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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 for Leave to Answer and Answer 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 FOR LEAVE TO ANSWER
AND ANSWER OF ISO NEW ENGLAND INC.**

Pursuant to Rules 101(e), 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”),¹ ISO New England Inc. (the “ISO”) hereby submits its *Motion for Leave to Answer and Answer* (“Answer”) to the Comments and Protests filed separately by the Connecticut Department of Public Utility Control (“DPUC”); the Connecticut Office of Consumer Counsel (“OCC”); The New England Power Generators Association, Inc. (“NEPGA”); FirstLight Power Resources Management, FirstLight Hydro and Mt. Tom Generating Company LLC (collectively, “FirstLight”); TransCanada Power Marketing Ltd. (“TransCanada”); PPL Companies ; and PSEG Power LLC, PSEG Energy Resources and Trade and PSEG Power Connecticut LLC (together, “PSEG”) (“collectively, “Objecting Parties”). These pleadings were filed in response to the “Forward Capacity Auction Results Filing” (“FCA Results Filing”) submitted on March 3, 2008 by the ISO in accordance with the Forward Capacity Market² rules (“FCM Rules”).³ For the reasons

¹ See 18 C.F.R. §§ 385.101(e), 385.212 and 385.213 (2007).

² Capitalized terms used but not otherwise defined in this filing have the meanings ascribed thereto in the ISO’s Transmission, Markets and Services Tariff (FERC Electric Tariff No. 3) (the “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.*, 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.

set forth more fully below, the ISO requests that the Commission reject these comments and protests in their entirety and permit the FCA auction result to become final.

I. INTRODUCTION

This Answer responds to certain protests and comments regarding two major areas: the ISO's review of de-list bids to determine if a given generator could cease operation in the Capacity Commitment Period without violating reliability criteria, and whether the ISO correctly determined that Connecticut should not have been a separate Capacity Zone. The ISO will also briefly address the protest filed by TransCanada.

Regarding the ISO's rejection of certain de-list bids, the protests filed in response to the FCA Results Filing consist of challenges to the ISO's reliability review of certain Dynamic De-List Bids. The DPUC and OCC⁴ (collectively, the "Connecticut Parties") incorrectly allege that the ISO applied a new transmission security analysis ("TSA") when it reviewed the Dynamic De-List Bids submitted by Norwalk Harbor Unit 1 and Norwalk Harbor Unit 2 (collectively, the "Norwalk Harbor Units") during the Forward Capacity Auction ("FCA"). The Connecticut Parties further incorrectly assert that the ISO applied the TSA in Connecticut as a new measure of resource adequacy. The Connecticut Parties request that the Commission direct the ISO to reject any resource adequacy standard that would require the purchase of more capacity than required by the Local Sourcing Requirement ("LSR") or Installed Capacity Requirements ("ICR").

³ ISO New England Forward Capacity Auction Results Filing, (filed in Docket No. ER08-633-000 on March 3, 2008).

⁴ The OCC states that it supports the comments filed by the DPUC. Therefore, the ISO's responses to the DPUC's comments are also addressed to the OCC.

Conversely, NEPGA, FirstLight, and PSEG (collectively, the “Generators”) question whether the LSR correctly addresses the capacity needs in local regions. The Generators suggest that the ISO should have instead applied the more conservative assumptions used in the TSA to determine if Connecticut should be a separate Capacity Zone. Additionally, PSEG requests that the ISO be directed to price resources that are not allowed to prorate at the auction clearing price (\$4.50/kW-month).⁵

As discussed in this Answer, the protests and comments are without merit and should be rejected by the Commission. With respect to the Connecticut Parties’ objection to the ISO’s determination to reject the Norwalk Harbor Units’ de-list bids for reliability, the Connecticut Parties’ assertions are simply not correct and appear to be based on a fundamental misunderstanding of the TSA. The TSA, which was referred to as an “Operable Capacity Analysis” prior to the FCM, is a basic security review set out in Section 5 of Northwest Power Coordinating Council (“NPCC”) Document A-2. Far from being “new” as asserted by the Connecticut Parties, this NPCC system security criterion has been a part of the ISO’s reliability determinations for many years and the Connecticut parties should be very familiar with its use in the context of Reliability Agreement, or “Reliability Must Run” need determinations. The ISO’s need determinations, including the Operable Capacity or TSA review, have been reviewed and confirmed by the Commission when contested. There is nothing new in this analysis, and the premise of the Connecticut Parties’ arguments (including those that confuse the TSA as a reliability security analysis with the LSR, which is not a system security analysis but a resource adequacy analysis that serves a wholly different purpose), are in error.

⁵ PSEG Protest at 6-7.

Importantly, despite the Connecticut Parties' implication to the contrary, the rejection of the Norwalk Harbor Units' de-list bids is not the final chapter in the story of what costs will be borne by Connecticut ratepayers. The ISO will conduct reconfiguration auctions prior to the 2010 Capacity Commitment Period. If other resources are procured in a reconfiguration auction that address system security needs, the Norwalk Harbor Units may be permitted to de-list and will not receive out-of-market compensation.

Regarding the second issue raised in the protests, as explained further below, the Generators' concerns that the ISO improperly determined the LSR in Connecticut and that Connecticut should have been modeled as a separate Capacity Zone are without merit. The LSR for Connecticut was determined pursuant to the Tariff and has been approved by the Commission.⁶ The Objecting Parties' attempts to re-litigate these issues in this proceeding should be rejected.

Finally, TransCanada's contention that the ISO improperly excluded its offer from the FCA is misplaced in this proceeding. As TransCanada acknowledges, it has filed a complaint challenging the ISO's action in Docket No. EL08-43-000. TransCanada's argument does not relate to the narrow purpose of the FCA Results Filing, but rather to the earlier qualification process.

Because none of the comments or protests demonstrate that the FCA Results Filing is not just and reasonable, the ISO urges the Commission to deny them in their entirety, and permit the FCA auction results to become final.

⁶ *ISO New England Inc., et al.*, 121 FERC ¶ 61,250 (2007)(“ICR Order”); *ISO New England Inc et al.*, “Order Accepting Informational Filing,” 122 FERC ¶ 61,018 (2008) (“Informational Filing Order”).

II. BACKGROUND

On March 6, 2006, the ISO, joined by numerous other Settling Parties, filed the Settlement Agreement setting forth the framework for the Forward Capacity Market (“FCM”).⁷ The Commission approved the Settlement Agreement on June 16, 2006.⁸ To implement the Settlement Agreement, the ISO and the New England Power Pool filed the FCM Rules with the Commission on February 15, 2007,⁹ which the Commission approved on April 16, 2007¹⁰ and June 5, 2007.¹¹

On October 11, 2007, the ISO filed with the Commission the ICR developed for the New England region for the 2010/2011 Capability Year (“ICR Filing”).¹² As pertinent to this Answer, in the ICR Filing, the ISO submitted for approval the 2010/2011 Capability Year values for the ICR and the Local Sourcing Requirements. The Commission approved the ICR and LSR in an order issued on December 10, 2007.¹³

⁷ Explanatory Statement in Support of Settlement Agreement of the Settling Parties and Request for Expedited Consideration and Settlement Agreement Resolving All Issues, *Devon Power LLC, et al.*, Docket Nos. ER03-563-000, -030, and -055 (March 6, 2006) (“Settlement Agreement”).

⁸ *Devon Power LLC*, 115 FERC ¶ 61,340, *order on reh’g*, 117 FERC ¶ 61,133 (2006).

⁹ Filing Containing Revisions to Market Rules Implementing the FCM Settlement Agreement, Docket Nos. ER07-546-000 and ER07-547-000 (February 15, 2007).

¹⁰ *ISO New England Inc.*, 119 FERC ¶ 61,045 (“April 16 Order”), *order on reh’g*, 120 FERC ¶ 61,087 (2007) (“Rehearing Order”).

¹¹ *ISO New England Inc.*, 119 FERC ¶ 61,239 (2007).

¹² Filing of Installed Capacity Requirement, Hydro Quebec Interconnection Capability Credits and Related Values for the 2010/2011 Capability Year, Docket No. ER08-41-000.

¹³ ICR Order at PP 1, 54.

As required by Section III.13.8.1 of the Tariff, on November 6, 2007, the ISO filed with the Commission an Informational Filing for qualification in the FCA.¹⁴ Among other things, the Informational Filing included the locational capacity requirements of the FCA based upon the topology of the transmission system, including whether it is appropriate to model separate Capacity Zones in the auction. In the Informational Filing, the ISO detailed its determination that because the projected capacity in Connecticut exceeded the LSR, Connecticut was not modeled as a separate Capacity Zone. Although a few parties filed challenges with the Commission to the determinations made in the Informational Filing, no party challenged the determination not to model Connecticut as a separate Capacity Zone. In an order issued on January 11, 2008, the Commission accepted the Informational Filing in its entirety and rejected all challenges.¹⁵

Utilizing the determinations approved by the Commission in the Informational Filing Order, the ISO held the first FCA on February 4-6, 2008. The FCM market design, approved by the Commission and implemented through the Tariff, provided appropriate price signals to procure the region's capacity needs with supply and demand resources at competitive prices.

On March 3, 2008, pursuant to Section 205 of the Federal Power Act ("FPA")¹⁶ and Section III.13.8.2 of the Tariff, the ISO submitted the FCA Results Filing. In accordance with Section III.13.8.2 of the Tariff, the FCA Results Filing included the final

¹⁴ Informational Filing for Qualification in the Forward Capacity Market, Docket No. ER08-190-000 (November 6, 2007) ("Informational Filing").

¹⁵ Informational Filing Order.

¹⁶ 16 U.S.C. §824d (2000).

set of Capacity Zones resulting from the auction, the Capacity Clearing Price in the Capacity Zone, and a list of which resources received Capacity Supply Obligations in each Capacity Zone and the amount of those Capacity Supply Obligations. The filing also enumerated de-list bids that were rejected for reliability reasons pursuant to Section III.13.2.5.2.5 and the reasons for those rejections. The ISO rejected two Dynamic De-List Bids submitted by NRG Power Marketing LLC (“NRG”) for the Norwalk Harbor Units because reliability criteria would have been violated without those units. In further support of the ISO’s determination to reject the Norwalk Harbor Units for reliability reasons, the FCA Results Filing included the testimony of Mr. Stephen Rourke, Vice President of System Planning at the ISO.

III. MOTION FOR LEAVE TO ANSWER

In this Answer, the ISO responds to certain comments and protests filed in response to the FCA Results Filing that was submitted on March 3, 2008 in accordance with the FCM rules. While the Commission’s Rules of Practice and Procedure allow parties to respond to comments,¹⁷ as a general matter, the Commission’s rules prohibit responses to protests.¹⁸ The Commission has the authority, however, to waive this prohibition for good cause.¹⁹ The Commission has found good cause to permit replies where they are otherwise prohibited in various circumstances, including where the answer would assure a complete record in the proceeding,²⁰ provide information helpful

¹⁷ See 18 C.F.R. § 385.213(a)(3) (2007).

¹⁸ *Id.* at § 385.213(a)(2).

¹⁹ *Id.* at § 385.101(e).

²⁰ See, e.g., *Pacific Interstate Transmission Co.*, 85 FERC ¶ 61,378 at 62,444 (1998), *reh’g denied*, 89 FERC ¶ 61,246 (1999).

to the disposition of an issue,²¹ permit the issues to be narrowed or clarified,²² or aid the Commission in understanding and resolving issues.²³ The ISO believes that this Answer will clarify the issues, assure a more complete record in this proceeding, and otherwise assist the Commission in understanding and resolving the issues raised concerning the results of the FCA. For these reasons, the ISO respectfully requests that the Commission grant the ISO's motion to provide the following Answer.

IV. ANSWER

A. The Application Of The Transmission Security Analysis To Review De-Listing Resources Is Appropriate

1. The Transmission Security Analysis Is A Long Standing Methodology Affirmed By The Commission In The ISO's Review Of Reliability Agreements

The Transmission Security Analysis is a basic system reliability review set out in NPCC criteria²⁴ and that has been utilized by the ISO in its reliability need determinations in the Reliability Agreement context, referred to in that setting as an

²¹ See, e.g., *CNG Transmission Corp.*, 89 FERC ¶ 61,100 at 61,287 n.11 (1999).

²² See, e.g., *PJM Interconnection, L.L.C.*, 84 FERC ¶ 61,224 at 62,078 (1998); *New Energy Ventures, Inc. v. Southern California Edison Co.*, 82 FERC ¶ 61,335 at 62,323 n.1 (1998).

²³ See, e.g., *Tennessee Gas Pipeline Co.*, 92 FERC ¶ 61,009 at 61,016 (2000).

²⁴ NPCC Document A-2, "Basic Criteria for Design and Operation Of Interconnected Power Systems," Section 5 ("NPCC A-2") states as follows:

The portion of the **bulk power system** in each **Area** and of each member system shall be designed with sufficient transmission capability to serve forecasted loads under the conditions noted in Sections 5.1 and 5.2. These criteria will also apply after any critical generator, transmission circuit, transformer, series or shunt compensating device or HVdc pole has already been lost, assuming that the **Area** generation and power flows are adjusted between outages by the use of **ten-minute reserve** and where available, phase angle regulator control and HVdc control.

Anticipated transfers of power from one **Area** to another, as well as within **Areas**, shall be considered in the design of inter-**Area** and intra-**Area** transmission facilities. Transmission transfer capabilities shall be determined in accordance with the conditions noted in Sections 5.1 and 5.2.

Operable Capacity Analysis, for several years.²⁵ The Connecticut Parties are very familiar with the ISO's reliance upon and use of this analysis for reliability determinations, having intervened in a number of proceedings in which Reliability Agreements have been filed and having raised objections with the details of the ISO's analyses.²⁶ The Commission has upheld the ISO's reliability determinations based upon this analysis in a number of recent cases, over the challenges of various parties.²⁷ The Connecticut Parties' claims that the TSA is a "new analysis,"²⁸ "previously undisclosed"²⁹ that "disproportionately allocate[s] capacity costs to Connecticut's electric consumers"³⁰ are simply wrong and should be rejected.

The Connecticut Parties' error further extends to a basic misunderstanding of what a TSA is, and the role it serves as a test of system security as opposed to a Local Sourcing Requirement review, which is a resource adequacy measure. NPCC Document

²⁵ "Market Rule 1, the currently-effective rate schedule on file with the Commission, permits ISO-NE to determine whether units are needed for reliability." *Bridgeport Energy, LLC*, 112 FERC ¶ 61,077 at P 40, *order on reh'g*, 113 FERC ¶ 61,311 (2005), *order on reh'g*, 114 FERC ¶ 61,265 (2006); *see also Consolidated Edison Energy Massachusetts, Inc.*, 116 FERC ¶ 61,180 at P 21 (2006); *see also Braintree Electric Light Department*, 120 FERC ¶ 61,097 at P 11 (2007) ("Under Market Rule 1, ISO-NE has the authority to determine whether a generator is needed for reliability purposes, which is a prerequisite for negotiating an RMR agreement."). In performing that determination, the ISO utilized what was then referred to as an Operable Capacity Analysis, now referred to as the TSA. *See e.g., Summary of System Planning Reports Summarizing the Need for Bridgeport Energy*, December 7, 2004 at http://www.iso-ne.com/genrtn_resrcs/reports/rmr/Bridgeport_energy_iso_12_7_04.pdf.

²⁶ *See Berkshire Power Company, LLC*, 114 FERC ¶ 61,099 (2006).

²⁷ *Milford Power Co.*, 110 FERC ¶ 61,299, *order on reh'g*, 112 FERC ¶ 61,154 (2005); *Bridgeport Energy, LLC*, 112 FERC ¶ 61,077 (2005); *PSEG Power Connecticut, LLC*, 110 FERC ¶ 61,020, *order on reh'g*, 111 FERC ¶ 61,441 (2005).

²⁸ DPUC Comments at 5.

²⁹ *Id.* at 9.

³⁰ *Id.* at 13.

A-07 “(NPCC A7”) defines “reliability” as having two elements: resource adequacy and security. Adequacy is defined in NPCC A7 as: “The ability of the electric system to supply the aggregate electrical demand and energy requirements of the customers at all times, taking into account scheduled and reasonably expected unscheduled outages of system elements.” Security is also defined in Document A-07, as: “The ability of the electric system to withstand disturbances such as electric short circuits or unanticipated loss of system elements.”

In reviewing whether the loss of a unit would violate NERC, NPCC or ISO reliability criteria as required by Section III.13.2.5.2.5 of the Tariff, the ISO must determine whether the New England Transmission System would be “secure” in accordance with the NPCC criteria discussed above. A resource adequacy measure is not a test of system security and so the Connecticut Parties arguments that somehow the ISO should have used the LSR, a resource adequacy review,³¹ in lieu of the TSA system security review is baseless. The two reviews serve very different purposes and are not interchangeable.

The LSR is necessary to determine the Capacity Zones modeled in the FCA, and represents the minimum amount of capacity that must be electrically located within an import-constrained zone to satisfy the Loss of Load Expectation (“LOLE”) criteria.³² The analysis for determining LSR is set out in PP3, Section 2, which references the manner in which “resources will be planned and installed.” The ISO uses a probabilistic analysis to determine the amount of resources necessary to meet the LOLE criteria. The

³¹ *Id.* at 11-15.

³² The LOLE criteria is 0.1, or the expectation of disconnecting non-interruptible customers no more than once in every ten years.

LSR is intended to ensure that capacity resources are geographically distributed within the New England Control Area in a manner that helps to ensure capacity is located where it is needed. Conversely, the TSA is used to determine the specific units that are needed for reliability purposes, consistent with transmission system security criteria. As noted above, it is based on NPCC Document A-2, and PP3, Section 3, and following a deterministic analysis examines a discrete set of operating conditions for an extreme (90/10) seasonal peak demand hour. The TSA examines the capability of static transmission interface transfer limits as a reasonable representation of the transmission system's capability to serve sub-area load with available existing resources. For these reasons, the arguments made by the Connecticut Parties regarding the ISO's use of a Transmission Security Analysis in determining whether a unit is needed in order for the transmission system to meet reliability criteria are clearly in error and should be rejected.

2. The ISO Assumptions Used To Perform The Transmission Security Analysis Are Well Established

The Connecticut Parties argue that the assumptions underlying the TSA are incorrect; however, the ISO assumptions used to perform the TSA are appropriate and well established, having been used by the ISO over the past several years in reliability studies. The ISO's methodology is based on NPCC criteria in NPCC A-2, and NPCC A-07. The ISO properly followed the language of the Tariff and the referenced PP3 and NPCC A-2 in performing the TSA.

Pursuant to Section III.13.2.5.2.5 of the Tariff, the ISO reviewed the Norwalk Harbor Dynamic De-List Bids to determine if the capacity associated with those bids was needed for the reliability of the New England bulk power system in accordance with

NPCC reliability standards,³³ which are also reflected in the ISO's PP3. As described in Mr. Rourke's testimony,³⁴ the ISO followed a four-step process to conduct the required reliability review – a process nearly identical to every reliability determination made underlying an RMR or Reliability Agreement in recent memory. Accordingly, the ISO determined that accepting either Dynamic De-List Bid for either of the Norwalk Harbor Units would have resulted in the inability of the Connecticut sub-area to meet the “Area Transmission Requirements” specified in Section 3 of PP3.³⁵ As detailed below, the assumptions used in the TSA are consistent with the Tariff and the ISO's planning procedures.

a. The ISO Assumed Appropriate Availability Factors for Generation Resources

The Connecticut Parties incorrectly claim that the ISO improperly reduced the amount of installed capacity resources in Connecticut by 687 MW.³⁶ In fact, the methodology comports with NPCC and ISO reliability criteria and has been used in past ISO reliability reviews. As part of their argument, the Connecticut Parties state that the 33% de-rating factor applied to peaking units is excessive. The Connecticut Parties

³³ NPCC A-2, Section 5.

³⁴ Forward Capacity Auction Results Filing, Testimony of Stephen J. Rourke at 5-6, *ISO New England Inc.*, Docket No. ER08-633-000 (filed March 3, 2008) (“Rourke Testimony”).

³⁵ “The New England bulk power supply system shall be designed with sufficient transmission capacity to integrate all resources and serve area loads under the conditions noted in Sections 3.1 and 3.2 [of PP3].” PP3, Reliability Standards for the New England Area Bulk Power Supply System (“PP3”), Section 3 (“PP3”) (emphasis omitted). Sections 3.1 and 3.2 of PP3 include severe contingencies such as a “permanent three-phase fault on any generator, transmission circuit, transformer, or bus section with normal fault clearing,” (PP3 Section 3.1.a) (emphasis omitted) and a “permanent phase-to-ground fault on any transmission circuit, transformer or bus section with delayed fault clearing” (PP3 Section 3.1.c.) (emphasis omitted).

³⁶ DPUC Comments at 25.

further claim that the ISO has not shown that these reductions in capacity availability are justified for a deterministic analysis,³⁷ and request that the Commission instead require the ISO to use the resources' EFORD ratings. With respect to non-peaking and non-demand resources, the Connecticut Parties criticize the ISO for not describing the basis for the ISO's reliance upon a weighted EFORD of 5.62% for non-peaking and non-demand resources.³⁸

Contrary to the Connecticut Parties' claims, the de-rating factors applied to peaking units are consistent with past reliability need determination studies. The ISO has applied these or comparable availability factors³⁹ in past reliability need determinations, such as:⁴⁰ Milford Power Units 1 and 2 (dated December 7, 2004); Bridgeport Energy (dated December 7, 2004); Bridgeport Harbor Unit 2 (dated December 6, 2004); New Haven Harbor (dated December 7, 2004); Mirant Kendall Steam Units 1-3 and Kendall

³⁷ *Id.*

³⁸ *Id.* at 26-27.

³⁹ The ISO reviews the data that is the basis for unit availability rates and will update it when and if the data demonstrates that the assumptions should be revised. If assumptions are revised, existing reliability determinations are re-run to determine if the need exists in light of revised criteria

⁴⁰ For instance, on page 6 of the Need for Bridgeport Energy report, a footnote to the Operable Capacity analysis table indicates "Assumed unavailable capacity is made up of 174 MW of Forced Outages (6.78 percent of Capacity), 223 MW of constrained generation (goes away with assumed in service of SWCT Reliability Project Phase II project in 2008), and 132 MW of peaking unit deratings" Summary of System Planning Reports Supporting the Need for Bridgeport Energy for System Reliability James E. Platts and Peter Wong at p. 6 (December 7, 2004). On page 4 of the Evaluation of the Mirant Kendall Steam Units 1-3 and Kendall Connecticut Unit 4 report, section 2.1. "Operable Capacity/Area Transmission Requirement Assessment Assumptions" provides "1/3 of the ICU's assumed unavailable."

Connecticut Unit 4 (dated June 29, 2007); and Mystic Units 7, 8 and 9 (dated December 7, 2004).⁴¹

Further, the de-rating factor is supported by the NPCC Reliability Criteria and the ISO planning procedures which reflect the required NPCC reliability standards. Section 5 of NPCC A-2 provides the “Transmission Design Criteria.” Similarly, PP3, Section 3 provides the “Area Transmission Requirements.” As discussed above, allowing either of the Norwalk Harbor Units to de-list would have violated these requirements or criteria. Section 2.1 of NPCC A-2 requires the ISO to test the system under specific maintenance and forced outage conditions: “The design criteria will be used in the assessment of the bulk power system of each of the NPCC member systems and each NPCC Area, and in the reliability testing at the member system, Area, and Regional Council levels. Design studies shall assume power flow conditions utilizing transfers, load and generation conditions which stress the system.”⁴² Section 3 of PP3 also requires the ISO to test the system under specific maintenance and forced outage conditions: “With due allowance for generator maintenance and forced outages, design studies will assume power flow conditions with applicable transfers, load, and resource conditions that reasonably stress the system.”⁴³ The ISO’s well established use of the base system conditions reflects the direction of the NPCC standards.

⁴¹ See http://www.iso-ne.com/committees/comm_wkgrps/reblty_comm/reblty/mtrls/index.html.

⁴² NPCC A-2, Section 2.1 (emphasis omitted).

⁴³ PP3, Section 3 (emphasis omitted).

b. The Demand Response Resource Availability Is Appropriate

Consistent with Section 3 of PP3 and section 2.1 of NPCC A-2, the ISO applied an unavailability factor of 11% to Demand Response Resources. This unavailability factor was based on actual 2006 performance. The DPUC challenges the 11% de-rating factor. According to the Connecticut Parties, the ISO has not justified reducing Demand Response Resources by an availability factor using 2006 data, but not applying the 2007 summer period.⁴⁴ Consistent with the LSR and ICR calculation, the ISO relied on the 2006 Demand Response Resources availability factors in its TSA study. The 2007 Demand Response Resource availability factors were not available when the LSR and ICR calculations were performed for the first FCA. Further, pursuant to the FCM market rules, the ISO will use updated unavailability data in modeling the upcoming reconfiguration auctions. If the updated models show that changes to Demand Response availability assumptions resolve the need for the Norwalk Harbor Units, the de-list bids will be approved and the units will not be retained for the 2010 Capacity Commitment Period.

c. The ISO Properly Calculated The Connecticut Import Limit

The Connecticut Parties incorrectly assert that the ISO disregarded the external interface limits between Connecticut and New York when the ISO calculated the Connecticut Import Limit, and “appears to exclude from its analysis the reliability

⁴⁴ DPUC Comments at 27.

benefits provided by the 1385 cable.”⁴⁵ The Connecticut Parties claim that “[i]f Connecticut simultaneously lost Millstone 3 and a transmission line to the rest of New England, it would be reasonable to rely on these external ties for capacity assistance,”⁴⁶ however, the facts indicate otherwise.

First, the ISO did not exclude the 1385 Cable. Rather, Connecticut’s 2500 MW import limit includes the reliability benefit provided by the 1385 Cable since the cable was included among the ties defining the Connecticut Interface. Second, no reliability benefit provided by the Cross Sound Cable (“CSC”) was included in the TSA since no import qualified over the tie for the 2010/2011 Capacity Commitment Period. Instead a 100 MW export toward the Long Island Power Authority (“LIPA”) had qualified and cleared in the Auction. Also, it is the ISO’s real-time experience that no capacity reserves are available from LIPA via the CSC. The Commission has found that “LIPA has not demonstrated that the Cross Sound Cable, by itself, makes any additional surplus generation available to New England.”⁴⁷ Furthermore, the ISO does not know the amount of additional tie reliability benefits that would be available, if any, from the interconnections using the Cross Sound Cable when emergency assistance is required because the ISO and New York Independent System Operator have not yet found a way to calculate any additional benefits isolated to the Cross Sound Cable. Thus, the CSC is not assumed available to provide reliability benefits to Connecticut.

⁴⁵ *Id.*

⁴⁶ *Id.* at 29.

⁴⁷ *ISO New England Inc. and New England Power Pool*, 120 FERC ¶ 61,234 at P 64 (2007). The Commission further held that “[t]he fact that Long Island, specifically, is projected to have large amounts of excess generating capacity by 2010 is not relevant to the calculus of tie benefits provided to New England by the Cross Sound Cable at this time.” *Id.* at P 65.

Further, the 2500 MW Connecticut import limit captures the stability or steady state limitations affecting the Connecticut subarea. The Connecticut Parties state that the ISO has failed to explain how the TSA relates to the stability, steady state, or fault current assessments included in Section 3 of PP3.⁴⁸ In fact, these constraints were embedded in the Connecticut import limit. By definition, a subarea transfer limit is determined by identifying the most restrictive thermal, voltage or transient stability limitations of the system.

d. The ISO Properly Excluded 342 MW of Real-Time Emergency Generation Resources

Because the exclusion of Real-Time Emergency Generation (“RTEG”) Resources from the TSA is consistent with the reliability review standards, the Connecticut Parties are incorrect when they assert that the ISO improperly excluded 342 MW of available RTEG Resources from the TSA.⁴⁹ According to the Connecticut Parties, because the ISO excluded RTEG Resources from Connecticut, the ISO “erroneously determined that the NRG Facilities are needed for reliability.”⁵⁰

Excluding RTEG Resources is consistent with PP3, Section 3. Section 3 of PP3 states that “design studies will assume power flow conditions with applicable transfers, load, and resource conditions that **reasonably stress** the system.”⁵¹ RTEG Resources are available only under Action 12 of ISO New England Planning Procedure No. 4 (“OP-4”).

⁴⁸ DPUC Comments at 19.

⁴⁹ DPUC Errata at 1 (filed on April 28, 2008).

⁵⁰ DPUC Comments at 24.

⁵¹ PP3, Section 3 (emphasis added).

OP-4 actions are operating procedures that are implemented during a real time capacity deficiency, therefore reliability analyses in the planning horizon do not rely on OP-4 actions. This is consistent with the ISO's long-standing practice not to plan the power system to rely on emergency actions. As Action 12 of OP-4 is utilized under a fairly severe capacity deficiency, relying on resources called under this action would be inconsistent with studies that are to be performed under conditions that "reasonably stress" the system. [Exclusion of RTEG Resources is consistent with the ISO's practices in performing reliability determinations prior to a finding that a Reliability Agreement is appropriate.

3. The Connecticut Parties' Argument that the ISO's Reliability Determination Thwarts Connecticut's Own Resource Adequacy Efforts Is Without Merit

The Connecticut Parties argue that the ISO's reliability determination regarding the Norwalk Harbor units thwarts Connecticut's efforts to assure its own resource adequacy.⁵² This argument, which is wholly aside from whether the ISO has correctly adhered to the terms of its Commission-approved tariff in performing a well established reliability review, is also incorrect.

As discussed above, the TSA analysis is not a new analysis, but rather is a well established security review performed by the ISO in determining whether a unit is needed for system reliability. If there are other options available that can replace a given unit and keep the system secure, then the unit will not be determined to be needed for reliability and its de-list bid will not be rejected. The end of the first FCA auction is not the final word on whether these units will receive some sort of out of market

⁵² DPUC Comments at 13.

compensation⁵³ and retain their Capacity Supply Obligation. Under the Tariff, the ISO will conduct reconfiguration auctions prior to the 2010/2011 Capacity Commitment Period.⁵⁴ Other Qualified Capacity, such as new generating, demand side resources or resources that de-listed at higher prices in the auction will be eligible to participate.⁵⁵ If these reconfiguration auctions are able to procure capacity that addresses the reliability needs met by the Norwalk Harbor Units, the units will be permitted to de-list.

B. The ISO Determination of the LSR Was Reviewed And Approved By the Commission

None of the Generators claim that the ISO incorrectly followed the Commission-approved Tariff in determining and applying the LSR to Connecticut. Instead, the Generators erroneously claim that the determination of the LSR was inadequate and disregard the fact that the Commission has accepted the LSR and the application of the LSR to Connecticut. Despite this fact, the Generators make several assertions regarding the validity of the LSR determination. For example, PSEG claims that “[c]learly, the determination of the Local Sourcing Requirement for Connecticut was inappropriately determined.”⁵⁶ PSEG claims that to rectify this flaw in the future, “FCM should be

⁵³ The ISO will file its proposal for compensation for units that have different types of de-list bids rejected for reliability reasons on July 1, 2008 with the Commission.

⁵⁴ Tariff, Section III.13.4.5.

⁵⁵ For a new resource to be eligible to participate in a reconfiguration auction, it needs to have been qualified by participating in the primary auction qualification process, and have elected to have its critical path schedule monitored after the primary auction. For the first FCA, there are three such projects in Connecticut, which could participate in reconfiguration auctions for the 2010/2011 Capacity Commitment Period, and their combined summer qualified capacity amount is 403 MW.

⁵⁶ PSEG Protest at 10.

modified so as to apply the most binding reliability criteria...for procurement in the auction.”⁵⁷

NEPGA states that there is a disconnect between the LSR and the actual amount of capacity needed for reliability.⁵⁸ NEPGA argues that although there was a binding constraint in Connecticut, the determination of LSR under the Tariff “did not identify Connecticut as a separate capacity zone.”⁵⁹ According to NEPGA, because the LSR does not take into account the results of the TSA, the LSR may indicate that a separate zone is unnecessary, even while the TSA demonstrates that a local reliability problem exists.⁶⁰ As a result, NEPGA claims, this “effectively conscripts the affected units into providing additional reliability services without any locational price signal”⁶¹ and “denie[s] any chance for locational pricing in Connecticut.”⁶²

Similarly, FirstLight argues that not accounting for the TSA in modeling the Capacity Zone for Connecticut will result in the market not attracting sufficient resources to meet the full reliability needs of Connecticut. Finally, PSEG argues that if the LSR had been set using the TSA, “Connecticut would have been modeled as a separate capacity zone prior to the auction and the [Norwalk Harbor Units] would have cleared in the auction creating a separate Connecticut pricing zone.”⁶³

⁵⁷ *Id.*

⁵⁸ NEPGA Comments at 7.

⁵⁹ *Id.* (emphasis omitted).

⁶⁰ *Id.* at 9.

⁶¹ *Id.*

⁶² *Id.* at 10.

⁶³ PSEG Protest at 9-10.

However, the Commission has accepted the LSR in its December 11, 2007 Order. The Commission accepted the LCR determination, ICR and other related values for the 2010/2011 Capability Year submitted by the ISO in Docket No. ER08-41-000.⁶⁴ Moreover, the Commission accepted the ISO's application of the LSR to Connecticut in the ISO's Informational Filing. In the Informational Filing, the ISO provided its determination that based on the projected amount of capacity in Connecticut, Connecticut would not be modeled as a separate Capacity Zone.⁶⁵ In the instant proceeding, the Generators now seek to overturn this determination which has been accepted by the Commission. This constitutes a collateral attack on a final Commission order.

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 discouraged.”⁶⁶ In *NSTAR*, the Commission rejected a complaint filed against the ISO with regard to the interrelationship of Hydro Québec Interconnection Capacity

⁶⁴ *Order Accepting Proposed Installed Capacity Requirement, Hydro Quebec Interconnection Capability Credits and Related Values*, 121 FERC ¶ 61,250 (2007). The ISO filed the LSR determination and other values on October 11, 2007 in Docket No. ER08-41-000.

⁶⁵ Informational Filing for Qualification in the Forward Capacity Market, *ISO New England Inc.*, Docket No. ER08-190-000 (Nov. 6, 2007).

⁶⁶ *NSTAR Electric Company v. ISO New England, Inc.*, 120 FERC ¶ 61,261 at P 33 (2007) (“*NSTAR*”). See also *Pacific Gas & Electric Company*, 121 FERC P 61065 at PP 38-40 (2007) (citing *Alamito Co.*, 41 FERC ¶ 61,312 at 61,829 (1987) (emphasis added), *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.””

Credits (“HQICCs”) and capacity imports that may bid into the FCM during the transition period from the current installed capacity (“ICAP”) market to the FCM. The Commission denied the complaint on the grounds that it was a collateral attack on final FERC orders. The Commission stated:

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.⁶⁷

The instant case involves very similar facts. Like NSTAR, the Generators had every opportunity to raise questions about the determination of the LSR in the relevant proceeding in which the LCR, ICR and other related values for the 2010/2011 Capability Year were addressed. The Generators challenge the determination of the LSR, but this process was carried out in accordance with the Commission-approved Settlement Agreement and Tariff, and thus, the Generators’ arguments constitute an impermissible “collateral attack on final orders and relitigation of applicable precedent.”

C. A Rejected De-List Bid Cannot Set the Capacity Clearing Price

Moreover, to the extent that Generators argue that the de-list bids rejected for reliability by the ISO somehow establish a more accurate cost of new entry for Connecticut than the Capacity Clearing Price,⁶⁸ they ignore the explicit instruction in the

⁶⁷ *NSTAR Electric Company v. ISO New England, Inc.*, 120 FERC 61,261 at P 33 (2007).

⁶⁸ PPL Protest at 19-20.

Settlement that “Permanent De-list Bids and De-list Bids that are rejected for reliability reasons are not eligible to set the Capacity Clearing Price.”⁶⁹ Thus, the ISO is precluded by the plain language of the Settlement from permitting the rejection of de-list bids for reliability to establish the FCA clearing price.

D. The Relief Requested in PSEG’s Protest Would Violate the Settlement And Should Be Denied

PSEG is recommending that the resources in Connecticut that are not allowed to prorate be paid the capacity clearing price. However, following PSEG’s suggestion would violate the Settlement Agreement and the purpose of Section III.13.2.7.3(b). The Settlement Agreement does not allow the FCA to purchase more capacity than what is equal to the ICR. Hence, Section III.13.2.7.3(b) provides that proration of either price of capacity or the MWs provided will occur. Thus, the Commission should dismiss PSEG’s arguments.

PSEG maintains that, under the Tariff, the resources that are not allowed to be prorated should receive the clearing price.⁷⁰ The auction ended when the floor price reached \$4.50/kW-month with an excess amount of capacity. In accordance with the Tariff, when the minimum price is reached, the auction will conclude and load will pay only ICR times the applicable floor price. Under Section III.13.2.7.3(b) of the Tariff, Resources will choose between a Capacity Supply Obligation at their full cleared capacity price of \$4.254/kW-month, or receiving the floor price of \$4.50/kW-month and prorating their Capacity Supply Obligation by the same ratio. Any proration is subject to

⁶⁹ Settlement Agreement at 11.III.G.1. *See also* Tariff, Section III.13.2.5.2.5.

⁷⁰ PSEG Protest at 8.

reliability review by the ISO.⁷¹ As explained in the testimony of Mr. Stephen Rourke, due to the low transmission security margin of only 38 MW in the Connecticut sub-area, it is highly unlikely that the ISO will allow proration based on bid MWs for resources within the Connecticut area.

PSEG attempts to support its claim that the resources that are not allowed to prorate “should be priced at the ‘un-prorated’ clearing price of \$4.50 kW-month,”⁷² by stating that the “proration mechanism does not apply if the units are needed for local reliability reasons.”⁷³ However, PSEG’s arguments contradict the plain language of the Tariff and should be rejected. Section III.13.2.7.3 (b) of the Tariff provides that:

Where the Capacity Clearing Price reaches 0.6 time CONE, offers shall be prorated such that no more than the Installed Capacity Requirement is procured in the Forward Capacity Auction, as follows: the total payment to all listed capacity resources during the associated Capacity Commitment Period shall be equal to 0.6 times CONE times the Installed Capacity Requirement applicable in the Forward Capacity Auction. Payments to individual listed resources shall be prorated based on the total number of MWs of capacity clearing in the Forward Capacity Auction (receiving a Capacity Supply Obligation for the associated Capacity Commitment Period). Suppliers may instead prorate their bid MWs of participation in the Forward Capacity Market....Any proration shall be subject to reliability review.

PSEG argues that the language “offers shall be prorated such that no more than the Installed Capacity Requirement is procured” is modified by what PSEG claims is the

⁷¹ Tariff Section III.13.2.7.3(b).

⁷² PSEG Protest at 7.

⁷³ *Id.* at 8.

immediately following sentence: “Any proration shall be subject to reliability review.”⁷⁴ “Any proration shall be subject to reliability review,” however, does not immediately follow the “offers shall be prorated” language and is not modified by it. PSEG’s tortured reading of the Tariff is simply incorrect and should be ignored by the Commission.

E. TransCanada's "Conditional Protest" Inappropriately Seeks the Opportunity in This Proceeding to Re-Argue its Complaint Filed in Another Proceeding and Should be Denied

Lastly, TransCanada’s “conditional protest”⁷⁵ inappropriately raises issues regarding the ISO's disqualification of TransCanada’s offers into the FCA, which is the subject of a complaint filed by TransCanada against the ISO in another Commission proceeding.⁷⁶ Indeed, TransCanada acknowledges that its “protest exclusively raises issues that already are before the Commission in Docket No. EL08-43, and the issues concerning that protest presumably will be resolved in that docket.”⁷⁷ Yet TransCanada effectively seeks the ability to re-argue its complaint in this Section 205 proceeding in the event that the Commission denies its complaint in the EL08-43-00 proceeding, and is filing its “conditional protest” “out of an abundance of caution.”⁷⁸

TransCanada’s efforts are inappropriate and its arguments are beyond the scope of this proceeding. The complaint in Docket No. EL08-43-000 is predicated on

⁷⁴ *Id.* at 8.

⁷⁵ Motion for Leave to Intervene and Protest One Day Out of Time of TransCanada Power Marketing, Ltd at 1, filed in this proceeding on April 18, 2008 (“TransCanada Protest”).

⁷⁶ Complaint Requesting Fast Track Processing of TransCanada Power Marketing Ltd., *TransCanada Power Marketing Ltd. v. ISO New England Inc.*, Docket No. EL08-43-000 (filed Feb. 26, 2008).

⁷⁷ TransCanada Protest at 3.

⁷⁸ TransCanada Protest at 4.

TransCanada's position that the ISO did not comply with the Commission's directives when the ISO disqualified the offer composed of separate resources⁷⁹ submitted by TransCanada on January 10, 2008. However, as the ISO demonstrates in the complaint proceeding, the ISO fully complied with Commission directives and did not qualify TransCanada's offers because the winter capacity associated with those offers was already irrevocably committed to participate in the FCA as part of composite offers previously submitted, approved by the ISO and the Commission, and which were never withdrawn. While TransCanada in this proceeding seeks to re-style its EL08-43-000 complaint as the argument that "all entities bidding into the FCA were not properly qualified," and "the FCA was not conducted in accordance with the provisions of Section II.13.1 [sic] in the case of TransCanada's January 10, 2008 composite offers,"⁸⁰ these arguments still exceed the scope of the instant proceeding, which is limited to the discrete issues presented in the FCA Results Filing.

TransCanada should not be allowed to use this proceeding, which is narrowly focused on the results of the FCA, to strategically position itself to take a "second bite at the apple" if it does not prevail in the EL08-43-000 complaint case. Any substantive response to TransCanada's arguments is appropriately made in the complaint proceeding which TransCanada initiated in Docket No. EL08-43-000.⁸¹ TransCanada maintains that

⁷⁹ The FCM rules in the Tariff enable resources having seasonal capacity to combine their capacity in different months to create a single, annual offer. These offers composed of separate resources are commonly referred to as "composite offers" and are governed by Section III.13.1.5 of the Tariff.

⁸⁰ TransCanada Protest at 4.

⁸¹ The ISO does not seek to reiterate its responses to TransCanada's complaint in the instant proceeding. The ISO's answer to TransCanada's complaint was filed in Docket No. EL08-43-000 on March 17, 2008.

in this proceeding the Commission should "reverse ISO-NE's disqualification of TransCanada's January 10 composite offers and order ISO-NE to accept TransCanada's January 10 composite offers into the FCA at the floor price that was established in the February 4-6, 2008 auction."⁸² To the contrary, the Commission should reject TransCanada's request and its strategic efforts in the instant proceeding.

V. CONCLUSION

For the foregoing reasons, the ISO respectfully requests that the Commission grant the ISO's Motion for Leave to Answer and Answer.

Respectfully submitted,

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Dated: May 2, 2008

⁸² TransCanada Protest at 4-5.

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 2nd day of May, 2008.

/s/ E-filed _____
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