

178 FERC ¶ 61,050
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
James P. Danly, Allison Clements,
Mark C. Christie, and Willie L. Phillips.

ISO New England Inc.

Docket No. ER22-391-000

ORDER ACCEPTING INFORMATIONAL FILING AND DIRECTING
MODIFICATION

(Issued January 21, 2022)

1. On November 9, 2021, pursuant to section III.13.8.1 of the ISO New England Inc. (ISO-NE) Transmission, Markets and Services Tariff (Tariff), ISO-NE submitted an informational filing providing information relating to the sixteenth Forward Capacity Auction (FCA 16)¹ for the 2025-2026 Capacity Commitment Period² (Informational Filing), including the qualification of capacity resources to participate in FCA 16. As discussed below, we accept the Informational Filing and direct ISO-NE to modify certain incorrect Qualified Capacity values, as ISO-NE requested.

I. Background

2. As part of its Forward Capacity Market (FCM), ISO-NE administers an annual FCA in which capacity resources compete to provide capacity to New England three years later, during the relevant one-year Capacity Commitment Period.³ The FCM rules require ISO-NE to submit to the Commission an informational filing no later than 90 days prior to each FCA that includes, *inter alia*, the details of the resources accepted or rejected in the qualification process for participation in the FCA and the capacity zones to

¹ Tariff, § III.13.8 (22.0.0) § III.13.8.1. ISO-NE states that FCA 16 will be held beginning on February 7, 2022.

² Capitalized terms not defined herein are used as they are defined in the Tariff. *See* Tariff, § I.2 Rules of Construction; Definitions) (139.0.0).

³ The FCA includes the primary auction and a substitution auction conducted for state-sponsored policy resources. Qualification values in the Informational Filing are for both the primary auction and the substitution auction.

be modeled for the FCA.⁴ Under Tariff section III.13.8.1(d), the determinations in the informational filing will be used in the relevant FCA, unless the Commission issues an order within 75 days of the filing directing otherwise.

3. As part of the process for qualifying resources to participate in the FCA, ISO-NE's Internal Market Monitor reviews the prices at which certain resources propose to offer their capacity into the auction. The Internal Market Monitor develops a benchmark price, the Offer Review Trigger Price (ORTP), for some resource types that seek to participate in the auction, set at a level that approximates that resource type's net cost of new entry.⁵ Each new resource that seeks to submit an offer in the FCA at a price below the relevant ORTP must include in its qualification package the New Resource Offer Floor Price (Offer Floor Price)⁶ and supporting documentation justifying that Offer Floor Price as competitive in light of the resource's costs as well as relevant financial assumptions and cost projections for the resource. As part of these estimates, the Project Sponsor estimates the revenue that the resource will earn from the sale of energy and ancillary services, expected to offset the resource's costs.

4. The Tariff requires the Internal Market Monitor to replace submitted information that is "clearly inconsistent with prevailing market conditions."⁷ After the Internal Market Monitor makes these replacements, it derives its own Offer Floor Price for the resource by: (1) entering relevant resource costs and non-capacity revenue data and assumptions regarding depreciation, taxes, and discount rate into the capital budgeting model used to develop the relevant ORTP; and (2) calculating the break-even contribution required from the capacity market to yield discounted cash flows with a net present value of zero for the project. If the Internal Market Monitor determines that the requested Offer Floor Price is inconsistent with the Internal Market Monitor's estimate, then the resource's Offer Floor Price will be set to a level consistent with the capacity price estimate as determined by the Internal Market Monitor.⁸ The Internal Market

⁴ Tariff, § III.13.8.1(c).

⁵ *Id.*, § III, app. A (60.0.0) § III.A.21.1.

⁶ The New Resource Offer Floor Price is a value submitted by new resources that reflects the lowest price at which the resource requests to offer capacity in the FCA. *Id.*, § III.13.1 (67.0.0) § III.13.1.1.2.2.3(a).

⁷ *Id.*, § III.A.21.2(b)(i) ("The [Internal Market Monitor] will review capital costs, discount rates, depreciation and tax treatment to ensure that [the resource's proposed Offer Floor Price] is consistent with overall market conditions. Any assumptions that are clearly inconsistent with prevailing market conditions will be adjusted.").

⁸ *Id.*, § III.A.21.2(b)(iv).

Monitor then issues a Qualification Determination Notification to each resource, informing that resource whether it has qualified to participate in the FCA and at what price or, if applicable, an explanation as to why the resource was not accepted.⁹

5. The Tariff also states that if the supporting documentation and information provided by the Project Sponsor for the resource is deficient, the Internal Market Monitor, at its sole discretion, may consult with the Project Sponsor to gather further information as necessary to complete its analysis. If, after consultation, the Project Sponsor does not provide sufficient documentation and information for the Internal Market Monitor to complete its analysis, then the resource's Offer Floor Price is set to the relevant ORTP.¹⁰

6. The Tariff also requires the External Market Monitor to review the quality and appropriateness of the Internal Market Monitor's mitigation. When the External Market Monitor discovers problems, it must promptly inform several entities, including the Commission, ISO-NE's Board of Directors, and the market participants.¹¹

II. Filing

7. On November 9, 2021, as required by the Tariff, ISO-NE submitted the instant Informational Filing with the Commission for the 2025-2026 Capacity Commitment Period.¹²

A. Summary of Information Related to FCA 16

8. ISO-NE explains that it will model four Capacity Zones in FCA 16: the Southeast New England Capacity Zone (modeled as an import-constrained zone and includes Southeastern Massachusetts, Rhode Island, and Northeastern Massachusetts/Boston), the Northern New England Capacity Zone (modeled as an export-constrained zone and includes Maine, New Hampshire, and Vermont), the Maine Capacity Zone (modeled as

⁹ *Id.*, § III.13.1.1.2.8

¹⁰ *Id.*, § III.A.21.2(b)(iv).

¹¹ *Id.*, § III.A.2.2(d).

¹² ISO-NE filed both a public version of its Informational Filing and a version for which it seeks privileged treatment. All citations from the Informational Filing are to the public version.

an export-constrained zone nested within the Northern New England Capacity Zone), and the Rest-of-Pool Capacity Zone (Connecticut and Western/Central Massachusetts).¹³

9. ISO-NE states that the Installed Capacity Requirement (ICR) is 32,568 MW and, after accounting for 923 MW of Hydro Quebec Interconnection Capability Credits, a net ICR of 31,645 MW remains to be procured in FCA 16.¹⁴

10. ISO-NE notes that Qualified Existing Capacity Resources consist of 30,080 MW from Existing Generating Capacity Resources (intermittent and nonintermittent); 0 MW from Existing Import Capacity Resources; and 3,275 MW from Existing Demand Capacity Resources.¹⁵ ISO-NE states that a total of 503 MW of Static De-List Bids were submitted for FCA 16.¹⁶

11. ISO-NE explains that, overall, 5,246 MW of new resources and 33,356 MW of existing resources qualified to participate in FCA 16. ISO-NE adds that, with respect to the substitution auction, ISO-NE qualified 15 demand bids totaling 994 MW and 193 supply offers totaling 779 MW.¹⁷

B. ISO-NE's Requests to Fix Administrative Errors

12. ISO-NE describes two instances in which, due to administrative errors, it calculated incorrect Qualified Capacity values. Regarding the first instance, ISO-NE explains that when a New Generating Capacity Resource clears only a portion of its Qualified Capacity in an FCA, in the next FCA, the portion that cleared participates as an Existing Generating Capacity Resource, and the portion that did not clear can participate

¹³ Informational Filing at 3.

¹⁴ *Id.* at 4.

¹⁵ ISO-NE states that Killingly Energy Center (Killingly) is currently qualified to participate in FCA 16 as an Existing Generating Capacity Resource. ISO-NE states that on November 4, 2021, in Docket No. ER22-355-000, ISO-NE submitted a resource termination filing to the Commission seeking to terminate Killingly's Capacity Supply Obligation (CSO) with a requested effective date of January 3, 2022. ISO-NE states that if Killingly's CSO is terminated as requested, then Killingly's Qualified Capacity will be removed such that Killingly will not be able to participate in FCA 16. *Id.* at 11 n.25.

¹⁶ *Id.* at 5.

¹⁷ *Id.*

as a New Generating Capacity Resource (referred to as a “carry-over”).¹⁸ ISO-NE states that finalizing the FCA qualification process for New Generating Capacity Resources includes calculating the summer Qualified Capacity and winter Qualified Capacity for each carry-over while accounting for the corresponding Qualified Capacity values of the associated Existing Generating Capacity Resource. ISO-NE states that during this calculation process, ISO-NE realized that, due to an administrative error, the winter Qualified Capacity value for one Existing Generating Capacity Resource associated with a carry-over was incorrect. ISO-NE states that it used the incorrect value in its calculation of the winter Qualified Capacity value for the associated carry-over. ISO-NE states that as a result, the winter Qualified Capacity value for the Existing Generating Capacity Resource is lower than it should have been, and the winter Qualified Capacity value of the carry-over is higher than it should have been. In addition, ISO-NE states that because the FCA Qualified Capacity value of a resource equals the lesser of its summer Qualified Capacity value and its winter Qualified Capacity value, the FCA Qualified Capacity values for both the Existing Generating Capacity Resource and the carry-over are also incorrect. To correct the values, ISO-NE requests that, pursuant to Tariff section III.13.8.1(d), the Commission direct the ISO-NE to modify the FCA Qualified Capacity values (and the underlying winter Qualified Capacity values) of both the Existing Generating Capacity Resource and the carry-over.¹⁹

13. Regarding the second administrative error, ISO-NE states that on October 1, 2021, ISO-NE issued a Qualification Determination Notification to the Project Sponsor for a resource that listed an incorrect summer Qualified Capacity value. ISO-NE states that due to an administrative error, ISO-NE miscalculated the summer Qualified Capacity value for the resource and then used the incorrect (i.e., slightly lower) summer Qualified Capacity value to calculate the resource’s FCA Qualified Capacity value, which is slightly lower than it should be. ISO-NE requests that, pursuant to Tariff section III.13.8.1(d), the Commission direct ISO-NE to modify the incorrect FCA Qualified Capacity value (and the underlying summer Qualified Capacity value) by replacing it with the correct value.²⁰

III. Notice of the Filing and Responsive Pleadings

14. Notice of the filing was published in the *Federal Register*, 86 Fed. Reg. 64,465 (Nov. 18, 2021), with interventions and protests due on or before November 24, 2021. Anbaric Development Partners, LLC and Massachusetts Municipal Wholesale Electric Company (Anbaric and MMWEC); Borrego Solar Systems, Inc. (Borrego);

¹⁸ *Id.* at 12 (citing Tariff, § III.13.1.1.1(c)).

¹⁹ *Id.* at 12-13.

²⁰ *Id.* at 15-16.

Calpine Corporation; Dominion Energy Services, Inc.; Eversource Energy Service Company; Massachusetts Department of Public Utilities; Massachusetts Electric Company, Nantucket Electric Company, and Narragansett Electric Company d/b/a National Grid; New England Power Pool Participants Committee; New England States Committee on Electricity; and NRG Power Marketing LLC filed timely motions to intervene. Energy New England, LLC and Potomac Economics, Ltd. (External Market Monitor) filed untimely motions to intervene. Anbaric and MMWEC and Borrego filed comments. On December 9, 2021, the External Market Monitor, the Internal Market Monitor, and RENEW Northeast, Inc., filed answers. On December 17, 2021, Anbaric and MMWEC filed an answer to the Internal Market Monitor's answer.

IV. Commission Determination

A. Procedural Issues

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2021), the 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 Procedures, 18 C.F.R. § 385.214(d), we grant the late-filed motions to intervene of the External Market Monitor and Energy New England, LLC, given their interests in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2021), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We accept the answers filed by Anbaric and MMWEC, the External Market Monitor, the Internal Market Monitor, and RENEW Northeast, Inc., because they have provided information that has assisted us in our decision-making process.

B. Substantive Issues

17. We accept the Informational Filing because we find that, except as noted below, ISO-NE has complied with its obligations under Tariff section III.13.8.1 to submit information related to its qualification determinations and to provide supporting documentation. The Informational Filing meets these requirements by discussing, *inter alia*, the capacity zones to be modeled for FCA 16 and the details of the resources accepted or rejected in the qualification process for participation in the FCA. ISO-NE has provided evidence that it has appropriately reviewed relevant information for all resources requesting to participate in FCA 16.²¹

²¹ We acknowledge ISO-NE's statement that if Killingly's CSO is terminated as requested in a filing with the Commission, then Killingly's Qualified Capacity will be

18. Also, ISO-NE has represented, without challenge from any other party, that it must make minor modifications to certain incorrect Qualified Capacity values.²² Consistent with ISO-NE's representations in this case and as provided under Tariff section III.13.8.1(d),²³ we direct ISO-NE to modify, within 15 days of the date of this order, the incorrect values for the resources that ISO-NE has identified, as requested.

19. We now address protests submitted in response to the Informational Filing.

1. Investment Tax Credit for Standalone Battery Storage Resources

a. Protest

20. Borrego states that it submitted an Offer Floor Price for its Wendell Energy Storage Project (Wendell Project), assuming an investment tax credit (ITC) based on the expected passage of the Build Back Better Act, which extends an existing ITC to standalone battery storage resources. Borrego explains that the Internal Market Monitor removed the ITC from its own Offer Floor Price calculation for the Wendell Project because the Build Back Better Act had not been signed into law.²⁴

21. Borrego states that it understands that the Internal Market Monitor has historically relied on existing law to define the "prevailing market conditions" of Tariff section III.A.21.2(b)(i) under which the Internal Market Monitor must accept or estimate the input values used to calculate Offer Floor Prices. In this case, Borrego argues, any passage of legislation creating a battery storage ITC would be a material change in

removed such that Killingly will not be able to participate in FCA 16. We note that, on January 3, 2022, the Commission accepted the termination filing. *ISO New England Inc.*, 178 FERC ¶ 61,001 (2022).

²² See *supra* PP 12-13.

²³ See Tariff, § III.13.8.1(d) ("If within 75 days after the ISO's submission of the informational filing, the Commission does issue an order modifying one or more of the ISO's determinations, then the Forward Capacity Auction shall be conducted no earlier than 15 days following that order using the determinations as modified by the Commission (unless the Commission directs otherwise), and challenges to Capacity Clearing Prices resulting from the Forward Capacity Auction shall be reviewed in accordance with the provisions of Section III.13.8.2(c).").

²⁴ Borrego Protest at 1-2. Borrego filed both a public version of its protest and a version for which it seeks privileged treatment. All citations from the protest are to the public version. RENEW Northeast, Inc., supports Borrego's request.

prevailing market conditions. Borrego therefore asks the Commission to direct the Internal Market Monitor to update Borrego's and any similarly situated storage resources' Offer Floor Prices in FCA 16 to reflect the battery storage ITC included in the Build Better Act if that legislation passes prior to January 23, 2022. Borrego also requests that the Commission direct ISO-NE to update, through a Federal Power Act (FPA) section 205 filing prior to FCA 17, applicable ORTPs to reflect the change in tax law creating a standalone storage ITC.²⁵

b. Commission Determination

22. The Build Back Better Act has not become law. Because Borrego's requests are contingent on the act becoming law, we dismiss Borrego's protest as moot.

2. Westover Project Offer Floor Price

a. Protest

23. Anbaric and MMWEC state that they submitted an Offer Floor Price for their proposed Westover Energy Storage Center (Westover Project), a 100 MW battery storage project. They explain that under a joint ownership agreement, a portion of the project will be funded and owned by Anbaric, and the other portion will be funded and owned by MMWEC. Anbaric and MMWEC state that the Internal Market Monitor mitigated the Offer Floor Price for the Westover Project to the storage ORTP of \$2.601/kW-month. For the reasons stated below, Anbaric and MMWEC ask that the Commission, pursuant to its authority under the FPA and Tariff section III.13.8.1(d), to issue an order by January 21, 2022, directing ISO-NE to permit the Westover Project to be bid into FCA 16 at Anbaric and MMWEC's proposed Offer Floor Price.²⁶

24. Anbaric and MMWEC argue that the Internal Market Monitor inappropriately mitigated the proposed Offer Floor Price by rejecting and replacing several of the proposed values for the Offer Floor Price's components. They contend that the proposed component values were permissible and that the Internal Market Monitor should have accepted their Offer Floor Price. In doing so, Anbaric and MMWEC make specific arguments regarding several of the component values the Internal Market Monitor rejected.²⁷ They explain that where Westover Project-specific costs and revenues were

²⁵ *Id.* at 2, 10-11, 15-16, 20.

²⁶ Anbaric and MMWEC Protest at 1-3. Anbaric and MMWEC filed both a public version of their protest and a version for which they seek privileged treatment. All citations from the protest are to the public version.

²⁷ In the confidential version of their protest, Anbaric and MMWEC also argue

comparable to the component values used in setting the storage ORTP, they proposed the use of the ORTP component values for convenience and to minimize opportunities for dispute. Anbaric and MMWEC state that where they were able to offer more competitive terms than were reflected in the ORTP component values, they proposed project-specific figures. Specifically, Anbaric and MMWEC explain that they used values for Anbaric's debt-to-equity ratio and the Westover Project's forecasted revenue equal to the values that the Internal Market Monitor used to calculate the storage ORTP.²⁸ In support of this approach, Anbaric and MMWEC contend that each ORTP component value should be "treated as a 'safe harbor' benchmark that resource sponsors can rely on in their Offer Floor Price, or, where defensible, improve upon."²⁹ Regarding the debt-to-equity ratio, Anbaric and MMWEC contend that the capital structure incorporated into the storage ORTP is conservative and reflective of the average leverage rate for storage projects. Anbaric and MMWEC state that despite these arguments, the Internal Market Monitor rejected the submitted debt-to-equity ratio and revenue forecast.³⁰

25. Anbaric and MMWEC state further that the Internal Market Monitor unreasonably adjusted upward their proposed cost of equity for Anbaric's ownership share. They state that the equity is to be provided to Anbaric by the Ontario Teachers' Pension Plan (OTPP), which is a 40% owner of Anbaric and its major investor. Anbaric and MMWEC claim that OTPP is "well capitalized" and can fund the capital expenditures without resorting to the capital markets or the recruitment of other investors to finance new resource development, thereby saving the costs of doing so.³¹ To support their proposal, Anbaric and MMWEC note that the cost of equity of another infrastructure proposal recently submitted by Anbaric, the Mystic Reliability Wind Link transmission project, was 7.9%.³² In making this comparison, Anbaric and MMWEC argue that merchant

that the Internal Market Monitor's replacement component values are unreasonable.

²⁸ Anbaric and MMWEC note that in the Commission order accepting the storage ORTP for FCA 16, the Commission found that the revenue forecast use to calculate the ORTP "reflects how a reasonable battery operator would operate a battery." Anbaric and MMWEC Protest at 26 (citing *ISO New England Inc.*, 175 FERC ¶ 61,195, at P 99 (2021)).

²⁹ *Id.* at 21. *See also Id.* at 5.

³⁰ *Id.* at 18 (citing the Qualification Determination Notification for the Westover Project (Westover QDN) at 3).

³¹ *Id.* at 8-9.

³² *Id.* at 8 n.24, 11, 17.

transmission projects are riskier to develop than batteries, suggesting that their proposed cost of equity is a conservative estimate.³³

26. Anbaric and MMWEC state that the Internal Market Monitor inappropriately adjusted upward both MMWEC's cost of debt and (separately) Anbaric's cost of debt, the latter of which was "based on OTPP's and Anbaric's market experience."³⁴ Anbaric and MMWEC state that MMWEC's cost of debt, assumed to be 2%, will be funded through issuance of tax-exempt 15-year municipal bonds. Anbaric and MMWEC claim that publicly available data show that 2% is a reasonable cost for an entity with a Fitch AA- credit rating like MMWEC's.³⁵ They claim that, since 1976, MMWEC has issued more than \$4.6 billion in bonds to finance and refinance its approximate 720 MWs in current and former ownership of five New England power plants. They also note that MMWEC recently received authorization from the Massachusetts Department of Public Utilities to issue tax-exempt debt to finance 100% of a peaking generation project.³⁶

27. Finally, Anbaric and MMWEC argue that the Tariff does not give the Internal Market Monitor authority in the instant circumstances to reject their revenue forecast for the Westover Project. They argue that Tariff section III.A.21.2(b)(i) allows the Internal Market Monitor to replace the revenue forecast only "[i]f the project is supported by a regulated rate, charge, or other regulated cost recovery mechanism," which is not the case here.³⁷

³³ *Id.* at 17. Anbaric and MMWEC argue that merchant transmission projects like the Mystic Reliability Wind Link require the upfront expenditure of millions of dollars for onshore and offshore geotechnical review—expenditures at risk should the project not be selected in a competitive solicitation, as was the case for the Mystic project. Anbaric and MMWEC also argue that an offshore transmission project like Mystic presents more complex siting and development challenges than the Westover Project, which will be built on MMWEC property and directly adjacent to a transmission substation. *Id.* at 17 n.55.

³⁴ *Id.* at 9, 18.

³⁵ *Id.* at 9-10, 19-21.

³⁶ *Id.* at 9 n.26.

³⁷ *Id.* at 24-25.

b. Internal Market Monitor Answer

28. In response to Anbaric and MMWEC's protest, the Internal Market Monitor states that it mitigated the submitted modeling assumptions to make them consistent with the Westover Project's circumstances and prevailing market conditions.³⁸

29. In response to Anbaric and MMWEC's argument that each ORTP input value should be "treated as a 'safe harbor' benchmark that project sponsors can rely on in their Offer Floor Price, or, where defensible, improve upon," the Internal Market Monitor argues that this claim amounts to Anbaric and MMWEC "cherry-picking" from the ORTP model rather than providing evidence of the project's actual net costs in accordance with the Tariff.³⁹ The Internal Market Monitor argues that if that approach were allowed, any resource could successfully bid below the relevant ORTP (representing the low end of a competitive offer) simply by adjusting one or two inputs while relying on others as "safe harbor" inputs, regardless of true costs. The Internal Market Monitor explains that its job is to evaluate all aspects of a below-ORTP request for an Offer Floor Price, based on the particulars of the proposed project, and not to review only select proffered values.⁴⁰ The Internal Market Monitor states that it accepts Offer Floor Prices that are based on inputs that are supported by adequate evidence.⁴¹ Finally, the Internal Market Monitor contends that relying on data from the ORTP model rather than supplying documentation to demonstrate the unique business case of a project is contrary to the Tariff.⁴²

³⁸ *Id.* at 12. The Internal Market Monitor filed both a public version of its answer and a version for which it seeks privileged treatment. All citations in this order from the answer are to the public version.

³⁹ *Id.* at 3, 18. The Internal Market Monitor also argues that Anbaric and MMWEC's position has no support in the Tariff. The Internal Market Monitor states that, consistently with the Tariff, the Internal Market Monitor required Anbaric and MMWEC to provide adequate documentation to support all the inputs used to determine the requested Offer Floor Price, and did not allow selective reliance on ORTP component values. *Id.* at 3.

⁴⁰ *Id.* at 15-16.

⁴¹ *Id.* at 19.

⁴² *Id.* at 17.

c. External Market Monitor Answer

30. In its answer, the External Market Monitor agrees with the Internal Market Monitor that it is not appropriate for Project Sponsors to selectively rely on ORTP component values and supports the Internal Market Monitor's proposed mitigation of the Westover Project.⁴³ The External Market Monitor argues that the ORTP component values correspond to a representative project, and while the values could serve as useful benchmarks, they may not always be relevant to a project's Offer Floor Price calculation. The External Market Monitor explains that many project-specific circumstances could result in situations where the ORTP component values are not relevant for the project.⁴⁴

31. Regarding Anbaric and MMWEC's support for their proposed value for Anbaric's cost of equity—i.e., their comparison to the cost of equity proposed by Anbaric for the Mystic Reliability Wind Link transmission project—the External Market Monitor argues that because the Mystic Reliability Wind Link transmission project would be able to recover its costs under a cost-of-service compensation mechanism (if selected under a competitive solicitation), it is not an appropriate comparable for estimating the cost of equity of the Westover Project, which the sponsors claim is a pure merchant project.⁴⁵

d. Anbaric and MMWEC Answer

32. In their answer, Anbaric and MMWEC reiterate that the proposed Offer Floor Price for the Westover Project—based on a combination of ORTP component values and project-specific component values—meets the requirements of the Tariff, which does not prohibit such a combination of component values. Anbaric and MMWEC argue that ORTP component values cannot be “clearly inconsistent with prevailing market conditions” because they were approved by the Commission in June 2021 and are specific to new battery storage facilities.⁴⁶ Anbaric and MMWEC contend that their

⁴³ External Market Monitor at 5.

⁴⁴ *Id.* at 6-7. As an example of such a project-specific circumstance, the External Market Monitor states that a battery project that relies on regulation revenues may have considerably different costs compared to a resource that primarily relies on energy price arbitrage and reserve markets. The External Market Monitor also notes that a resource may enter into service later than the entry date assumed when developing the ORTP values.

⁴⁵ *Id.* at 8.

⁴⁶ Anbaric and MMWEC Answer at 2 (citing Tariff, § III.A.21.2(b)(i); *ISO New England Inc.*, 175 FERC ¶ 61,195, *on reh'g*, 176 FERC ¶ 61,125 (2021)), 6. Anbaric and MMWEC filed both a public version of their answer and a version for which they seek

proposed project-specific component values are well supported by the particulars of the Westover Project's financial arrangements.⁴⁷

33. Anbaric and MMWEC also argue that the Internal Market Monitor acted inconsistently because, while it rejected some ORTP component values proposed for the Westover Project's Offer Floor Price, it also accepted several other proposed ORTP component values without comment.⁴⁸ Anbaric and MMWEC contend that the Internal Market Monitor appears to have neither a general concern with Offer Floor Prices based on a combination of ORTP and non-ORTP component values, nor a basis to claim that Anbaric and MMWEC have engaged in prohibited cherry-picking. They argue that the Internal Market Monitor's prohibition on bid component combinations appears instead to be a selectively enforced restriction, with the Internal Market Monitor having unilateral authority over when it applies, which is inconsistent with the Tariff.

e. Commission Determination

34. As discussed below, we find that the Internal Market Monitor acted consistently with the Tariff in mitigating the Westover Project's Offer Floor Price to the storage ORTP. We therefore decline to provide the relief that Anbaric and MMWEC request.

35. The relevant Tariff provisions are as follows. Tariff section III.A.21.2 states that the Internal Market Monitor shall determine an Offer Floor Price “[f]or every new resource participating in [an FCA].” Tariff section III.A.21.2(b) describes how the Internal Market Monitor will determine an Offer Floor Price when the submitted Offer Floor Price is below the relevant ORTP, stating that the Internal Market Monitor will “enter all relevant resource costs and non-capacity revenue data, as well as assumptions regarding depreciation, taxes, and discount rate into the capital budgeting model used to develop the relevant [ORTP].” Tariff section III.A.21.2(b)(iv) then states that “[s]ufficient documentation and information must be included in the resource’s qualification package to allow the Internal Market Monitor to make the determinations described in this subsection (b). Such documentation should include all relevant financial estimates and cost projections for the project, including the project’s pro-forma financing support data.” Finally, Tariff section III.A.21.2(b)(iv) states that “if after consultation [with the Internal Market Monitor], the Project Sponsor does not provide sufficient documentation and information for the Internal Market Monitor to complete its analysis, then the resource’s New Resource Offer Floor Price shall be equal to the [ORTP].”

privileged treatment. All citations in this order from the answer are to the public version.

⁴⁷ *Id.* at 2.

⁴⁸ *Id.* at 3, 7.

36. We find that Anbaric and MMWEC have failed to provide sufficient documentation and information for certain component values they used to calculate their proposed Offer Floor Price. Specifically, we find that Anbaric and MMWEC provided insufficient support for their proposed values for Anbaric’s debt-to-equity ratio and the Westover Project’s revenue forecast. For these component values, Anbaric and MMWEC use the same values that the Internal Market Monitor used to calculate the storage ORTP. Although Anbaric and MMWEC assert that the actual Westover Project-specific values for these components are comparable to the ORTP component values that Anbaric and MMWEC instead chose to use, they provide no support for this assertion. Instead, they argue that Project Sponsors should be able to adopt discrete ORTP component values as “safe harbor” values. As the External Market Monitor notes, the generic ORTP component values correspond to a representative project. Project-specific component values may differ significantly from these generic component values. Further, we agree with the Internal Market Monitor that if Project Sponsors could adopt ORTP component values without question, any resource could bid below the relevant ORTP by adjusting select component values, regardless of true costs. Tariff section III.A.21.2(b)(iv) precludes that result by requiring Project Sponsors to provide “sufficient documentation and information” to support all their proposed component values, even if those values happen to be identical to the ORTP component values.

37. Having found that Anbaric and MMWEC did not provide sufficient documentation and information to support certain component values they used to calculate their proposed Offer Floor Price—even after consultation with the Internal Market Monitor⁴⁹—we find that Tariff section III.A.21.2(b)(iv) authorized the Internal Market Monitor to set the final Offer Floor Price for the Westover Project to the storage ORTP. Accordingly, we find that the Internal Market Monitor acted consistently with the Tariff.

⁴⁹ We note that the communications between the Internal Market Monitor and Anbaric and MMWEC during the qualifications process are described in the Westover Project’s QDN, as well as in Anbaric and MMWEC’s protest. Westover Project QDN at 2-4; Anbaric and MMWEC Protest at 8-14.

The Commission orders:

(A) ISO-NE's Informational Filing is hereby accepted, as discussed in the body of this order.

(B) ISO-NE is hereby directed to modify incorrect Qualified Capacity values, within 15 days of the date of this order, as discussed in the body of this order.

By the Commission. Chairman Glick and Commissioner Clements are concurring with a joint statement attached.

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England Inc.

Docket No. ER22-391-000

(Issued January 21, 2022)

GLICK, Chairman, CLEMENTS, Commissioner, *concurring*:

1. We concur in today's order. We agree that ISO New England's Internal Market Monitor correctly mitigated the Westover Energy Storage Center (Westover Project)'s capacity offer to the Offer Reserve Trigger Price (ORTP).¹ While Anbaric Development Partners, LLC (Anbaric) and Massachusetts Municipal Wholesale Electric Company (MMWEC) make a persuasive case that the Internal Market Monitor applied an inappropriate cost of debt to their project, arguing that publicly available data show that 2% is a reasonable cost for an entity with a Fitch AA- credit rating like MMWEC's, they failed to provide unit-specific supporting documentation with regard to each component of the ORTP calculation, as the Tariff requires.² Because they did not provide sufficient documentation to support their proposed Offer Floor Price for the Westover Project, we agree that mitigating the project's offer to the ORTP is consistent with the Tariff as it currently stands.³

2. We write separately to explain our concern that the existing Tariff appears to be unjust and unreasonable. A minimum offer price rule (MOPR) should be limited to preventing the exercise of buyer-side market power—that is, the submission of an uneconomically low capacity offer by a resource owned by or associated with a net buyer for the purpose of depressing the market-clearing price, thereby benefitting the net-buyer's net-short position.⁴ In this manner, a MOPR can effectively mitigate anti-competitive efforts to depress the capacity price.

3. But an overly broad MOPR does more harm than good. Where a capacity offer is low for legitimate rather than anti-competitive reasons (i.e., where the resource is not a

¹ *ISO New England, Inc.*, 178 FERC ¶ 61,050, at P 36 (2022).

² *Id.*

³ *Id.* P 37.

⁴ PJM Interconnection, L.L.C., Fair Rates Act Statement of Chairman Glick and Commissioner Clements, Docket No. ER21-2582-000, at P 7 (Oct. 19, 2021) (Glick-Clements FRA Statement).

buyer with market power), artificially raising that offer *hurts* competition, potentially pushing the resource out of the market and forcing capacity prices above the competitive level.⁵ Moreover, by producing high capacity prices notwithstanding an abundance of low-cost supply, an overly broad MOPR can lead to uneconomic price signals that falsely suggest that new capacity is needed or that existing capacity should be retained.⁶ That result distorts the market-clearing price, and forces customers to pay more than necessary to meet their capacity needs. In addition, an over-broad MOPR may impose complex administrative burdens on resources even when anti-competitive behavior is not a threat.

4. ISO New England's MOPR regime appears to have these exact effects. The MOPR applies to all new resources, regardless whether those resources are buyers, much less buyers with market power.⁷ As such, the MOPR appears to act as a barrier to competition, insulating incumbent generators from having to compete with certain new resources that may be able to provide capacity at lower cost. Such overbroad barriers are the antithesis of market competition, in that they divorce "capacity market clearing prices from the actual net going forward costs of would-be capacity suppliers" and serve "only to prop up capacity prices, protect incumbent generators, and increase the costs of state policies."⁸ The end result is "is doubly bad for consumers, as they will be forced to pay for more capacity than is actually needed, and to do so at a higher price than they should, because the MOPR will allow a relatively high-cost resource to set the capacity price for the entire set of resources procured through PJM's capacity market."⁹

5. This case provides further evidence that it is time for ISO New England to "move beyond the MOPR."¹⁰ We understand that ISO New England is currently considering proposals to eliminate its MOPR pursuant to section 205 of the FPA.¹¹ We think it

⁵ *Id.*

⁶ *Id.*

⁷ Tariff § III.A.21 (60.0.0).

⁸ Glick-Clements FRA statement at P 12.

⁹ *Id.* P 14.

¹⁰ *ISO New England Inc.*, 173 FERC ¶ 61,161 (2020) (Glick, Comm'r, dissenting at P 3).

¹¹ ISO New England, Inc., Modernizing Electricity Market Design and Resource Adequacy in the Evolving Electricity Sector Pre-Conference Statement, Docket No. AD21-10-000, at 1 (filed May 26, 2021); *see also* ISO New England, Inc., *2021 Wholesale Markets Project Plan* at 4 (Dec. 2021), https://www.iso-ne.com/static-assets/documents/2020/12/wmpp_final.pdf (noting ISO New England's goal of having a

prudent to give the ISO an opportunity to replace the existing MOPR with a solution of its choosing. After all, under the FPA, one size need not fit all and different regions of the country may choose different approaches to addressing the problem of actual buyer-side market power.¹²

6. But ISO New England must move expeditiously. We urge ISO New England to promptly put forward a proposal that addresses the foregoing concerns and provides a path to a more durable approach to the issue of buyer-side market power.

For these reasons, we respectfully concur.

Richard Glick
Chairman

Allison Clements
Commissioner

MOPR replacement in place for Forward Capacity Auction 17).

¹² Glick-Clements FRA statement at P 21 (explaining the importance of focusing on “actual” buyer-side market power).