

172 FERC ¶ 61,144
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick, Bernard L. McNamee,
and James P. Danly.

Constellation Mystic Power, LLC

Docket No. EL20-52-000

v.

ISO New England Inc.

ORDER DENYING COMPLAINT

(Issued August 17, 2020)

1. On June 10, 2020, Constellation Mystic Power, LLC (Mystic) filed a complaint, asking the Commission to prohibit ISO New England Inc. (ISO-NE) from implementing an unfiled revision to its Planning Procedure No. 10 (PP-10 Revision), when conducting its transmission security review prior to its fifteenth annual auction to procure capacity on a forward basis (Forward Capacity Auction or FCA 15). Mystic also seeks a Commission finding that ISO-NE's conduct of the Order No. 1000 Request for Proposal (RFP) process to address reliability needs in the Boston area (Boston RFP) violates the ISO-NE Transmission, Markets and Services Tariff (Tariff) and requests that the Commission direct ISO-NE to conduct this process in accordance with the Tariff. For the reasons discussed below, we deny the Complaint.

I. Background

A. Fuel Security and Transmission Security Tariff Provisions

2. ISO-NE operates a Forward Capacity Market (FCM), under which it procures capacity by conducting an FCA every year, in which resources compete to obtain Capacity Supply Obligations for a Capacity Commitment Period three years in the future. Resources that clear the FCA are committed to provide capacity to ISO-NE during the relevant Capacity Commitment Period, and in return they receive capacity payments.¹ Resources that seek to de-list from an FCA (i.e., not participate) and leave the capacity market on a permanent basis submit either Retirement or Permanent De-List bids. In

¹ Tariff, § III.13, "Forward Capacity Market."

preparation for each FCA, the Tariff requires ISO-NE to conduct reliability reviews of Retirement and Permanent De-list Bids to determine whether the units are needed for either “fuel security” or for “transmission security”² during the relevant Capacity Commitment Period. If a resource is needed for either purpose, the Tariff provides for the potential retention of that resource by either paying the resource its de-list bid or allowing the resource to negotiate a cost-of-service agreement.³ If ISO-NE finds that it needs a resource previously retained for fuel security to maintain local transmission reliability after the term of its fuel security cost-of-service agreement has ended, the Tariff’s fuel security provisions allow ISO-NE to retain that resource under a cost-of-service agreement.⁴

3. ISO-NE is beginning preparations for FCA 15, which will procure capacity for the Capacity Commitment Period running from June 1, 2024 to May 31, 2025. Relevant here, in the process leading up to the thirteenth FCA (FCA 13), Mystic’s units Mystic 8 and 9 submitted Retirement De-List Bids, indicating that Mystic wished to retire those units. ISO-NE retained Mystic 8 and 9 for fuel security for the Capacity Commitment Periods associated with FCAs 13 and 14 under a cost-of-service agreement.⁵ However, ISO-NE has indicated that it will not retain either unit for fuel security in FCA 15. Pursuant to the Tariff, Mystic 8 and 9 will retire from the system after the FCA 14 Capacity Commitment Period, unless they are needed to maintain transmission security in the FCA 15 delivery year, beginning June 1, 2024.

B. Order No. 1000 Request for Proposals

4. On September 14, 2018, pursuant to Attachment K of the Tariff (Attachment K), ISO-NE initiated a needs assessment for the Boston area to assess potential transmission security needs resulting from the retirement of Mystic 8 and 9 (Boston Area Needs

² Fuel security and transmission security are aspects of reliability treated separately in the ISO-NE Tariff. The fuel security reliability review is specified in § III.13.2.5.2.5A and evaluates whether a resource is necessary to avoid a fuel security reliability trigger outlined in § III, Appendix L. The transmission security reliability review is specified in § III.13.2.5.2.5 and evaluates whether a resource is necessary to avoid violation of any North American Electric Reliability Corporation (NERC) or Northeast Power Coordinating Council (NPCC) criteria, or ISO-NE System Rules.

³ See Tariff, §§ III.13.2.5.2.5; III.13.2.5.2.5A.

⁴ See *id.* § III.13.2.5.2.5A(j).

⁵ *Constellation Mystic Power, LLC*, 164 FERC ¶ 61,022 (2018), *order on clarification*, 172 FERC ¶ 61,043 (2020); see also *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267 (2018), *order on clarification*, 172 FERC ¶ 61,044 (2020).

Assessment).⁶ On December 20, 2019, ISO-NE issued the Boston RFP, which is ISO-NE's first RFP for the selection of a competitive transmission project under Order No. 1000. The Boston RFP is intended to address the transmission reliability need caused by the retirement of Mystic 8 and 9.⁷ Pursuant to Attachment K, section 4.3, the Order No. 1000 RFP process requires parties to submit initial proposals during Phase One, and, following ISO-NE's evaluation of these proposals, a subset of the remaining entrants proceed to Phase Two. The deadline for submitting Phase One proposals for the Boston RFP closed on March 4, 2020. ISO-NE received 36 Phase One proposals with in-service dates ranging from March 2023 to December 2026.⁸ Pursuant to Attachment K, section 4.3(a), one or more Participating Transmission Owners is required to submit a Backstop Transmission Solution into the Order No. 1000 RFP process. The Backstop Transmission Solution competes with all other transmission solutions and must remain in the competitive transmission solicitation process until the preferred solution is selected.⁹

C. PP-10 Revision

5. PP-10 is an ISO-NE business practice manual that sets out the process by which ISO-NE conducts the FCM planning activities, including the transmission security review governed by Tariff section III.13.2.5.2.5. On April 13, 2020, ISO-NE informed the New England Power Pool (NEPOOL) Participants Committee that it planned to revise PP-10 to ensure alignment of the transmission security review and the Order No. 1000 RFP process.¹⁰ ISO-NE stated that it was important to ensure that new transmission developed in response to an Order No. 1000 RFP is considered when evaluating whether a retiring FCM resource is needed for transmission security so as to prevent consumers

⁶ See ISO-NE, *Notice of Initiation of 2028 Boston Area Needs Assessment* (September 14, 2018), https://www.iso-ne.com/static-assets/documents/2018/09/notice_of_initiation_of_boston_2028_needs_assessment_study.pdf.

⁷ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

⁸ Complaint, Exh. MYS-0016 (Boston 2028 RFP – Review of Phase One Proposals) at slide 6 (RFP Review).

⁹ See Attachment K, § 4.3(j).

¹⁰ Complaint, Exh. MYS-0008 (ISO-NE April 13, 2020 Letter to NEPOOL Participants Committee).

from paying twice to resolve the same reliability concern: once to retain a retiring resource and also for the Order No. 1000 transmission project, which ISO-NE argued was neither efficient nor cost-effective. According to ISO-NE, prior to the PP-10 Revision, there was a timing problem because PP-10 did not explicitly allow ISO-NE to include responses from an ongoing Order No. 1000 RFP in its transmission security review process. ISO-NE stated that, to ensure alignment of the Order No. 1000 RFP process with its review of the Boston area's reliability needs, it planned to update PP-10 to appropriately include responses from the RFP in the transmission security review process.

6. Prior to the PP-10 Revision, the relevant portion of section 7.5 of PP-10 stated that, when conducting its transmission reliability review process pursuant to Tariff section III.13.2.5.2.5(e), ISO-NE would also determine whether the reliability need created by the resource that had submitted the de-list bid was met by "a new transmission project, formerly de-listed resources, New Capacity Resource(s) having obtained a Capacity Supply Obligation or updates to all relevant assumptions."¹¹ The PP-10 Revision states that ISO-NE may consider responses to an Order No. 1000 RFP when conducting its reliability review and adds the following language to section 7.5:

Where [an RFP] under Section 4 of Attachment K has been issued in response to a de-list bid rejected for reliability reasons, [ISO-NE's] reevaluation of the rejected de-list bid may consider:

1. Whether there are responses to the RFP with in-service dates prior to the relevant Capacity Commitment Period for the rejected de-list bid and [ISO-NE] determines that some of those responses, including the Backstop Transmission Solution, are reasonably likely to be in-service prior to the relevant Capacity Commitment Period for the rejected de-list bid; and
2. Whether some of such responses are expected to address the reliability need(s) set forth in the RFP.

In such cases, responses to the RFP may be determined to be timely and sufficient to meet the reliability need caused by the rejected de-list bid.

¹¹ See PP-10, § 7.5.

The PP-10 Revision passed the NEPOOL Participants Committee's advisory vote with 99.12% support and became effective on June 4, 2020.¹²

D. Boston RFP Phase One Results

7. On June 8, 2020, as revised on June 9, 2020, ISO-NE issued the preliminary results of the draft Phase One Boston RFP.¹³ As part of Phase One, ISO-NE conducted a preliminary review of the proposals, reporting that it eliminated those proposals that either failed to meet a specific requirement in Attachment K, section 4.3(e) or were not allowed under the Tariff or Boston RFP, after which ten proposals remained.¹⁴

Subsequently, ISO-NE initiated the process to cure minor Phase One proposal deficiencies pursuant to Attachment K, section 4.3(f), which resulted in the exclusion of four of the updated Phase One proposals.¹⁵ The remaining six proposals ranged in installed cost from \$49M to \$121M. Pursuant to Attachment K, section 4.3(f), ISO-NE proposed to exclude five of the six proposals as not competitive, which would eliminate all but the \$49M proposal, the incumbent transmission owner's Backstop Transmission Solution.¹⁶ The Backstop Transmission Solution has an anticipated in-service date of October 2023, ahead of the retirement of Mystic 8 and 9 on June 1, 2024.¹⁷

Subsequently, ISO-NE conducted the meeting with the Planning Advisory Committee on June 17, 2020, and sought feedback from stakeholders by July 2, 2020.

8. On July 17, 2020, ISO-NE posted the Final Boston 2028 RFP Review of Phase One Proposals Report, confirming ISO-NE's selection of the Backstop Transmission Solution as the sole qualifying Phase One proposal.¹⁸ ISO-NE indicated that it will

¹² NEPOOL Comments at 1.

¹³ See RFP Review.

¹⁴ *Id.* at slide 30.

¹⁵ *Id.* at slides 32, 40.

¹⁶ *Id.* at slides 43-44.

¹⁷ *Id.* at slide 46.

¹⁸ ISO-NE, *Posting of the Final Boston 2028 RFP Review of Phase One Proposals Report and Notice of Initiation of the Boston 2028 Solutions Study – Mystic Retirement* (July 17, 2020), https://www.iso-ne.com/static-assets/documents/2020/07/pac_memo_final_boston_2028_rfp_review_of_phase_one_proposals_report_and_notice_of_information.pdf; ISO-NE, *Boston 2028 Request for Proposal (RFP) - Review of Phase One Proposals Final Report* (July 17, 2020),

initiate a Solutions Study to further evaluate this project based on Attachment K, section 4.1(i).

II. Summary of Complaint

9. As discussed further below, Mystic alleges in its Complaint that: (1) the PP-10 Revision should be filed with the Commission and included in the Tariff rather than a business practice manual as a practice that significantly affects rates, terms and conditions of jurisdictional services; (2) the PP-10 Revision violates the Tariff's modeling and generator compensation requirements; (3) the PP-10 Revision and ISO-NE's Boston RFP review process violate the Tariff's Order No. 1000 procedures; and (4) the PP-10 Revision will jeopardize reliability. Mystic contends that ISO-NE is deliberately using the PP-10 Revision to ensure that Mystic 8 and 9 will not be retained to provide transmission security in the FCA 15 Capacity Commitment Period.¹⁹ Specifically, Mystic asserts that ISO-NE revised PP-10 to allow it to treat RFP proposals that could possibly be constructed in time to relieve the transmission security problem that is currently addressed by Mystic 8 and 9 as if those proposals will be constructed in time to relieve the reliability need for FCA 15.²⁰

10. Mystic asks the Commission to issue an order by August 10, 2020, so ISO-NE can reflect the retention of Mystic 8 and 9 in the transmission security review that ISO-NE will be conducting through August 18, 2020.²¹

III. Notice of Filings and Responsive Pleadings

11. Notice of Mystic's Complaint was published in the *Federal Register*, 85 Fed. Reg. 36,575 (June 17, 2020), with interventions and protests due on or before June 30, 2020. Connecticut Public Utilities Regulatory Authority and Massachusetts Department of Public Utilities filed notices of intervention. Anbaric Development Partners, LLC (Anbaric); Avangrid Networks (Avangrid); Brookfield Renewable Trading and

https://www.iso-ne.com/static-assets/documents/2020/07/final_boston_2028_rfp_review_of_phase_one_proposals.pdf.

¹⁹ Complaint at 6-7.

²⁰ *Id.* at 18.

²¹ Mystic July 10, 2020 Answer at 27-28; *see also* Mystic August 3, 2020 Answer at 3. ISO-NE contends that action by this date is not necessary because, on July 27, 2020, ISO-NE posted a notice, stating that it had accepted the Retirement De-List Bids for Mystic 8 and 9 for the 2024/2025 Capacity Commitment Period. ISO-NE July 27, 2020 Answer at 16-17.

Marketing LP; Calpine Corporation; Connecticut Attorney General; Connecticut Department of Energy and Environmental Protection; Dominion Energy Services; Electric Power Supply Association (EPSA); Eastern Massachusetts Consumer-Owned Systems (EMCOS);²² Eversource Energy Service Company; FirstLight Power (FirstLight); Footprint Power Salem Harbor Development LP; Helix Maine Wind Development; LSP Transmission Holdings II (LS Power); Massachusetts Attorney General (Mass AG); Massachusetts Municipal Wholesale Electric Company (MMWEC) and New Hampshire Electric Cooperative, Inc. (NHEC) (together, Public Systems); National Grid; NEPOOL; New England Power Generators Association (NEPGA); New England States Committee on Electricity (NESCOE); New York Transmission Owners; NextEra Energy Resources; NextEra Energy Transmission; NRG Power Marketing; Southern Power Company; and Vistra Energy Corp. (Vistra) filed timely motions to intervene. Energy New England and Versant Power (Versant) individually filed motions to intervene out of time.

12. On June 30, 2020, ISO-NE filed an answer to the Complaint. EMCOS; EPSA; FirstLight, ISO-NE's Internal Market Monitor (IMM); LS Power; Mass AG; National Grid;²³ NEPGA; NEPOOL; NESCOE; Vistra; and Versant filed comments. On July 10, 2020, Mystic filed an answer to ISO-NE's answer and the comments. On July 27, 2020, ISO-NE, NEPGA, NEPOOL and Vistra individually filed answers to Mystic's answer. On August 3, 2020, Mystic filed an answer to the ISO-NE and NEPOOL July 27, 2020 answers.

13. On June 23, 2020, Mystic also filed a Motion to Lodge New Information with the Commission. On June 30, 2020, Anbaric filed limited comments with respect to the Motion to Lodge. On July 8, 2020, and July 13, 2020, respectively, ISO-NE and Avangrid filed answers to Mystic's Motion to Lodge. On July 15, 2020, Anbaric filed an answer to ISO-NE's and Avangrid's answers.

²² EMCOS consists of the Belmont Municipal Light Department; Braintree Electric Light Department; Concord Municipal Light Plant; Danvers Electric Division; Georgetown Municipal Light Department; Groveland Electric Light Department; Hingham Municipal Lighting Plant; Littleton Electric Light and Water Department; Merrimac Municipal Light Department; Middleborough Gas & Electric Department; Middleton Electric Light Department; Norwood Light & Broadband Department; Reading Municipal Light Department; Rowley Municipal Lighting Plant; Taunton Municipal Lighting Plant; and Wellesley Municipal Light Plant.

²³ National Grid filed its protest on behalf of itself, Avangrid, Eversource and Vermont Electric Power Company.

IV. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2019), we grant Energy New England's and Versant's late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.²⁴

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 358.213(a)(2) (2019), prohibits an answer to a protest and an answer unless otherwise ordered by the decisional authority. We accept Mystic's answers and ISO-NE's, NEPGA's, NEPOOL's and Vistra's July 27, 2020 answers because they have provided information that assisted us in our decision-making process.

16. We deny Mystic's Motion to Lodge a June 16, 2020 letter from Anbaric to ISO-NE raising issues about Phase One of the Boston RFP process because it does not provide information that has assisted us in our decision-making process.²⁵ The letter that Mystic seeks to lodge, and the answers related to Mystic's motion,²⁶ speak generally to alleged errors in ISO-NE's conduct of the Boston RFP process, rather than to the specific allegations raised by Mystic concerning ISO-NE's implementation of Attachment K, section 4.3. To the extent that there are concerns regarding ISO-NE's conduct of the

²⁴ The IMM filed comments but did not file a motion to intervene; therefore, it is not a party to this proceeding. See 18 C.F.R. §§ 385.102(c)(3), 385.214(a)(3). National Grid filed comments on behalf of Vermont Electric Power Company; however, Vermont Electric Power Company did not file a motion to intervene, so it is not a party to this proceeding.

²⁵ See, e.g., *ISO New England Inc.*, 147 FERC ¶ 61,027, at P 13 (2014), *rev'd and remanded on other grounds sub nom. TransCanada Power Mktg. Ltd. v. FERC*, 811 F.3d 1 (D.C. Cir. 2015), *order on remand, ISO New England Inc.*, 171 FERC ¶ 61,003 (2020).

²⁶ We consider Anbaric's June 30, 2020 limited comments to the Motion to Lodge to be an answer to the motion. See 18 C.F.R. § 385.213(a)(3).

Boston RFP process, parties may raise objections pursuant to the procedures set forth in the Tariff.²⁷

B. Substantive Matters

1. Necessity of Filing the PP-10 Revision with the Commission

a. Complaint

17. Mystic asserts that the PP-10 Revision is a “classification, practice, and regulation affecting” jurisdictional rates that, according to section 205 of the Federal Power Act (FPA) and the “rule of reason,” qualifies as a term and practice that “significantly affect[s] rates, terms, or conditions of service,” which must be included in the Tariff and filed with the Commission.²⁸ Mystic argues that the PP-10 Revision will significantly affect the rates, terms and conditions of jurisdictional services because the outcome of ISO-NE’s reliability studies will determine whether Mystic 8 and 9 are able to receive compensation in FCA 15 for providing reliability service.²⁹ Therefore, Mystic contends that ISO-NE cannot include the PP-10 Revision in an unfiled business process document.³⁰

²⁷ Attachment K, section 12, provides dispute resolution procedures through which “regional transmission planning-related disputes may be resolved.”

²⁸ Complaint at 25-26 (citing *New England Power Pool*, 110 FERC ¶ 61,396, at P 29 (2005) (requiring ISO-NE to file rules relating to qualifications for capacity resources to fully or partially de-list, noting that “such qualifications *significantly affect the terms and conditions* of participation in the jurisdictional wholesale market for capacity” (emphasis added))).

²⁹ *Id.* at 26 (citing *ANP Funding, LLC v. ISO New England, Inc.*, 110 FERC ¶ 61,040, at P 23 (2005) (*ANP Funding*) (revisions to ISO-NE’s operating procedures “could affect compensation that generators receive under Market Rule 1 by limiting the circumstances under which they can declare economic outages. Consequently, we find that the revisions must be filed under section 205 of the FPA”)).

³⁰ *Id.* (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,212, at P 121 (2011) (*MISO*) (denying rehearing of prior requirement that MISO file provisions related to measurement and demand verification for demand response resources); *Mirant Americas Energy Mktg., L.P. v. ISO New England Inc.*, 96 FERC ¶ 61,201, at 61,860 (2001) (*Mirant*) (granting complaint against ISO-NE related to attempt to implement unfiled market rules related to market mitigation), *vacated and*

18. Mystic argues that the PP-10 Revision allows ISO-NE to use a “reasonably likely” standard to determine whether responses to an Order No. 1000 RFP are expected to be in service when conducting its transmission security review. Mystic alleges that, in doing so, the PP-10 Revision violates the rule of reason because it grants ISO-NE authority that it previously lacked.³¹ Before the PP-10 Revision, Mystic contends that PP-10 was fully aligned with ISO-NE’s Tariff processes and therefore did not need to be filed. However, Mystic states that, because the PP-10 Revision grants ISO-NE new authority and contradicts various provisions of the Tariff, it must be filed with the Commission.³²

b. ISO-NE Answer

19. ISO-NE argues that the PP-10 Revision does not belong in the Tariff because it does not significantly affect rates.³³ ISO-NE states that, in *Big Sandy*, the Commission recognized that “it may be appropriate to provide operational and reliability-related discretion to independent system operators, and to not second-guess their decisions in that regard.”³⁴ ISO-NE asserts that it is appropriate for business practice manuals to contain implementation details, such as instructions, guidelines, examples and charts, which guide internal operations and inform market participants of how a utility conducts its operations.³⁵

remanded on other grounds, NSTAR Elec. & Gas Corp. v. FERC, 64 F. App’x 786 (D.C. Cir. 2003)).

³¹ *Id.* at 31.

³² *Id.* at 7, 12-13, 25-30.

³³ ISO-NE June 30, 2020 Answer at 18-23 (citing *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985) (*City of Cleveland*)).

³⁴ *Id.* at 19 (citing *Big Sandy Peaker Plant, LLC v. PJM Interconnection, L.L.C.*, 154 FERC ¶ 61,216, at P 50 (2016) (*Big Sandy*) (finding that “innumerable,” reliability-related reasons to deselect a generating resource for any given hour are not “realistically susceptible of specification” in a tariff and that requiring PJM Interconnection (PJM) to set forth in the PJM Tariff an exclusive list of these specific, reliability-related reasons would limit PJM to those tariff criteria, which could compromise PJM’s ability to respond to changes in operations or characteristics of the PJM system.”)).

³⁵ *Id.* at 19 (citing *Cal. Indep. Sys. Operator Corp.*, 122 FERC ¶ 61,271, at P 16 (2008); *Monterey MA, LLC v. PJM Interconnection, L.L.C.*, 165 FERC ¶ 61,201, at P 52 (2018)).

20. ISO-NE acknowledges that the rule of reason requires all matters that significantly affect rates, terms, and conditions of transmission service to be included in a public utility's tariff.³⁶ ISO-NE asserts, however, that the PP-10 Revision does not fall within this category. ISO-NE explains that PP-10 provides details relating to FCM studies, including how ISO-NE will conduct the reliability review pursuant to section III.13.2.5.2.5 of the Tariff.³⁷ ISO-NE further explains that, before the PP-10 Revision, PP-10 did not specifically address how ISO-NE's transmission reliability reviews might take into account an ongoing solicitation for transmission solutions for a rejected de-list bid.³⁸ ISO-NE argues that the PP-10 Revision adds detail about how it implements its reliability review but does not fundamentally change PP-10 or how ISO-NE conducts the review, as Mystic alleges.³⁹ ISO-NE asserts that, instead, the PP-10 Revision simply aligns the Order No. 1000 solicitation process and the reliability review.⁴⁰

21. ISO-NE challenges Mystic's reliance on *New England Power Pool* to support its assertion that the PP-10 Revision must be included in the Tariff and filed with the Commission.⁴¹ ISO-NE argues that the precedent is inapposite because it addressed whether qualifications and eligibility requirements significantly affected rates and therefore must be in the Tariff, while this case addresses whether a particular clarification of the factors ISO-NE may consider in the transmission reliability review of a rejected de-list bid must be in the Tariff. ISO-NE asserts that, as a Regional Transmission Organization (RTO) and NERC-designated reliability coordinator, ISO-NE requires the flexibility and has the expertise to determine whether transmission facilities are likely to be in service.⁴² Further, ISO-NE states that the PP-10 Revision does not conflict with the Tariff as alleged because the PP-10 Revision is permitted by the Tariff and PP-10. ISO-NE notes that the Tariff already allows ISO-NE's reliability review to consider transmission enhancements pursuant to section III.13.2.5.2.5(e), which states that:

³⁶ *Id.* at 3.

³⁷ *Id.* at 21.

³⁸ *Id.* at 10.

³⁹ *Id.* at 3, 20-21 (citing Complaint at 7).

⁴⁰ *Id.* at 11.

⁴¹ *Id.* at 21-23 (citing Complaint at 26 (citing *New England Power Pool*, 110 FERC ¶ 61,396 at P 29)).

⁴² *Id.* at 23-24.

[ISO-NE] shall review the results of each annual reconfiguration auction and determine whether the reliability need which caused [ISO-NE] to reject the de-list bid has been met through the annual reconfiguration auction. [ISO-NE] may also attempt to address the reliability concern through other reasonable means (*including transmission enhancements*).⁴³

c. Protests, Comments, and Further Answers

22. Commenters generally agree with ISO-NE that the PP-10 Revision does not need to be included in the Tariff because it does not significantly affect the rates, terms and conditions of jurisdictional service; rather, it is an implementation detail that clarifies, and does not change, the broad discretion that ISO-NE has always had pursuant to the Tariff.⁴⁴ EMCOS and Vistra argue that section 7.5 of PP-10 has always provided the implementation details for the reliability review of de-list bids under Tariff sections III.13.2.5.2.5(e) and (f) and the PP-10 Revision makes explicit the considerations that ISO-NE will use in incorporating the Boston RFP results.⁴⁵

23. NEPGA asserts that Mystic's claims regarding the rule of reason are based on the flawed premise that ISO-NE may only take into account in its local transmission reliability reviews those transmission solutions that meet the criteria for inclusion in the Network Model.⁴⁶ NEPGA contends that the Commission does not require RTOs/Independent System Operators (ISO) to attempt to specify every rule or practice

⁴³ *Id.* at 21, 24-25 (citing Tariff § III.13.2.5.2.5(e) (emphasis added)).

⁴⁴ See FirstLight Protest at 4-6; IMM Protest at 4; Mass AG Protest at 3-10; National Grid at 14-17; NEPGA Protest at 8-16; NEPGA Answer at 2; NEPOOL Protest at 5-6, 12; Versant Protest at 3; Vistra Protest at 2, 6-8, 12.

⁴⁵ EMCOS Protest at 12-14; Vistra Protest at 4-7, 13-15 (citing *N.Y. Indep. Sys. Operator, Inc.*, 155 FERC ¶ 61,076 at P 73 (2016), *order on reh'g*, 161 FERC ¶ 61,189 (2017), *order on clarification and reh'g*, 163 FERC ¶ 61,047 (2018) (finding that New York Independent System Operator, Inc.'s (NYISO's) tariff provisions could be "sufficiently broad and flexible" to take into account variations in circumstances); *Cal. Indep. Sys. Operator Corp.*, 168 FERC ¶ 61,199, at P 31 (2019) (citing *Cal. Indep. Sys. Operator Corp.*, 134 FERC ¶ 61,211, at P 134 (2011) (describing the need to provide RTOs/ISOs with flexibility)).

⁴⁶ NEPGA Protest at 16.

employed when analyzing the operational and reliability needs of the system.⁴⁷ Commenters also disagree with Mystic's argument that the PP-10 Revision must be filed with the Commission because it could impact the rates paid to generators, contending that Mystic's argument would require ISO-NE to file the entire PP-10, or at a minimum, additional portions of PP-10, in its Tariff.⁴⁸ Mass AG contends that the rule of reason precedent upon which Mystic relies is distinguishable because it does not involve reliability planning but instead concerns operational issues.⁴⁹

24. Commenters claim that, contrary to Mystic's assertions, the Commission has recognized that RTOs/ISOs require flexibility.⁵⁰ Mass AG argues that reliability reviews necessarily require judgment-based assessments; therefore, the Commission should allow ISO-NE the flexibility under PP-10 to respond to changes and reassess reliability needs in the context of the FCA.⁵¹ FirstLight argues that preventing ISO-NE from implementing section 7.5 of PP-10, as revised, would risk over-charging transmission customers and harming the operation of the FCM.⁵² NEPOOL argues that, even if the Commission determines that the PP-10 Revision should be in the Tariff, it should not prevent ISO-NE from taking into account the transmission enhancements proposed in response to the Boston RFP.⁵³

⁴⁷ *Id.* at 17 (citing *Southwest Power Pool*, 132 FERC ¶ 61,042, at P 57 (2010); *ISO New England Inc.*, 154 FERC ¶ 61,008, at P 32 *reh'g denied*, 155 FERC ¶ 61,145 (2016); *Big Sandy*, 154 FERC ¶ 61,216 at P 50).

⁴⁸ *Id.* at 5-6; *Vistra Protest* at 16-18; *Vistra Answer* at 6-7.

⁴⁹ *Mass AG Protest* at 8-10 (citing *MISO*, 137 FERC ¶ 61,212; *Mirant*, 96 FERC ¶ 61,201; *New England Power Pool*, 110 FERC ¶ 61,396).

⁵⁰ *EPSA Protest* at 7; *Mass AG Protest* at 8; *NEPGA Protest* at 11-13; *Vistra Protest* at 4.

⁵¹ *Mass AG Protest* at 8 (citing *Southwest Power Pool*, 136 FERC ¶ 61,050, at P 37 (2011); *Big Sandy*, 154 FERC ¶ 61,216 at P 49); *Vistra Protest* at 15 (citing *Cal. Indep. Sys. Operator Corp.*, 147 FERC ¶ 61,231, at P 96, *reh'g denied and clarification granted*, 149 FERC ¶ 61,058 (2014) (finding that "instructions, guidelines, examples, and charts guiding internal operations" related to the Energy Imbalance Market need not be filed in the tariff).

⁵² *FirstLight Protest* at 7.

⁵³ *NEPOOL Protest* at 15-18.

25. In response, Mystic argues that ISO-NE has not meaningfully responded to Mystic's foundational argument that a change in procedure that allows ISO-NE to alter a Tariff standard must be filed with the Commission.⁵⁴ Mystic asserts that ISO-NE admits that the PP-10 Revision gives ISO-NE discretion that it did not have before and therefore not filing the PP-10 Revision with the Commission violates the rule of reason.⁵⁵ Mystic alleges that the PP-10 Revision is not an implementation detail that merely supplements information included in the Tariff because ISO-NE had a long-held practice of using the Tariff's Network Model for all significant activities related to the FCA.⁵⁶ Mystic adds that the PP-10 Revision is not pre-authorized by Tariff section III.13.2.5.2.5(e).⁵⁷ Mystic asserts that, even if Tariff section III.13.2.5.2.5(e) applied to Mystic, ISO-NE should have filed the PP-10 Revision with the Commission because it permits ISO-NE to change the planning procedures in such a way that it will have a significant and material impact on Mystic's and other market participants' rates.⁵⁸ Mystic states that, under the Tariff interpretation advanced by ISO-NE and other commenters, Mystic 8 and 9 will not be retained for transmission security in FCA 15 and will receive no compensation for providing transmission security. Mystic argues that, because prior to the PP-10 Revision ISO-NE would have retained Mystic in FCA 15 for transmission security in FCA 15, the PP-10 Revision prevents Mystic from receiving the rate to which Mystic is entitled and thus the PP-10 Revision materially affects Mystic's rate.⁵⁹ Mystic further argues that it will have no way to challenge "that complete reversal of the rate to which it is entitled," which is contrary to the filed rate doctrine's prohibition against service providers unilaterally setting rates without Commission review.⁶⁰ Mystic acknowledges that, in a previous order involving the possibility that a transmission solution might address ISO-NE's reliability needs, the Commission noted that it "remain[s] open to [ISO-NE] proposing to revise the relevant reliability review timeline to ensure that resources are not unnecessarily retained when transmission solutions will be in place in time to address

⁵⁴ Mystic August 3, 2020 Answer at 2-3.

⁵⁵ Mystic July 10, 2020 Answer at 2, 5-6 (citing ISO-NE June 30, 2020 Answer at 2).

⁵⁶ *Id.* at 19-20 (citing *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,288, at P 38 (2008)).

⁵⁷ *Id.* at 6-12.

⁵⁸ *Id.* at 10.

⁵⁹ *Id.* at 5.

⁶⁰ *Id.* at 5.

identified reliability needs.”⁶¹ Mystic argues, however, that this language requires ISO-NE to propose any such revision specifically through a filing with the Commission.

26. Mystic argues that the issue here is similar to *New England Power Pool*, in which the Commission required ISO-NE to file qualifications for de-listing generators because “the qualifications for de-listing are likely to limit the circumstances by which generators can fully or partially de-list, and thus necessarily affect the service they provide and the manner by which they are compensated”⁶² and *ANP Funding*, in which the Commission found that an operating procedure had to be on file because it “affect[ed] compensation that generators receive under Market Rule 1 by limiting the circumstances under which they can declare economic outages.”⁶³ Mystic asserts that the issue here is not about deferring to ISO-NE’s technical or operational expertise or elaborating on a technical process in the Tariff because the Tariff already provides the necessary technical detail about when to include a planned transmission project in the Network Model.⁶⁴

27. Mystic disagrees that *City of Cleveland* supports ISO-NE’s assertion that the PP-10 Revision does not belong in the Tariff because it does not significantly affect rates.⁶⁵ Mystic argues that *City of Cleveland* is inapplicable here because that case concerned terms of service applicable to a bilateral agreement that were required to be filed with the Commission. Mystic adds that, in *Keyspan-Ravenswood*, the D.C. Circuit found that the *City of Cleveland* exception to the FPA’s filing requirement is inapplicable in certain situations (i.e., details concerning an RTO/ISO process must be included in the Tariff when that process has a significant effect on rates, terms or conditions of service and is susceptible of specification).⁶⁶ Mystic argues that, like in *Keyspan-Ravenswood*, the *City of Cleveland* exception does not apply here because the PP-10 Revision directly affects whether a generator will operate, and therefore receive compensation, and ISO-NE has already put its procedure in a few paragraphs, which demonstrates that the

⁶¹ *Id.* at 14 (citing *ISO New England Inc.*, 170 FERC ¶ 61,183, at P 30 (2020) (Order Rejecting Fuel Security Resource Limitation)).

⁶² *Id.* at 13 (citing *New England Power Pool*, 110 FERC ¶ 61,396 at P 29).

⁶³ *Id.* (citing *ANP Funding*, 110 FERC ¶ 61,040 at P 23).

⁶⁴ *Id.* at 18 (citing *ISO New England Inc.*, 137 FERC ¶ 61,112, at P 19 (2011); *N.Y. Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,051, at P 16 (2020)).

⁶⁵ *Id.* at 16.

⁶⁶ *Id.* at 16 (citing *Keyspan-Ravenswood LLC v. FERC*, 474 F.3d 804, 810 (D.C. Cir. 2007)).

procedure could be easily reduced to writing.⁶⁷ Mystic argues that *Big Sandy* is also inapplicable because it involved whether to add a specific process to the Tariff, not whether to ignore a specific process that was already there.

28. Vistra disagrees with Mystic, arguing that, although Mystic states that *City of Cleveland* is inapplicable because it involved “a higher level of specificity,” such specificity is exactly what the new language in the PP-10 Revision provides.⁶⁸ Vistra adds that, while Mystic argues that *Big Sandy* is inapplicable, Mystic also admits in its discussion of that case that “an RTO has clear discretion in the realm of reliability reviews and modeling,” which supports the argument that ISO-NE has such discretion in the instant case.⁶⁹

d. Commission Determination

29. We disagree with Mystic’s argument that the PP-10 Revision must be filed with the Commission. The Commission has stated that “[d]ecisions as to whether an item should be included in a tariff or in a business practice manual are guided by the Commission’s rule of reason policy, under which provisions that ‘significantly affect rates, terms, and conditions’ of service, are readily susceptible of specification, and are not generally understood in a contractual agreement must be included in a tariff.”⁷⁰ We disagree with Mystic’s assertions that the PP-10 Revision provides ISO-NE with new authority to use a “reasonably likely” standard to determine whether to consider Order No. 1000 RFP proposals in its reliability review. The PP-10 Revision is consistent with ISO-NE’s existing authority set forth in Tariff section III.13.2.5.2.5(e), which, as discussed below, allows ISO-NE to consider transmission enhancements that may address its reliability concerns. As ISO-NE explains, PP-10 is a business practice manual intended to “detail[] requirements and procedures, as well as provides sample forms to be used in planning activities that are conducted pursuant to” the Tariff’s provisions

⁶⁷ *Id.* at 17.

⁶⁸ Vistra Answer at 7 (citing *City of Cleveland v. FERC*, 773 F.2d 1368).

⁶⁹ *Id.* at 7-8 (citing *Big Sandy*, 154 FERC ¶ 61,216; Mystic July 10, 2020 Answer at 17, n.57).

⁷⁰ *N.Y. Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,054, at P 35 (2020) (citing *Energy Storage Assoc. v. PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,296, at P 103 (2018); *City of Cleveland v. FERC*, 773 F.2d 1368 at 1376; *Pub. Serv. Comm’n of N.Y. v. FERC*, 813 F.2d 448, 454 (D.C. Cir. 1987)).

regarding the FCM.⁷¹ Thus, the PP-10 Revision does not need to be included in the Tariff under the rule of reason because it is Tariff section III.13.2.5.2.5(e), not the PP-10 Revision, which significantly affects the rates, terms and conditions of service that concern Mystic.

30. ISO-NE's ability to consider transmission projects as part of its transmission security review arises under Tariff section III.13.2.5.2.5(e), which gives ISO-NE broad authority to address reliability concerns arising from the retirement of a resource "through other reasonable means (including transmission enhancements)." Section 7.5 of PP-10 outlines the process that ISO-NE follows to address those concerns, including re-evaluating de-list bids rejected for reliability reasons to determine if that reliability concern has been met as the result of a new transmission project. The PP-10 Revision indicates that ISO-NE may use responses to RFPs as part of its consideration of such transmission projects. The PP-10 Revision adds the criteria for aligning the timing of its transmission security review with the results of an ongoing Order No. 1000 RFP process. The PP-10 Revision does not change the authority already given to ISO-NE by Tariff section III.13.2.5.2.5(e). Even if ISO-NE had not revised PP-10, ISO-NE would still have the authority to consider the results of an Order No. 1000 RFP (i.e., in this case, the Boston RFP) because that authority comes from Tariff section III.13.2.5.2.5(e), not from PP-10.⁷²

31. For these reasons, we find that the PP-10 Revision is similar to the "instructions [and] guidelines . . . [that] guide internal operations" that the Commission has found to be more appropriately placed in non-tariff materials such as business manuals.⁷³ We therefore do not find persuasive Mystic's analogies to prior Commission orders.

⁷¹ ISO-NE, *Planning Procedure to Support the Forward Capacity Market* (June 4, 2020), <https://www.iso-ne.com/static-assets/documents/2020/02/pp-10.pdf>

⁷² Mystic points out in its answer that ISO-NE stated that it "recently changed PP-10 to give the ISO discretion to consider the product of the transmission procurement process." Mystic July 10, 2020 Answer at 6 (citing ISO-NE June 30, 2020 Answer at 2); *see also* Mystic August 3, 2020 Answer at 5. We clarify that ISO-NE could not give itself "discretion" to consider the result of the Boston RFP Process, if that discretion had not already been granted to ISO-NE by its Commission-accepted Tariff. ISO-NE also later corrected this statement, explaining that the PP-10 Revision "merely provides appropriate notice concerning *how* the ISO will implement its authority under the Tariff." ISO-NE July 27, 2020 Answer at 7 (emphasis in original).

⁷³ *Cal. Indep. Sys. Operator Corp.*, 122 FERC ¶ 61,271 at P 16.

2. **Whether the PP-10 Revision Violates the Tariff's Modeling and Generator Compensation Provisions**

a. **Complaint**

32. Mystic contends that the PP-10 Revision violates the Tariff's modeling and generator compensation requirements related to transmission security, specifically Tariff section III.12.6, which relates to inclusion of planned transmission in the Network Model, and Tariff section III.13.2.5.2.5, which relates to compensating generators needed to provide transmission security.⁷⁴

33. First, Mystic argues that the PP-10 Revision bypasses the requirement in Tariff section III.12.6 to use the Network Model analysis to determine whether a generator that has submitted a de-list bid leading up to an FCA is needed for transmission security.⁷⁵ Mystic explains that the outcome of this analysis determines whether the de-list bid will be rejected and, thus, whether the generator will be asked to continue operating. Mystic states that Tariff section III.12.6 requires that planned transmission may only be included in the Network Model if the project has been certificated or executed a binding construction contract, met important milestones, and been vetted and selected through an extensive process. Specifically, Mystic contends that merchant transmission projects can only be included in the Network Model if the project sponsor has executed a Selected Qualified Transmission Project Sponsor Agreement and not merely submitted its proposal. However, Mystic argues that, because ISO-NE will conduct the transmission security analysis in August 2020, ISO-NE will not have a vetted, approved and committed project in response to the Boston RFP in place in time to conduct that review. Therefore, Mystic claims that the PP-10 Revision effectively allows ISO-NE to apply a lower level of scrutiny to the transmission security review for the de-list bids associated with Mystic 8 and 9, while all other FCA studies will rely on the Network Model. In addition, Mystic argues that the PP-10 Revision conflicts with Tariff sections III.12.6.1(c)-(d), which Mystic alleges require the use of the Network Model for all studies required for FCA purposes, including the transmission security analysis, prohibiting the inclusion of speculative projects in the model by requiring that specific milestones be met, including project certification or execution of a binding contract before such projects may be included in the Network Model.⁷⁶

⁷⁴ Complaint at 35.

⁷⁵ *Id.* at 10-12, 27.

⁷⁶ *Id.* at 27-28, 44-46. The Network Model is "the computer-based representation of physical transmission system assets used by ISO New England." ISO-NE Glossary and Acronyms, <https://www.iso-ne.com/participate/support/glossary-acronyms#n>.

34. Mystic also argues that ISO-NE provides no detail on critical aspects of its PP-10 Revision, including the metrics that ISO-NE will use to determine whether a proposed solution is reasonably likely to be in service prior to the relevant Capacity Commitment Period or expected to address the reliability need(s).⁷⁷ As a result, Mystic contends that there are no real metrics to bound ISO-NE's discretion and ISO-NE may not conduct any modeling or any study at all relating to the transmission security review for a resource that previously submitted a Retirement De-List Bid. Mystic asserts that, without any metrics, ISO-NE could rely on the Backstop Transmission Solution without any vetting of the detailed information provided in Phase Two of the Order No. 1000 RFP process and without any binding commitment from the project sponsor to build the project.

35. Mystic adds that, because the PP-10 Revision permits ISO-NE to eliminate the transmission modeling step for the Retirement De-List Bids associated with Mystic 8 and 9 set forth in Tariff section III.12.6, the PP-10 Revision materially changes the test that is used to determine whether to retain and compensate Mystic 8 and 9.⁷⁸ Mystic points out that Tariff section III.13.2.5.2.5(a) states that units are needed for reliability "if the absence of the capacity would result in the violation of any NERC or NPCC criteria, or ISO New England System Rules." Mystic states that, based on Tariff sections III.13.1.2.3.1.5.1(b) and III.13.2.5.2.5(d), ISO-NE's reliability studies determine whether the Retirement De-List Bid will be rejected and thus whether the generator will be asked to continue operating, which in turn entitles the generator to compensation for its service. Mystic claims that, if the transmission studies were conducted pursuant to the Tariff, meaning that ISO-NE has to use the Network Model without considering proposals in response to the Boston RFP, they would show that Mystic 8 and 9 are needed for transmission security purposes for FCA 15 and thus eligible to provide reliability services at a cost-of-service rate.

b. ISO-NE Answer

36. ISO-NE argues that neither the Tariff nor PP-10 requires ISO-NE to base its reliability reviews exclusively on the Network Model.⁷⁹ ISO-NE contends that Tariff section III.13.2.5.2.5(e) provides ISO-NE with the authority and discretion to consider transmission enhancements that may resolve the reliability need caused by a resource retiring, and PP-10 similarly expressly allows ISO-NE to consider new transmission projects in performing its reliability review. ISO-NE asserts that neither the Tariff nor PP-10 requires that ISO-NE base its reliability reviews exclusively on the Network Model or that the transmission upgrade addressing the reliability need be certified for

⁷⁷ *Id.* at 21-22.

⁷⁸ *Id.* at 28-30.

⁷⁹ ISO-NE June 30, 2020 Answer at 24-29.

inclusion in the Network Model. ISO-NE contends that the certification process is not necessary for ISO-NE to determine that RFP responses are reasonably likely to be in service because such a requirement is not in the Tariff and much of the information that ISO-NE receives with Phase One proposals under Attachment K is essentially the same as that required by the certification form for the Network Model.

c. Protests, Comments, and Further Answers

37. Commenters agree with ISO-NE that the PP-10 Revision does not violate the modeling and generator compensation provisions of the Tariff because Tariff section III.13.2.5.2.5 and existing section 7.5 of PP-10 provide ISO-NE with the authority when conducting its reliability review to take into account transmission enhancements that could allow a retained resource to retire.⁸⁰ NEPGA and Mass AG argue that Tariff sections III.13.2.5.2.5(e) and (f) already give ISO-NE the flexibility to consider whether there have been changes in resources, transmission solutions, or other facts or circumstances when reevaluating a previously rejected de-list bid to determine whether a suitable alternative to the resource has been identified.⁸¹ NEPGA notes that the Network Model is used for other purposes in the FCA and that the FCM addresses separate and distinct reliability issues from the retention of Mystic, namely resource adequacy, further highlighting the limits of Mystic's arguments.⁸² The IMM notes that even the Network Model includes generating units and transmission infrastructure that "are expected to be in service no later than the first day of the relevant Capacity Commitment Period" and that "may have a material impact on the network model," consistent with the PP-10 Revision.⁸³ ISO-NE argues that its Planning Procedures "are not static documents, but must be updated to address, among other things, never-before-identified questions that may arise during implementation."⁸⁴

⁸⁰ FirstLight Protest at 6-7; NEPGA Protest at 8-11; NEPOOL Protest at 3-4, 11-13; Vistra Protest at 15-18. NEPOOL asserts that the PP-10 Revision is consistent with the overall intent of the FCM rules to enable resources that have submitted a Retirement De-List Bid to retire, subject to the appropriate reliability review. NEPGA states that the PP-10 Revision is and consistent with the objective of ensuring that market participants are provided transparency into the assumptions that ISO-NE employs when re-evaluating de-list bids.

⁸¹ Mass AG Protest at 3-10; NEPGA Protest at 7-9.

⁸² NEPGA Protest at 14-15.

⁸³ IMM Protest at 6 (citing Tariff § 12.6.1.(e)).

⁸⁴ ISO-NE July 27, 2020 Answer at 6.

38. In response, Mystic argues that Tariff section III.13.2.5.2.5(e) does not allow ISO-NE to circumvent the initial review currently proscribed by Tariff sections III.13.2.5.2.5 (a)-(d).⁸⁵ Mystic contends that, instead, Tariff section III.13.2.5.2.5(e) allowed a unit previously reviewed and retained for transmission security for a particular Capacity Commitment Period to be reviewed again after the reconfiguration auction and prior to the start of that Capacity Commitment Period based on a change in facts and then released from its Capacity Supply Obligation. Mystic argues that Tariff section III.13.2.5.2.5(e) does not apply to Mystic 8 and 9 because the “transmission enhancements” referenced in this Tariff section are intended to address “the reliability need which caused the ISO to reject the de-list bid” (i.e., the fuel security concern, not the transmission security concern, resulting from the retirement of Mystic 8 and 9).⁸⁶ Mystic argues that the applicable provision to the end of a term of retention for fuel security is Tariff section III.13.2.5.2.5A(j), which states that, in order for Mystic to be retired, it cannot be needed “for another reliability reason pursuant to Section III.13.2.5.2.5.”⁸⁷ Mystic contends that the standard that must be applied to perform the evaluation required in section III.13.2.5.2.5A(j) is the requirement in Tariff section III.13.2.5.2.5(a) to determine whether retirement of Mystic 8 and 9 would “result in the violation of any NERC or NPCC criteria, or the ISO New England System Rules.”⁸⁸ Mystic argues that the PP-10 Revision is contrary to section 3.0 of PP-10, which states that ISO-NE will “create an updated network model” to “simulate topology conditions forecasted for the Capacity Commitment Period” and then use that model to determine whether “new transmission” has “met” the reliability need.⁸⁹

39. Commenters disagree with Mystic’s Tariff interpretation. They assert that Tariff section III.13.2.5.2.5(e) generically covers all types of reliability reviews and reliability needs, is not tied to one FCA, and provides discretion as to not require use of the Network Model.⁹⁰ NEPOOL contends that Tariff sections III.13.2.5.2.5(e) and (f) apply to resources that have already been retained for reliability, independent of subsections (a) through (d), and adds that the fuel security finding does not negate a condition of need for

⁸⁵ Mystic July 10, 2020 Answer at 7.

⁸⁶ *Id.* at 8-9 (citing Tariff § III.13.2.5.2.5(e); *ISO New England Inc.*, 164 FERC ¶ 61,003, at P 59 (2018); *Constellation Mystic Power, LLC*, 164 FERC ¶ 61,022 at P 1).

⁸⁷ *Id.* at 9 (citing Tariff § III.13.2.5.2.5A(j)).

⁸⁸ *Id.* at 9-10 (citing Tariff § III.13.2.5.2.5(a)).

⁸⁹ *Id.* at 11 (citing Exhibit No. MYS-0007, PP-10 §§ 3.0 and 7.5).

⁹⁰ ISO-NE July 27, 2020 Answer at 9-16; NEPOOL Answer at 5-7; *Vistra* Answer at 2-5.

transmission reliability under Tariff section III.13.2.5.2.5.⁹¹ NEPOOL and Vistra assert that ISO-NE is complying with Tariff section III.13.2.5.2.5.A(j) by conducting its reliability review.⁹²

40. In its August 3, 2020 answer, Mystic asserts that ISO-NE argues that it is acceptable to “skip” a transmission security review for Mystic 8 and 9 for FCA 15 because the dynamic de-list bids of Mystic 7 and 9 were rejected for transmission reliability in FCA 12.⁹³ Mystic contends that NEPOOL argues that it is immaterial whether a resource was previously retained for fuel security or transmission security. Mystic responds that Tariff section III.13.2.5.2.5(e) cannot be read to allow *any* rejection of a de-list bid for transmission security in a prior FCA to permit ISO-NE to avoid the transmission security review for a different FCA.

d. Commission Determination

41. We disagree with Mystic’s assertion that the Tariff requires ISO-NE to use the Network Model for the transmission security review for a resource that has previously submitted a Retirement De-List Bid. Tariff section III.12.6 requires ISO-NE to determine, for each Capacity Commitment Period, the generating units and transmission infrastructure to include in the Network Model that are expected to be in service no later than the first day of the Capacity Commitment Period, and sets forth the criteria that ISO-NE must use to make that determination. However, Tariff section III.12.6 does not specifically require ISO-NE to use the Network Model to conduct reliability reviews when evaluating the effect of a retirement de-list bid on reliability. Rather, the Tariff simply states that the Network Model “shall be used, among other purposes, (i) for the Forward Capacity Market qualification process and (ii) to calculate transmission interface limits in order to forecast the Local Sourcing Requirements.”⁹⁴ Tariff section III.13.2.5.2.5, which lays out the requirements for ISO-NE’s transmission security review process, does not require use of (or even mention) the Network Model. It only requires that ISO-NE retain a resource if it determines that “the absence of the capacity would result in the violation of any NERC or NPCC criteria, or [ISO-NE] System Rules.”⁹⁵

⁹¹ NEPOOL Answer at 3-4, 6.

⁹² *Id.* at 4-5; Vistra Answer at 4.

⁹³ Mystic August 3, 2020 Answer at 1-2.

⁹⁴ Tariff § III.12.6.

⁹⁵ Tariff § III.13.2.5.2.5.

42. To that end, we find that the Boston RFP results provide ISO-NE with sufficient information to ensure that it can address violations of applicable reliability criteria due to the absence of Mystic 8 and 9, as required by Tariff section III.13.2.5.2.5. After Mystic first submitted de-list bids for FCA 13, ISO-NE initiated the Boston Area Needs Assessment to assess transmission security needs resulting from the retirement of Mystic 8 and 9. Based on the results of the Boston Area Needs Assessment, ISO-NE issued the corresponding Boston RFP, which was designed to address the transmission security needs caused by the retirement of Mystic 8 and 9 and involved modeling of whether each proposal addresses the identified reliability needs. For these reasons, we find that ISO-NE was not required and, given the information it obtained from the Boston RFP results, had no need to use the Network Model in order to comply with Tariff section III.13.2.5.2.5.

43. We also disagree with Mystic's argument that ISO-NE has violated or circumvented Tariff section III.13.2.5.2.5 by depriving Mystic 8 and 9 of the opportunity to receive compensation in FCA 15 for providing transmission security. The purpose of Tariff section III.13.2.5.2.5 is to require ISO-NE to review de-list bids and ensure that, if capacity exits the FCM, ISO-NE can still maintain compliance with NERC and NPCC standards. Tariff section III.13.2.5.2.5(e) explicitly allows ISO-NE to address a reliability need that caused ISO-NE to previously reject a de-list bid through transmission enhancements, stating that "[t]he ISO may also attempt to address the reliability concern through other reasonable means (including transmission enhancements)." Tariff section III.13.2.5.2.5 was not intended to create a continuing entitlement for resources to obtain out-of-market compensation for providing reliability services. Moreover, if ISO-NE determines that Mystic 8 and 9 do not need to be retained for transmission security in FCA 15 pursuant to section III.13.2.5.2.5, Mystic 8 and 9 would not be entitled to receive compensation because they would not be providing a reliability service during that Capacity Commitment Period.⁹⁶

44. We disagree with Mystic's argument that Tariff section III.13.2.5.2.5(e) does not apply to Mystic. Contrary to Mystic's assertions, the phrase "reliability concern" in Tariff section III.13.2.5.2.5(e) could refer to either fuel security or transmission security. Mystic contends that it must refer to fuel security only because the first sentence of Tariff section III.13.2.5.2.5(e) addresses "the reliability need which caused the ISO to reject the de-list bid" (i.e., the fuel security need). However, the second half of section III.13.2.5.2.5(e) does not make that same reference; it is written more broadly. As such, section III.13.2.5.2.5(e) allows ISO-NE to consider transmission enhancements that may address either fuel security or transmission security concerns when conducting its

⁹⁶ As noted above at footnote 21, on July 27, 2020, ISO-NE posted a notice, stating that it had accepted the Retirement De-List Bids for Mystic 8 and 9 for the 2024/2025 Capacity Commitment Period. ISO-NE July 27, 2020 Answer at 16-17.

reliability review. Furthermore, both ISO-NE and Mystic understood that the Retirement De-List Bids submitted by Mystic 8 and 9 in FCA 13 prompted not only fuel security concerns but also transmission security needs, as evidenced by the subsequent Boston Area Needs Assessment and Boston RFP.⁹⁷

45. We also disagree with Mystic's claim that ISO-NE unreasonably seeks to avoid conducting a transmission security review for FCA 15 on the basis that ISO-NE rejected the dynamic de-list bids of Mystic 7 and 9 in FCA 12. Mystic appears to imply that ISO-NE can only reevaluate whether a resource is needed for transmission security for the Capacity Commitment Period associated with the FCA in which a de-list bid was rejected – in this case, for FCA 12. Contrary to Mystic's claim, ISO-NE does not exclusively rely on its prior retention of Mystic 7 and 9 in FCA 12 to support its choice to consider the status of Boston RFP projects in evaluating whether Mystic 8 and 9 should be further retained and does not propose to avoid conducting a reliability review of any kind. Rather, ISO-NE is evaluating whether Mystic 8 and 9 are needed for another reliability reason pursuant to section III.13.2.5.2.5, consistent with section III.13.2.5.2.5(A)(j).⁹⁸ To do so, ISO-NE will use the extensive modeling and reliability analysis conducted as part of the Boston RFP, which specifically addresses the precise transmission security needs prompted by the Retirement De-List Bids submitted by Mystic 8 and 9 in FCA 13.

3. **Whether the PP-10 Revision or ISO-NE's Boston RFP Review Process Violates the Tariff's Order No. 1000 Procedures**

a. **Complaint**

46. Mystic contends that the PP-10 Revision violates the Order No. 1000 RFP sequencing and evaluation requirements in Attachment K, sections 4.3(c)-(h).⁹⁹ Mystic argues that the PP-10 Revision provides ISO-NE with the discretion to bypass most of the RFP selection criteria in Attachment K, section 4.3(h), with the exception of two criteria

⁹⁷ We also note that Exelon recognized that Mystic 8 and 9 were needed for both fuel security and transmission security in FCA 13. ISO-NE July 27, 2020 Answer at 10 n.30.

⁹⁸ See Tariff § III.13.2.5.2.5(A)(j) ("If a resource associated with a Retirement De-List Bid that was rejected for reliability reasons pursuant to this section, is found to no longer be needed for fuel security, *and is not needed for another reliability reason pursuant to Section III.13.2.5.2.5*, the resource will be retired from the system as described in Section III.13.2.5.2.5.3(a)(1).") (emphasis added).

⁹⁹ Complaint at 30-32.

(i.e., anticipated in-service date and likelihood of meeting the reliability need) when identifying a Phase Two solution.

47. Mystic also disputes the manner in which ISO-NE evaluated the Boston RFP responses to ultimately eliminate all projects during Phase One except the Backstop Transmission Solution.¹⁰⁰ First, Mystic claims that ISO-NE exceeded its authority by eliminating some projects during Phase One based on installed cost alone, bypassing the detailed weighing of factors required for viable projects in Phase Two. Mystic argues that, by eliminating projects in Phase One, ISO-NE is depriving itself and ratepayers of the analysis of more detailed costs and new cost containment measures permitted during Phase Two, pursuant to section 4.3(h), and instead is relying on the less detailed cost information provided in Phase One, pursuant to section 4.3(c). Mystic argues that ISO-NE has no proof that the Backstop Transmission Solution would still be chosen after the completion of Phase Two of the analysis, especially if ISO-NE had taken into account all necessary cost factors in the selection process.

48. In addition, Mystic asserts that ISO-NE violated Attachment K, sections 4.3(e) and (g), by considering cost factors alone and eliminating projects on this basis without input from the Planning Advisory Committee. Mystic contends that ISO-NE relied on Attachment K, section 4.3(g), to exclude proposals that were “not competitive with other projects that have been submitted in terms of cost, electrical performance, future expandability, or feasibility.”¹⁰¹ However, Mystic argues that ISO-NE provided no explanation for considering only one of the five factors (i.e., cost) identified in Attachment K, section 4.3(g). Mystic adds that ISO-NE is not authorized to exclude Order No. 1000 RFP projects based on any of these section 4.3(g) factors without input from the Planning Advisory Committee. Mystic contends that, without input from the Planning Advisory Committee, ISO-NE is limited to posting on its website Phase One projects that meet the criteria of Attachment K, section 4.3(e).¹⁰² Mystic asserts that

¹⁰⁰ *Id.* at 32-35.

¹⁰¹ *Id.* at 33 (citing RFP Review at slide 44).

¹⁰² *Id.* at 33-34 (citing Tariff, Attachment K, § 4.3(g) (“For each Needs Assessment, the ISO will provide the Planning Advisory Committee with, and post on the ISO’s website, a listing of Phase One Proposals that meet the criteria of Section 4.3(e). A meeting of the Planning Advisory Committee will be held thereafter in order to solicit stakeholder input on the listing, and the listed proposals. The ISO with input from the Planning Advisory Committee may exclude projects from the list, and from consideration in Phase Two Solutions, based on a determination that the Phase One Proposal is not competitive with other projects that have been submitted in terms of cost, electrical

ISO-NE's selection of the Backstop Transmission Solution contravenes the Tariff because Attachment K, section 4.3(e), only permits elimination of projects based on non-cost factors.

49. In addition, Mystic argues that ISO-NE can avoid paying twice for transmission security in FCA 15 when determining its preferred Boston RFP solution or by asking a project sponsor with an earlier in-service date if it is willing to delay the in-service date to prevent a double count.¹⁰³

b. ISO-NE Answer

50. ISO-NE also argues that Mystic's assertions about the Boston RFP are incorrect because ISO-NE has not yet selected a winner and has complied with Attachment K, sections 4.3(e) and (g).¹⁰⁴ ISO-NE notes that section 4.3(g) requires ISO-NE to list Phase One proposals that meet the section 4.3(e) criteria and allows ISO-NE to exclude projects from the list that are not competitive based on certain criteria, including cost. In support of its decision to eliminate all but one of the proposed projects after Phase One, ISO-NE contends that nothing in the Tariff precludes ISO-NE from making recommendations to the Planning Advisory Committee at this stage. ISO-NE states that, in accordance with the Tariff, ISO-NE provided its recommendation to the Planning Advisory Committee and requested input at the June 17, 2020 meeting.

51. ISO-NE also asserts that, contrary to Mystic's claim that projects should be carried over to Phase Two because their sponsors could include new cost containment measures, new cost containment measures would not be allowed in Phase Two because, pursuant to section 4.3(f), material modifications to proposals are not allowed during Phase Two. ISO-NE states that ISO-NE conducted modeling of the proposals and vetted its recommended project. ISO-NE contends that its recommended approach to exclude projects from Phase Two is consistent with the Tariff and prevents ratepayers from paying development costs of projects that move to Phase Two.

52. ISO-NE argues that Mystic ignores that Mystic's parent company, Exelon, decided to retire Mystic 8 and 9 and that ISO-NE has been seeking to put into place a transmission solution to the reliability need to eliminate roadblocks to the retirement that

performance, future system expandability, or feasibility. . . . The ISO may amend its listing based on stakeholder input.”)).

¹⁰³ *Id.* at 46.

¹⁰⁴ ISO-NE June 30, 2020 Answer at 31-37.

Mystic sought.¹⁰⁵ ISO-NE asserts that Mystic's argument that Mystic 8 and 9 could be retained in FCA 15 and that ISO-NE could select another transmission solution with a later in-service date to avoid duplicative costs is a cavalier disregard for costs.

53. Further, ISO-NE argues that the Boston RFP, which relates to transmission planning, is unrelated to the PP-10 Revision, which supports the FCM. ISO-NE urges the Commission to decline to prejudge the outcome of the Boston RFP.¹⁰⁶

c. Protests, Comments, and Further Answers

54. Commenters contend that Mystic's arguments regarding the PP-10 Revision's alleged violation of ISO-NE's Tariff and Order No. 1000 RFP are without merit.¹⁰⁷ Commenters argue that Mystic has failed to demonstrate a Tariff violation and that ISO-NE's RFP review slides undercut Mystic's argument because the slides demonstrate how ISO-NE's Boston RFP process comported with the Tariff.¹⁰⁸

55. NEPGA and Mass AG assert that Mystic's claims regarding the conduct of the Boston RFP are a red herring and distract from the central issue in the proceeding.¹⁰⁹ National Grid maintains that Mystic's criticisms of the Boston RFP appear to be motivated by Mystic's displeasure with the outcome of Phase One rather than a legitimate criticism of how ISO-NE has conducted the Boston RFP.¹¹⁰ Mass AG contends that ratepayers have benefited from the competitive RFP process, even though the successful proposal is the Backstop Transmission Solution.¹¹¹ FirstLight claims that ISO-NE's Boston RFP efforts have yielded an inexpensive transmission solution that can meet the Boston area needs much more cost effectively than a third year of a cost-of-

¹⁰⁵ *Id.* at 2.

¹⁰⁶ *Id.* at 30-35.

¹⁰⁷ National Grid at 18-21; NEPGA Protest at 7-8, 23-24; Vistra Protest at 2, 12.

¹⁰⁸ National Grid at 22-26; NEPGA Protest at 23-24 (citing RFP Review). NEPGA argues that ISO-NE identified numerous solutions that met the Boston RFP and Tariff requirements and that the Tariff allows ISO-NE to take into account information obtained through the Boston RFP.

¹⁰⁹ Mass AG Protest at 10-12; NEPGA Protest at 7-8, 23-24.

¹¹⁰ National Grid at 21-22.

¹¹¹ Mass AG Protest at 11-12.

service agreement for Mystic 8 and 9.¹¹² LS Power states that it has identified improvements that can be made to the Order No. 1000 competitive process but that the instant proceeding is not the proper venue to litigate the competitive process.¹¹³

56. In response, Mystic maintains that ISO-NE has effectively admitted that it does not know the in-service date of the final project because ISO-NE admits that it may not ultimately select the Backstop Transmission Solution.¹¹⁴

d. Commission Determination

57. We find that the PP-10 Revision does not violate the Attachment K provisions related to the Order No. 1000 RFP process. The PP-10 Revision does not make any changes to the Order No. 1000 RFP process in Attachment K, section 4.3, and nothing in the PP-10 Revision affects the Attachment K provisions or the manner in which ISO-NE is conducting the Boston RFP process.

58. We also find that Mystic fails to demonstrate that ISO-NE violated its Tariff in conducting the Boston RFP process. Mystic's concerns regarding Tariff requirements in Attachment K, section 4.3(h), which pertain to the manner in which ISO-NE would conduct Phase Two, are not relevant here because ISO-NE has only conducted the Phase One process.¹¹⁵ Pursuant to Attachment K, section 4.3(c), cost containment measures may be included in Phase One proposals. Further, Attachment K, section 4.3(f), states that new cost containment measures representing a material modification to the project would not be permitted during Phase Two.¹¹⁶ Moreover, cost containment measures may be included in Phase One proposals pursuant to Attachment K, section 4.3(c). Therefore, although the cost information provided during Phase Two is more detailed than that provided during Phase One, Mystic fails to demonstrate that the information provided in Phase One is insufficient for ISO-NE to make a determination pursuant to section 4.3(e), which pertains to the selection of eligible proposals after Phase One.

¹¹² FirstLight Protest at 8.

¹¹³ LS Power Comments at 1.

¹¹⁴ Mystic July 10, 2020 Answer at 25 (citing ISO-NE June 30, 2020 Answer at 13).

¹¹⁵ Tariff, Attachment K, § 4.3(h).

¹¹⁶ See Tariff, Attachment K, section 4.3(f) ("Phase Two Solutions reflecting a material modification to a Phase One Proposal or representing a new project will be rejected.").

59. In addition, Mystic fails to demonstrate that ISO-NE violated Attachment K, sections 4.3(e) and (g). Mystic does not take issue with the initial list of six proposals that ISO-NE identified as meeting the criteria of Attachment K, section 4.3(e). Instead, Mystic questions whether ISO-NE's decision to propose eliminating projects from Phase Two consideration prior to meeting with the Planning Advisory Committee complies with Attachment K, section 4.3(g). However, Attachment K, section 4.3(g) does not preclude ISO-NE from making recommendations to the Planning Advisory Committee. ISO-NE's meeting with the Planning Advisory Committee on June 17, 2020, in which it solicited feedback prior to finalizing its list of qualifying Phase One proposals, was consistent with the Tariff. Pursuant to Attachment K, section 4.3(g), after receiving input from the Planning Advisory Committee, ISO-NE may exclude projects from the list if they are not cost-competitive. For this reason, we find that Mystic has failed to demonstrate that ISO-NE has violated the Tariff. Moreover, we note that ISO-NE's conduct of the Boston RFP process does not affect how ISO-NE performs its transmission security review pursuant to Tariff section III.13.2.5.2.5 (implemented according PP-10) and therefore does not impact whether Mystic 8 and 9 would be retained for transmission security in FCA 15.

4. Whether the PP-10 Revision Will Jeopardize Reliability in ISO-NE

a. Complaint

60. Mystic contends that ISO-NE's failure to file the PP-10 Revision with the Commission does not insulate the PP-10 Revision from Commission review and that, if filed, the PP-10 Revision would be unjust and unreasonable because it jeopardizes reliability.¹¹⁷ Mystic claims that the PP-10 Revision will lead to ISO-NE relying on a speculative assumption that the Boston RFP process will provide a transmission solution that is implemented in time to provide reliability after June 1, 2024.

61. First, Mystic argues that the PP-10 Revision is contrary to the Tariff and undermines the FCM's fundamental purpose of ensuring that there are sufficient resources available to meet New England's electricity demand and reliability standards.¹¹⁸ Mystic argues that it is not reasonable to allow ISO-NE to rely on the initial stages of a competitive process to ensure that any particular solution will be identified, contracted, financed, developed, permitted, and placed into service by June 1, 2024. Mystic contends that ISO-NE must conclude Phase Two of the Boston RFP process before it has critical information about project schedule, regulatory approvals, design and equipment, and feasibility to make such an assessment. Mystic states that, if Mystic 8

¹¹⁷ Complaint at 15, 36-46.

¹¹⁸ *Id.* at 36-44.

and 9 retire before the replacement project is in-service, Mystic 8 and 9 will no longer be available to meet the reliability need.

62. Second, Mystic argues that the PP-10 Revision will allow ISO-NE to ignore or alter its Network Model for purposes of conducting its transmission security study, without making any corresponding changes to other uses of the Network Model.¹¹⁹ Mystic asserts that, because ISO-NE relies on the same Network Model assumptions for all FCA studies, the use of different models for the same system will undermine predictability and uniformity and could cause a ripple effect. With respect to ISO-NE's assertion that the Commission has already approved its actions, Mystic argues that the Commission qualified its statement that ISO-NE could revise its reliability review timeline by, according to Mystic, indicating that ISO-NE must propose such a timeline revision to the Commission and the proposal must ensure that transmission solutions will be in place in time to address reliability needs.¹²⁰ Mystic suggests that ISO-NE is seeking to ensure that Mystic 8 and 9 are not retained under an out-of-market arrangement in spite of the Commission's prior rulings that ISO-NE could not take this step prematurely.¹²¹

b. ISO-NE Answer

63. ISO-NE claims that Mystic's assertions regarding reliability are incorrect.¹²² ISO-NE contends that there is no merit to Mystic's claim that the provision in the PP-10 Revision requiring ISO-NE to determine whether it is "reasonably likely" that a transmission project will be in-service by its proposed date provides ISO-NE with too much discretion and jeopardizes reliability because ISO-NE often has to make such assessments in the context of preparing for an FCA. ISO-NE states that the Boston RFP

¹¹⁹ *Id.* at 44-46.

¹²⁰ *Id.* at 46-47 (citing Order Rejecting Fuel Security Resource Limitation, 170 FERC ¶ 61,183 at P 30).

¹²¹ *Id.* at 6 (citing Order Rejecting Fuel Security Resource Limitation, 170 FERC ¶ 61,183 at PP 29-30 (rejecting ISO-NE's proposed Tariff revisions intended to ensure that resources retained for fuel security reasons will not be retained for other reasons once the fuel security retention period ends, although it would "remain open to Filing Parties proposing to revise the relevant reliability review timeline to ensure that resources are not unnecessarily retained when transmission solutions will be in place in time to address identified reliability needs"); *ISO New England Inc.*, 170 FERC ¶ 61,099, at P 17 (2020) (rejecting early sunset of provisions enabling ISO-NE to retain Mystic 8 and 9 for fuel security)).

¹²² ISO-NE June 30, 2020 Answer at 30, 35-38.

process elicited three dozen responses, the majority of which proposed in-service dates prior to the retirement of Mystic 8 and 9 upon expiration of the existing cost-of-service agreement. ISO-NE asserts that it has sufficient information on the Boston RFP projects and already conducted modeling to assess whether each proposal addresses the reliability needs.¹²³ ISO-NE adds that the Backstop Transmission Solution is a binding response that will remain in the Boston RFP process until the preferred solution is selected.¹²⁴ ISO-NE states that, with input from its consultant, it has concluded that it is feasible to have a transmission solution in place before June 1, 2024. ISO-NE acknowledges that in-service dates can be difficult to predict but contends that, when a proposal is straightforward with little or no siting approval required, the proposed in-service date is reasonably considered reliable.¹²⁵

c. Protests, Comments, and Further Answers

64. Commenters agree with ISO-NE that the PP-10 Revision does not jeopardize reliability.¹²⁶ NEPOOL expresses confidence that ISO-NE, as the NERC Reliability Coordinator for the New England region, will fulfill its reliability obligations in administering the PP-10 Revision, as it has for Tariff section III.13.2.5.2.5.¹²⁷ Commenters assert that the preferred solution to the reliability need is relatively simple and has an in-service date well before the need date, requires minimal siting and permitting, which mitigates the risk of potential delays, and is the least cost solution that is a fraction of the cost of retaining Mystic 8 and 9.¹²⁸ Commenters argue that the

¹²³ ISO-NE explains that, pursuant to Attachment K, project sponsors are required to submit a schedule supporting the in-service date, siting and permitting requirements, terms of access to required land, and engineering and modelling data during Phase One. *Id.* at 26.

¹²⁴ *Id.* at 37-38.

¹²⁵ *Id.* at 36.

¹²⁶ EPSA Protest at 10; IMM Protest at 4-5; Mass AG Protest at 10-12; National Grid at 9-10; NEPGA Protest at 18-24; NEPOOL Protest at 13-15; NESCOE Protest at 4; Vistra Protest at 20.

¹²⁷ NEPOOL states that the Reliability Committee recommended Participant Committee support for the PP-10 Revision with 98.8% in favor, and the NEPOOL Participants Committee supported the PP-10 Revision with 99.12% in favor, with the only opposition cast by Exelon. NEPOOL Protest at 1, 7-14, 18.

¹²⁸ EPSA Protest at 10; Mass AG Protest at 12; NEPGA Protest at 21-22; NEPOOL Protest at 15.

Commission should give ISO-NE flexibility to evaluate reliability and operational needs and that that ISO-NE is best positioned to determine the measures needed to maintain reliability.¹²⁹

65. In addition, commenters disagree with Mystic's interpretation of recent Commission precedent and argue that requiring ISO-NE to have absolute certainty regarding the outcome of an Order No. 1000 RFP would hold ISO-NE to an impossible standard, constrain ISO-NE's discretion, and lead to the over-retention of resources seeking to retire.¹³⁰ Commenters assert that there will always be a certain degree of uncertainty regarding the in-service date of any solution, arguing that Mystic misreads the Commission's statement in the Order Rejecting Fuel Security Resource Limitation that "transmission solutions will be in place" in an attempt to impose a new, impossibly high standard into the Tariff that would undermine the Order No. 1000 RFP process.¹³¹

66. The IMM points out that unnecessarily retaining units for reliability can have a price-suppressing effect on capacity market clearing prices because the retained units are uniquely compensated out-of-market for their fixed and going forward costs, particularly when a transmission solution is reasonably likely to be in-service to solve the reliability need.¹³² Others note that Reliability Must Run (RMR) agreements should be used only as a last resort, after all other alternatives have been eliminated and for a limited duration,

¹²⁹ EPSA Protest at 5-7; NEPGA Protest at 11-12, 18-19 (citing *Milford Power Co.*, 110 FERC ¶ 61,299, at P 42 (2005) ("We also will not second-guess the reliability determinations of ISO-NE, the independent grid operator responsible for ensuring reliability in the region"); *ISO New England Inc.*, 140 FERC ¶ 61,088, at P 30 (2012); Exelon Corp., Answer and Motion for Leave to Answer, Docket No. ER18-1509-000 (June 7, 2018) ("In addressing ISO-NE's proposal to maintain reliability in the interim, the Commission should give the *most weight to the views of entities whose interests are not as economically driven as the protesters*, like the gas LDCs, *who have actual responsibility to maintain reliability*, the External Market Monitor, and ISO-NE itself, who all support granting the waiver now" (emphasis added))).

¹³⁰ EMCOS Protest at 14-15; EPSA Protest at 10; IMM Protest at 5-7; National Grid at 10-14; NEPGA Protest at 13-14, 21 (citing Order Rejecting Fuel Security Resource Limitation, 170 FERC ¶ 61,183 at P 30; *ISO New England Inc.*, 170 FERC ¶ 61,099 at P 18).

¹³¹ IMM Protest at 6; NEPGA Protest at 13-14, 19-21 (citing Order Rejecting Fuel Security Resource Limitation, 170 FERC ¶ 61,183 at P 30).

¹³² IMM Protest at 7-8.

because they are an administrative out-of-market fix that distorts the market-clearing prices that drive retirement and investment decisions.¹³³

67. Mystic reiterates that reliability is at issue in this proceeding.¹³⁴ Mystic argues that, although ISO-NE has been subject to pressure to retire Mystic, as evidenced by the NEPOOL vote results, the Commission does not decide reliability issues based on votes of self-interested parties. Mystic asserts that it is not requiring that ISO-NE have “absolute certainty” about the in-service date of a project but rather a level of certainty that ISO-NE requires of comparable unbuilt projects.

d. Commission Determination

68. In essence, Mystic makes a three-part argument: (1) the PP-10 Revision is what allows ISO-NE to consider transmission solutions to transmission security concerns; (2) ISO-NE’s ability to address these concerns through development of a transmission solution, rather than through the retention of Mystic 8 and 9, endangers reliability in the New England region; and (3) the PP-10 Revision is therefore unjust and unreasonable. As noted above, we find that ISO-NE’s ability to consider transmission solutions as part of its reliability review arises under Tariff section III.13.2.5.2.5(e), which gives ISO-NE the discretion to address reliability concerns arising from a resource retiring “through other reasonable means (including transmission enhancements).” We find that it is Tariff section III.13.2.5.2.5(e) that provides ISO-NE this ability, rather than PP-10.¹³⁵ Mystic has not challenged ISO-NE’s ability under the Tariff to consider transmission enhancements as a solution to reliability concerns. Thus, that issue is not before the Commission here.

69. We also disagree with Mystic’s assertion that the PP-10 Revision is unjust and unreasonable because it jeopardizes reliability. As a Transmission Planner, ISO-NE is required by NERC Standard TPL-001-4 to prepare an annual Planning Assessment of its portion of the Bulk Electric System that includes performing studies, identifying potential scenarios that can lead to violation of system performance requirements, and developing a corrective action plan or plans that will address how the performance requirements will be met.¹³⁶ It is within ISO-NE’s discretion to develop the PP-10 Revision in order to

¹³³ EPSA Protest at 5, 7; National Grid Protest at 3, 6, 8-9 (citing *New England Power Pool*, 101 FERC ¶ 61,344, at P 33 (2002); *Devon Power, LLC*, 103 FERC ¶ 61,082 (2003)).

¹³⁴ Mystic July 10, 2020 Answer at 20-25.

¹³⁵ See *supra* PP 29-30.

¹³⁶ The NERC Reliability Standards TPL-001-4 (Transmission System Planning Performance Requirements) establishes transmission planning performance requirements

implement its responsibility under Tariff section III.13.2.5.2.5 to meet applicable reliability criteria.

70. We disagree with Mystic’s argument that, for reliability reasons, ISO-NE must retain Mystic 8 and 9 on a cost-of-service basis until ISO-NE has received more detailed information from developers during Phase Two of the Boston RFP process. We also disagree with Mystic’s argument that, because there is some level of uncertainty following Phase One that a project will be selected and in place by the 2024/2025 Capacity Commitment Period, ISO-NE cannot consider the proposed solutions from the Boston RFP when conducting its reliability review. While Phase Two provides more details regarding the project schedule and construction sequencing, as Mystic states, Phase One submissions must include “the proposed schedule, including key high-level milestones, for development, siting, procurement of real estate rights, permitting, construction and completion of the proposed solution,” which should provide ISO-NE with sufficient detailed information regarding a project’s schedule.¹³⁷ Moreover, the Tariff gives ISO-NE the discretion to use all the information that it has to inform its reliability review, which may include using information gathered during Phase One of the Order No. 1000 RFP process.¹³⁸

71. In addition, as ISO-NE notes, the Backstop Transmission Solution requires minimal siting and permitting, which increases the likelihood that the project will be in service well before June 1, 2024.¹³⁹

for transmission planners and planning coordinators to plan their areas of the Bulk-Power System for reliability that address both normal and contingency conditions. Specifically, the Reliability Standard requires planning coordinators and transmission planners to determine whether the contingency conditions cover system can withstand a wide range of probable contingencies or “planning events.” On January 23, 2020, the Commission approved version five of the standard, which goes into effect in 2023. *Transmission Planning Reliability Standard TPL-001-5*, Order No. 867, 170 FERC ¶ 61,030 (2020).

¹³⁷ Tariff, Attachment K, § 4.3(c)(iii).

¹³⁸ See Tariff § III.13.2.5.2.5(e) (“The ISO may also attempt to address the reliability concern through *other reasonable means* (including transmission enhancements)”) (emphasis added); see also Tariff § III.13.2.5.2.5(f) (“If the reliability need that caused the ISO to reject a de-list bid is met through a reconfiguration auction *or other means*, the resource shall retain its Capacity Supply Obligation through the end of the Capacity Commitment Period for which it was retained for reliability...”) (emphasis added).

¹³⁹ See, e.g., EPSA Protest at 10; NEPOOL Protest at 15.

72. We also disagree with Mystic that ISO-NE is precluded from implementing the PP-10 Revision due to the Commission's statement that it "[remains] open to Filing Parties proposing to revise the relevant reliability review timeline to ensure that resources are not unnecessarily retained when transmission solutions will be in place in time to address identified reliability needs."¹⁴⁰ Through the PP-10 Revision, ISO-NE is not revising the relevant reliability review timeline but instead clarifying how it will incorporate inputs from an Order No. 1000 RFP when performing its transmission reliability review for units that want to retire. In doing so, ISO-NE appropriately recognizes that a solution has been identified and will "ensure that resources are not unnecessarily retained when transmission solutions will be in place in time to address identified reliability needs," consistent with the Commission's order.¹⁴¹

The Commission orders:

The Complaint is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁴⁰ See Mystic July 10, 2020 Answer at 14 (citing Order Rejecting Fuel Security Resource Limitation, 170 FERC ¶ 61,183 at P 30).

¹⁴¹ Order Rejecting Fuel Security Resource Limitation, 170 FERC ¶ 61,183 at P 30.