

151 FERC ¶ 61,270  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Philip D. Moeller, Cheryl A. LaFleur,  
Tony Clark, and Colette D. Honorable.

ISO New England Inc.  
New England Power Pool Participants Committee

Docket No. ER15-1650-000

ORDER ON TARIFF REVISIONS

(Issued June 30, 2015)

1. On May 1, 2015, pursuant to section 205 of the Federal Power Act,<sup>1</sup> ISO New England Inc. (ISO-NE) and the New England Power Pool (NEPOOL) Participants Committee (together, Filing Parties) jointly submitted proposed revisions to ISO-NE's Transmission, Markets and Services Tariff (Tariff) provisions containing market monitoring rules related to ISO-NE's Forward Capacity Market (FCM). The revisions include changes to the Dynamic De-List Bid Threshold, Static De-List Bid rules, pivotal supplier tests, and New Import Capacity Resources rules, all of which relate to the potential for the exercise of market power in the FCM.<sup>2</sup> As discussed below, we accept in part and reject in part the proposed revisions, with the accepted revisions to become effective June 1, 2015, as requested and direct ISO-NE to submit a compliance filing.

**I. Background**

2. ISO-NE administers the FCM, in which eligible resources compete in an annual Forward Capacity Auction (FCA) to provide capacity three years in advance of the relevant delivery year. A resource whose capacity clears the FCA acquires a Capacity

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<sup>1</sup> 16 U.S.C. § 824e (2012).

<sup>2</sup> Capitalized terms used but not defined herein are intended to have the meaning given to such terms in the ISO-NE Tariff.

Supply Obligation and commits to providing capacity for the relevant Capacity Commitment Period,<sup>3</sup> three years in the future.

3. In the FCA, existing resources submit de-list bids that reflect the lowest price in \$/kW-month at which they are willing to supply capacity. The FCA is conducted as a descending price auction; a resource exits the auction if the clearing price falls below its de-list bid. Prior to an auction, existing resources may submit Static De-List Bids,<sup>4</sup> Permanent De-List Bids,<sup>5</sup> or Non-Price Retirement Requests<sup>6</sup> for review by the Internal Market Monitor (IMM). Dynamic De-List Bids<sup>7</sup> are submitted during the auction and thus are not reviewed prior to an FCA. During an auction, if the price falls below a resource's Static De-List Bid, that resource will be removed from the current capacity auction. If the price in the auction falls below a resource's Permanent De-List Bid, that resource will be removed from all future auctions. The submittal of a Non-Price Retirement Request permanently removes the resource from the current auction and all future capacity auctions, regardless of price.

4. Prior to the ninth and most recent FCA (FCA 9), held in February 2015, ISO-NE implemented a two-settlement capacity market design under which a resource that produces energy or provides reserves during Capacity Scarcity Conditions in excess of a

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<sup>3</sup> The Capacity Commitment Period is "the one-year period from June 1 through May 31 for which obligations are assumed and payments are made in the Forward Capacity Market." Tariff § I.2.2 (54.0.0).

<sup>4</sup> A Static De-List Bid is a bid that may be submitted by an Existing Generating Capacity Resource, Existing Import Capacity Resource, or Existing Demand Resource in the Forward Capacity Auction to remove itself from the capacity market for a one year period. Tariff § I.2.2. *See also* Tariff § III.13.1.2.3.1.1.

<sup>5</sup> A Permanent De-list Bid is a bid that may be submitted by an Existing Generating Capacity Resource, Existing Import Capacity Resource, or Existing Demand Resource in the Forward Capacity Auction to permanently remove itself from the capacity market. Tariff § I.2.2. *See also* Tariff § III.13.1.2.3.1.2.

<sup>6</sup> A Non-Price Retirement Request is a binding request to retire the entire capacity of a Generating Capacity Resource. Tariff § I.2.2. *See also* Tariff § III.13.1.2.3.1.5.

<sup>7</sup> A Dynamic De-List Bid is a bid that may be submitted by Existing Generating Capacity Resources, Existing Import Capacity Resources, and Existing Demand Resources in the Forward Capacity Auction at or below the Dynamic De-List Bid Threshold. Tariff § I.2.2. *See also*, Tariff § III.13.2.3.2(d).

*pro rata* share of its Capacity Supply Obligation receives additional revenue, while a resource that produces less than its *pro rata* share faces a reduction in its net capacity revenue.<sup>8</sup> As part of the two-settlement capacity market design, ISO-NE made changes to the information resources must submit with de-list bids. Consequently, de-list bids now include four separate components: (1) net going-forward costs, (2) expected Capacity Performance Payments,<sup>9</sup> (3) a risk premium, and (4) opportunity costs. If the IMM determines that the bid is consistent with the resource's costs, the bid is entered into the auction. The IMM may only mitigate the de-list bids of those resources associated with a Lead Market Participant<sup>10</sup> that is found to be pivotal<sup>11</sup> and that are above the Dynamic De-List Bid Threshold. This threshold was raised from \$1.00/kW-month to \$3.94/kW-month as part of the two-settlement capacity market design and used in FCA 9.

5. The IMM also reviews requests by new resources to submit offers below the applicable Offer Review Trigger Price<sup>12</sup> to determine if the offer is consistent with the IMM's capacity price estimate. This review protects against the exercise of buyer-side market power that could inappropriately suppress capacity prices.

6. On September 16, 2014, following completion of the eighth FCA (FCA 8), the Commission issued an Order to Show Cause finding that ISO-NE's limited review of import resources' offers and existing market mitigation provisions may not protect

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<sup>8</sup> *ISO New England Inc. and New England Power Pool*, 147 FERC ¶ 61,172 (2014).

<sup>9</sup> McDonald/Laurita Testimony at 10 (citing Tariff § III.13.1.2.3.2). ISO-NE is the sole sponsor of this testimony.

<sup>10</sup> For purposes of the FCM, the Lead Market Participant is the entity designated to participate in that market on behalf of an Existing Capacity Resource or a New Capacity Resource. Tariff § I.2.2.

<sup>11</sup> A Lead Market Participant will be considered pivotal if any of the capacity from the existing resources controlled by that Lead Market Participant is needed to satisfy the capacity requirements either system-wide or in an import-constrained Capacity Zone. *See* Tariff § III.13.1.2.3.2.

<sup>12</sup> "For each new technology type, the [IMM] shall establish an Offer Review Trigger Price. Offers in the [FCA] at prices that are equal to or above the relevant Offer Review Trigger Price will not be subject to further review by the [IMM]." Tariff § III.A.21.1.

customers against unjust and unreasonable prices for capacity.<sup>13</sup> Although the Commission previously had determined that most imports should be treated like existing internal resources for mitigation purposes,<sup>14</sup> the then-existing Tariff did not review whether importers' removal of capacity from the FCA was consistent with their net risk-adjusted going-forward and opportunity costs, as it does with regard to other existing capacity supply resources. Accordingly, the Commission directed ISO-NE to either submit revisions that provide for review and potential mitigation of importers' offers in a manner similar to the manner in which it reviews and mitigates existing capacity supply resources, or show cause why it should not be required to do so.<sup>15</sup> ISO-NE subsequently proposed Tariff revisions that would apply mitigation to pivotal New Import Capacity Resources in a manner consistent with the mitigation applied to existing capacity supply resources. By order issued December 15, 2014, the Commission conditionally accepted these revisions effective October 17, 2014.<sup>16</sup>

## II. Summary of the Filing

7. As further detailed below, the Filing Parties propose four primary changes to the market monitoring rules related to the FCM: (1) increase the Dynamic De-List Bid Threshold from \$3.94 to \$5.50/kW-month; (2) limit the amount of flexibility capacity supply resources have to modify Static De-List Bids after submission and eliminate the option to replace a Static De-List Bid with a Non-Price Retirement Request in certain instances; (3) establish a single pivotal supplier test for both capacity imports and existing capacity supply resources; and (4) improve the rules governing the application of supplier-side and buyer-side market power mitigation to different types of capacity imports. The Filing Parties also propose a number of clean-up changes to remove obsolete terms and to correct incorrect cross-references and other errors in the Tariff.

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<sup>13</sup> *ISO New England Inc.*, 148 FERC ¶ 61,201, at P10 and P 12 (2014).

<sup>14</sup> *ISO New England Inc., et al.*, 135 FERC ¶ 61,902, at P 191 (2011) (“In light of the difficulty in determining the resource or resources that support imports, we conclude that it is reasonable to treat most imports like existing internal resources for mitigation purposes.”).

<sup>15</sup> *ISO New England Inc.*, 148 FERC ¶ 61,201 at P 10 and P 12.

<sup>16</sup> *ISO New England Inc.*, 149 FERC ¶ 61,227 (2014). On April 1, 2015, in Docket No. ER15-117-004, ISO-NE submitted Tariff revisions to comply with the condition contained in the December 15, 2014 order that would allow importers to submit up to five price-quantity pairs of supply offers in the FCA. The compliance filing was accepted on May 15, 2015, through a delegated letter order.

8. The proposed changes received 85.48 percent support in the NEPOOL Markets Committee and the NEPOOL Participants Committee voted to support the changes based on a show of hands. The Filing Parties request waiver of the Commission's 60-day notice requirements<sup>17</sup> to allow the proposed Tariff revisions to become effective on June 1, 2015, so that ISO-NE can implement the changes for the tenth FCA (FCA 10), which will be conducted in February 2016.

### **III. Notice of Filing and Responsive Pleadings**

9. Notice of the filing was published in the *Federal Register*, 80 Fed. Reg. 26,247, with interventions and protests due on or before May 22, 2015. Timely motions to intervene were filed by GDF Suez Energy Marketing North America, Inc.; Entergy Nuclear Power Marketing, LLC (Entergy); Consolidated Edison Solutions, Inc. and Consolidated Edison Energy, Inc.; PSEG Companies;<sup>18</sup> NRG Companies;<sup>19</sup> Electric Power Supply Association; Northeast Utilities Service Company d/b/a Eversource Energy Service Company; Dominion Resources Services, Inc.;<sup>20</sup> Emera Energy Services, Inc.; and NextEra Energy Resources, LLC (NextEra). In addition, NextEra, NRG Companies, and PSEG Companies (Joint Companies) jointly filed a protest. Brookfield Energy Marketing LP (Brookfield); Champlain VT, L.L.C. d/b/a TDI New England (TDI New England); and New England Power Generators Association, Inc. (NEPGA) filed motions to intervene and protest. Entergy submitted comments in support and limited protest. New England States Committee on Electricity (NESCOE) filed a motion to intervene and comments in support of the proposed rule changes as incremental improvements in the FCM mitigation regime. NEPOOL also submitted comments agreeing with the Filing Parties' arguments in support of the changes. Calpine Corporation and Exelon Corporation filed motions to intervene out-of-time. ISO-NE and NEPOOL filed answers to the protests. TDI New England filed an answer to ISO-NE's answer.

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<sup>17</sup> 18 C.F.R. § 35.11 (2014).

<sup>18</sup> PSEG Companies is comprised of PSEG Power LLC, PSEG Energy Resources & Trade LLC, and PSEG Power Connecticut LLC.

<sup>19</sup> NRG Companies is comprised of NRG Power Marketing LLC and GenOn Energy Management, LLC.

<sup>20</sup> Dominion Resources Services, Inc. moved to intervene on behalf of Dominion Energy Marketing, Inc., Dominion Energy Manchester Street, Inc., and Dominion Nuclear Connecticut, Inc.

#### **IV. Discussion**

##### **A. Procedural Matters**

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d), the Commission grants Calpine's and Exelon's late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 185.213(a)(2) (2014), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We accept ISO-NE's and NEPOOL's answers to the protests, because they have provided information that assisted us in our decision-making process. However, we are not persuaded to accept TDI New England's answer to answer and will, therefore, reject it.

##### **B. Substantive Matters**

12. We accept in part and reject in part the proposed Tariff changes, with the accepted revisions to become effective June 1, 2015, as requested, and direct ISO-NE to submit a compliance filing. Specific aspects of the filing and relevant comments and protests are discussed by issue below.

#### **1. Static De-List Bid Flexibility**

##### **a. Filing Parties' Proposal**

13. As explained above, a Static De-List Bid is the price below which an existing resource will exit the market and will not have a Capacity Supply Obligation for the applicable Capacity Commitment Period. The Filing Parties state that Static De-List Bids are established through a multi-month process before an FCA is held, beginning with submissions in June of the year prior to the auction. The Filing Parties explain that capacity suppliers must submit detailed, resource-specific information to support their Static De-List Bids, including information about expected energy market revenues, capital investments, fixed and variable operation and maintenance costs, risk premiums, and opportunity costs. Following the submission of Static De-List Bids in June, the Filing Parties state, the IMM reviews each bid to assess whether it is supported by reasonable cost expectations in order to prevent the capacity supplier from potentially exercising market power through economic withholding. The Filing Parties explain that currently, after the four month IMM review and consultation period, the IMM sends a Qualification Determination Notification where it either accepts or rejects each submitted

de-list bid. If the IMM rejects a resource's bid, that bid is mitigated by replacing the supplier's original bid with an IMM-determined value.<sup>21</sup>

14. The Filing Parties explain that the current rules allow capacity suppliers to make significant changes to their Static De-List Bids during the seven days after receiving the IMM's determination; suppliers may either lower or completely withdraw their Static De-List Bids during the post-review modification process, regardless of whether the IMM has accepted or rejected their original bid.<sup>22</sup>

15. The Filing Parties assert that the flexibility to "fine tune" de-list bids during the post-review modification process was intended to allow suppliers to reflect new, unanticipated information into their bids before the bids are finalized.<sup>23</sup> However, the Filing Parties explain, during the last two capacity auctions (FCA 8 and FCA 9), the vast majority of Static De-List Bids were either substantially reduced or withdrawn completely during the post-review modification process, and suppliers did not identify any new or unanticipated information that prompted their actions.<sup>24</sup> According to ISO-NE, a Market Participant can approach the Static De-List Bid process as a risk-free price exploration exercise, rather than a fact finding mission for purposes of discovering competitive reference prices such that the IMM can effectively mitigate the exercise of market power.<sup>25</sup>

16. The Filing Parties assert that, based on the IMM's experience, the flexibility afforded to suppliers during the post-review modification process gives capacity suppliers the incentive to submit initial de-list bids in excess of their expected going-forward costs and allows capacity suppliers to use the IMM review process to explore whether the IMM

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<sup>21</sup> Transmittal at 8.

<sup>22</sup> The post-review modification process follows the June-September IMM review period. McDonald/Laurita Testimony at 16-18. In FCA 10, the post-review modification process (finalization window) will be September 26, 2015 to October 2, 2015. *See* Tariff § III.13.1.2.3.2.1.1.2.

<sup>23</sup> Transmittal at 8-9; McDonald/Laurita Testimony at 18.

<sup>24</sup> Transmittal at 9. If a capacity supplier withdraws its Static De-List Bid it must accept any FCA price that clears above the Dynamic De-List Bid Threshold. Such a resource is permitted to exit the FCA if the price falls below the Dynamic De-List Bid Threshold. *See* McDonald/Laurita Testimony at 19-20.

<sup>25</sup> McDonald/Laurita Testimony at 23.

will allow de-list bids at prices that substantially exceed their costs.<sup>26</sup> Thus, the Filing Parties propose three changes to the Static De-List Bid rules. First, the Filing Parties propose to only allow capacity suppliers to lower their bids by up to \$1.00/kW-month.<sup>27</sup> Second, the Filing Parties propose to prohibit a supplier from withdrawing its Static De-List Bid if the originally-submitted bid or the IMM-determined price is more than \$0.999/kW-month greater than the Dynamic De-List Bid Threshold.<sup>28</sup> The Filing Parties state that, depending on whether a supplier is deemed pivotal before the auction, either the supplier's de-list bid or the IMM-determined bid will be used.<sup>29</sup> Third, the Filing Parties propose that if the IMM has established an IMM-determined Static De-List Bid price for a resource, the bid may be converted to a Non-Price Retirement Request.<sup>30</sup> However, Filing Parties propose that a Non-Price Retirement Request may not be submitted for any portion of a Static De-List Bid for which an IMM-determined price has not been established.<sup>31</sup>

17. With regard to the proposed changes relating to Non-Price Retirement Requests, the McDonald/Laurita Testimony maintains that if a resource does not retain a Capacity Supply Obligation through a Static De-List Bid in a particular FCA, it may continue to earn economic gains by remaining active in ISO-NE's energy and ancillary services markets as well as future capacity auctions.<sup>32</sup> The McDonald/Laurita Testimony argues that if a capacity supplier submits a Static De-List Bid, the market participant is indicating that the resource is not at the end of its economic life and therefore, in the absence of mitigation, that resource should not be permitted to submit a Non-Price Retirement Request.<sup>33</sup>

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<sup>26</sup> Transmittal at 8-10.

<sup>27</sup> *Id.* at 9.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* n.20.

<sup>30</sup> *Id.* at 9.

<sup>31</sup> *Id.* at 9-10.

<sup>32</sup> McDonald/Laurita Testimony at 30.

<sup>33</sup> *Id.* at 31.

18. The Filing Parties state that the proposed rules for modifying Static De-list Bids preserve the opportunity for capacity suppliers to submit de-list bids that reflect their expected costs but also change the de-list bid submittal process to one where suppliers submit initial bids that reflect their cost expectations and limit post-review modifications to only changes that reflect new, unanticipated information.<sup>34</sup>

19. The Filing Parties contend the proposed changes to the Static De-List Bid modification process will allow the IMM to focus its review more closely on assessing whether such bids are based on reasonable cost expectations. The Filing Parties state that placing reasonable limits on Static De-List Bid modifications will remove the “risk-free” opportunity to submit inflated bids under the current process and restore the original intent that the post-review adjustment process would be used to reflect new, unanticipated information before the de-list bids are finalized.

**b. Protests**

20. Several protestors<sup>35</sup> oppose the proposal to limit the amount by which a resource can lower its Static De-List Bid during the post-review modification process, stating that the change would have the perverse effect of requiring existing resources to offer a higher initial de-list bid than they would be willing to accept. For example, NEPGA argues that restricting a resource from lowering its Static De-List Bid below the \$1.00/kW-month threshold will mitigate competitive offers. NEPGA explains that the proposed rules ignore a resource’s willingness to assume a Capacity Supply Obligation at a lower price, effectively mitigating the Static De-List Bid to a higher level and creating a less efficient market. According to NEPGA, this mitigation would occur even in cases where the IMM has made no finding that the suppliers are pivotal.<sup>36</sup> Brookfield claims that, if adopted, the proposal to limit post-review de-list bid modifications would create market inefficiencies and result in consumers purchasing capacity at a price above the level at which suppliers may be willing to sell that capacity.<sup>37</sup>

21. Joint Companies contend that the current Static De-List Bid review and qualification process was designed to protect against market power abuse and was never

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<sup>34</sup> Transmittal at 10.

<sup>35</sup> Joint Companies at 2-4, NEPGA Protest at 2, 7-8, Entergy Protest at 2 (adopting NEPGA Protest), and Brookfield Comments at 6-7.

<sup>36</sup> NEPGA at 2 and 8.

<sup>37</sup> Brookfield at 2.

intended to represent a precise estimate of the absolute lowest price that a resource would be willing to accept in order to assume a Capacity Supply Obligation.<sup>38</sup> Joint Companies state that the lowest price a capacity resource is willing to accept is a business decision that incorporates numerous qualitative and quantitative considerations outside the IMM's purview. Joint Companies argue that the IMM's review and qualification process establishes an upper bound on a capacity supplier's competitive offer; therefore, any offer below that level is necessarily a competitive offer that does not represent an attempt to exercise market power and thus should be allowed.<sup>39</sup>

22. Joint Companies argue that the IMM's concerns about capacity suppliers reducing or withdrawing their Static De-List Bids during the post-review modification period are unwarranted because market participants were uncertain about the two-settlement capacity market design during the last two capacity auctions (i.e., FCA 8 and FCA 9) and that de-list bid modifications made prior to those FCAs may be associated with market participants attempting to better understand the new market rules.<sup>40</sup> Furthermore, Joint Companies assert in testimony accompanying their protest that the IMM's concerns are unfounded because an exercise of market power involves an attempt to increase prices, whereas the de-list modifications observed in FCA 8 and FCA 9 demonstrated that suppliers actually lowered their bids.<sup>41</sup> Joint Companies also argue that ISO-NE's proposal to limit post-modification review will decrease the extent and intensity of competition in the FCA because the proposed rules eliminate existing resources' ability to update their bids with the latest cost information and react to competitive pressures when finalizing their bids.<sup>42</sup>

**c. Answers**

23. In its answer, ISO-NE states that, in a forward market, there is always a point when bids must be finalized and may not be adjusted (up or down) even though circumstances may change prior to the clearing of the market. In addition, ISO-NE states, the market rules allow for the use of a risk premium to explicitly reflect changes to capacity suppliers' expectations. Therefore, ISO-NE argues, in the context of a forward

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<sup>38</sup> Joint Companies at 5-6.

<sup>39</sup> *Id.* at 6-7.

<sup>40</sup> *Id.* at 7.

<sup>41</sup> Montalvo Testimony at 9-10.

<sup>42</sup> Joint Companies at 8.

market in which bids are submitted well in advance of the delivery period, the proposed limits on modifying or withdrawing the initial bid submissions are reasonable.<sup>43</sup>

**d. Commission Determination**

24. We reject the proposed changes to the Static De-List Bid rules. We find it is inconsistent with competitive market principles to prevent a capacity supplier without buyer-side market power from lowering its offer in the FCA or from withdrawing its Static De-List Bid during the post-review modification period, both actions that would tend to reduce FCA clearing prices. After a seller first submits a Static De-List Bid, it may conclude based on additional information that its costs are lower than its originally-submitted de-list bid. It would promote a competitive and efficient selection of capacity resources to allow the seller to adjust its de-list bid to reflect these lower costs. Conversely, preventing the seller from adjusting its bid could cause the seller to inefficiently exit the auction before more costly resources, thereby resulting in a mix of capacity resources that is not least cost, and in capacity prices that are unnecessarily high.

25. The Commission recognizes that the Filing Parties and the IMM are concerned about capacity suppliers using the Static De-List Bid review process as a price exploration exercise to ascertain whether the IMM may allow inflated bids. However, we are not convinced that the concerns the Filing Parties and the IMM raise warrant the changes proposed to the Static De-List Bid rules, or that these concerns outweigh the resulting potential market inefficiencies associated with preventing a seller whose estimate of its costs has gone down over time from lowering its de-list bid.

26. Static De-List Bids must be submitted in June, seven months ahead of the FCA and approximately four years ahead of the Capacity Commitment Period. Thus, some capacity suppliers may face uncertainty about many variables that affect their costs ahead of participation in the FCA (e.g. change in capital, equipment status, operating costs, energy and ancillary market revenues, environmental regulations, etc.). However, as time passes, these uncertainties are reduced and a rational market participant may be willing to lower its Static De-List Bid during the post-review modification period.

27. While we recognize, as ISO-NE suggests, that there comes a time when bids must be finalized, we believe that, given the significant time between the Static De-List Bid submission deadline and the Capacity Commitment Period, it would not be reasonable to preclude additional downward Static De-List Bid adjustments following the IMM review process, absent sufficient evidence, which does not exist on the record here, that the

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<sup>43</sup> ISO-NE Answer at 3-5.

practice is causing harm to market competitiveness. This is particularly true since capacity suppliers are only permitted to lower, not increase, their Static De-List Bids.<sup>44</sup>

28. Accordingly, we reject the proposal to limit the capacity supplier to Static De-List Bid reductions of at most \$1.00/kW-month during the post-review modification period. For the same reasons, we reject the proposal to prevent capacity suppliers from withdrawing Static De-List Bids if the originally-submitted bid or the IMM-determined bid is more than \$0.999/kW-month greater than the Dynamic De-List Bid Threshold. The Commission finds that both proposals unjustly and unreasonably inhibit competitive behavior.

29. In addition, we reject the Filing Parties' proposal to restrict the ability of some capacity suppliers to submit Non-Price Retirement Requests by allowing only capacity suppliers that submitted a Static De-List Bid that was mitigated by the IMM to submit a Non-Price Retirement Request. A Non-Price Retirement Request permanently removes the resource from ISO-NE's energy and capacity markets.<sup>45</sup> Currently, capacity resources may submit Non-Price Retirement Requests for any resource prior to the deadline for such requests, which is no later than 120 days prior to the start of the FCA.<sup>46</sup>

30. We disagree with the Filing Parties' contention that a capacity supplier that submits a Static De-List Bid to ISO-NE in June of the year prior to the FCA necessarily indicates that its resource is not at the end of its economic life four months later. ISO-NE's argument fails to consider instances where a capacity supplier's going-forward costs change during the four month period between the time it submits a Static De-List Bid and the end of the IMM's review process in a way that materially changes that supplier's retirement decision. Further, this information may not be available to the IMM, which makes basing the ability to submit a Non-Price Retirement Decision on whether or not the IMM mitigates the supplier's Static De-List Bid problematic. The Commission notes that the existing rules still require a capacity supplier to submit Non-Price Retirement Requests no later than 120 days prior to the start of the FCA, so the resource may not withdraw its supply during the FCA.

31. The Commission finds that the proposed Static De-List Bid rule changes have not been shown to be just and reasonable. Provided that the resource submits a Non-Price Retirement Request before the deadline for such a request, the Commission finds no basis

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<sup>44</sup> See Montalvo Testimony at 6-8.

<sup>45</sup> McDonald/Laurita Testimony at 30.

<sup>46</sup> *Id.* at 29.

for precluding a supplier from making this decision during the Static De-List Bid finalization process. Therefore, we direct ISO-NE to submit Tariff revisions removing the changes to the Static De-List Bid rules proposed here within 30 days of the date of this order.

## 2. Dynamic De-List Bid Threshold

### a. Filing Parties' Proposal

32. The Filing Parties propose raising the Dynamic De-List Bid Threshold from \$3.94/kW-month to \$5.50/kW-month. According to the Filing Parties, this increase is intended to avoid having the IMM review de-list bid information at prices that already are low enough to ensure that there will be adequate competition in the market, so that the exercise of market power is not a concern. The Filing Parties state that the Tariff requires the IMM to recalculate the Dynamic De-List Bid Threshold as cost and market conditions change and, at a minimum, no less than every three years.<sup>47</sup>

33. The Filing Parties explain that the Dynamic De-List Bid Threshold is intended to establish a price threshold below which de-list bids may be submitted during the running of an FCA without any prior or contemporaneous review by the IMM.<sup>48</sup> As explained in the McDonald/Laurita Testimony, when establishing the existing \$3.94/kW-month threshold for FCA 9, the IMM determined that an older, oil-fired steam generator is most likely to be marginal and set the auction clearing price because such units are likely to be the higher-cost existing resources and thus more likely to exit the auction before other resource types.<sup>49</sup> Thus, the IMM established the Dynamic De-List Bid Threshold for FCA 9 by estimating the competitive bid for an oil-fired steam generator based on historical performance data and expectations of future conditions and performance under the two-settlement capacity market design.<sup>50</sup> The IMM states that suppliers with other existing resources that submit bids below the price of the likely marginal resource, the characteristic oil-fired unit, are not likely to have an impact on the auction clearing price.

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<sup>47</sup> Transmittal at 2, 7.

<sup>48</sup> *Id.* at 6.

<sup>49</sup> McDonald/Laurita Testimony at 5.

<sup>50</sup> *Id.* at 5-8.

Therefore, according to the IMM, applying mitigation to these lower-price bids would be unnecessary.<sup>51</sup>

34. The Filing Parties explain that the proposed \$5.50/kW-month threshold is based on an updated assessment of a competitively-priced bid for the type of resource that is likely to be marginal in an auction in which there is more existing capacity than needed to meet the Installed Capacity Requirement.<sup>52</sup> To establish the proposed \$5.50/kW-month threshold, the McDonald/Laurita Testimony explains that the IMM used actual IMM-approved Static De-List Bids from 30 oil and dual fuel steam and combustion turbine generators submitted in the most recent FCA (i.e., FCA 9) (hereafter, the “reference bids”).<sup>53</sup> Specifically, the McDonald/Laurita Testimony states that the proposed \$5.50/kW-month threshold reflects the averages of the IMM-reviewed and disaggregated bid cost components for the reference bids, which for the first time reflect the cost and risk assumptions associated with the two-settlement capacity market design.

**b. Protests and Comments**

35. NEPOOL and NESCOE support raising the Dynamic De-List Bid Threshold. NESCOE explains that, with the benefit of reviewing actual offers from FCA 9, the IMM has identified that the Dynamic De-List Bid Threshold would need to be further updated and the IMM’s increased threshold appears to be responsive to current market conditions.<sup>54</sup>

36. Entergy fully supports the proposed \$5.50/kW-month Dynamic De-List Bid Threshold, stating that a threshold any lower clearly would be unjust and unreasonable.<sup>55</sup> Joint Companies support the proposal to raise the Dynamic De-List Bid Threshold, but argue that it should be based on the higher end of the range of data used by the IMM to determine the threshold.<sup>56</sup> Joint Companies argue that using the average value proposed by the Filing Parties sets the Dynamic De-List Bid Threshold too low and fails to

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<sup>51</sup> *Id.* at 4-5.

<sup>52</sup> Transmittal at 7.

<sup>53</sup> McDonald/Laurita Testimony at 11.

<sup>54</sup> NESCOE at 3-5.

<sup>55</sup> Entergy at 4.

<sup>56</sup> Joint Companies at 20; Montalvo Testimony at 15-19.

recognize that offers at the high end of the range of the data analyzed by the IMM were found to be competitive and were the actual marginal offers in FCA 9. According to Joint Companies, the Filing Parties' proposed methodology undermines economic efficiency and increases the administrative burden on both market participants and the IMM because it requires them to develop, submit, and review Static De-List Bids for FCA 10 that the IMM deemed competitive in FCA 9.<sup>57</sup> The Joint Companies maintain that the Dynamic De-List Bid Threshold should represent a price level above which it is deemed improbable that a participant would choose to competitively exit the market and needs to be, minimally, the highest observed competitive offer from the population of resources most likely to exit.<sup>58</sup>

**c. Answers**

37. In its answer, ISO-NE states that the proposed Dynamic De-List Bid Threshold is "well within the zone of reasonableness" and, while there may be different threshold values that also could be reasonable, the proposed value is reasonable and the Commission need not consider alternatives.<sup>59</sup> ISO-NE states that the threshold's primary purpose is to determine which de-list bids will be subject to additional scrutiny and it does not prevent capacity suppliers from having properly supported de-list bids that exceed the threshold.<sup>60</sup>

38. In its answer, NEPOOL states that, while there was much discussion during the stakeholder process on the appropriate threshold level, no amendment was presented to modify the IMM-proposed threshold. NEPOOL further states that, while there could be other reasonable threshold levels, at this time, NEPOOL fully supports the proposed threshold of \$5.50/kW-month.<sup>61</sup>

**d. Commission Determination**

39. We accept the proposal to raise the Dynamic De-List Bid Threshold to \$5.50/kW-month for the reasons discussed below.

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<sup>57</sup> Joint Companies at 17-18; Montalvo Testimony at 17-18.

<sup>58</sup> Joint Companies at 19-20.

<sup>59</sup> ISO-NE Answer at 6.

<sup>60</sup> *Id.*

<sup>61</sup> NEPOOL Answer at 9-10.

40. We find that the Filing Parties' proposal to use actual IMM-approved Static De-List Bids submitted in FCA 9 as the basis for determining the Dynamic De-List Bid Threshold is an improvement to the current process which, while based on historical data, does not include actual Static De-List Bids. Using actual IMM-accepted Static De-List Bids is just and reasonable because the capacity suppliers themselves are in the best position to calculate their own going-forward costs and the perceived risks and benefits associated with participating in the FCA. Further, the IMM previously reviewed these particular bids and determined that they were reasonable reflections of resource costs; therefore we are satisfied that they represent an acceptable dataset for determining the Dynamic De-List Bid Threshold.<sup>62</sup> In addition, we find that the Filing Parties' proposed methodology for determining the Dynamic De-List Bid Threshold is consistent with the methodology that the Commission previously approved.<sup>63</sup>

41. We disagree with arguments that the Dynamic De-List Bid Threshold should be based on the higher end of the data range and find that it is reasonable for the IMM to estimate the Dynamic De-List Bid Threshold based on an average value in a range of data. Although a Dynamic De-List Bid Threshold could be based on a higher range, we accept ISO-NE's more conservative proposal to use the average. We find that the use of current bids in the most recent auction for which the two-settlement capacity market design was in effect is a better basis for defining the default value than the use of historic data from a time when the two-settlement capacity market design was not in effect. The dispute is only over how these current data should be used to update the default de-list bid. ISO-NE's proposal will result in a lower Dynamic De-List Bid Threshold and thus require that the IMM review a larger number of bids than if the default value were based on a higher range. We find this conservative approach prudent during the transition period when parties are gaining experience with the new market design. Therefore, we accept the Filing Parties' proposal to use average values rather than the upper end in the range of data.

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<sup>62</sup> McDonald/Laurita Testimony at 10-11.

<sup>63</sup> As discussed above, the IMM explains that it used an approach that was intended to set the Dynamic De-List Bid Threshold at the competitive bid of the likely marginal unit, similar to that produced for FCA 9, updated to take advantage of the bid data received from existing generators in the FCA 9 qualification process. *See* McDonald/Laurita Testimony at 8.

### 3. Pivotal Supplier Test

#### a. Filing Parties' Proposal

42. The Filing Parties propose to combine the pivotal supplier test for existing resources and the pivotal supplier test for new import capacity resources, currently two separate tests, into a single test. The Filing Parties state that the current use of separate tests was based mainly on ISO-NE's need to implement the rules for new import capacity resources on an expedited schedule in response to the Commission's Show Cause order.<sup>64</sup> The Filing Parties explain that, with the benefit of additional time, they have concluded that the two tests should be combined.<sup>65</sup>

43. The Filing Parties state that the combined test will produce a more accurate assessment of the existing capacity that a given capacity supplier controls because the new combined test will determine a supplier's overall capacity portfolio by including the capacity of its existing capacity resources as well as any new import capacity resources that function like existing resources.<sup>66</sup> The Filing Parties explain that if a resource's capacity is required to meet system or zonal capacity needs, then that resource is considered to be a pivotal supplier. The Filing Parties state the IMM has identified two primary benefits of the combined test: (1) it provides a more accurate reflection of the available capacity in New England and a more accurate identification of suppliers with market power by considering both existing resources and capacity imports that function like existing resources as being part of the available capacity to meet demand, and (2) the expanded consideration of both internal and external interface limits provides a more accurate assessment of whether particular resources are able to satisfy system or zonal requirements.<sup>67</sup>

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<sup>64</sup> *ISO New England Inc.*, 148 FERC ¶ 61,201. *See also ISO New England Inc.*, 149 FERC ¶ 61,227.

<sup>65</sup> Transmittal at 10-11.

<sup>66</sup> *Id.* at 10. ISO-NE's terminology includes a group of resources called "new import capacity resources which function like existing resources." These resources are external to New England, but are backed by existing capacity in a neighboring control area or use existing transmission capability to import the capacity into New England. These resources are subject to rules to mitigate the potential exercise of supplier-side market power. McDonald/Hodgdon Testimony at 11. The McDonald/Hodgdon Testimony is solely sponsored by ISO-NE.

<sup>67</sup> Transmittal at 10-11.

44. The Filing Parties state that the proposed rules reflect other improvements to the pivotal supplier test process. First, the Filing Parties explain that the timing of the test is being moved closer to the FCA in order to allow for the use of updated zonal and system configurations as well as any late retirements.<sup>68</sup> Second, the Filing Parties state that the rules adopt a definition of “control” that is more closely aligned with the definition used by the Commission for its triennial market power analyses.<sup>69</sup>

**b. Protests**

45. Protestors<sup>70</sup> argue that the pivotal supplier test revisions fail to account for all competitive supply offers in the FCA by excluding new capacity resources and thus fail to represent the actual competitive conditions that dictate whether the opportunity for undue market power exists.<sup>71</sup> Brookfield argues that the exclusion is likely to result in the over-mitigation of existing resources because it decreases the supply available to competitively meet demand.<sup>72</sup> Joint Companies argue that the market should include new resources that have qualified to participate in the relevant FCA, passed the overlapping impact test for full deliverability, and posted financial assurance in support of any Capacity Supply Obligation they might obtain in the auction.<sup>73</sup> Protestors request that the Commission direct ISO-NE to return to the stakeholder process to revise the pivotal supplier test to account for the availability of new resources that have qualified to participate in the auction.<sup>74</sup> Entergy requests that the Commission order ISO-NE to file

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<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 11. The Filing Parties state that the new definition of control under the pivotal supplier test is consistent with the guiding principle concerning “control” that the Commission enunciated in Order No. 697. Proposed Tariff § III.A.23.4 states: “For purposes of determining the FCA Qualified Capacity of a supplier or its Affiliates under Section III.A.23.4, ‘control’ or ‘controlled’ means the possession, directly or indirectly, of the authority to direct the decision-making regarding how capacity is offered into the Forward Capacity Market, and includes control by contract with unaffiliated third parties.”

<sup>70</sup> Joint Companies at 12-15, NEPGA at 3-7, Entergy at 4-5, and Brookfield at 4-6.

<sup>71</sup> Brookfield at 4.

<sup>72</sup> *Id.* 5.

<sup>73</sup> Joint Companies at 13.

<sup>74</sup> Joint Companies at 14, Entergy at 5, Brookfield at 6, NEPGA at 7.

Tariff changes no later than November 27, 2015, modifying the pivotal supplier test to count competitive New Capacity Resource offers in the FCA as supply, for effect in FCA 10.<sup>75</sup>

**c. Answers**

46. In its answer, ISO-NE states that including all new supply in the pivotal supplier test would undermine the significant improvements contained in the consolidated test and substantially reduce the accuracy of the test as a mechanism to guard against the exercise of market power.<sup>76</sup> ISO-NE argues that, while it may be reasonable to presume that some new capacity is being offered competitively and will not withdraw from the auction above competitive prices, it is critical to identify which new capacity satisfies these conditions in order to avoid weakening the test.<sup>77</sup> ISO-NE states it is not opposed to continuing stakeholder discussions on the issue and that the IMM is committed to further evaluating if new capacity can be accurately accounted for in the pivotal supplier test.

47. In its answer, NEPOOL reiterates that the proposed amendments to include new capacity in the pivotal supplier test failed to receive a passing vote in the Participants Committee.<sup>78</sup> NEPOOL further states that while the proposed amendments are not supported by NEPOOL at this time, there was agreement among some NEPOOL members and the IMM that continued evaluation of this issue is warranted and could benefit from Commission input and further deliberation in the NEPOOL stakeholder process.<sup>79</sup>

**d. Commission Determination**

48. We accept the Filing Parties' pivotal supplier test revisions.

49. ISO-NE's previously-approved pivotal supplier tests separately assessed whether a supplier's existing resources<sup>80</sup> or capacity imports<sup>81</sup> were required to meet either the

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<sup>75</sup> Entergy at 5.

<sup>76</sup> ISO-NE Answer at 6.

<sup>77</sup> *Id.* at 7.

<sup>78</sup> NEPOOL Answer at 8.

<sup>79</sup> *Id.* at 9.

<sup>80</sup> *ISO New England Inc. and New England Power Pool*, 147 FERC ¶ 61,172.

system capacity requirement or the requirement in an import-constrained zone. We find that the revised combined test is an improvement to the existing tests in that it more accurately assesses a given supplier's market power based on the supplier's entire portfolio of existing resources and capacity imports. Furthermore, moving the timing of the test closer to when the auction occurs will allow for more updated and accurate inputs into the test. We also find the Filing Parties' proposal to adopt a new definition of "control," which is more closely aligned with the definition of control used by the Commission for its triennial market power analyses, to be just and reasonable.

50. Protestors contend that the revised pivotal supplier test overstates the potential for the exercise of market power because it excludes supplies from new entry committed to participate in the FCA. ISO-NE concedes that it is reasonable to presume that some new capacity is being offered competitively.<sup>82</sup> However, ISO-NE argues that, in order to include new capacity and not weaken the test, it is critical to identify which new capacity is being offered competitively and will not withdraw from the auction above competitive prices.<sup>83</sup> We agree with ISO-NE's conservative approach and the need to ensure that new capacity is included as competitive supply with the proper provisions. While we accept the proposed changes here, we encourage ISO-NE, as it has committed, to utilize the stakeholder process to work through concerns and explore the incorporation of new capacity supply into the pivotal supplier test.

#### **4. New Import Capacity Resource Mitigation Rules**

##### **a. Filing Parties' Proposal**

51. According to the Filing Parties, the new import capacity resource mitigation revisions improve the rules governing the application of supplier-side and buyer-side market power mitigation to different types of capacity resources depending on whether those imports are more like existing or new resources.<sup>84</sup> The Filing Parties explain that the current rules generally refer to most types of capacity imports as New Import

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<sup>81</sup> *ISO New England Inc. and New England Power Pool*, 149 FERC ¶ 61,227.

<sup>82</sup> ISO-NE Answer at 7.

<sup>83</sup> *Id.*

<sup>84</sup> Transmittal at 12. The Filing Parties explain that, under the terminology of both the current and new rules, it is the "offer prices" of capacity imports that function like existing resources and that are subject to supplier-side market power mitigation. Transmittal at n. 36.

Capacity Resources; however, while some do function like new resources, the large majority of these resources function more like existing resources.<sup>85</sup> The Filing Parties state that the proposed rules better distinguish between the different types of external resources and result in existing and new resources located within New England being treated in a more comparable manner.<sup>86</sup>

52. The Filing Parties state that, under the new rules, New Import Capacity Resources that are comprised of existing resources, or use existing transmission capability, function like existing resources and would be treated in the same manner as existing resources located in New England.<sup>87</sup> Thus, the Filing Parties state, the proposed rules would subject these resources' offer prices to supplier-side, but not buyer-side, market power mitigation review by the IMM.<sup>88</sup> The Filing Parties explain that as with existing resources, it is possible for a supplier with an import that functions like an existing resource to exercise market power by removing the resource from the auction at a price that does not reflect its costs. Therefore, the Filing Parties state, it is important to evaluate the prices at which a new import that functions like an existing resource would be withdrawn from the auction and to subject the supplier to mitigation when it is in a position to exercise market power.<sup>89</sup>

53. The Filing Parties further explain that the proposed rules also treat New Import Capacity Resources that function like new resources in a manner consistent with other new resources. According to the Filing Parties, this category of resources includes imports that are (1) associated with an Elective Transmission Upgrade or (2) backed by a single new resource located outside the New England region and associated with a transmission investment that increases New England's import capability.<sup>90</sup> The Filing

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<sup>85</sup> Transmittal at 12 (citing *ISO New England Inc. and New England Power Pool Participants Committee, et al.*, 135 FERC ¶ 61,902 at P 191 and *ISO New England Inc.*, 148 FERC ¶ 61,201).

<sup>86</sup> Transmittal at 12.

<sup>87</sup> *Id.* at 12-13. The Filing Parties state these capacity imports function like existing resources because they use existing resource capability or existing transmission infrastructure and do not face the risks involved in financing and constructing a new resource or new transmission infrastructure.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at 13.

<sup>90</sup> *Id.*

Parties state that these types of capacity resources function like new resources because they involve significant investments in new infrastructure and face similar investment risks to those faced by new resources located within New England. Thus, the Filing Parties state, under the proposed rules, these resources will continue to be subject to buyer-side market power mitigation mechanisms to establish the price at which these resources must exit the auction.<sup>91</sup>

**b. Commission Determination**

54. We accept the proposed New Import Capacity Resource mitigation rules as discussed below. We note that no party opposed this aspect of the proposed Tariff revisions.

55. The proposed rules clarify how the IMM will apply supplier-side and buyer-side market power mitigation rules to different types of capacity imports based on whether these imports are more like existing or new resources, and provide for more comparable treatment of such resources than under the current rules. Thus, we find the proposed rule changes just and reasonable.

**5. Deadline for Submission of De-List Bids**

**a. Filing Parties' Proposal**

56. ISO-NE filed the proposed rule changes on May 1, 2015, and requested waiver of the Commission's 60-day notice requirements to allow the proposed Tariff revisions to become effective on June 1, 2015.

**b. Protests**

57. Several protestors note that Static De-List Bids and Permanent De-List Bids associated with the tenth FCA (FCA 10) were due to be submitted to the IMM by June 1, 2015, prior to the expected issuance of an order on the proposed rule changes. Given the uncertainty over whether the proposed or existing rules will apply, these parties<sup>92</sup> request that the Commission direct ISO-NE to extend the June 1, 2015 deadline to submit Static De-List Bids and Permanent De-List Bids in connection with FCA 10 by 2-3 weeks. NEPGA states that a market participant cannot make its most reasoned and competitive offer into the FCA if it does not know the market rules at the time it submits its de-list

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<sup>91</sup> *Id.* at 13-14.

<sup>92</sup> Joint Companies at 11-12, NEPGA at 9-10.

bids.<sup>93</sup> NEPGA asserts that if market participants face uncertainty about the market rules at the time of bidding, market efficiency will decrease.<sup>94</sup> NEPGA asks the Commission to postpone the deadline for existing resources to submit Static and Permanent De-List Bids, from June 1, 2015 to two weeks after the Commission issues an order in the instant proceeding.<sup>95</sup>

**c. Answers**

58. In its answer, ISO-NE argues that if a capacity supplier accurately reflected its estimated net risk-adjusted going-forward costs, then the changes to the Static De-List Bid flexibility provisions should not require an extended deadline.<sup>96</sup> ISO-NE states that it notified capacity suppliers that they will be permitted to submit Static De-List Bids below \$5.50/kW-month and, in the event that the Commission ultimately accepts the increase in the Dynamic De-List Bid Threshold, ISO-NE will administratively remove any Static De-List Bids lower than the threshold.<sup>97</sup>

59. In its answer, NEPOOL states that, although it fully supports the instant proposal, it does not oppose postponing the Static De-List Bid submission deadline because ISO-NE's market rules only require that Static-De-List Bids be submitted during the month of June (in the year prior to the FCA). As such, NEPOOL states that there is flexibility under the current rules to accommodate up to a four-week delay in submitting Static De-List Bids for IMM review.<sup>98</sup>

**d. Commission Determination**

60. While we are allowing the revisions accepted here to become effective June 1, 2015, we do not find it necessary to extend the June 1, 2015 submission deadline for Static De-List Bids because we are rejecting the revisions that would have limited Static De-List Bid flexibility. Thus, ISO-NE must maintain existing rules that permit existing

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<sup>93</sup> NEPGA at 9.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* at 10.

<sup>96</sup> ISO-NE Answer at 5-6.

<sup>97</sup> *Id.*

<sup>98</sup> NEPOOL Answer at 7.

supply resources to reduce or withdraw their respective Static De-List Bid during the post-review modification period, which for FCA 10 is September 26, 2015 to October 2, 2015.

**6. Competitive Exemption for Commercially Owned Resources**

**a. Protest**

61. TDI New England argues that the Filing Parties' proposed rules are not just and reasonable without a "competitive entry exemption" from the buyer-side market power mitigation rules for new commercial resources seeking to sell capacity into the FCA as an import. TDI New England requests that the Commission require ISO-NE to grant merchant imports funded solely by private investment such a "competitive entry exemption" from the FCA's buyer-side market power mitigation rules, similar to what the Commission approved in PJM<sup>99</sup> and NYISO.<sup>100</sup> TDI New England asserts that applying buyer-side market power mitigation to such merchant projects results in unnecessary mitigation and constitutes a harmful barrier to entry and that a competitive entry exemption will incentivize new capacity resources to participate in the FCA.<sup>101</sup>

**b. Answers**

62. In its answer, ISO-NE states that TDI New England's protest is outside the scope of the changes that ISO-NE is proposing. According to ISO-NE, TDI New England's protest does not raise any concern with the justness and reasonableness of the proposed rule changes, but rather requests the addition of a new exemption from mitigation to address an entirely separate set of concerns. ISO-NE states that the IMM is not opposed to considering a competitive entry exemption; however, that consideration requires evaluating an entirely different set of issues that are unrelated to those before the Commission in this proceeding.<sup>102</sup>

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<sup>99</sup> TDI New England at 4 (citing *PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090, at PP 26, 55-57, 166-168 (2013)).

<sup>100</sup> *Id.* at 5 (citing *Consolidated Edison Co. of New York, et al. v. NYISO*, 150 FERC ¶ 61,139 (2015)).

<sup>101</sup> *Id.* at 6-7.

<sup>102</sup> ISO-NE Answer at 9-12.

63. In its answer, NEPOOL states that it opposes TDI New England's requested relief for procedural reasons. According to NEPOOL, TDI New England did not offer or discuss its proposed changes among stakeholders, thus the Commission granting TDI New England's request would circumvent the Commission-approved participant processes for consideration of changes to the market rules. NEPOOL urges the Commission to reject the relief requested by TDI New England without prejudice.<sup>103</sup>

**c. Commission Determination**

64. TDI New England's arguments on the issue are beyond the scope of this proceeding. TDI-New England does not oppose the Filing Parties' proposal to apply buyer-side market power mitigation to New Import Capacity Resources that function as new resources. Instead, TDI New England requests that ISO-NE grant merchant imports funded solely by private investment a "competitive entry exemption" from these rules, which the Filing Parties have not proposed here. TDI New England may pursue its concerns in the stakeholder process.

**7. Clean-Up Changes**

65. The Filing Parties also propose a number of clean-up changes to remove obsolete terms and correct incorrect cross-references and other errors in the Tariff. The Commission accepts the unopposed conforming changes proposed to clean-up obsolete terms, incorrect cross-references, and other errors in the Tariff.

The Commission orders:

(A) The proposed Tariff revisions are hereby accepted, in part, and rejected, in part, with the accepted revisions effective June 1, 2015, as requested, as discussed in the body of this order.

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<sup>103</sup> NEPOOL Answer at 11-12.

(B) ISO-NE is hereby directed to submit a compliance filing within 30 days of the date of this order, removing from the Tariff the changes to the Static De-List Bid rules proposed here, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.