

155 FERC ¶ 61,029  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

ISO New England Inc.

Docket No. ER16-551-001

ORDER ACCEPTING TARIFF FILING, SUBJECT TO CONDITION

(Issued April 12, 2016)

1. On December 17, 2015, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> ISO New England Inc. (ISO-NE) submitted revisions to its Transmission, Markets, and Services Tariff (Tariff) that revise the Forward Capacity Market (FCM) rules to provide a means for capacity suppliers to price the potential retirement of existing resources and to address the potential exercise of market power associated with the retirement of existing resources. The Commission accepts the filing subject to condition, effective March 1, 2016, as requested.

**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.<sup>2</sup> The current auction process begins in February (approximately eleven months prior to the next auction) with submission of “Show of Interest” forms for new resources. Suppliers submitting certain de-list bids for existing resources must do so in June (approximately eight months prior to the auction). De-list bids specify a price below which a supplier does not wish to provide capacity from an existing resource; they may be in the form of either a Static De-List Bid (a one year exit from the capacity market) or a Permanent De-List Bid (a permanent exit from the capacity market). If a

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> See, e.g., ISO-NE Transmission, Markets and Services Tariff (ISO-NE Tariff) § I.2.2 (50.0.0).

capacity supplier would like to permanently retire an existing resource without regard to price, it may submit a Non-Price Retirement Request as late as 120 days prior to the auction (i.e., October). ISO-NE reviews whether a resource that submitted a Non-Price Retirement Request is required for reliability without considering the cost of the retiring resource; however, ISO-NE cannot require the continued operation of the resource, regardless of whether the unit is needed for reliability.

## **II. ISO-NE's Proposal**

3. ISO-NE proposes two sets of changes. The first set pertains to the timeline for submitting certain de-list bids; the second set pertains to retirement options and market power mitigation.

4. As to the first set, ISO-NE proposes to advance the deadline for submitting Permanent De-List Bids from June and October (respectively) to March in order to coincide with the deadline for pursuing resource retirement under the new proposed Retirement De-List Bid option, discussed below. The proposal will also move the Show of Interest deadline for new capacity market entrants from February to April. Thus, under ISO-NE's proposal, market participants will have to submit requests for retirement before, rather than after, the Show of Interest deadline.<sup>3</sup>

5. As to the second set, ISO-NE proposes market rules to mitigate market power that could potentially be exercised through premature retirement of an economic resource to increase capacity prices. ISO-NE explains that, over the past several years, New England's previous excess supply of capacity has effectively disappeared.<sup>4</sup> In such instances where capacity supply conditions are tight, a supplier could seek to retire an existing resource to reduce available supply and increase prices in order to benefit the remainder of that supplier's resource portfolio. Recently, both ISO-NE's Internal Market Monitor (IMM) and External Market Monitor (EMM) have identified the need to develop market rules to address the potential for a supplier to uneconomically retire a resource and raise capacity prices above competitive levels.<sup>5</sup> ISO-NE proposes a new Retirement

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<sup>3</sup> ISO-NE's proposed changes to the timing for retirement and FCA submissions is captured in a graphic illustration in its filed testimony. *See* ISO-NE Filing, Testimony of Mark Karl and Andrew Gillespie at 40.

<sup>4</sup> ISO-NE Filing at 7.

<sup>5</sup> *Id.* (citing David B. Patton *et al.*, Potomac Economics, 2013 Assessment of the ISO New England Electricity Markets (June 2014), [http://www.iso-ne.com/committees/comm\\_wkgrps/prtcpnts\\_comm/prtcpnts/mtrls/2014/jun2425262014/npc\\_2014062426\\_isone\\_2013\\_emm\\_report\\_final.pdf](http://www.iso-ne.com/committees/comm_wkgrps/prtcpnts_comm/prtcpnts/mtrls/2014/jun2425262014/npc_2014062426_isone_2013_emm_report_final.pdf)).

De-List Bid option that allows suppliers to price the retirement of an existing resource from all ISO-NE markets.

6. The proposed Retirement De-List Bid, which replaces the Non-Price Retirement Request, reflects the net present value of the resource using a discounted cash flow approach. According to ISO-NE, this approach incorporates the resource's remaining economic life, as well as operating and capital costs likely to be incurred for the resource to remain reliable and financially viable over its remaining economic life. ISO-NE also proposes to revise the Tariff to apply the discounted cash flow approach to the Permanent De-List Bid review process. ISO-NE's IMM, Dr. McDonald, explains that competitive Retirement Bids should typically be greater than that resource's Static De-List Bid, as it reflects the costs of maintaining operation over multiple years.<sup>6</sup> ISO-NE states that its proposed Retirement Bids (which term includes both Permanent De-List Bids and priced Retirement De-List Bids) will make it more likely that resources will retire as a result of an insufficiently high FCA clearing price, rather than following a non-priced administrative withdrawal, (i.e., being forced to make an irrevocable retirement decision on the basis of estimated capacity clearing prices).<sup>7</sup>

7. To address potential market power concerns associated with uneconomic retirements,<sup>8</sup> ISO-NE proposes that the IMM will review all proposed Retirement Bids. As with Static and Permanent De-List bids, the IMM will consult with the supplier on the reasonableness of its cost assumptions during the bid review process. Within 90 days of receiving a Retirement Bid, the IMM will issue a determination on the appropriateness of the proposed bid, and ISO-NE will file with the Commission either the supplier's original bid or a mitigated bid.<sup>9</sup> ISO-NE reasons that this process ultimately will result in a Commission-approved de-list bid price for use in the FCA.

8. Prior to submittal of ISO-NE's section 205 filing, the supplier may choose to take no further action, and ISO-NE will run the FCA with the bid filed with the Commission.

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<sup>6</sup> ISO-NE Filing, Testimony of Jeffery McDonald at 14 (McDonald Test.).

<sup>7</sup> In contrast to the market clearing solution, "administrative withdrawal" occurs under the current Tariff by means of the Non-Price Retirement Request and under the proposed revisions through "unconditional" retirement.

<sup>8</sup> According to ISO-NE, "uneconomic retirement" refers to the retirement of a capacity resource that would be expected to remain profitable if it were not retired.

<sup>9</sup> It is our understanding that ISO-NE will file the multiple bids in a single filing, as is currently the practice. See ISO-NE Tariff § III.13.8.1(c) (17.0.0).

If the IMM proposes to mitigate the bid and the supplier does not accept that price, the supplier may choose to retire unconditionally. This choice is similar to the Non-Price Retirement Request in the current Tariff, but under the Retirement Bid framework the IMM would run a Portfolio Benefits Test to see if the resource owner's portfolio, as a whole, benefits from the retirement.<sup>10</sup> If the retiring resource fails the test, i.e., if the portfolio would benefit financially from the retirement, ISO-NE would use the IMM's proposed mitigated price as a proxy bid for the retiring resource's capacity in the FCA.

9. Alternatively, a supplier may choose to retire conditionally, subject to the market clearing price. In this case, ISO-NE again would use the IMM's proposed mitigated price as a proxy bid in the FCA.<sup>11</sup> If the FCA clearing price is below both the IMM's proxy bid and the supplier's bid, the supplier retires without a Capacity Supply Obligation. If the FCA clearing price is above both the IMM's proxy bid and the supplier's bid, the supplier assumes a Capacity Supply Obligation. However, if the FCA clearing price falls between the IMM-determined proxy bid and the supplier's bid, the supplier will still retire without a Capacity Supply Obligation and the clearing engine will be re-run to dispense with the proxy's Capacity Supply Obligation. Specifically, the proxy supply will be removed from the supply stack, and the market will be re-cleared against the same demand curve. If, in this second round, incremental capacity clears, only resources receiving new Capacity Supply Obligations will receive the new market clearing price. All other resources that cleared in the first round will receive the clearing price set by the first-round market clearing run. This same re-clearing process will also occur for unconditional retirements in instances where the IMM determines that a proxy bid is necessary.

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

10. Notice of ISO-NE's December 17, 2015 filing was published in the *Federal Register*, 80 Fed. Reg. 80,352 (2015), with protests and interventions due on or before

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<sup>10</sup> Specifically, the proposed Portfolio Benefits Test compares the estimated revenue that a capacity supplier would earn with and without the capacity of the retiring resource. If a supplier's expected revenue without the capacity of the retiring resource is greater than its expected revenues with the capacity of the retiring resource, the supplier is determined to have a portfolio benefit. ISO-NE Tariff § III.A.24 (44.0.0).

<sup>11</sup> As proposed, the IMM will not conduct a Portfolio Benefits Test for a resource that chooses to conditionally retire. The IMM will propose a proxy bid in all instances where a supplier chooses to conditionally retire.

January 7, 2016. The comment period deadline was subsequently extended to and including January 11, 2016.<sup>12</sup>

11. The following parties submitted timely motions to intervene: New England Power Generators Association (NEPGA) (as corrected on January 5, 2016); Exelon Corporation; PSEG Companies;<sup>13</sup> Calpine Corporation; New England States Committee on Electricity (NESCOE); New England Power Pool Participants Committee (NEPOOL); Entergy Nuclear Power Marketing, LLC; Consolidated Edison Energy, Inc.; Public Citizen, Inc.; Eversource Energy Service Company (Eversource); Emera Energy Services Inc.; NextEra Energy Resources, LLC; GDF SUEZ Energy Marketing North America, Inc.; NRG Power Marketing LLC and GenOn Energy Management, LLC (together, NRG Companies); Public Systems;<sup>14</sup> TransCanada Power Marketing Ltd.; and National Grid.

12. NEPOOL submitted comments discussing the stakeholder process involving ISO-NE's proposal, and NESCOE submitted comments supporting the proposal. NEPGA, GEN Group,<sup>15</sup> NRG Companies, and PSEG Companies submitted timely protests. Dominion Resources Services, Inc. (Dominion) submitted a timely motion to intervene and protest.

13. On January 27, 2016, ISO-NE and Eversource submitted answers to the protests.

14. On February 2, 2016, Potomac Economics, Ltd. (Potomac Economics), the EMM, submitted an out-of-time motion to intervene and comments in support.

15. On February 5, 2016, GEN Group, NRG Companies, Dominion, and NEPGA submitted answers.

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<sup>12</sup> Notice of Extension of Time, Docket No. ER16-551-000 (issued Dec. 21, 2015).

<sup>13</sup> For this filing, PSEG Companies include: PSEG Power LLC, PSEG Energy Resources & Trade LLC, and PSEG Power Connecticut LLC.

<sup>14</sup> For this filing, Public Systems include: Connecticut Municipal Electric Energy Cooperative; Massachusetts Municipal Wholesale Electric Company; New Hampshire Electric Cooperative, Inc.; and Vermont Public Power Supply Authority.

<sup>15</sup> For this filing, GEN Group includes: GDF SUEZ Energy Marketing North America, Inc.; Emera Energy Services, Inc.; Exelon Corporation; and NextEra Energy Resources, LLC.

16. On February 12, 2016, the Commission issued a letter informing ISO-NE that its proposal is deficient and requesting additional information (Deficiency Letter), with responses due on or before February 29, 2016. In the Deficiency Letter, the Commission requested, among other things, additional detail on the methodology that the IMM will use to evaluate Retirement Bids.<sup>16</sup> The Commission also requested further explanation regarding the IMM's reasoning that Static De-List Bids will usually be lower than Retirement Bids. The Commission requested further explanation about the consultative process through which the IMM will review Retirement Bids and why the proposed approach was selected rather than bright line criteria.<sup>17</sup>

17. On February 29, 2016, ISO-NE submitted responses to the Deficiency Letter, as well as other clerical revisions to its Tariff, including language that was omitted from ISO-NE's original filing (Deficiency Letter Response); ISO-NE stated that such omissions "did not affect the meaning of the submitted language."<sup>18</sup> Further, ISO-NE requests waiver of the 60-day notice requirement for an effective date of March 1, 2016, averring that it is important that these changes become effective in time to allow them to apply to FCA 11, which will be held on February 6, 2017.

18. Notice of ISO-NE's Deficiency Letter Response was published in the *Federal Register*, 81 Fed. Reg. 11,787 (2016), with protests and interventions due on or before March 14, 2016.

19. NEPGA, NRG Companies, PSEG Companies, and GEN Group submitted timely protests.

20. NEPGA filed a motion on March 1, 2016, requesting Commission action by March 17, 2016, that would direct ISO-NE to refrain from enforcing the provisions of its (December 17, 2015) proposal and to propose adjusted FCA 11 deadlines in order to afford suppliers time to comply with the new requirements, should the Commission accept ISO-NE's proposal.

21. On March 7, 2016, ISO-NE proffered an answer, stating that it may put the new proposed provisions into effect as of March 1, 2016, because FPA section 205 allows for

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<sup>16</sup> Deficiency Letter at 1-2.

<sup>17</sup> *Id.* at 3.

<sup>18</sup> Deficiency Letter Response, Transmittal Letter at 3.

waiver requests for good cause and, thus, this would be the “filed rate” unless the Commission rejects its request for waiver.<sup>19</sup>

#### **IV. Discussion**

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

22. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

23. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), we will grant Potomac Economics’s unopposed motion to intervene out-of-time and accept its comments, given its interest, the early stage of this proceeding, and the absence of undue prejudice or delay.

24. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept ISO-NE’s and Eversource Companies’ January 7 answers, as well as the February 5 answers filed by GEN Group, NRG Companies, Dominion, and NEPGA, because they have provided information that has assisted us in our decision-making process.

25. NEPGA’s motion for expedited action is denied. We will grant ISO-NE’s request for waiver of the 60-day prior notice requirement for good cause shown.<sup>20</sup>

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

26. The Commission accepts this filing subject to condition, effective March 1, 2016, as discussed below.<sup>21</sup> We address the comments and protests by issue below.

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<sup>19</sup> See ISO-NE March 7 Answer at 3; *id.* at 4 (contending that “the Tariff sheets submitted with [the February 29 responses to the Deficiency Letter] are therefore the ‘filed rate’ in effect as of March 1 unless and until the Commission rejects them”).

<sup>20</sup> *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, at 61,338-39 (1992) (finding that the Commission will grant waiver of the 60-day prior notice requirement if good cause is shown and the agreement is filed prior to the commencement of service).

<sup>21</sup> The Commission can revise a proposal filed under section 205 of the Federal Power Act as long as the filing utility accepts the change. See *City of Winnfield v. FERC*,

## 1. Need for Reform

### a. Comments

27. Dominion, PSEG Companies, NEPGA, and GEN Group contend that ISO-NE has not demonstrated that the new Retirement Bid mitigation proposal is needed.<sup>22</sup> They argue that the proposal is designed to address a non-existent problem; namely, the exercise of market power through resource retirement.<sup>23</sup> NEPGA notes that there has been just one instance of alleged withholding (through retirement) to exercise market power and in that case the Commission's Office of Enforcement found credible justification for the resource owner's retirement decision.<sup>24</sup> Similarly, Dominion argues that retiring a resource is a significant decision, and companies explore every avenue to avoid retiring before doing so.<sup>25</sup>

28. Further, NEPGA, GEN Group, and PSEG Companies argue that existing market rules and potential market manipulation penalties eliminate incentives for withholding capacity. NEPGA and GEN Group argue that uneconomic retirements are implausible given the high-profile nature of resource retirements and the threat of penalties that could be imposed on a supplier using such retirement to withhold capacity, including massive monetary penalties and potential revocation of market-based rate authorization.<sup>26</sup> GEN Group states that sloped demand curves in all zones will reduce any potential benefit of withholding.<sup>27</sup> Lastly, PSEG Companies aver that, if a resource owner is suspected of

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744 F.2d 871, 875-77 (D.C. Cir. 1984). The filing utility is free to indicate that it is unwilling to accede to the Commission's conditions by withdrawing its filing.

<sup>22</sup> Dominion Protest at 5; PSEG Companies January 11 Protest at 5; NEPGA January 11 Protest at 5; GEN Group January 11 Protest at 19.

<sup>23</sup> PSEG Companies January 11 Protest at 5; NEPGA January 11 Protest at 6.

<sup>24</sup> NEPGA January 11 Protest at 7-8.

<sup>25</sup> Dominion Protest at 6.

<sup>26</sup> NEPGA January 11 Protest at 7; GEN Group January 11 Protest at 21.

<sup>27</sup> GEN Group January 11 Protest at 21.

attempting to exercise market power through retirement, the IMM as well as the Commission have ample means to investigate that activity.<sup>28</sup>

29. In contrast, NESCOE comments that ISO-NE may propose mitigation reforms even if ISO-NE has not demonstrated actual withholding. NESCOE states that, in upholding the Commission's acceptance of supply-side mitigation rules, the U.S. Court of Appeals for the D.C. Circuit rejected suppliers' arguments that the proposed rule addressed seller-side market power concerns that were not substantiated, finding that it was "irrelevant that de-list bids were not previously wielded as market power."<sup>29</sup> Similarly, NESCOE states that it is irrelevant whether retirement bids have been used in the past to exercise market power, because the potential exists under the current structure and the costs to consumers associated with the artificial increase could be substantial.<sup>30</sup>

**b. Commission Determination**

30. At the outset, we note that ISO-NE's proposal includes several changes to the FCM timeline, which will benefit the market. By requiring Retirement Bids to be submitted in March and by requiring ISO-NE to post shortly afterwards information regarding the amount of existing capacity that may exit the FCM, project sponsors that are considering developing new resources will have better and more timely information about when and where new capacity may be needed. Additionally, by moving the Show of Interest window to a date after the Retirement Bid deadline, new entrants will be able to use the information about potential retirements to inform their decision on whether to enter the FCM in the next auction. The March Retirement Bid deadline also aligns with the capacity zone determination process, allowing ISO-NE to better reflect potential resource retirements in this process.

31. With respect to the Retirement Bid mitigation proposal, we agree with NESCOE that, for the purposes of our review of the instant proposal, it is irrelevant whether suppliers have previously used physical withholding through retirement as a means to exercise market power. Our review here is limited to whether ISO-NE's proposal is just and reasonable and not preferential or unduly discriminatory. As discussed below, we find that ISO-NE's proposal has met this burden.

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<sup>28</sup> PSEG Companies January 11 Protest at 5.

<sup>29</sup> NESCOE Comments at 11 (quoting and citing *New England Power Generators Ass'n v. FERC*, 757 F.3d 283, 298-99 (D.C. Cir. 2014) (*NEPGA*)).

<sup>30</sup> *Id.* at 12.

32. We are also not persuaded by GEN Group's argument that sloped demand curves in all zones will reduce any potential benefit of withholding and, therefore, the need for the proposed reforms. While we agree that zonal sloped demand curves, when compared with the current zonal vertical demand curves, will reduce the benefits of withholding, we find that the potential for an exercise of supplier-side market power still exists. Both the IMM and EMM have identified a potential inefficiency with the FCM: a deficiency in the mitigation scheme that allows a resource owner to engage in physical withholding by retiring a profitable resource at any time. Accordingly, we find it appropriate for ISO-NE to propose measures to correct the structural deficiencies of its market regardless of the likelihood that market participants will exploit these deficiencies.

## 2. Over-mitigation

### a. Comments

33. Dominion, NRG Companies, PSEG Companies, NEPGA, and GEN Group are concerned that ISO-NE's proposal will result in "over-mitigation."<sup>31</sup> NRG Companies state that ISO-NE's approach fails to weigh the need to deter bad behavior by one actor against the potential harm of its proposal to all participating suppliers.<sup>32</sup>

34. NEPGA states that the Commission has recognized the dangers of over-mitigation,<sup>33</sup> and that the Commission has, therefore, made clear that it will "approve only mitigation measures that address well-defined structural problems in the market."<sup>34</sup>

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<sup>31</sup> See, e.g., Dominion Protest at 4-5; NRG Companies January 11 Protest at 5-6; NEPGA January 11 Protest at 10. Parties fear that the IMM will review every Retirement Bid and that differences in assumptions or methodologies will result in the IMM calculating (and ISO-NE using) a proxy bid for more Retirement Bids than appropriate, thus, in "over-mitigation."

<sup>32</sup> NRG Companies January 11 Protest at 6.

<sup>33</sup> NEPGA January 11 Protest at 9 (citing *PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090, at P 26 (2013), *on reh'g*, 153 FERC ¶ 61,066 (2015); *Midwest Indep. Sys. Operator, Inc.*, 111 FERC ¶ 61,043, at P 78, *on reh'g*, 112 FERC ¶ 61,086 (2005)).

<sup>34</sup> *Id.* at 9 (quoting *New England Power Pool*, 101 FERC ¶ 61,344, at P 28 (2002)).

35. NRG Companies argue that ISO-NE's proposal assumes a supplier's unconditional retirement is uneconomic.<sup>35</sup> NRG Companies argue that, on the contrary, resource owners have limited capital for resource repairs and upgrades, and a decision to retire a resource rather than to invest in it is not necessarily an exercise of market power. Therefore, NRG Companies maintain, a more focused approach to mitigation with strong incentives would benefit the market more than ISO-NE's proposal.<sup>36</sup> PSEG Companies similarly argue that there is no justification for ISO-NE to not accept a supplier's Retirement Bid price absent a showing, such as by way of a structural market power test, that a resource has market power.<sup>37</sup>

36. NRG Companies also object to the absence of a materiality threshold with respect to ISO-NE's proposed Portfolio Benefits Test.<sup>38</sup> They state that, because a supplier's Retirement Bid will be mitigated if its portfolio benefits increase by at least one cent as a result of a resource retirement, the Portfolio Benefits Test could result in over-mitigation.<sup>39</sup> To avoid this result, NRG Companies propose that "the IMM apply a deadband around the calculated net benefit."<sup>40</sup>

37. In response to arguments that ISO-NE's proposal will lead to over-mitigation, NESCOE comments that ISO-NE's proposal is in fact similar to, and consistent with, other current market mitigation measures.<sup>41</sup> NESCOE points out that, like the proposed changes, the current buyer-side mitigation rules apply preemptive mitigation to address market power concerns, with offers below the benchmark price deemed uneconomic and subject to mitigation, while providing the potential for a unit-specific finding that the offer is competitive.<sup>42</sup> Further, NESCOE states that ISO-NE's buyer-side mitigation rule

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<sup>35</sup> NRG Companies January 11 Protest at 10.

<sup>36</sup> *Id.* at 6-7.

<sup>37</sup> PSEG Companies January 11 Protest at 7.

<sup>38</sup> NRG Companies January 11 Protest at 8.

<sup>39</sup> *Id.* at 9.

<sup>40</sup> *Id.* (quoting Testimony of Marc Montalvo at 21).

<sup>41</sup> NESCOE Comments at 10.

<sup>42</sup> *Id.* at 12-13.

is essentially the inverse of ISO-NE's mitigation proposal here, in that there is no prior determination of buyer-side market power before mitigation is triggered. In NESCOE's view, the argument that the mitigation of resources seeking to exit the market is inappropriate prior to a finding that market power has been exercised likewise questions the appropriateness of market rules applying similar mitigation to resources seeking to enter the market.

38. In response to NRG Companies' assertion that the Portfolio Benefits Test threatens to over-mitigate the market, ISO-NE argues in its answer that, if anything, the Portfolio Benefits Test will tend not to fully account for the reduction in costs associated with retiring a resource.<sup>43</sup> ISO-NE states that this is because the Portfolio Benefits Test compares a resource owner's gross auction revenue with and without the retiring resource, rather than comparing profits. ISO-NE explains that even if a resource owner could earn the same capacity revenues by retiring or retaining a resource, it would likely earn higher profits by retiring the resource, because it will no longer have the costs associated with operating the presumably higher-cost plant. Regarding PSEG Companies' objection to a lack of a structural market power test in ISO-NE's proposal, ISO-NE explains that such a test may result in under-identifying the potential to exercise market power, given the uncertainty of portfolio asset holdings in current and forward capacity years.<sup>44</sup> Finally, ISO-NE states that the Commission has not indicated that a structural market power test is a prerequisite to a just and reasonable mitigation mechanism in the case of either buyer-side market power mitigation, or the mitigation of Static De-List Bids under ISO-NE's Pay-for-Performance market construct.<sup>45</sup>

39. In the Deficiency Letter Response, ISO-NE states that prior to any mitigation by the IMM there is a discussion between the IMM and the supplier with respect to the proposed bid, similar to the current review process for Static De-list Bids and capacity supply offers from new resources below the Offer Review Trigger Price.<sup>46</sup> ISO-NE explains that in such reviews, consultation often begins prior to the relevant submission deadline, and suppliers are encouraged to discuss their bids with the IMM before submission. ISO-NE also explains that, after the submittal deadline, suppliers are invited to call or meet in person with the IMM to review their submissions, and the IMM will contact suppliers with any questions of its own. ISO-NE further explains that, during the

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<sup>43</sup> ISO-NE Answer at 44.

<sup>44</sup> *Id.* at 43-44.

<sup>45</sup> *Id.* at 44.

<sup>46</sup> Deficiency Letter Response, Attachment A at 8.

consultation process for Retirement Bids, suppliers would have the opportunity to supplement their submissions with additional information, as well as to make adjustments to their submitted data and forecasts, if appropriate. ISO-NE adds that the EMM reviews the IMM's mitigation process and may provide consultation where its expertise in valuation can be leveraged.<sup>47</sup>

**b. Commission Determination**

40. In response to arguments that ISO-NE's proposal will lead to over-mitigation, we note that ISO-NE's proposal is similar to other market mitigation measures currently in place in ISO-NE's capacity markets. For example, as in the instant proposal, the current buyer-side mitigation rules apply preemptive mitigation to address market power concerns in instances where a supplier offers a price deemed to be uneconomic. In addition, ISO-NE's instant proposal allows for consultation with the IMM regarding whether the information supporting the Retirement Bid is reasonable. This consultative approach is consistent with the existing Static De-List Bid mitigation framework, where the IMM reviews and mitigates Static De-List Bids as necessary. We find that the instant proposal appropriately extends such an evaluation to retirement requests.

41. We are unpersuaded by PSEG Companies argument that ISO-NE must make a showing—either by a structural market power test or other means—that a resource has market power before mitigating a Retirement Bid. We find it reasonable for ISO-NE to protect market participants against potential attempts to exercise market power in this supply-constrained market without making an *ex ante* showing that a specific resource possesses market power.

42. We find that protestors have not demonstrated that the proposed Portfolio Benefits Test as applied is unjust and unreasonable. ISO-NE's proposed test will produce an objective measure indicating a potential exercise of market power and, accordingly, the need for mitigation. However, we also note that ISO-NE proposes to only use the Portfolio Benefits Test in narrow circumstances—i.e., when a supplier chooses to unconditionally retire a resource.

43. Additionally, with respect to concerns that the proposed Portfolio Benefits Test may result in over-mitigation because it does not contain a materiality component, we note that the Portfolio Benefits Test only looks at gross auction revenue. The test will tend not to fully account for the reduction in costs associated with retiring a plant.<sup>48</sup> But

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<sup>47</sup> *Id.*, Attachment A at 9 n.14 (“Tariff Section III.A.2.2(d) requires the [EMM] to ‘review the quality and appropriateness of the mitigation conducted by the [IMM].’”).

<sup>48</sup> ISO-NE Answer at 44.

as ISO-NE explains, market power is exercised to increase profit, not gross revenue. When retirement would increase a seller's gross auction revenues (by even a small amount), its profits would likely increase more than proportionately, because the retirement would reduce total costs (even after considering any effects caused by economies of scale) by eliminating the costs associated with keeping that resource in operation. Given this, it is difficult to conceive the Portfolio Benefits Test resulting in an over-mitigation of market participants; thus, we find that this particular design choice should help reduce concerns of over-mitigation with respect to suppliers that choose the unconditional retirement option.

44. We also note protestors have not provided any evidence to support a particular profits threshold with respect to the Portfolio Benefits Test. To the extent that protestors believe that a deadband is appropriate to account for error and uncertainty with respect to the Portfolio Benefits Test, we note that the proposed test is limited only to capacity market revenues for one auction. We find that the limited scope of this test does not support protestors' request for additional flexibility by way of a deadband. Moreover, as discussed below, ISO-NE's proposal allows for flexibility in the inputs of Retirement Bids, which should reduce concerns of over-mitigation at the review stage of ISO-NE's proposed retirement process.

### **3. IMM Review of Retirement Bids**

#### **a. Comments**

45. Dominion, NRG Companies, PSEG Companies, GEN Group, and NEPGA protest ISO-NE's proposal to grant the IMM discretion in determining whether a supplier's retirement is uneconomic.<sup>49</sup> Dominion argues that the assumptions for such a determination can vary greatly and can be based on factors that are not easily quantified.<sup>50</sup> Similarly, GEN Group argues that there is no objectively "right" value for a Retirement Bid, and while it might be possible to estimate a range of price and revenue outcomes in a future year, it is impossible to objectively determine the correct Retirement Bid with any precision.<sup>51</sup> Dominion, PSEG Companies, GEN Group, and NEPGA contend that there is no reason to assume that the IMM is better positioned to make Retirement Bid determinations compared to market participants whose business is based

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<sup>49</sup> GEN Group January 11 Protest at 6.

<sup>50</sup> Dominion Protest at 7.

<sup>51</sup> GEN Group January 11 Protest 6-7.

on these types of price forecasts.<sup>52</sup> Dominion also argues that, in light of the finality of retirement decisions and the fact that the resource owner bears all the risk if a Retirement Bid is too low, deference should be given to the business judgment of the owner.<sup>53</sup>

46. NRG Companies protest the IMM's use of a discounted cash flow methodology to produce its own estimate of the efficient Retirement Bid for a resource, and instead contend that this methodology should be used to establish a zone of reasonableness for a Retirement Bid.<sup>54</sup> They argue that the discounted cash flow methodology is fraught with error and uncertainty and that the IMM-calculated bid price could affect the entire marketplace. They also argue that the IMM's role should be to establish a zone of reasonableness for a Retirement Bid and not to provide a single just and reasonable bid.<sup>55</sup>

47. Dominion, GEN Group, and PSEG Companies are concerned that the IMM's methodology will not take into account differing risk assessments by individual companies.<sup>56</sup> Dominion explains that resource owners evaluate a range of scenarios based on different assumptions in order to make their de-list bid offers, and their final decisions often depend on their level of risk tolerance.<sup>57</sup> Dominion notes that a resource owner's decision to retire is not necessarily premature just because an analysis under a particular set of assumptions shows that the resource might make enough revenue to cover its costs if all assumptions prove true. PSEG Companies point out that the IMM acknowledges that its mitigation of a resource owner's bid could result in the resource owner not recovering its costs, an outcome that hinges upon conditions in future years that are consistent with the forecasts used in the analysis.<sup>58</sup>

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<sup>52</sup> Dominion Protest at 8-9; PSEG Companies January 11 Protest at 6; GEN Group January 11 Protest at 8; NEPGA January 11 Protest at 11.

<sup>53</sup> Dominion Protest at 8-9.

<sup>54</sup> NRG Companies January 11 Protest at 10.

<sup>55</sup> *Id.* at 11.

<sup>56</sup> Dominion Protest at 7-8; GEN Group January 11 Protest at 9; PSEG Companies January 11 Protest at 6-7.

<sup>57</sup> Dominion Protest at 8.

<sup>58</sup> PSEG Companies January 11 Protest at 7 (citing McDonald Test. at 27).

48. GEN Group proposes modifications to ISO-NE's proposal. Specifically, it proposes that, in addition to the discounted cash flow methodology, the IMM take into account the supplier's business judgments, assumptions, and risk tolerance when reviewing Retirement Bids.<sup>59</sup> Among other things, the GEN Group proposal retains Non-Price Retirement Requests but requires generator resources to submit sufficient information to justify the retirement.<sup>60</sup>

49. While Potomac Economics, the EMM, generally supports ISO-NE's proposal, it notes that protestors rightly recognize that constructing a competitive Retirement Bid is a complicated exercise and includes several subjective factors that determine a resource's economics.<sup>61</sup> It further notes that when there is only a small difference between the IMM's proposed proxy bid price and the supplier's Retirement Bid price, the risk that the IMM will mitigate conduct that is not actually an exercise of market power becomes greater.<sup>62</sup> As a means of balancing this concern with the need for effective mitigation, Potomac Economics recommends that the Commission establish a mitigation conduct threshold of 15 percent of the competitive bid price level. It asserts that such a threshold would make a reasonable allowance for differing expectations about the future and risk tolerances.

50. In its answer, ISO-NE states that the discounted cash flow methodology is the standard industry model used to value assets.<sup>63</sup> ISO-NE also states that, while the IMM will conduct a discounted cash flow analysis of all Retirement Bids, it will not force suppliers to use this methodology when calculating its Retirement Bid.<sup>64</sup> ISO-NE further states that the IMM will review any methodology provided by the participant and consider that methodology in its analysis, provided that the IMM can understand the methodology and finds it sound and reasonable. Additionally, ISO-NE states that, while the inputs for costs and revenue in the discounted cash flow model call for "expected" values, any risk that can be quantified and analytically supported may be included in a

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<sup>59</sup> See GEN Group January 11 Protest at 25.

<sup>60</sup> *Id.* at 26.

<sup>61</sup> Potomac Economics Comments at 13.

<sup>62</sup> *Id.* at 14.

<sup>63</sup> ISO-NE Answer at 25.

<sup>64</sup> *Id.* at 25-26.

resource's Retirement Bid.<sup>65</sup> In response to arguments that ISO-NE should defer to the business judgments of suppliers when reviewing Retirement Bids, ISO-NE states that there is no reason for permitting suppliers to hide unreasonable assumptions under a cloak of "business judgment."<sup>66</sup>

51. In its Deficiency Letter Response, ISO-NE explains that, during the consultation process following a supplier's submission of a Retirement Bid, suppliers will have the opportunity to demonstrate to the IMM that their submitted forecasts and inputs used to form their Retirement Bids are based on reasonable assumptions and methodologies.<sup>67</sup> To aid its review of these inputs (e.g., forecasted capacity prices and forecasted energy prices), ISO-NE states that the IMM will purchase third-party forecasts from independent expert vendors.<sup>68</sup> For inputs for which the IMM is unable to use third-party forecasts (e.g., forecasted ancillary service market revenues), ISO-NE states that the IMM will rely on ISO-NE's and the EMM's expertise, previous de-list bid data (if available), historic resource performance data, and, if necessary, outside consultants.<sup>69</sup> ISO-NE also states that, if a supplier fails to provide sufficient support for its inputs, the IMM will use its purchased forecasts and internally-derived inputs as inputs for calculating a proxy bid.

52. ISO-NE states that there are two possible approaches that the IMM can use to account for unknowns, variations in expectations, differences in resource circumstances, and inaccuracies in valuations that may result in discrepancies between participants' submitted Retirement Bids and the IMM's evaluation of those bids.<sup>70</sup> ISO-NE explains that the IMM can either: (1) allow flexibility in the inputs (e.g., price forecasts, risk factors, and other inputs) to the calculation or (2) apply a materiality threshold to the output of the mitigation calculation (e.g., 115 percent of the calculated competitive benchmark price). ISO-NE explains that using both methods is not appropriate as the redundancy may cause the mitigation process to allow prices that deviate significantly from competitive levels. It states that the IMM has chosen the first method—input flexibility, rather than specifying values that must be used as inputs to the de-list bid

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<sup>65</sup> *Id.* at 28.

<sup>66</sup> *Id.* at 31.

<sup>67</sup> Deficiency Letter Response, Attachment A at 1.

<sup>68</sup> *Id.*, Attachment A at 1-3.

<sup>69</sup> *Id.*, Attachment A at 2-3.

<sup>70</sup> *Id.*, Attachment A at 9.

calculation and applying those values to all retiring resources—for its Retirement Bid review process, arguing that providing this flexibility in the input values obviates the need to apply a materiality threshold to the final bid price, and that applying both methods could undermine the effectiveness of mitigation.<sup>71</sup>

53. ISO-NE explains that a materiality mitigation threshold for energy bids is effective in the energy market, because there are fewer inputs to the competitive bid calculation and there is less uncertainty around forecasting inputs one day out than in forecasting inputs four to ten years out.<sup>72</sup> However, according to ISO-NE, “retirement decision-making does not lend itself to mitigation using strict predetermined inputs.”<sup>73</sup> Therefore, ISO-NE argues, if applied to the Retirement Bid review process, a materiality mitigation threshold above the competitive Retirement Bid price “would likely have to be very large in order to accommodate the degree of uncertainty over the evaluation period and the heterogeneity among resource circumstances.”<sup>74</sup> ISO-NE also argues that this single, high threshold would be applied to all retiring resources, even if the appropriate competitive price for the other resources was considerably lower. ISO-NE explains that such a high threshold could reduce the effectiveness of the mitigation.

54. ISO-NE explains that suppliers may include any relevant risk that can be quantified and analytically supported in their proposed Retirement Bids as adders to the discount rate.<sup>75</sup> ISO-NE also explains that these adders are to be derived by identifying a specific workbook item that may be impacted by a particular risk. It states that the suppliers must then assign a cost to this risk and the probability of the risk. ISO-NE further explains that this information will allow suppliers to calculate a weighted average bid from which they can derive a risk adder to be included in the discount rate used to determine the Retirement Bid. Moreover, ISO-NE states that regulatory risk may be included in a Retirement Bid so long as the suppliers can show that the risk may have a direct impact on a revenue or cost element used in calculating a Retirement Bid.<sup>76</sup> It clarifies, however, that regulatory risk will not be permitted in all circumstances. For

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<sup>71</sup> *Id.*, Attachment A at 9-10.

<sup>72</sup> *Id.*, Attachment A at 10.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*, Attachment A at 4.

<sup>76</sup> *Id.*, Attachment A at 5.

instance, uncertainty regarding the final form of a regulation, or whether a regulation will be enacted at all, is likely to render the risk unquantifiable and unsupportable.

55. With respect to the Commission's inquiry of why a resource's Static De-List Bid should typically be less than that resource's competitive Retirement Bid, ISO-NE explains that this assumption was intended to convey that, because the IMM permits more costs in the Retirement Bid calculation than in the Static De-list Bid calculation (due primarily to the amortization period), the calculated Retirement Bid is likely to be higher than the calculated Static De-list Bid for the same resource.<sup>77</sup> However, ISO-NE acknowledges that there may be instances where a resource's Retirement Bid will be below its Static De-list Bid.<sup>78</sup> For instance, if market conditions are forecast to improve in coming years, expected revenue beyond the relevant capacity commitment year may drive the resulting Retirement Bid price down—so much so that it is below that resource's Static De-list Bid. Because the Static De-list Bid price considers only the one-year commitment period associated with the instant auction, it would not capture the projected increase in profitability in the out-years. ISO-NE, however, does not believe that this situation is likely to occur, and the IMM does not believe that this result would either reduce market efficiency or increase gaming opportunities.

56. NEPGA, PSEG Companies, NRG Companies, and GEN Group express concerns with ISO-NE's proposal regarding how the IMM will evaluate regulatory uncertainty reflected by a supplier in a Retirement Bid.<sup>79</sup> NEPGA objects to ISO-NE's proposal that the IMM will not permit the inclusion of any risk adders if a regulation has not yet been approved by the relevant regulatory body because the risk would otherwise be unquantifiable and unsupportable. NEPGA states that the notion of including regulatory uncertainty in a risk adder only when it is certain is absurd and would result in the disallowance of even reasonable foreseeable regulatory risks. Additionally, PSEG Companies argue that, when a resource owner is prohibited from incorporating risk premiums into their offers consistent with their business judgments, they are left with no alternative, but to protect their downside exposure and withdraw from the markets.

57. PSEG Companies also protest the lack of clarity in ISO-NE's proposal regarding how the IMM will determine whether the forecasts submitted by a supplier in its Retirement Bid are reasonable. They argue that, in order for the IMM to evaluate the

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<sup>77</sup> *Id.*, Attachment A at 6.

<sup>78</sup> *Id.*, Attachment A at 7.

<sup>79</sup> NEPGA March 14 Protest at 4; PSEG Companies March 14 Protest at 7; NRG Companies March 14 Protest at 2; GEN Group March 14 Protest at 3.

forecasts of a supplier, the IMM must acquire its own forecasts of future prices for comparison purposes.<sup>80</sup> PSEG Companies explain that, when considering long-term investment decisions, they also purchase forecasts from third-party vendors—forecasts which may diverge significantly from vendor to vendor. PSEG Companies and NRG Companies are concerned about the extent to which a divergent forecast may appear to the IMM as not reasonable or well-supported.<sup>81</sup>

**b. Commission Determination**

58. We are not persuaded by protestors' arguments that ISO-NE's proposal to allow for IMM review of Retirement Bids is unjust and unreasonable. As ISO-NE explains, the proposed reforms permit flexibility in the submitted forecasts and inputs of a Retirement Bid, so long as a supplier can show that those forecasts and inputs are reasonable. We find that this process will not result in an undue preference for the IMM's estimates of a supplier's retirement costs, but rather will initiate a dialogue whereby suppliers would have the opportunity to demonstrate that their proposed inputs to their Retirement Bids are reasonable. Additionally, we note that the IMM will only use its own estimates for specific cost items as a "fallback" input in instances where a supplier has failed to demonstrate the reasonableness of a particular proposed cost item. ISO-NE's Deficiency Letter Response indicates that, in the event of mitigation, the IMM will still use those proposed values submitted by the supplier, and found to be reasonable by the IMM, as inputs in its calculation of a mitigated Retirement Bid. We believe that this should reduce the expected difference between the supplier's Retirement Bid and the IMM's mitigated Retirement Bid. We also find it reasonable that, in instances where mitigation is appropriate, the IMM will contract with expert, third-party vendors and leverage ISO-NE's and the EMM's expertise to produce a reasonable fallback Retirement Bid input.

59. With respect to the IMM's particular use of the discounted cash flow methodology in its review, we are not persuaded by arguments that this methodology as applied in this context will render ISO-NE's proposed Retirement Bids and process unjust, unreasonable, unduly discriminatory or preferential. We agree with ISO-NE that the discounted cash flow model is a standard means of valuing assets. Further, protestors have not identified any flaws in the discounted cash flow methodology that render its use in this construct unjust and unreasonable. We also note that, under ISO-NE's proposal, the IMM must: (1) review any other methodology provided by a supplier to justify its Retirement Bid, provided that the IMM can understand the methodology and finds it

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<sup>80</sup> PSEG Companies March 14 Protest at 5.

<sup>81</sup> *Id.* at 6; NRG Companies March 14 Protest at 6.

sound and reasonable and (2) allow any risk that can be quantified and analytically supported in a supplier's Retirement Bid.<sup>82</sup>

60. We also disagree with protestors' assertion that ISO-NE's proposal will not allow the incorporation of reasonably foreseeable regulatory risks, or forecasts different from those of the IMM, in Retirement Bids. ISO-NE states that a supplier may incorporate in its Retirement Bid any "relevant risks that can be quantified and analytically supported."<sup>83</sup> Similarly, ISO-NE has confirmed that the IMM will permit some flexibility in inputs, such as forecasts, to "recognize differences in resource circumstances, views of future market conditions, and risk factors."<sup>84</sup> Regarding ISO-NE's clarification that generally speaking a regulation not yet approved by the relevant regulatory body may not be permissible in a Retirement Bid, we do not understand this clarification to mean that a supplier is prohibited from including such regulatory risks in its submitted Retirement Bid, but rather, to clarify that those anticipated regulations with much uncertainty may "render the risk unquantifiable and unsupported."<sup>85</sup> We note that ISO-NE's proposal does not prohibit any particular inputs from being included in a submitted Retirement Bid, but rather, requires that all inputs be sufficiently quantified and supported for the Retirement Bid to remain un-mitigated.

61. We also note that, notwithstanding the IMM's ability to mitigate a supplier's Retirement Bid price, ISO-NE's proposal does not require a supplier to remain in ISO-NE's markets at any capacity price other than the one agreed to by the supplier. Even under the conditional retirement option where the IMM proposes a mitigated Retirement Bid price, *the supplier is only required to remain in the FCM at a price at or above its originally proposed Retirement Bid*. Thus, to the extent that the IMM objects to the inclusion of a particular risk adder in a supplier's Retirement Bid price in that case, a supplier's decision to retire is only bound by its original bid, and nothing prohibits a supplier from including that risk adder in its original bid. Furthermore, under the unconditional retirement option, suppliers still retain the right to retire without regard to

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<sup>82</sup> ISO-NE Answer at 24; *see also* ISO-NE Tariff § III.13.1.2.3.2.1.2.B (41.0.0) ("The Lead Market Participant . . . shall report all expected costs, revenues, prices, discount rates and capital expenditures in a manner and format specified by the [IMM], and may supplement this information with other evidence." (emphasis added)).

<sup>83</sup> Deficiency Letter Response, Attachment A at 5.

<sup>84</sup> *Id.*, Attachment A at 10.

<sup>85</sup> *Id.*, Attachment A at 5.

price. The purpose of the IMM's review is only to ensure that a Retirement Bid price included in the FCA must reflect inputs that are reasonable and supportable.

62. While ISO-NE's proposal requires that the IMM review all supplemental information provided by a supplier in support of its Retirement Bid, the proposed revisions do not explain the degree to which the IMM will accept differences in expectations, risk tolerances, and methodologies that may result in a Retirement Bid greater than what the IMM would calculate for that unit. We agree with parties that constructing a competitive Retirement Bid is complex and includes several subjective factors that determine a resource's economics. We also agree, as Potomac Economics suggests, that in cases where there is a small difference between the IMM's proposed proxy bid price and the supplier's Retirement Bid price, the risk that the IMM will mitigate conduct that is not actually an exercise of market power becomes greater. We find that, as proposed, the IMM's broad discretion in determining whether to mitigate a Retirement Bid, based on the IMM's own assumptions and methodologies, could result in inaccurate mitigation. Potomac Economics' recommended use of a materiality threshold for mitigation presents a reasonable limit on the spread between the IMM's derived Retirement Bid and the supplier's originally proposed bid, due to such differences in assumptions and methodologies, while still allowing mitigation in instances where an exercise of market power is likely. Accordingly, we accept ISO-NE's proposal, subject to condition that ISO-NE submit a compliance filing within 30 days of the date of this order with tariff revisions establishing a materiality threshold for determining whether or not a particular proxy de-list bid will replace a Retirement Bid in an FCA. Although Potomac Economics proposes a threshold of 15 percent of the IMM's determined price, ISO-NE and the IMM may propose another percentage as appropriate.

63. As summarized earlier, Dr. McDonald states that the competitive Retirement Bid of a resource typically should be greater than that resource's Static De-List Bid. However, Dr. McDonald's observation raises the question of whether there is a potential for a supplier to exercise market power by submitting a Retirement Bid when a lower, Static De-List Bid would be cost-justified. ISO-NE proposes to allow the supplier to choose between submitting a Static De-List Bid and a Retirement Bid. Allowing the supplier to submit a Retirement Bid without imposing mitigation would be reasonable if the lower Static De-List Bid, as would have been calculated by the IMM, does not fully capture the incremental costs of taking on a Capacity Supply Obligation for the instant commitment period. For example, as ISO-NE notes, a Static De-List Bid may include an amortized portion of a needed capital upgrade, and this amortized portion may not reflect the full avoidable cost of receiving a Capacity Supply Obligation in the instant commitment period.<sup>86</sup> On the other hand, if the IMM-calculated Static De-List Bid

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<sup>86</sup> *Id.*, Attachment A at 6.

accurately reflects the true avoidable costs of receiving a Capacity Supply Obligation for a single commitment period and would be lower than the IMM-calculated Retirement Bid, a higher Retirement Bid may overstate the cost of receiving a Capacity Supply Obligation in the instant commitment period. In these instances, allowing the supplier the choice to submit the higher, Retirement Bid without applying mitigation could allow the supplier to exit the auction at an unnecessarily higher price, raise the clearing price, and may reflect an exercise of market power.

64. We will not require changes to ISO-NE's proposal at this time, given the IMM's conclusion that the retirement track will likely discourage suppliers from using the Retirement Bid to exercise market power in this way. However, we encourage ISO-NE to monitor future FCAs for instances where suppliers are exercising market power by inefficiently submitting a Retirement Bid in place of a Static De-List Bid, and if such behavior is observed, to evaluate whether further mitigation measures are necessary.

#### **4. Pricing in the FCA**

##### **a. Comments**

65. PSEG Companies, NEPGA, GEN Group, and NRG Companies state that the use of proxy bids in the event of mitigation is problematic because it results in resources being paid different prices even though they are providing identical products, which is unduly discriminatory and preferential.<sup>87</sup> PSEG Companies explain that in virtually all cases the units acquired in the second run will be higher priced than the units that cleared in the first run with the proxy bid. NEPGA adds that ISO-NE has not—and cannot—identify a difference between the product supplied by resources that are selected in the first run and those that are selected in the second run, other than that the latter will be paid more.<sup>88</sup> NEPGA posits that ISO-NE's "two-run" proposal could create incentives for suppliers with offer flexibility to guess the first-run clearing price and submit offers just above what they expect it to be, so that they will be able to participate in the second run.<sup>89</sup>

66. GEN Group argues against the use of such administratively-set proxy bids "given ISO-NE's long history of inefficient, administrative prices and the Commission's current

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<sup>87</sup> PSEG Companies January 11 Protest at 9; NEPGA January 11 Protest at 15; GEN Group January 11 Protest at 16; NRG Companies January 11 Protest at 6.

<sup>88</sup> NEPGA January 11 Protest at 16.

<sup>89</sup> *Id.* at 17 (citing *id.*, Testimony of Seabron Adamson ¶ 36 (Adamson Test.)).

focus on improving price formation.”<sup>90</sup> GEN Group submits witness testimony arguing that “[t]his type of price suppression/discrimination can have two negative effects on the market: it can promote ‘uneconomic’ retirement of resources that would otherwise not exit the market, and it can also increase the price at which new resources are willing to enter the market.”<sup>91</sup> GEN Group maintains that ISO-NE’s characterization of re-running the auction as an “instant reconfiguration auction” is inaccurate, as reconfiguration auctions occur much later in time and are designed to accommodate unanticipated load and supply changes.<sup>92</sup> Lastly, GEN Group notes that the Commission has long promoted the use of a uniform market clearing price.<sup>93</sup>

67. Dominion, NRG Companies, PSEG Companies, NEPGA, and GEN Group argue that the use of the proxy de-list bid in the first run of the FCA will lead to price suppression in the FCA clearing price and will prevent capacity prices from accurately reflecting a supplier’s decision to retire.<sup>94</sup> They explain that proxy de-list bids do not represent real, qualified capacity resources participating in the auction and, therefore, the auction appears to have more existing capacity supply than what is actually available, suppressing the FCA price. NEPGA avers that this will mask the actual balance of supply and demand in the region and improperly suppress market clearing prices when signals for new entry are needed.<sup>95</sup> Moreover, NEPGA argues that ISO-NE’s proposal to

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<sup>90</sup> GEN Group January 11 Protest at 16.

<sup>91</sup> *Id.* at 17 (citing *id.*, Testimony of Michael Schnitzer at 21 (Schnitzer Test.)).

<sup>92</sup> *Id.* at 19.

<sup>93</sup> *Id.* at 17 (citing *Frequency Regulation Compensation in the Organized Wholesale Power Mkts.*, Order No. 755, FERC Stats. & Regs. ¶ 31,324, at P 99 (2011) (“The Commission finds that paying to all cleared frequency regulation resources a uniform clearing price that includes the marginal resource’s opportunity costs is just and reasonable. . . . Further, this uniform clearing price must be market-based, derived from market-participant bids for the provision of frequency regulation capacity. As commentators recognize, contrary market pricing rules would consistently result in artificial and inaccurate prices . . .”), *reh’g denied*, Order No. 755-A, 138 FERC ¶ 61,123 (2012)).

<sup>94</sup> Dominion Protest at 4-5; NRG Companies January 11 Protest at 6; PSEG Companies January 11 Protest at 8; NEPGA January 11 Protest at 13; GEN Group January 11 Protest at 16.

<sup>95</sup> NEPGA January 11 Protest at 13.

run the clearing mechanism a second time to procure additional capacity at a potentially higher price is akin to uplift payments that the Commission has recognized undermine the market's ability to send actionable price signals.<sup>96</sup> NEPGA's expert witness contends new entrants will rationally seek to price the risk of barriers to exit and future capacity price suppression into their entry bids, diminishing market efficiency.<sup>97</sup>

68. In its answer, ISO-NE responds that its proposal will produce a second run of the clearing mechanism only where a resource owner elects the unconditional retirement option, or where a resource owner has elected the conditional treatment option and the auction clears between the IMM's proxy bid and the resource's submitted price.<sup>98</sup> ISO-NE explains that, in the second run of the clearing mechanism, it is not necessarily true that a more expensive resource will be selected to displace the capacity represented by the proxy bid. ISO-NE further explains that it is possible for a less expensive unit to be selected in the second run.

69. In response to arguments that the proxy bid will suppress prices, ISO-NE maintains that a proxy bid is simply another term for a Commission-approved competitive price.<sup>99</sup> ISO-NE states that it currently uses Commission-approved competitive prices in place of uncompetitive participant-submitted prices in its mitigation of Static De-List Bids and under its buyer-side mitigation rules.<sup>100</sup> ISO-NE explains that the only difference from these other mitigation regimes is that, in the case of conditional and unconditional retirements, a proxy bid will be used and it will not represent actual capacity. ISO-NE argues, however, that this difference is the result of a supplier's right to retire at its own uneconomic price, and is not the result of the use of the proxy bid.

#### **b. Commission Determination**

70. As an initial matter, we agree with ISO-NE that its proposal to use a proxy bid price in place of a supplier's uneconomic Retirement Bid is just and reasonable. The

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<sup>96</sup> *Id.* at 14 (citing *Price Formation in Energy and Ancillary Servs. Mkts. Operated by Reg'l Transmission Orgs. and Indep. Sys. Operator*, Notice, Docket No. AD14-14-000, at 3 (June 19, 2014)).

<sup>97</sup> NEPGA January 11 Protest, Adamson Test. ¶ 15.

<sup>98</sup> ISO-NE Answer at 34.

<sup>99</sup> *Id.* at 39.

<sup>100</sup> *Id.* at 40.

Commission has previously accepted similar ISO-NE constructs which allow for bid replacement in instances of buyer-side mitigation and in instances where the IMM finds that a supplier has submitted an uncompetitive Static De-List Bid.<sup>101</sup> Moreover, similar to ISO-NE's current mitigation regime for Static De-List Bids, the proposal states that the IMM will consult with a supplier during its review of the reasonableness of a submitted Retirement Bid.<sup>102</sup> Additionally, in both cases, the IMM's determination will be filed with the Commission, allowing the supplier an opportunity to protest the IMM's determination.<sup>103</sup>

71. We disagree that ISO-NE's proposal will inappropriately suppress FCM prices. We acknowledge that, if the IMM finds that the use of a proxy bid is warranted, there is the possibility that the clearing price of the FCA will be lower than if the original Retirement Bid were included in the FCA. However, this is the intended outcome in instances where a Retirement Bid may raise FCM prices above a competitive level. In response to arguments that ISO-NE's proposal will fail to provide an accurate price signal to new entrants, we note that the Tariff requires that ISO-NE file after each FCA an FPA section 205 filing with the Commission reporting the results of that FCA, "including...the Capacity Clearing Price in each...Capacity [Zone]."<sup>104</sup> We understand that, under the proposal here, that filing will include both the first run and second run prices, should two prices occur. Reporting the second run price in that filing will provide a sufficient signal to new entrants for the next FCA.

72. Further, we find that re-running the clearing mechanism, if necessary, will not result in undue price discrimination. We agree with ISO-NE that the use of a Commission-reviewed proxy bid in the first run of the market reflects the competitive price for the resource, while the second run of the clearing mechanism is necessary to

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<sup>101</sup> *ISO New England Inc.*, 135 FERC ¶ 61,026, at P 165 (2011) (directing ISO-NE to develop an offer-floor mitigation construct akin to those in PJM and NYISO); *ISO-NE*, 119 FERC ¶ 61,045 at P 120 (directing ISO-NE to amend its proposal to allow existing generating capacity resources whose Static De-List Bids are determined to be inconsistent with their net risk-adjusted going forward and opportunity costs, as determined by the IMM, to submit a revised Static De-List Bid consistent with the price level determined by the IMM).

<sup>102</sup> ISO-NE Tariff § III.13.1.2.3.2.1.1.1 (41.0.0); *see also id.* § III.13.1.2.3.2.1.1.2 (41.0.0).

<sup>103</sup> *Id.* § III.13.8.1(a),(c) (16.0.0).

<sup>104</sup> *Id.* § III.13.8.2(a) (16.0.0).

reflect the actual capacity situation in the market with the resource retired.<sup>105</sup> We agree with ISO-NE that the first run may have procured less capacity than the market would have demanded absent a potentially uneconomic retirement.<sup>106</sup> Given this situation, we find that it is reasonable to re-run the market clearing engine and potentially procure additional capacity, if needed.

73. Although the price paid in the second run will likely differ from that paid in the first, we note that this will not necessarily always be the case. As ISO-NE explains, it is possible that the second run of the clearing mechanism would not clear any additional capacity due to the maximization of the social welfare function of the FCM. For example, as ISO-NE explains, the second run of the clearing mechanism may not procure any additional resources because the first run procured a large, non-divisible capacity offer to meet its capacity requirement. Additionally, the second run may even allow ISO-NE to select a large, non-divisible, lower-cost offer to replace a higher-cost smaller offer selected in the first run of the clearing mechanism. In both cases, any capacity procured in the second run would receive the same price as capacity procured in the first run. We find that in cases where a different price emerges from the re-running of the clearing mechanism, the use of a proxy bid and a second run of the auction is reasonable to safeguard the competitiveness of the auction and protect consumers from the potential exercise of market power. Moreover, we note that there will be two prices in the limited circumstance where the IMM determines that a resource is seeking to retire uneconomically.

74. We also note that the review process in ISO-NE's proposal is similar to the existing ISO-NE Static De-List Bid review process. In the current Static De-List Bid review process, the IMM reviews each submitted bid at or above the Dynamic De-List Bid Threshold and notifies the resource owner if it disagrees with the bid price.<sup>107</sup> At that point, the owner may either agree to a lower bid or withdraw it. Similarly, ISO-NE proposes that the IMM will review every Retirement Bid, and the IMM will propose a mitigated bid if it disagrees with the submitted Retirement Bid. If the IMM recommends mitigation, similar to the Static De-List Bid process, the supplier is presented with options: it may either accept the mitigated bid, retire unconditionally, or retire conditionally at its initial Retirement Bid price.

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<sup>105</sup> ISO-NE Filing, Transmittal Letter at 14.

<sup>106</sup> *Id.*

<sup>107</sup> ISO-NE Tariff § III.13.1.2.3.2.1 (39.0.0) (Static De-List Bids, Export Bids, and Permanent De-List Bids, and Retirement De-List Bids at or Above the Dynamic De-List Bid Threshold).

75. Regarding NEPGA's protest that suppliers may be able to manipulate the system by guessing the first-run clearing price and offering in such a way as to clear in the second run, we find such a scenario unlikely. Such a strategy would be risky; if the supplier's prediction of the clearing price is too high, its resource might fail to clear in either run of the clearing mechanism, resulting in permanent removal from all ISO-NE markets. We find that this risk will provide a sufficient disincentive against such behavior.

76. We also disagree with GEN Group's characterization of the proxy bid mechanism, and the associated possibility of two prices in the auction, as administrative pricing. These features of the proposal are mitigation measures, which, as stated above, are necessary to ensure the competitive outcome of the auction when a resource seeks to retire uneconomically. Moreover, ISO-NE's proposal involves a re-running of the market clearing mechanism to accurately reflect the capacity situation when a resource seeks to retire uneconomically. Under GEN Group's definition, all mitigation could be viewed as administrative pricing rather than a review of the associated parameters underlying a proposed bid.

77. We also disagree with GEN Group that these changes, designed to provide a disincentive to uneconomic retirements, will instead encourage them. We find that the proxy bid mechanism will help discourage attempts to exercise market power through premature or uneconomic retirements. We further disagree that the proxy bid will increase the price at which new resources are willing to enter the market. This will be a one-year mitigation of the potential exercise of market power. As GEN Group notes in its protest, the decision to enter the market will likely be based on an analysis of expected revenues and costs over 15 to 20 years,<sup>108</sup> and therefore we judge it unlikely that one year of mitigated prices will discourage new entry into the future. Accordingly, we find that using the proxy bid does not constitute undue discrimination, and instead is a logical consequence of the mitigation measures, which are not substantively different than others the Commission has previously approved.<sup>109</sup>

## **5. Section 205 Filing Rights**

### **a. Comments**

78. PSEG Companies, NEPGA, and GEN Group argue that the ISO-NE proposal is not just and reasonable because it denies market participants their FPA section 205 rights

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<sup>108</sup> GEN Group Protest, Schnitzer Test. at 23.

<sup>109</sup> See *ISO-NE*, 135 FERC ¶ 61,029 at P 19.

in seeking a determination of their own rates.<sup>110</sup> PSEG Companies state that “ISO-NE could use its FPA section 205 rights to obtain a proxy bid value that is less than the generation owner’s proposed rate resulting in an outcome in which the proxy bid could clear and displace the bid of the actual unit the proxy bid is supposed to represent.”<sup>111</sup> Thus, they reason, ISO-NE effectively will have set the rate of the displaced generating unit by having exercised its FPA section 205 rights in place of the unit’s owner.

79. NEPGA, GEN Group, and PSEG Companies argue that, under ISO-NE’s proposal, suppliers will have to intervene and submit protests regarding their own rates, rather than having the opportunity to propose those rates themselves before the Commission.<sup>112</sup> They maintain that under the instant proposal, the Commission would be required to accept the IMM’s bid under section 205 if it were just and reasonable, even if the supplier’s bid were also just and reasonable or even superior to that calculated by the IMM.<sup>113</sup> PSEG Companies assert that, given the difficulties of valuing all of the components that compromise a just and reasonable Retirement Bid, generators should not bear the additional burden of showing that someone else’s rate determination for their own unit is not just and reasonable.<sup>114</sup>

80. GEN Group and NEPGA contend that, should a retiring resource not protest the ISO-NE rate, other entities that are adversely affected by the “two-tiered pricing” described above would have insufficient information to effectively protest.<sup>115</sup> GEN Group states that the Commission lacks authority to preclude the generator from filing its Retirement Bid with the Commission merely because the Commission, ISO-NE, or

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<sup>110</sup> PSEG Companies January 11 Protest at 10; NEPGA January 11 Protest at 18; GEN Group January 11 Protest at 12.

<sup>111</sup> PSEG Companies January 11 Protest at 10.

<sup>112</sup> NEPGA January 11 Protest at 19; GEN Group January 11 Protest at 14.

<sup>113</sup> See NEPGA January 11 Protest at 20; GEN Group January 11 Protest at 14; PSEG Companies January 11 Protest at 11.

<sup>114</sup> PSEG Companies January 11 Protest at 10.

<sup>115</sup> GEN Group January 11 Protest at 14; NEPGA January 11 Protest at 21-22.

another market participant may prefer another reasonable rate.<sup>116</sup> GEN Group characterizes ISO-NE's proposal as an "erosion" of its retirement rights.<sup>117</sup>

81. Moreover, GEN Group asserts that its proposal is different than the current Static De-List Bid mitigation process, in which IMM-approved de-list bids are filed with the Commission. GEN Group explains that, "[w]hile generators in the case of static delist bids may have rationally agreed 'voluntarily' to give up their statutory section 205 rights due to the nature of the bid (given their ultimate right to submit a non-priced retirement request), there has been no such agreement by generators when it comes to permanent retirement bids."<sup>118</sup> According to GEN Group, the mitigation of supply offers in the energy market—to which ISO-NE also draws comparison—involves a much more limited scope.

82. ISO-NE states in its answer that generators do not have FPA section 205 filing rights regarding the inputs to the FCA market-clearing price. ISO-NE explains that a Retirement Bid is not a stand-alone generator *rate* for electric service; rather, the IMM-reviewed Retirement Bid is a part of the IMM bid mitigation function of the FCA—and "the mitigation function is a *required* operation of the FCA."<sup>119</sup> According to ISO-NE, the resulting IMM-reviewed Retirement Bid is one of a myriad of inputs that impact the auction clearing price for capacity. Thus, ISO-NE contends, the filing that ISO-NE will make to the Commission is not a rate filing related to service from a generator; rather, it is a filing for an input into the capacity clearing price—the rate—produced by the FCA. ISO-NE avers that market participants' rights under the Tariff are explicitly defined and do not include the right to file inputs that would produce the FCA capacity clearing price.

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<sup>116</sup> GEN Group January 11 Protest at 12 (citing *Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 9 (D.C. Cir. 2002) (*Atlantic City*), that the Commission "cannot point to any statute giving it authority for its unprecedented decision to require the utility petitioners to cede rights expressly given to them in section 205 of the [FPA]."); *see also id.* at 15; NEPGA Protest at 18-20.

<sup>117</sup> GEN Group January 11 Protest at 21, 24.

<sup>118</sup> *Id.* at 15 (footnote omitted) (citing *Atlantic City*, 295 F.3d at 9, and *Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,057, at P 92 (2014), in support of utilities' section 205 filing rights).

<sup>119</sup> ISO-NE Answer at 19 (quoting *New England Power Generators Ass'n, Inc. v. FERC*, 757 F.3d 283, 298 (D.C. Cir. 2014) ("To ensure that the [FCA] is competitive, review of bids by the [IMM] is required.")).

ISO-NE recognizes that the Tariff grants generators FPA section 205 filing rights in certain specific instances, such as for compensation on a cost-of-service basis (rather than, as here, through market mechanisms).

**b. Commission Determination**

83. Certain parties contend that ISO-NE's proposal "erodes" or "usurps" their FPA section 205 rights to file a proposed rate, because ISO-NE could file a proxy bid value that, if it cleared, would displace the bid of the actual generating resource that the proxy bid is supposed to represent.<sup>120</sup> Moreover, several parties take issue with having to intervene and protest ISO-NE's submission of a mitigated input with which they disagree—an alleged reversal of the burden of demonstrating a rate is just and reasonable. Protestors argue that there can be more than one just and reasonable rate, particularly in an instance such as this, where the exercise of determining a Retirement Bid price is complex, imprecise, and dependent upon forecasts of future market conditions. They argue that, if the mitigated bids are submitted to the Commission, the only alternative for protesters who dispute such mitigation is to show that the bids are not just and reasonable. If the IMM's bids are found to be just and reasonable, protesters argue that generating resources have, in effect, lost the opportunity, provided under FPA section 205, to show that their own different, still reasonable, rate should be accepted.

84. Citing *Atlantic City*, protestors correctly point out that section 205 of the FPA gives public utilities certain defined rights with respect to filing their rates, terms, and conditions of service, and that a regional transmission organization, such as ISO-NE, may not require suppliers to cede rights expressly given to them.<sup>121</sup> However, as discussed below, ISO-NE's proposal to submit Retirement Bids to the Commission for review, in addition to those de-list bids currently reviewed by the IMM, does not conflict with *Atlantic City*.

85. Here, ISO-NE's proposed mitigation of Retirement Bids is simply incorporated into the existing IMM bid mitigation function adopted as part of the FCM Settlement. Under the FCM Settlement, ISO-NE makes both an informational filing prior to the capacity auction that includes information regarding the zones to be used and qualifying bids and a section 205 filing following the auction containing the results. Thus, unlike in *Atlantic City*, here market participants have agreed to this approach for bid submission as part of the FCM process. Like the process proposed herein for Retirement Bids, the existing IMM bid mitigation rules for static de-list bids involve ISO-NE's submission

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<sup>120</sup> PSEG Companies January 11 Protest at 10.

<sup>121</sup> See GEN Group January 11 Protest at 12 (citing *Atlantic City*, 295 F.3d at 9).

of the bids with the Commission, and subsequently an additional filing of the ultimate rate(s) under section 205 once the auction has completed. In both the existing Static De-List Bid and proposed Retirement Bid processes, if the IMM finds a supplier's bid to be uncompetitive, suppliers may accept the IMM's determination or reject that determination either by withdrawing the bid, under the current Static De-List Bid process, or by unconditionally retiring from the capacity market, under the proposed Retirement Bid process. Following a review and determination by the IMM, ISO-NE currently files the mitigated Static De-List Bids with the Commission, a filing that serves as an integral part of its mitigation process, as it proposes to do in the new Retirement Bid process.<sup>122</sup> The filing provides suppliers an opportunity to challenge any proposed mitigation before the Commission. Accordingly, we find ISO-NE's mitigation process as applied to the proposed Retirement Bids to be just and reasonable.<sup>123</sup>

## 6. Binding Retirement Bids

### a. Comments

86. NRG Companies and PSEG Companies object to the "retirement track" in ISO-NE's proposal; namely, the requirement that a supplier must continue to submit in subsequent auctions a Retirement Bid if the retiring capacity was procured in the prior FCA, without any amendment to that bid.<sup>124</sup> NRG Companies state that it is perfectly rational for a supplier that submitted a Retirement Bid, but still was selected in the FCA, to reevaluate the information that comprised its Retirement Bid in subsequent years, because costs to maintain the plant could vary significantly from year to year.<sup>125</sup> PSEG Companies similarly argue that the retirement track makes no commercial sense.<sup>126</sup> They

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<sup>122</sup> ISO-NE Tariff § III.13.8.1. (14.0.0).

<sup>123</sup> Ensuring markets are producing just and reasonable rates is the Commission's responsibility, which responsibility includes the exercise of mitigation when appropriate. *See NEPGA*, 757 F.3d at 291 ("The Commission bears the statutory responsibility of ensuring that rates are just and reasonable."), 293 (deferring to the Commission's decision to mitigate "because its determination [was] a proper exercise of its role in balancing competing interests").

<sup>124</sup> *See* NRG Companies January 11 Protest at 11, 13; PSEG Companies Protest at 11-12.

<sup>125</sup> NRG Companies January 11 Protest at 13.

<sup>126</sup> PSEG Companies January 11 Protest at 12.

assert that the underlying principle of the priced Retirement Bid is to allow the resource owner to reveal a price at which it would retire its asset, or in the alternative, continue to operate in the market.<sup>127</sup> PSEG Companies argue that, if this rationale is correct, there is no valid basis to force a supplier onto the retirement track if that supplier no longer chooses to retire because it received the price it needed.<sup>128</sup> Additionally, PSEG Companies argue that requiring a resource to stay on a retirement track adds significant risk to a resource in evaluating potential investment decisions and the price it would require in the current auction.<sup>129</sup>

87. In addition, NRG Companies state that ISO-NE's proposal puts resource owners and consumers at risk by not accounting for changed conditions, expectations, and assumptions between Retirement Bid submittal and the auction.<sup>130</sup> According to PSEG Companies, having the ability to lower or withdraw a Retirement Bid would allow the supplier to incorporate into its offer its latest market assessments and, thus, would allow the auction to procure the most cost-effective suite of resources.<sup>131</sup>

88. PSEG Companies also state that the Commission rejected the imposition of binding delist bids with respect to Static De-List Bids, finding "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 Delist Bid during the post-review modification period."<sup>132</sup> They argue that here, in circumstances in which the consequence of the pricing decision is not just a one-year withdrawal from the auction but rather the retirement of the resource, the logic supporting the Commission's earlier finding is amplified.

89. In addition, NEPGA identifies related logistical problems, noting that suppliers will be asked to make decisions regarding how they would like to proceed with respect to retirement after receiving their Retirement Determination Notifications but prior to the

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<sup>127</sup> *Id.* at 12-13

<sup>128</sup> *Id.* at 13.

<sup>129</sup> *Id.* at 14.

<sup>130</sup> NRG Companies January 11 Protest at 11-12.

<sup>131</sup> PSEG Companies January 11 Protest 11-12.

<sup>132</sup> *Id.* at 11 (citing *ISO New England Inc.*, 151 FERC ¶ 61,270, at P 24 (2015)).

submission of ISO-NE's section 205 filing with the Commission.<sup>133</sup> Thus, NEPGA argues, suppliers will have to make their retirement decisions with considerable uncertainty regarding the Commission's ultimate determination as to price.

90. In its answer, ISO-NE states that, contrary to protestors' arguments, a resource owner may request to remove its resource from the retirement track in future years.<sup>134</sup> ISO-NE states that the IMM will consult with the resource owner to determine the appropriateness of exiting the retirement track and the Commission will review the subsequent IMM determination.

91. By contrast, ISO-NE contends that allowing a resource to withdraw a submitted Retirement Bid would eviscerate the proposal's attempt to provide a market signal to new resources.<sup>135</sup> ISO-NE explains that its proposal shifts the FCM auction timeline to provide for the submission of Retirement Bids prior to the Show of Interest deadline for new resources, and that the information conveyed by the initial submission of a Retirement Bid is of little use to another party considering entering the FCM if that retirement bid may be withdrawn long after the new entrant has committed to enter the FCM. ISO-NE discounts NRG Companies' argument that resource owners should be allowed to alter a Retirement Bid after submission, remarking that it is difficult to see how market changes from the proposed Retirement Bid deadline to NRG Companies' requested deadline will change a resource owner's retirement decisions nearly four years before the actual retirement date.<sup>136</sup> According to ISO-NE, however, if such a circumstance were to arise, there is nothing to prevent a resource from seeking Commission approval to modify or withdraw a Retirement Bid.

**b. Commission Determination**

92. We accept ISO-NE's proposal to require a resource that submits a Retirement Bid to resubmit its Retirement Bid every year until the resource is permanently de-listed or retired. We agree with ISO-NE's expert witness, Dr. McDonald, that failing to adopt this part of the instant proposal creates concerns regarding resources moving into and out of

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<sup>133</sup> NEPGA January 11 Protest at 21.

<sup>134</sup> ISO-NE Answer at 47.

<sup>135</sup> *Id.* at 49.

<sup>136</sup> *Id.* at 50.

retirement.<sup>137</sup> We agree that the proposed retirement track provides a disincentive to use Retirement Bids for the purpose of obtaining an inflated bid price.

93. The retirement track is similar to the Tariff's current provisions where, once a resource submits a Non-Price Retirement Request, that resource is not allowed to offer capacity into subsequent auctions.<sup>138</sup> The Commission has found that, for Non-Price Retirement Requests, this binding obligation to retire is critical in addressing the concern that a resource needed for reliability may seek to use certain bids to toggle between cost-based and market-based compensation to the detriment of customers.<sup>139</sup> Similarly, the proposed retirement track prevents potential gaming where, absent a retirement track, a resource that is not near the end of its economic life may seek to influence the capacity market price through a Retirement Bid.

94. We are not persuaded by NRG Companies' and PSEG Companies' arguments that it is necessary to allow a supplier to reevaluate the information that comprised its Retirement Bid in subsequent years when it has received a capacity supply obligation in the market. ISO-NE states that a supplier may request to remove a resource from the retirement track.<sup>140</sup> ISO-NE also states that changes in circumstances that result in extended economic life of the resource, such that retirement in the short-term appears to be irrational, will be taken into consideration.<sup>141</sup> We would expect that this commitment would address the scenarios NRG Companies and PSEG Companies envision.

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<sup>137</sup> ISO-NE Filing, McDonald Test, at 15.

<sup>138</sup> See ISO-NE Tariff § III.13.1.2.3.1.5.1 (39.0.0) ("A Non-Price Retirement Request is a binding request to retire all or part of a Generating Capacity Resource. . . . Once submitted, a Non-Price Retirement Request may not be withdrawn.").

<sup>139</sup> "Resources whose permanent de-list bids or non-price retirement requests are rejected for local reliability concerns will have the option of receiving cost-based payments, but once the reliability concern is resolved, any cost-based payments will terminate and that resource will be unable to participate in any future auctions, eliminating the ability for the resource to receive market-based capacity payments. This, in coordination with a security review of bilateral transfers of capacity, prevents gaming by holding these units needed for reliability to their committed capacity obligation." *ISO New England Inc.*, 125 FERC ¶ 61,102, at P 47 (2008).

<sup>140</sup> ISO-NE Filing, Transmittal Letter at 7 n.12; *id.*, McDonald Test. at 15.

<sup>141</sup> ISO-NE Filing, McDonald Test. at 16.

95. We are also not persuaded by NRG Companies' and PSEG Companies' arguments that suppliers should be able to lower or withdraw a Retirement Bid prior to the auction. ISO-NE proposes that, shortly after the deadline for Retirement Requests, it will post information regarding the amount of existing capacity that may exit for the upcoming auction.<sup>142</sup> We find that holding suppliers to their initial Retirement Bids ensures that ISO-NE's posting is accurate, and that project sponsors receive better and more timely information about when and where new capacity may be needed. Additionally, given that the IMM will be reviewing every Retirement Bid, it seems impractical to allow suppliers to adjust their Retirement Bids up until the auction as such a practice will present the IMM with a "moving target" and would require ISO-NE to submit multiple informational filings with the Commission should the IMM's Retirement Determination Notification change.

The Commission orders:

(A) ISO-NE's proposed revisions are hereby accepted, effective March 1, 2016, subject to condition, as discussed in the body of this order.

(B) ISO-NE is hereby directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>142</sup> *Id.*, Transmittal Letter at 9.