New Entry ("CONE");⁷ (2) the Installed Capacity Requirement ("ICR");⁸ (3) the qualification and participation of Demand Resources;⁹ (4) treatment of de-list bids rejected for reliability;¹⁰ (5) new resources bidding into the FCA as existing resources;¹¹ (6) FCM matters regarding which various studies, reports and technical conferences are sought;¹² and (7) several areas in which

⁷ For example, some commenters urge the Commission to require "a Tariff change to be filed . . . to avoid the lowering in CONE." PPL Protest at 17.

⁸ FPL maintains that the Commission "should direct ISO-NE to modify its market rules and associated practices" regarding the procurement of capacity. FPL Protest at 2.

⁹ Various entities raise issues regarding the participation of Demand Resources and seek related stakeholder processes. *See, e.g.*, NEPGA Comments at 13; FirstLight Comments at 11; PSEG Protest at 12.

¹⁰ FirstLight requests that the Commission direct the ISO to conduct a technical conference to examine the impact on the auction price of rejecting de-list bids for reliability reasons. FirstLight Comments at 8.

¹¹ PPL requests that the Commission require the ISO to study the effect on the auction of bids and file a report with the Commission. PPL Protest at 16.

¹² Several parties request that the Commission order the ISO to undertake studies and reports, and order technical conferences regarding FCM issues. *See, e.g.*, NEPGA Comments at 13; FirstLight Comments at 8, 11; PSEG Protest at 12; PPL Protest at 16; PSEG Comments at 11-12.

“enhancements to FCM” are sought in order for the FCM to “realize its full potential.”¹³ The Commission should strike these comments and protests, for the reasons set forth below.

The ISO requests that the Commission shorten the time period for filing answers to this Motion to ten days from the date of this filing, and issue an order ruling on this Motion by May 27, 2008. The ISO has sought an effective date of July 1, 2008 for the FCA Results Filing. If the Commission denies the Motion, the ISO intends to file a substantive response to the arguments addressed in the Motion as expeditiously as possible, so that the Commission has a complete record on which to base an order ruling on the FCA Results Filing. To provide the ISO an opportunity to submit its substantive response if necessary, and allow the Commission to issue its ruling based on the ISO’s response by the requested effective date, the ISO submits that a shortened answer period and expedited issuance of an order ruling on the Motion is appropriate and necessary.

I. BACKGROUND

On June 16, 2006, the FCM was approved by the Commission as a settlement that addressed issues relating to locational capacity in New England. On February 15, 2007, after a lengthy stakeholder process, the ISO filed revisions to its Tariff implementing the FCM Settlement Agreement (“FCM Settlement”), which the Commission approved in orders issued on April 16, 2007 and June 5, 2007.¹⁴ In accordance with the Tariff, to provide interested parties an opportunity to comment upon and the Commission to review the ISO’s fulfillment of its

¹³ PSEG Comments at 11-12. In addition to advocating further stakeholder processes regarding Demand Resource, ICR and the auction timeline, PSEG also seeks further processes regarding issues including Reliability Must Run units and generation interconnection rules.

¹⁴ *ISO New England Inc.*, 119 FERC ¶ 61,045, *order on reh’g*, 120 FERC ¶ 61,087 (2007); *ISO New England Inc.*, 119 FERC ¶ 61,239 (2007).

responsibilities prior to the FCA, on November 6, 2007, the ISO made an “Informational Filing.”¹⁵ In the Informational Filing, the ISO discussed in detail the qualification process for resources to participate in the FCA and the process used by the ISO to review qualification of those resources. The ISO also specified the resources accepted or rejected in the qualification process in the FCA. A few parties filed challenges with the Commission to the determinations made in the Informational Filing. In an order issued on January 11, 2008, the Commission accepted the Informational Filing in its entirety and rejected all challenges.¹⁶

Pursuant to Section 205 of the FPA and Section III.13.8.2 of the Tariff the ISO on March 3, 2008, submitted “the results of th[e] Forward Capacity Auction with the Commission.”¹⁷ The filing contained specified and particular information related to the outcome of the first FCA conducted in New England under the FCM, as required by the Tariff.

The FCA Results Filing included the determination that Maine was not an export constrained Capacity Zone resulting from the auction, the region-wide Capacity Clearing Price of \$4.50/kW-Month, the Capacity Clearing Price associated with certain imports pursuant to Section III.13.2.3.3(d) of the Tariff,¹⁸ and a list of which resources received Capacity Supply Obligations. In the filing, the ISO specified that a single Capacity Zone resulted from the auction. The ISO listed the de-list bids rejected for reliability purposes and set forth the reasons

¹⁵ Informational Filing for Qualification in the Forward Capacity Market, filed by ISO New England Inc. in Docket No. ER08-190.

¹⁶ See *ISO New England Inc., Order Accepting Informational Filing*, 122 FERC 61,018 (2008) (“Informational Filing Order”).

¹⁷ The FCM rules require that “[a]s soon as practicable after the Forward Capacity Auction is complete, the ISO shall file the results of that Forward Capacity Auction with the Commission pursuant to Section 205 of the Federal Power Act.” ISO Tariff, Section III.13.8.2(a).

¹⁸ The Capacity Clearing Price associated with certain imports pursuant to Section III.13.2.3.3(d) is also \$4.50 /kW-month.

for those rejections. As also required by the Tariff, the ISO provided “documentation regarding the competitiveness of the Forward Capacity Auction” which included certification in the form of testimony that all participating entities were “properly qualified” and that the FCA “was conducted in accordance with the provisions of [the FCM rules].”¹⁹

The Tariff allows parties to challenge the results provided in the FCA Results Filing. Pursuant to Section III.13.8.2(c) of the Tariff, any objection to the FCA results must be filed with the Commission within 45 days from the date of the FCA Results Filing. Accordingly, objections were due on or before April 17, 2008. The following parties filed comments or protests in response to the ISO’s FCA Results Filing: Connecticut Department of Public Utility Control (“CT DPUC”); Connecticut Office of Consumer Counsel (“CT OCC”); FPL Energy, LLC (“FPL”); FirstLight Power Resources Management, LLC, FirstLight Hydro Generating Company, and Mt. Tom Generating Company LLC (“FirstLight”); New England Power Generators Association, Inc. (“NEPGA”); PPL Companies (“PPL”); and PSEG Power LLC, PSEG Energy Resources & Trade LLC, and PSEG Power Connecticut LLC (“PSEG”). This Motion does not address the comments filed by the CT DPUC, CT OCC, or the comments related to the Local Sourcing Requirements filed by the NEPGA, PPL and PSEG. Instead, the ISO intends to respond to those comments and any remaining comments not addressed here in an answer to be filed with the Commission at a later date.

II. MOTION TO STRIKE

The ISO moves to strike Objecting Parties’ comments and protests as described below (collectively, “Objecting Parties’ Comments”) because the pleadings raise matters wholly irrelevant to the narrow substance of the FCA Results Filing. The ISO moves to strike aspects of

¹⁹ ISO Tariff, Section III.13.8.2(b).

the pleadings on the grounds that they impermissibly exceed the scope of a Section 205 proceeding and are an improper collateral attack on prior Commission orders.

The ISO does not minimize the importance of certain of the issues raised by the Objecting Parties, or, in some instances, the need to address those issues. However, issues raised which are not relevant to the subject of the instant proceeding are properly raised in the stakeholder process or other Commission proceedings,²⁰ and parties should not be permitted to use this proceeding to collaterally attack prior Commission orders approving the various elements of the FCM market design.

A. Challenges of the Objecting Parties Impermissibly Exceed the Scope of a Proceeding Under Section 205 of the FPA and Constitute a Collateral Attack on Prior Commission Orders

In general, the Objecting Parties do not object to either the operation or outcome of the auction. However, the Objecting Parties proceed to argue substantive issues that are not before the Commission in this proceeding that are wholly irrelevant to the substance of the FCA Results Filing. In fact, certain Objecting Parties admit that they are “not protesting the auction results, but ... are concerned with certain aspects of the performance of the market.”²¹ The matters

²⁰ See, e.g., *New England Power Pool and ISO New England, Inc.*, 109 FERC ¶ 61,252, at P 40 (2004) (encouraging parties who want to change tariff provisions to work through stakeholder process); *State of Rhode Island Attorney General’s Office v. ISO New England Inc.*, 107 FERC ¶ 61,242, at P 15 (2004) (Commission dismissing the Rhode Island Attorney General’s petition and stating that to grant the petition before the stakeholder process had been undertaken would “inappropriately circumvent established procedures in New England”); *New England Power Pool*, 107 FERC ¶ 61,201, at P 12 (2004) (requiring NEPOOL to use its stakeholder process to examine financial assurance and billing policies); *New England Power Pool*, 107 FERC ¶ 61,135, at P 24 (2004) (accepting proposed amendments to the NEPOOL Market Rule and rejecting revisions proposed by an entity which had not attempted to utilize the stakeholder process); *New England Power Pool and ISO New England, Inc.*, 105 FERC ¶ 61,300 (2003) (approving a transmission cost allocation plan and noting the extensive stakeholder process used to develop that plan, which the Commission expected would “help to minimize litigation and encourage actual needed transmission.”).

²¹ NEPGA Comments at 1. See also FirstLight Comments at 5 (“The FirstLight Parties wish to be clear that they are not challenging the results of the first FCA, but rather highlighting what they believe to be shortcomings that should be addressed through market rule changes for future auctions.”).

before the Commission in this proceeding, however, are limited to the operation of the auction and the results of the FCA.²² Such comments may allege an error in the way the auction was administered, or a flaw in the auction results. This proceeding is not the appropriate forum to challenge the design of the FCM market as approved by the Commission or to raise issues that are properly addressed in other proceedings, as the Commission has held in prior, analogous cases.

In another proceeding involving an ISO filing pursuant to Section 205 of the FPA, the Commission rejected efforts to expand the scope of the proceeding to include matters more properly raised in a complaint under Section 206.²³ In *ISO New England*, the Commission accepted the ISO's filing of a report and cost schedule pursuant to Section 205 and held that a party's request regarding certain issues was more appropriately presented in a Section 206 complaint proceeding:

The Commission finds that the Capital Projects Report and schedule of unamortized costs of funded capital expenditures filed by ISO-NE fully meet the requirements of section IV.B.6.2 of ISO-NE's tariff. We agree with ISO-NE that MMWEC is seeking, through its request that ISO-NE perform cost-benefit analyses for all future major proposed capital expenditures, to alter the reporting requirements of ISO-NE's tariff. As ISO-NE correctly notes, such a request is outside of the scope of this section 205 proceeding, which concerns only the quarterly reports submitted pursuant to the tariff. MMWEC's protest, which expresses concerns regarding the current reporting requirements in section IV.B.6.2 of ISO-NE's tariff and does not raise concerns with the actual reports at issue in this docket, is more properly filed in a complaint proceeding under section 206 of the FPA.²⁴

²² ISO Tariff, Section III.13.8.2(c). "Any objection to the Forward Capacity Auction results must be filed with the Commission within 45 days after the ISO's filing of the Forward Capacity Auction results."

²³ *ISO New England Inc.*, 112 FERC ¶ 61,060 (2006) ("*ISO New England*").

²⁴ 112 FERC ¶ 61,060 at P 13 (citations omitted).

The Commission has also held that “[a] protest does not expand the scope of a proceeding.”²⁵ In *Southern Company Services, Inc.*, the Commission held that a party, “through its intervention and protest, would be seeking to convert a section 205 review of [an] Informational Filing into an evaluation of [an] already approved Interconnection Agreement.”²⁶ The Commission found that “[a] party seeking such a change must file a complaint under section 206 of the FPA.”²⁷

In this case, Section III.13.8.2(a) of the Tariff required the ISO to file the results of the FCA, including the final set of Capacity Zones resulting from the auction, the Capacity Clearing Price in each of those Capacity Zones, the Capacity Clearing Price associated with certain imports pursuant to Section III.13.2.3.3(d), and a list of which resources received Capacity Supply Obligations in each Capacity Zone and the amount of those Capacity Supply Obligations. The ISO’s FCA Results Filing was tailored to address only these elements of the FCM that were mandated by the Tariff, in the timeline provided in the Tariff, and any arguments beyond these issues should not be permitted.

Further, it is well settled that “[c]ollateral attacks on final orders and relitigation of applicable precedent, especially by parties that were active in the earlier case, thwart the finality and repose that are essential to administrative efficiency, and are therefore strongly

²⁵ *Southern Company Services, Inc.*, 116 FERC ¶ 61,070 at P 26 (2006) (citations omitted).

²⁶ *Id.*

²⁷ *Id.* See also *Cabrillo Power I LLC*, 114 FERC ¶ 61,160 at P 17 (2006) (the Commission rejected arguments that “have no bearing on the current FPA section 205 proceeding,” where a generator requested that the Commission investigate the prudence of the CAISO’s decision to deselect the generator’s units and select another unit as the final RMR unit, and noted the availability of the CAISO’s dispute resolution procedures if the generator wished to address its concerns).

discouraged.”²⁸ In *NSTAR v. ISO New England*, the Commission rejected a complaint filed against the ISO with regard to the interrelationship of Hydro Québec Interconnection Capacity Credits (“HQICCs”) and capacity imports that bid into the FCM during the ICAP Transition Period. On the grounds that the complaint was a collateral attack on final FERC orders, the Commission stated:

The Commission denies NSTAR’s complaint. First and foremost, the complaint is a collateral attack on both the Commission’s June 16 and October 31 Orders. NSTAR had the opportunity to raise its concern with the provision regarding HQICCs both when it was filed as a part of the FCM Settlement and when ISO-NE made its section 205 filing implementing the transition period rules. The Commission notes that NSTAR participated in the FCM Settlement proceeding, but chose not to raise concern with regard to HQICCs. Further, NSTAR chose not to participate in the transition rules proceeding in which the Commission conducted its review of the HQICC transition rules under section 205 of the FPA. We will not allow NSTAR to attack provisions on complaint when it failed to raise its concerns in the two prior relevant proceedings. Collateral attacks on final orders and relitigation of applicable precedent, especially by parties that were active in the earlier case, thwart the finality and repose that are essential to administrative efficiency, and are therefore strongly discouraged. **The Commission finds this particularly true with respect to the FCM Settlement and the tariff provisions arising from that settlement, given that they represent “difficult compromises among the diverse parties to [the FCM Settlement] proceeding that, if found just and reasonable, should be honored.”** The Commission found these provisions, including the provisions related to HQICCs in the transition period, just and reasonable and, therefore, will honor them.²⁹

²⁸ *NSTAR Electric Company v. ISO New England, Inc.*, 120 FERC ¶ 61,261 at P 33 (2007) (“*NSTAR v. ISO New England*”) (citations omitted). See also *Pacific Gas & Electric Company*, 121 FERC ¶ 61,065 at PP 38-40 (2007) (citing *Alamito Co.*, 41 FERC ¶ 61,312 at 61,829 (1987), *order denying reconsideration and granting request for clarification*, 43 FERC ¶ 61,274 (1988)). The Commission, citing to U.S. Supreme Court and D.C. Circuit precedent, underscored that “[b]oth the courts and the Commission have previously found that, to the extent that ‘new evidence’ is not presented or ‘changed circumstances’ are not demonstrated, preclusion doctrines such as collateral estoppel apply to administrative rate cases.” The Commission reaffirmed its own policy that “‘in the absence of new or changed circumstances requiring a different result, it is contrary to sound administrative practice and a waste of resources to relitigate issues in succeeding cases once those issues have been finally determined.’”

²⁹ 120 FERC ¶ 61,261 at P 33 (footnotes omitted, emphasis added).

Certain of the comments and protests at issue constitute a collateral attack on prior Commission orders. The Commission approved the FCM Rules, which as shown above arose from a complex set of compromises, based upon the rules themselves and the extensive record in the proceeding. The Objecting Parties Comments now seek to overturn these determinations.

With respect to all of these comments, the FCA Results Filing is not the proper venue for consideration of the issues raised. Rather, these parties should seek modifications within the NEPOOL stakeholder process, where consideration of market rule changes appropriately originates, or in other proceedings where these issues are properly raised. Objecting Parties' requests that the ISO take measures such as filing new Tariff rules and reports and conducting studies are further unwarranted in view of the Settlement Agreement's requirement that the ISO's market monitor issue a report analyzing the operations and effectiveness of the FCM after the second FCA and annually thereafter.³⁰

1. Challenges to CONE

In its comments, PPL expresses concern that the price of CONE in future auctions will not reflect the costs of constructing new infrastructure in New England.³¹ PPL requests that the Commission require "a Tariff change to be filed...to avoid the lowering in CONE."³² Similarly, First Light alleges that the low price of CONE in future auctions will cause the starting price of the auction to be too low to support new entry.³³ PSEG states that "[c]onsideration should be given as to whether using an FCA-derived CONE during an initial period of surplus will result in

³⁰ Section 5 of the Settlement Agreement; ISO Tariff, Section III.13.8.4.

³¹ PPL Protest at 17.

³² *Id.*

³³ First Light Comments at 12.

significantly undervalued levels for new entry.”³⁴ Finally, the NEPGA claims that “[i]f future auctions also clear at the floor, CONE will very quickly fall to levels so low that FCM could fail.”³⁵

These objections go beyond the results of the FCA and impermissibly attempt to use this proceeding as a vehicle to revamp aspects of the FCM that were previously approved by the Commission. The calculation of the CONE is a fundamental aspect of the FCM design that was negotiated as part of the Commission approved Settlement and is set forth in the Commission approved Tariff.³⁶ The Commission should strike the protests and comments that attempt to use this proceeding to re-open the fundamental design of the auction.

2. Challenge to Installed Capacity Requirement

a. FPL Impermissibly Seeks to Re-Litigate the Installed Capacity Requirement Value

The ISO requests that the Commission strike FPL’s pleading as an effort to re-argue the appropriate value of ICR for the 2010/2011 Capacity Commitment Period, a value that is in no way implicated in the FCA Results filing, has been approved by the Commission in another proceeding, and therefore is not at issue here. FPL claims that the ISO failed to procure capacity in the FCA with a value equal to 100 percent of the ICR. FPL maintains that the ISO’s capacity procurement was in error because it failed to account for the amount of Demand Resources that would clear in the auction, and the performance characteristics of those resources.³⁷

³⁴ PSEG Protest at 12.

³⁵ NEPGA Comments at 2.

³⁶ ISO Tariff, Section III.13.2.4

³⁷ FPL claims that the FCA outcome does not reflect forecasted Demand Resources or forecasted availability factors for the resources procured in the FCA, and thus, FPL claims that the FCA results are not just and reasonable. FPL Protest at 1. FPL maintains that the ISO under-procured capacity resources and that the Commission should direct the ISO to procure additional capacity on a prorated basis, and also

However, FPL is in error. The FCA was carried out in accordance with the Commission-approved Settlement Agreement and Tariff. Section III.13.2.2 of the Tariff governs the amount of capacity purchased in each FCA, and, consistent with the Tariff, the FCA indeed procured capacity equal to the ICR of 32,305 MW.³⁸ FPL claims that the ISO improperly calculated the availability of Demand Resources in determining the 2010/2011 ICR. According to FPL, the Commission should direct the ISO to procure additional capacity on a prorated basis, due to an alleged under-procurement of capacity resources. The ICR for the 2010/2011 Capability Year was filed in Docket No. ER08-41-000 on October 11, 2007. FPL did not protest that filing and cannot now belatedly object to an ICR value approved by the Commission and utilized in the auction. In a December 10, 2007 Order, the Commission accepted the ICR.³⁹ FPL's attempt to revisit an issue that was explicitly included in those rules constitutes an impermissible collateral attack on final orders and relitigation of applicable precedent.

FPL's insistence that the Commission require the ISO to re-open ICR and procure a greater amount of capacity is particularly inappropriate because the ISO will re-visit the question of whether it has procured adequate capacity for the 2010/2011 Capacity Commitment Period before that Capacity Commitment Period begins. Under the Settlement and the Tariff, if the ISO, after working through the stakeholder process determines that ICR has increased beyond the

require the ISO to modify the FCM Market Rules to ensure that "similar errors do not occur in future auctions." FPL Protest at 2. In addition, FPL requests that the Commission direct its Office of Enforcement to expand a non-public investigation concerning allegations of manipulation of the customer baselines of certain Demand Resources to determine whether any such actions "resulted in the manipulation of FCM resource capacity qualifications." FPL Protest at 2-3.

³⁸ The Installed Capacity Requirement for the region, less the tie benefits associated with the Hydro Quebec Phase I/II Interface.

³⁹ *ISO New England Inc. and New England Power Pool Participants Committee*, Order Accepting Proposed Installed Capacity Requirement, Hydro Quebec Interconnection Capability Credits, and Related Values, 121 FERC ¶ 61,250 (2007).

level procured in the February 2008 FCA, the ISO will procure additional capacity in a reconfiguration auction.⁴⁰ The ICR for the Capability Year June 2011 through May 2012, will be filed in the third quarter of this year and the values for ICR for prior Capability Years will be updated in that filing. If it wishes, FPL can raise its concerns in the stakeholder process developing ICR and make its protest against the upcoming ICR filing if its concerns are not addressed. Thus, a path within the current market structure is clearly laid out for any appropriate adjustments to ICR.

b. FPL Seeks Revisions to Aspects of the FCM Contrary to the Limitations in the FCM Settlement Agreement

Moreover, in raising objections to the ICR, FPL attempts to circumvent the agreement in the FCM Settlement Agreement that addresses changes to the FCM Settlement or to the Tariff.

Section 4.A. of the Settlement Agreement provides:

From March 6, 2006 through the earlier of September 5, 2008 or the date on which the prices from the second FCA become final (the “Waiver Period”), the Settling Parties waive their rights under Section 206 of the FPA to seek to modify the terms of this Settlement Agreement or, except as provided in Section 3.B, the Market Rules approved or accepted by the FERC to implement the Forward Capacity Market.

During the waiver period, the ISO retains its authority under Section 205 of the FPA to file modifications of the Tariff that address the terms of the Settlement Agreement.⁴¹

FPL, a party to the Settlement Agreement, has submitted a protest that ignores the limitations of the waiver period. FPL seeks to modify the FCM Market Rules, in disregard of the Settlement Agreement’s prohibition in Section 4.A of efforts to modify the Market Rules

⁴⁰ Settlement at 11.III.M.2; ISO Tariff, Section III.13.4.3.

⁴¹ Section 4.A of the Settlement Agreement further provides that any Section 205 filing by the ISO prior to September 5, 2008, “must demonstrate to the FERC that failure to implement the proposed change in the Market Rule would have a negative effect on (1) system reliability or security, or (2) the competitiveness or efficiency of the Forward Capacity Market or forward reserve market.”

pursuant to Section 206 of the FPA during the current waiver period.⁴² While its pleading is not styled as a complaint, the substance of the pleading in fact constitutes the type of claims that typify complaints seeking tariff changes under Section 206. As discussed above, FPL seeks to require the ISO to alter the amount of capacity procured in the auction above the level of the ICR approved by the Commission, which was established in a separate proceeding devoted to the proper development of that calculation. Under the Tariff, the ISO does not have the authority, prior to the FCA, to adjust ICR in the manner sought by FPL. FPL may not accomplish by a complaint styled as a protest what is prohibited by the terms of the Settlement Agreement.

3. Challenges to Demand Resources

Similarly, the Commission should reject the comments and protests of parties that challenge the participation of Demand Resources in the FCA. FirstLight, NEPGA and PSEG comment on the treatment of Demand Resources in the FCM. FirstLight contends that the “ISO-NE’s success in attracting a large number of new Demand Resources raises concerns about the nature of Demand Resource performance and reliability impacts of the large increase in Demand Resources over historical levels.”⁴³ FirstLight states that “[g]iven the increased level of new, untested Demand Resources in the market, ISO-NE should carefully monitor these new Demand Resources and consider additional performance measures.”⁴⁴ NEPGA raises issues regarding “[t]he substantial amount of demand resources responding to the first FCA highlight[ing] the

⁴² As an exception to Section 4.A, the Settlement Agreement provides that Settling Parties retain the right to challenge Market Rule provisions addressing Settlement Agreement terms “only on the basis that they contain provisions that are either inconsistent with or not required by this Settlement Agreement.” Section 3.B of Settlement Agreement. However, the opportunity to challenge the rules on the basis of Section 3.B is limited to the ISO’s filing under Section 205 of various rules to implement the Settlement Agreement, and is not implicated here.

⁴³ FirstLight Comments at 2.

⁴⁴ *Id.* at 11.

challenge of ensuring comparable treatment and the lowest cost to customers while maintaining a reliable system.”⁴⁵ NEPGA states that “[g]iven the heavy influx of demand response in FCM, the integration and comparability of demand response is ripe for stakeholder review.”⁴⁶ PSEG asserts that “Demand Resources must be better integrated into the capacity market as fully equal participants.”⁴⁷

Such arguments are misplaced in this proceeding, which is narrowly focused on the FCA results. The FCM Rules, setting forth the qualification requirements for Demand Resources, were the result of extensive settlement negotiations, stakeholder discussions, and a voluminous filing which was vetted in a separate Commission proceeding that was publicly noticed and concluded with a Commission order accepting the FCM Rules. All Demand Resources participating in the FCM were properly qualified by the ISO in accordance with the Tariff. The Commission has already authorized the participation of Demand Resources in the FCA, in the Commission’s order accepting the ISO’s informational filing regarding the qualification of resources to participate in the FCA.⁴⁸ Thus, the Commission should strike the comments filed by First Light, NEPGA and PSEG on this issue.

4. Request For Technical Conference on De-List Bids

FirstLight requests that the Commission direct the ISO to conduct a technical conference to examine the impact on the auction price of rejecting de-list bids for reliability reasons.⁴⁹ FirstLight cites to Market Rule III.13.2.5.2.5 (f), which requires the ISO to make a filing with the

⁴⁵ NEPGA Comments at 13.

⁴⁶ *Id.* at 13.

⁴⁷ PSEG Protest at 12.

⁴⁸ *ISO New England Inc.*, Order Accepting Informational Filing, 122 FERC ¶ 61,018 (2008).

⁴⁹ FirstLight Comments at 8.

Commission by May 15, 2008 regarding whether to change the treatment of de-list bids rejected for reliability reasons, and if so, in what manner. As pointed out by FirstLight, the New England Power Pool Markets Committee voted unanimously to defer this issue until May 17, 2010. The ISO is committed to working closely with the NEPOOL Participants and the state regulatory commissions on this issue. A technical conference is not necessary. Further, the ISO's filing under Section III.13.2.5.2.5(f) will be in a different proceeding outside the scope of the FCA Results Filing. Therefore, the Commission should strike this portion of FirstLight's protest.

5. Challenges to Contractual Requirements To Bid in the Auction As Existing Capacity

PPL claims the CT DPUC solicitation of 787 MW of additional capacity in Connecticut artificially depressed the capacity clearing price in the auction. PPL alleges that certain bidders in Connecticut were contractually precluded from bidding at competitive levels in the FCA. According to PPL, these "new entrants were required contractually to bid as price takers or as existing capacity instead of new capacity."⁵⁰ PPL requests that the Commission require the ISO to study the effect on the auction of these bids and file a report with the Commission.⁵¹

PPL does not provide any Tariff violation for the alleged bidding behavior. In fact, the Settlement Agreement allows for certain bidders bound by contractual requirements to be considered existing capacity under the FCM. Specifically Section 11.II.D.1 of the Settlement Agreement provides that

Any Resource that is not within 12 months of its expected commercial operations date at the time of the first FCA shall be

⁵⁰ PPL Protest at 15-16.

⁵¹ *Id.* at 16. Such a requirement is unnecessary particularly in light of the Settlement Agreement's requirement that the Market Monitor issue a report analyzing the operations and effectiveness of the FCM 180 days after the second FCA and annually in its Market Report thereafter. Section 5 of the Settlement Agreement. *See also* ISO Tariff, Section III.13.8.4.

treated as New Capacity, unless the Resource is required pursuant to contract or otherwise elects to be treated as Existing Capacity.⁵²

This language in the Settlement Agreement addresses the issue raised by PPL. PPL's comments amount to a collateral attack on the Settlement Agreement approved by the Commission and thus, should be stricken.

6. Requests for Studies, Reports and Technical Conferences

In general, the arguments that the ISO should conduct a study and file reports, or that the Commission should hold a technical conference are unnecessary at this time.⁵³ In addition to use of the stakeholder processes, the Settlement Agreement already requires the ISO's market monitor to issue a report analyzing the operations and effectiveness of the FCM after the second FCA and annually thereafter. Specifically, Section 5 of the Settlement Agreement states that:

No later than 180 days after the second FCA is conducted, the ISO's Internal Market Monitoring Unit ("Market Monitor") shall file with FERC and post to the ISO's website a full report analyzing the operations and effectiveness of the Forward Capacity Market. Thereafter, the Market Monitor shall report on the functioning of the Forward Capacity Market in its annual markets report submitted to FERC pursuant to Section 11.3 of Appendix A to Market Rule 1.⁵⁴

7. Requested "Enhancements"

The ISO requests that the Commission strike the suggested "FCM Enhancements" listed by PSEG as outside the scope of this proceeding.⁵⁵ PSEG lists a number of enhancements to the FCM that the Commission should consider in the future. These enhancements include continued

⁵² Section 11.II.D.1 of the Settlement Agreement; ISO Tariff, Section III.13.1.2.

⁵³ See, e.g., PPL Protest at 15-16; NEPGA Comments at 13; FirstLight Comments at 8, 11; PSEG Protest at 11-12.

⁵⁴ Section 5 of the Settlement Agreement; ISO Tariff, Section III.13.8.4.

⁵⁵ PSEG at 11-12.

work to create market solutions for meeting reliability needs, modifying generation interconnection rules, and modifying auction timelines. All of these proposals exceed the narrow scope of the FCA Results filing and require vetting through the stakeholder process before the Commission's approval is sought, and therefore the ISO requests that these issues be stricken.

B. Summary of Content Subject to Motion to Strike

In summary, the ISO respectfully requests that the Commission grant the ISO's Motion to strike the following:

1. The Comments of FirstLight in their entirety, which relate to CONE,⁵⁶ Demand Resources⁵⁷ and review of de-list bids.⁵⁸ The comments do not raise issues regarding the results of the FCA, but seek future remedies based upon FirstLight's opinion of improvements that should be made to the FCA, or involve issues otherwise beyond the scope of this filing.

2. The various issues raised by NEPGA related to calculation of CONE⁵⁹ and the appropriate valuation of Demand Resources,⁶⁰ particularly Section I of the NEPGA Comments at pages 2-6, and Section III at pages 11-13. Like FirstLight, NEPGA does not challenge the results of the FCA, but raise issues to be considered in the future, which is beyond the scope of this filing.

⁵⁶ FirstLight Comments at 11-13.

⁵⁷ *Id.* at 9-11.

⁵⁸ *Id.* at 8-9.

⁵⁹ NEPGA Comments at 2-6.

⁶⁰ *Id.* at 11-13.

3. The Protest filed by FPL, in its entirety, which argues that the ICR procured by the ISO in the FCA understates the amount of capacity needed in New England. The proper calculation of the ICR is beyond the scope of this proceeding and should not be re-opened here.

4. The Protest filed by PPL, which at pages 3-4 and 12-20 asks that the Commission take action in the future to address comments on bidding behavior that depresses prices in the FCA, and the calculation of CONE for future auctions.

5. The enhancements advocated by PSEG at Section III.B.3, pages 11-12 of the PSEG Protest, setting forth a list of issues that must be addressed in the future for the FCM to “realize its full potential.”⁶¹

III. REQUEST FOR SHORTENED ANSWER PERIOD AND EXPEDITED CONSIDERATION

The ISO respectfully requests that the Commission shorten the time period for filing answers to this Motion to ten days from the date of this filing, and issue an order ruling on this Motion by May 27, 2008. Good cause exists to grant these requests.

The ISO has sought an effective date of July 1, 2008 for the FCA Results Filing. If the Commission denies the Motion, the ISO intends to file a substantive response to the arguments addressed in the Motion as expeditiously as possible, so that the Commission has a complete record on which to base an order ruling on the FCA Results Filing. To provide the ISO an opportunity to submit its substantive response if necessary, and the Commission to issue its ruling based on the ISO’s response by the requested effective date, the ISO submits that a shortened answer period and expedited issuance of an order ruling on the Motion is appropriate and necessary.

⁶¹ PSEG Protest at 12.

IV. CONCLUSION

For the foregoing reasons, the ISO respectfully requests that the Commission grant the ISO's Motion to Strike and Request for Shortened Answer Period and Expedited Consideration.

Respectfully submitted,

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Dated: April 28, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the parties designated on the official service list for the above-captioned docket in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.2010 (2007).

Dated at Washington, D.C. on this the 28th day of April, 2008.

/s/ E-filed _____
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