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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. ER10-1185-000

Dear Secretary Bose and Deputy Secretary Davis:

Attached for electronic filing in the above-referenced docket is the *Motion for Leave to File 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. ER10-1185-000

**MOTION FOR LEAVE TO FILE 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 File Answer and Answer* (“*Answer*”) to the Protest filed by Dominion Resources Services, Inc. (“Dominion”)² in response to the Informational Filing for Qualification in the Forward Capacity Market³ (“Informational Filing”) for the 2013-2014 Capacity Commitment Period submitted on May 4, 2010 by the ISO in accordance with Section III.13.8.1 of the ISO New England Transmission, Market and Services Tariff (“Tariff”).

Dominion challenges the Internal Market Monitor’s (“IMM”) determination of the appropriateness of the de-list bids submitted for Salem Harbor Units 3 and 4. The Salem Harbor Station is a four resource station located in Salem, Massachusetts. Dominion states that the ISO improperly excluded amortized capital costs in its de-list review for Salem Harbor Units 3 and 4. As explained further below, Dominion’s

¹ 18 C.F.R. §§ 385.101(e), 385.212, and 385.213 (2009).

² Motion to Intervene and Protest of Dominion Resources Services, Inc., Docket No. ER10-1185-000 (filed May 19, 2010) (“Dominion Protest”).

³ Capitalized terms used but not otherwise defined in this filing have the meanings ascribed thereto in the Tariff, the Second Restated New England Power Pool Agreement, and the Participants Agreement. The rules governing the Forward Capacity Market (“FCM Rules”) are primarily contained in Section III.13 of the Tariff, but also may be in other provisions, including portions of Section III.12 (Calculation of Capacity Requirements) and portions of Section III.1.3.2 (Definitions).

arguments in its Protest are in error for several reasons. Among other things, Dominion's arguments are inconsistent with: (i) the plain language of the Tariff; (ii) Dominion's own choice to submit a Static De-List bid; and (iii) Dominion's previous statements and recognition of what costs are and are not included in "going-forward costs." The ISO respectfully requests that the Commission reject Dominion's Protest.

I. BACKGROUND

Under the Tariff, the generator has the burden of demonstrating to the IMM that its de-list bid is consistent with the generator's net-risk adjusted going forward and opportunity costs ("NRAGFC"). If the IMM determines that the de-list bid is not consistent with the resource's NRAGFC, the IMM will reject the de-list bid and provide an alternative bid consistent with the generator's NRAGFC. The generator may either elect to accept the IMM's alternative de-list bid or challenge the IMM's alternative bid disclosed in the Informational Filing.

In the third Forward Capacity Auction "FCA"), Dominion submitted Static De-List Bids for all four resources at the Salem Harbor Station. The IMM determined that the Dominion de-list bids were inconsistent with the resources' NRAGFC and developed alternative bids. Among other things, the IMM disagreed with Dominion's proposal to use a three year depreciation period for certain capital costs that Dominion stated needed to be incurred for the units to be available for the Capacity Commitment Period associated with the third FCA. In an August 19, 2009 Order, the Commission established a paper hearing on the issues associated with Dominion's Static De-List Bids.⁴ The Commission subsequently rejected Dominion's proposed three year depreciation period

⁴ *ISO New England Inc.*, 128 FERC ¶ 61,167 (2009) ("August 19 Order") (Docket No. ER09-1424-000).

and approved the ISO's alternative bids in an Order issued on September 18, 2009⁵ and concluded that "ISO-NE has . . . substantiated its depreciation periods."⁶ On October 19, 2009, Dominion filed for rehearing of the September 18 Order.⁷ The Commission issued an Order denying Dominion's Rehearing Request on February 18, 2010.⁸

For the fourth FCA, Dominion again submitted Static De-List Bids for all four Salem Harbor Resources. However, the de-list bids for Salem Harbor Units 3 and 4 in the fourth FCA included the annual depreciation of the capital costs previously included in the approved Static De-List Bids from *the third FCA*. As explained in the May 4, 2010 Informational Filing, the IMM determined that none of the Static De-List Bids submitted by Dominion were consistent with the resources' NRAGFC and, therefore, the IMM developed alternative bids for the resources consistent with the methodology in Section III.13.1.2.3.1.6 of the Tariff. With respect to Salem Harbor Units 3 and 4, the ISO removed the depreciation of the capital costs approved in the third FCA because such costs are not going forward costs as defined under Section III.13.1.2.3.2.1.2 of the Tariff.

⁵ *ISO New England Inc.*, 128 FERC ¶ 61,266 (2009) ("September 18 Third FCA Order").

⁶ *September 18 Third FCA Order* at P 45. Specifically, the Commission stated:
We believe the appropriate depreciation period should reflect the useful service life of the Salem Harbor Units In addition, based on the IRS' publication related to depreciation periods, the classification and age of the Salem Harbor Units indicate a three-year depreciation period is not reasonable. For example, Salem Harbor Unit 4 is 37 years old, but the IRS classifies steam turbine oil fired power plants, such as Unit 4, as having useful life of at least 50 years. We find that ISO-NE has also substantiated its depreciation periods and thus the depreciation expenses. *Id.*

⁷ *Request For Rehearing And Clarification Of Dominion Resources Services, Inc.* filed in Docket No. ER09-1424-000 ("Dominion Rehearing Request").

⁸ *ISO New England Inc.*, Order Denying Rehearing and Granting Clarification, 130 FERC ¶ 61,108 at PP 23-27 (2010) ("Rehearing Order") ("ISO-NE has shown that it is just and reasonable to use the useful service life as the correct measure of an appropriate depreciation period.").

Dominion's Protest challenges this determination. As explained further below, the Commission should reject Dominion's protest. The IMM's exclusion of the depreciation of the previously incurred capital costs is consistent with the Tariff, Commission precedent, and the capacity market design.

II. MOTION FOR LEAVE TO FILE ANSWER

In this *Answer*, the ISO responds to Dominion's Protest in response to the Informational Filing that was submitted on May 4, 2010. While the Commission's Rules of Practice and Procedure allow parties to respond to comments,⁹ as a general matter, the Commission's rules prohibit responses to protests.¹⁰ The Commission has the authority, however, to waive this prohibition for good cause.¹¹ 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,¹² provide information helpful to the disposition of an issue,¹³ permit the issues to be narrowed or clarified,¹⁴ or aid the Commission in understanding and resolving issues.¹⁵ 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 Informational Filing. In particular, it seeks to clarify certain

⁹ 18 C.F.R. § 385.213(a)(3) (2009).

¹⁰ *Id.* at § 385.213(a)(2).

¹¹ *Id.* at § 385.101(e).

¹² *See, e.g., Pacific Interstate Transmission Co.*, 85 FERC ¶ 61,378 at 62,444 (1998), *reh'g denied*, 89 FERC ¶ 61,246 (1999).

¹³ *See, e.g., CNG Transmission Corp.*, 89 FERC ¶ 61,100 at 61,287 n.11 (1999).

¹⁴ *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).

¹⁵ *See, e.g., Tennessee Gas Pipeline Co.*, 92 FERC ¶ 61,009 at 61,016 (2000).

facts, and amplify justification for the IMM’s actions in light of the requirements of the ISO’s Tariff. For these reasons, the ISO respectfully requests that the Commission grant the ISO’s motion to provide the following *Answer*.

III. ANSWER

A. The Exclusion of the Annual Amortization Cost of a Previously Incurred Capital Cost Is Consistent With The Tariff

In the Informational Filing, the ISO explained that it excluded the depreciation of the capital costs from the Static De-List Bids submitted for Salem Harbor Units 3 and 4 because those costs were incurred and included in the approved de-lists bids Dominion submitted for the previous (*i.e.*, third) FCA. Specifically, the ISO stated that “the amortization of the third FCA capital projects for Unit 3 and Unit 4 was removed since these expenses were approved in the third FCA and are considered sunk costs that cannot be included in going forward costs.”¹⁶

Dominion states that the ISO’s determination of compensation for the fourth FCA “does not reflect the continued amortization of FCA-3 capital costs [and that] failure to account for such costs would result in Salem Harbor being unable to recover costs directly resulting from serving the identified reliability need.”¹⁷ Dominion argues that the ISO’s action is unjust and unreasonable and inconsistent with the Tariff (and Commission orders).¹⁸ Dominion’s argument regarding the alleged failure to include the “continued amortization of *the FCA-3 capital costs*”¹⁹ as going-forward costs included in

¹⁶ Informational Filing at 20.

¹⁷ Dominion Protest at 4.

¹⁸ *Id.* at 1-2, 4.

¹⁹ *Id.* at 4 (emphasis added).

the compensation that the Salem Units should receive if they are prevented from de-listing *in the fourth FCA* is contrary to the Tariff and should be rejected.

Section III.13.2.5.2.5.1(e) of the Tariff specifies the compensation for Existing Generating Capacity Resources at stations with Common Costs that are retained for reliability. Section III.13.2.5.2.5.1(e)(ii) provides that “Existing Generating Capacity Resource[s] retained for reliability will be paid the sum of the Asset-Specific Going Forward Costs for the assets associated with that Existing Generating Capacity Resource plus a portion of the Station Going Forward Common Costs”

Section III.13.1.2.3.2.1.2 of the Tariff defines Going Forward Costs as those “costs that might otherwise be avoided or not incurred if the resource were not subject to the obligations of the listed capacity resource during the Capacity Commitment Period” Dominion’s capital costs for Salem Harbor Units 3 and 4 for the third FCA were determined to be avoidable and therefore the depreciation of the capital costs was included in the Static De-List Bids approved by the Commission for the third FCA. In order to comply with its third FCA obligations, Dominion must make these capital investments prior to the 2012-2013 Capacity Commitment Period.

The ISO properly excluded the depreciation of these capital costs from Dominion’s de-list bids for the fourth FCA because the costs are no longer avoidable. For the 2014-2015 Capacity Commitment Period for the fourth FCA, Dominion will have already incurred the capital costs associated with its third FCA de-list bids. In other words, the capital investment is sunk, no longer avoidable and not recoverable as part of the Dominion’s Static De-List Bids *in the fourth FCA*. Therefore, consistent with the Tariff, the ISO excluded the depreciation of the previously incurred capital costs. The

ISO notes that this issue (*i.e.*, what is a going forward cost and appropriately recoverable in a Static De-List Bid) is distinct from whether Dominion ultimately recovers its capital investments via all the sources of revenues it receives from the continued availability and operation of the Salem Units.²⁰

Dominion fails to provide any support for its claim that the treatment of the previously incurred capital costs as sunk costs is contrary to the Tariff and Commission orders. In fact, in Dominion's previous arguments and pleadings, Dominion clearly recognized that under the FCM Rules the capital costs for Salem Harbor Units 3 and 4 included in the de-list bids in the third FCA are sunk and cannot be recovered in subsequent de-list bids.²¹ For example, Dominion has stated that:

if investments in necessary capital improvements are incorporated in Salem Harbor's FCA 3 Bids and are made to meet identified reliability needs for the 2012-2013 Capacity Commitment Period, under the FCM Market Rules those costs become 'sunk' or 'fixed' once made *and may not be included in subsequent De-List Bids in future auctions.*²²

In short, Dominion's previous statements properly acknowledge that the capital investments are sunk costs. The Commission should disregard Dominion's contradictory

²⁰ Dominion's Protest appears to have an underlying premise that the sunk capital costs are not recoverable if the recovery does not take place as part of the FCM. If this is Dominion's premise, it is incorrect. In general, the FCM Rules allow cost-of-service recovery or rate treatment only if a resource submits either a Permanent De-List Bid or a Non-Price Retirement Request and if the bid is rejected for reliability reasons. However, if generators participate in the FCM on a long-term basis, the Commission has noted that the FCM Rules provide an opportunity over time to recover not only going-forward costs, but also additional fixed costs and a profit. *See* October 28, 2008 "Order Accepting Filing and Requiring Compliance Filings" in Docket No. ER08-1209-000, 125 FERC ¶ 61,102 at P 42 (2008) ("2008 Reliability Compensation Order").

²¹ *See* Dominion's September 2, 2009 Reply to ISO New England Inc.'s Statement in Docket No. ER09-1424-000 at 8-9 ("Dominion September 2 Reply") and Dominion Rehearing Request in Docket No. ER09-1424-000 at 6. *See also* the Commission's *Rehearing Order* at P 23 (indicating that capital improvement costs that become sunk cannot be included in subsequent de-list bids).

²² Dominion September 2 Reply at 8-9 (emphasis added).

arguments that the costs are now recoverable through their inclusion in NRAGFC for the fourth FCA.

Perhaps acknowledging the flaws in its argument, Dominion requests that the Commission “direct the ISO to work with stakeholders to revise the rules relating to the compensation of resources retained for reliability.”²³ However, this proceeding is not the appropriate forum to challenge the Tariff and the Commission should reject Dominion’s request.

B. Exclusion of Dominion’s Annual Amortization of Capital Costs Is Consistent With Commission Precedent

The Commission approved the current FCM rules and under those rules the going forward costs are “costs that might otherwise be avoided or not incurred if the resource were not subject to the obligations of a listed capacity resource during the Capacity Commitment Period.”²⁴ Plainly, capital costs that are sunk in one Capacity Commitment Period (and depreciated or amortized over a number of years) cannot be costs that are capable of being avoided in a subsequent Capacity Commitment Period. As noted above, Dominion itself cited this effect or aspect of the FCM Rules twice in its pleadings involving the Informational Filing for the third FCA (Docket No. ER09-1424-000).²⁵

In the proceeding involving the Informational Filing for the third FCA, Dominion was attempting to convince the Commission that a shorter depreciation period would not

²³ Dominion Protest at 10.

²⁴ See Section III.13.1.2.3.2.1.2 of the Tariff (describing “Net Risk-Adjusted Going Forward Costs”).

²⁵ See Dominion September 2 Reply in Docket No. ER09-1424-000 at 8-9; Dominion Rehearing Request in Docket No. ER09-1424-000 at 6. See also *Rehearing Order* at P 23 (indicating that capital improvement costs that become sunk cannot be included in subsequent de-list bids).

allow Dominion to recover its capital costs on an accelerated basis and re-enter the FCM and obtain market rates in the future. As noted above, in support of its efforts Dominion acknowledged that under the FCM rules previously sunk costs cannot be included in de-list bids in subsequent auctions. The Commission rejected the linkage asserted by Dominion but in so doing it clearly agreed that capital costs incorporated in Salem Harbor's de-list bids for the third FCA "become sunk and *may not be included in subsequent de-list bids.*"²⁶ Specifically, the Commission stated:

Dominion argues that the Commission erred in assuming Salem Harbor's three-year depreciation period would guarantee capital cost recovery. We disagree. Contrary to Dominion's assertions, the Commission does understand that the depreciation period would begin with the 2012-2013 Capacity Commitment Period. However, this does not minimize the fact that *Dominion, or other resources, could recover their capital costs on an accelerated basis and then re-enter the market to obtain market rates in the future, whether or not the costs for capital improvements become sunk and may not be included in subsequent de-list bids.*²⁷

For the purposes of responding to Dominion's current protest, the point is that there simply is no issue under the FCM Rules and Commission Orders that capital improvements incorporated in Salem Harbor's de-list bids for the third FCA are sunk costs with regard to the fourth FCA and may not be included in Salem Harbor's de-list bids for the fourth FCA.

C. Dominion's Arguments that the Continued Amortization of Capital Costs Recognized in Its De-List Bids in the Third FCA Should Be Included in Its De-List Bids for the Fourth FCA Are Flawed

Dominion makes a number of arguments allegedly in support of its request that the ISO be directed "to include unamortized capital costs included in FCA-3 De-List Bids

²⁶ See *Order on Rehearing* at P 23 (emphasis added).

²⁷ *Id.* (both emphases added).

in its ‘reliability compensation’ determined for Salem Harbor Units 3 and 4 for FCA-4.”²⁸
In so doing, Dominion sets forth a number of flawed arguments. As set forth in more detail below, the Commission should reject Dominion’s arguments that its de-list bids in the fourth FCA should reflect “the continued amortization of FCA-3 capital costs.”²⁹

1. The Length of An Amortization Period Is Relevant to the Amount of a Depreciation Expense to be Included in a De-List Bid for a Single Commitment Period.

In its protest, Dominion incorrectly draws a connection between the continued depreciation over a number of years of the capital costs incurred in the third FCA Capacity Commitment Period and including the continuing depreciation costs in Dominion’s reliability compensation in subsequent FCA Capacity Commitment Periods. In general, Dominion appears to confuse recovery of capital costs (which involves all markets and revenue streams associated with Dominion’s units) and whether a cost is a legitimate going forward cost for a de-list bid in a single FCM Capacity Commitment Period.

Dominion’s arguments rest on a single statement in the *September 18 Third FCA Order*. In that order, the Commission noted that “if [the ISO] determines that Salem Harbor generation is required for reliability purposes in 2012, *Salem Harbor could also be required for reliability purposes beyond 2013.*”³⁰ Dominion highlights the Commission’s statement about the possibility of being required for reliability purposes beyond 2013 and states the following:

²⁸ Dominion Protest at 11.

²⁹ *Id.* at 4.

³⁰ *September 18 Third FCA Order* at P 44 (emphasis in Dominion Protest citation at 8).

In this respect, the Commission recognized that the amortization of capital costs associated with Salem Harbor's De-List Bids for FCA-3 would continue in the event that the Salem Harbor Units continue to be needed to serve *the same reliability need* over successive Commitment Periods. *Any contrary conclusion would render meaningless the Commission's approval of an amortization period in FCA-3 for capital costs incurred to meet a reliability need.*³¹

The above-quoted statement by Dominion is not correct and contains compound errors. Briefly, the length of a depreciation period has relevance to the amount of a capital cost to be included in a de-list bid for a *single* Commitment Period so long as the capital cost is legitimately an avoidable (or going-forward) cost for that Capacity Commitment Period. However, the length of the depreciation period says nothing about subsequent Capacity Commitment Periods, the going forward costs in subsequent Capacity Commitment Periods, or what is appropriate for inclusion in de-list bids for subsequent Capacity Commitment Periods.

Dominion's statements indicate that it incorrectly is inserting a rationale into the Commission's statement that simply is not present. The Commission never drew any connection between the continued amortization of a capital cost over a number of years and serving "the same reliability need over successive Commitment Periods." If a capital cost would be incurred for the first time in a Capacity Commitment Period, such a cost can be a going-forward cost that could be avoided and therefore such a cost can be eligible for inclusion in determining a de-list bid. Moreover, the amount of a capital cost eligible for inclusion in a de-list bid depends on (or will vary with) the length of the depreciation period. A shorter depreciation period will include more capital costs as

³¹ Dominion Protest at 8 (emphasis added). *See also* Dominion Protest at 9 (where Dominion asserts that "[i]f the Salem Harbor Units are retained for reliability again, they will have been prevented from participating in the market because they will be meeting *the same reliability need as the previous year.*" (emphasis added)).

avoided costs in a de-list bid than a longer depreciation period. This is precisely what was at issue for the Salem Harbor Units in the third FCA.

In other words, the length of a depreciation period has relevance to the amount of a capital cost to be included in a de-list bid for a *single* Capacity Commitment Period so long as the capital cost is legitimately an avoidable (or going-forward) cost for that Capacity Commitment Period. Contrary to Dominion’s statement, the length of depreciation period does not have a connection to serving “the same” reliability need over successive Commitment Periods.

2. The ISO’s Exclusion of the Continuing Amortization Costs of Dominion’s Capital Expenditures for the Third FCA Does not Mean Dominion is Worse Off Than If It Were Allowed to De-List.

In its Protest, Dominion states that the ISO’s decision to prevent Salem Harbor from continuing to amortize capital costs from the third FCA is:

inconsistent with the Commission’s determination in accepting the FCM Market Rules related to compensation for resources retained for reliability that “when a resource is paid its going forward costs, the resource is no worse off by providing capacity than if it were allowed to de-list.” If the ISO is allowed to treat the capital costs that will be incurred as a direct result the ISO’s determination that Salem Harbor Units 3 and 4 may not de-list from FCM because of a reliability need as “sunk,” Salem Harbor would certainly be “worse off by providing capacity than if it were allowed to de-list.” In the present case, Salem Harbor would not incur the subject capital costs absent the ISO’s FCA-3 reliability determination, because the Units would have been permitted to exit the FCM.³²

First, Dominion’s statement that the ISO’s actions are inconsistent with Commission precedent is in error. The implications in Dominion’s statements quoted above are: (a) that its submission of a Static De-List Bid (for a year in) the third FCA

³² Dominion Protest at 8-9.

drove its decision to invest in a capital project with a multi-year recovery period, and (b) that Dominion would not have incurred the capital expenditure needed to remain a generator that can operate consistent with applicable regulations if it were allowed to de-list. Neither of these implications is reasonable. Dominion has made no representation that it was retiring these units or leaving the energy market. In addition, if Dominion had made such representations, the choice to submit a Static De-List Bid is inconsistent with that intent. It is important to remember that Static De-List Bids remove the associated units “from the capacity market only for a one year period, with no commitment to *leave the market* at any specific time.”³³

Second, Dominion’s statement that: “[i]n the present case, Salem Harbor *would not incur the subject capital costs* absent the ISO’s FCA-3 reliability determination, *because* the Units would have been permitted to exit the FCM” is a *non-sequitur*.³⁴

While Dominion is correct that absent the ISO’s reliability determination in the third FCA, its Static De-List Bid could have been accepted and it would have been allowed to “exit the FCM” for a single Capacity Commitment Period, this fact has nothing to do with Dominion’s decision to incur the capital costs, although it may have impacted the timing of when those costs were incurred. Dominion’s decision to incur the relevant capital costs in the third Capacity Commitment Period, presumably, was a reasoned decision for time periods beyond the third Capacity Commitment Period. As the Commission noted, the use of Static De-List Bids suggests that Dominion was “keeping

³³ *September 18 Third FCA Order* at P 44.

³⁴ Dominion Protest at 8-9.

open the possibility that the Salem Harbor units could potentially re-enter the market after the 2015-2016 Capacity Commitment Year.”³⁵

3. The Exclusion of the Depreciated Capital Costs Incurred in the Previous Capacity Commitment Period Does Not Deny Dominion the Opportunity to Recover Its Costs

Dominion’s claim that the exclusion of capital costs prevents Dominion from having the opportunity to recover its fixed or capital costs is without merit. By submitting a Static De-List Bid, Dominion has made an economic decision to preserve its opportunity to participate in the FCM in the future years and to receive revenues that contribute to the recovery of its fixed or capital costs (that Dominion claims it will not be able to recover) in future years. Furthermore, there is no requirement that Dominion recover its fixed or capital costs for the Salem Harbor Units only from the FCM; there are several other markets in which the Salem Harbor Units can participate and earn revenues that would contribute to recovery of those fixed or capital costs.

In the Commission’s order on the proper compensation for de-list bids retained for reliability, the Commission stated that a resource “control[s] its own economic situation by making a choice as to the type of de-list bid it offers, based on its perception of the potential for future FCM revenues.”³⁶ The ISO notes that cost-of-service compensation is available only for Permanent De-List Bids and Non-Price Retirement Requests that are rejected for reliability reasons. In addition, it is only the latter of these options that allows entities whose Non-Price Retirement Requests are rejected for reliability reasons to apply to recover *capital costs that have to be made* for the resource

³⁵ *Rehearing Order* at P 24.

³⁶ *2008 Reliability Compensation Order* at P 42.

or unit to remain in operation. For Permanent De-List Bids it is recognized that units will still be able to participate in other markets and can have other revenue streams that contribute to recovery of fixed or capital costs. For Static and Dynamic De-List Bids it is recognized that such units also can participate in other markets as well as participating in the FCM for future Capacity Commitment Periods. For example, the Commission has stated that if a resource “wish[es] to participate in the FCM on a long-term basis, the FCM market rules give them an opportunity over time to recover not only going forward costs, but also additional fixed costs and a profit.”³⁷ Especially relevant to the current situation, the Commission rejected the argument that paying a resource owner only its going-forward costs in a single year prevents the recovery of fixed costs. The Commission noted that over a number of years, FCM prices can be lower or higher than the cost of new entry and that so long as the average price approximates the cost of new entry:

*[a] resource whose temporary de-list bid is rejected for reliability reasons will have the opportunity to receive . . . higher prices in future years, and protestors are therefore wrong to assert that paying a temporary de-list resource its de-list bid in one year would prevent the resource from ever recovering any fixed costs. To the contrary, since the resource wants to preserve its opportunity to supply capacity in future years, it will have an opportunity to receive prices above its going forward costs in future years.*³⁸

In sum, there are several reasons why Dominion’s allegation that it will be prevented from recovering its fixed or capital costs is without merit. First, the notion that Dominion should be guaranteed recovery of fixed costs, especially in a single year, is incorrect. Rather, Dominion is not guaranteed recovery of its fixed or capital costs; it has

³⁷ *Id.*

³⁸ *Id.* at P 44 (emphasis added).

the opportunity to recover those costs. Second, the opportunity to recover such costs is not limited to the FCM. Dominion's units can participate in other electric markets during the Capacity Commitment Period for the fourth FCA and can participate in future FCAs. Third, the ISO's categorization of certain capital costs as going-forward costs in the third FCA was due to the fact that Dominion demonstrated that the costs in fact were going-forward costs for that Capacity Commitment Period. In future Capacity Commitment Periods (which includes the Capacity Commitment Period for the fourth FCA), the capital costs are sunk and no longer avoidable costs.

IV. CONCLUSION

The IMM's exclusion of capital costs is consistent with Commission precedent and Dominion's claim that going forward costs should include the capital costs for the Salem Harbor Units' fourth FCA bids is in direct conflict with prior Commission Orders and should be rejected. The Commission has affirmed that FCM capacity payments based upon going forward costs are just and reasonable.³⁹

Further, the Commission has held that "going forward costs are the costs that would be incurred only if the resource takes on the obligations of a New England capacity resource (and hence, costs that would be avoided if the resource does not become a capacity resource)."⁴⁰ As discussed above, by Dominion's own admission, the depreciation of the capital investments that are the subject of its Protest are not avoidable. Given the Commission's holding that only avoidable costs should be included in Static De-List Bids, the Commission should reject Dominion's arguments.

³⁹ *Id.* at P 38.

⁴⁰ *Id.* at P 40 n 30.

For the foregoing reasons, the ISO respectfully requests that the Commission grant the ISO's Motion for Leave to File Answer and Answer, and reject Dominion's Protest filed in response to the Informational Filing, as more fully discussed in this *Answer*.

Respectfully submitted,

ISO NEW ENGLAND INC.

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Dated: June 4, 2010

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 (2009).

Dated at Washington, D.C. on this the 4th day of June 2010.

/s/ E-filed _____

Sherry A. Quirk
Attorney for ISO New England Inc.