



**Proposed Tariff Changes to Clarify that FCM Repowering Projects
are Able to Unwind their Incremental Obligations**

April 25, 2023

About LS Power

LS Power is a development, investment and operating company focused on the North American power and energy infrastructure sector

- Founded in 1990, LS Power has 280 employees across its principal and affiliate offices in New York, New Jersey, Missouri, Texas and California
- LS Power is at the leading edge of the industry's transition to low-carbon energy by commercializing new technologies and developing new markets.
 - **Utility-scale power projects across multiple fuel and technology types**, such as pumped storage hydro, wind, solar and natural gas-fired generation
 - **Battery energy storage**, market-leading utility-scale solutions that complement weather dependent renewables like wind and solar energy
 - **High voltage electric transmission infrastructure**, which is key to increasing grid reliability and efficiency, as well as carrying renewable energy from remote locations to population centers
 - **EVgo, the nation's largest public fast charging platform for electric vehicles** and first platform to be 100% powered by renewable energy
 - **CPower Energy Management**, the largest demand response provider in the country that is dedicated solely to the commercial and industrial sector
- Since inception, LS Power has developed, constructed, managed and acquired competitive power generation and transmission infrastructure, for which **we have raised over \$47 billion in debt and equity financing.**
 - **Developed over 11,000 MW of power generation** (both conventional and renewable) across the United States
 - **Acquired over 34,000 MW of power generation assets** (both conventional and renewable)
 - **Developed over 660 miles of high voltage transmission**, with ~400 miles of additional transmission under development

Utilize deep industry expertise as owner/operator

Issue Summary

Under the ISO's interpretation of the tariff, there is no way for a "repowered" resource to unwind future FCM commitments, leading to an unexpected and nonsensical "bet-the-plant" situation

- In FCA15, LS bid an expansion at its Ocean State Power (OSP) facility, cleared the auction, and secured a 7-year price lock
 - Because the expansion would increase summer capacity by more than 20%, it was technically a "repowering". As a repowering, the *whole facility* is treated as **new** for purposes of FA, CPS monitoring, etc.
- Since the start of the year, LS has been exploring whether it is possible to functionally "revert" back to the plant as it exists today. The ISO tells us that based on their interpretation of the tariff, there is **no mechanism to shed the incremental MWs of a repowering project**. Based on their reading, a repowering project must either be:
 - **(a)** completed as originally contemplated in its Show of Interest; or
 - **(b)** terminated in its **totality**, which would result in the loss of the **whole plant's** ability to participate in the FCM in perpetuity (forfeit of CNRC) and forfeit of FA associated with MWs which are currently operational
- If a repowered resource is not developed for any reason, **including failure to obtain permits**, then the ISO's interpretation means that the whole resource must exit the FCM, even if a significant amount of capacity could remain operational
- This is not how we understood tariff to work and conversation with various NEPOOL stakeholders confirms that this is not how they understood the tariff to work, either. The ISO's current interpretation is untested and never been applied to another resource
- To that end, **LS is proposing tariff changes that clarify that the treatment of repowered resources** align with the treatment of both greenfield new builds and smaller uprates at existing facilities
 - Treatment would allow a repowered resource to shed its *incremental* obligations and forfeit FA and price-lock while retaining FCM-eligibility of the currently operating resource
- Since the last MC, LS has made modest revisions to its proposed tariff changes based on the suggestions of NEPOOL stakeholders
 - One substantive change makes clear that a repowered resource can only partly commercialize if it withdraws from CPS monitoring
 - Various stylistic changes added to enhance clarity and precision

Background on Ocean State Power & its Repowering

A Reliable, 2-Block NGCC, Operating Since 1991

- OSP is an existing, operational facility with two NGCC power blocks (with dual fuel backup) located in Rhode Island
 - The facility is comprised of two different capacity resources of approximately 270 MWs with two different resource IDs (528, 529). Both resources are of the same vintage, same technology, and same configuration
- OSP has operated since 1991 and cleared in every FCA since the inception of the capacity market
- OSP offers valuable energy-security / fuel-security contributions to New England with connections to two interstate pipelines (TGP and Algonquin) as well as 2 million gallons of on-site oil storage (~3 days of supply at full output)
 - Today, both phases of OSP continue to operate in the real world and have various capacity and energy obligations
 - Both units had good performance during the most recent PfP event that occurred on December 24, 2022
- OSP offered both of its power blocks as repowering projects in FCA 15, at different prices
 - It did not offer any capacity as a sub-20% uprate.
- OSP cleared one of its two power blocks as a repowering with that block increasing its output from 270 MW to 334 MW
 - This is a 64 MW increase representing a ~24% increase in summer output
- The repowered resource *also* secured a 7-year price lock at \$3.98/kW-month for FCAs 15-21 on the full 334 MW size
- The repowered resource was originally thought to necessitate modest network upgrades but subsequent analysis has shown that no upgrades are required
- OSP did not change its primary or secondary energy sources, still an NGCC with dual-fuel backup

Repowered resources are treated worse than greenfield new or smaller uprates of existing capacity under ISO interpretation

- **Operational capacity is never at risk on either a new greenfield project or a minor uprate at an existing unit.** Failure to meet CPS milestones can only result in the termination of *incremental* MWs
- FA on currently operational capacity is never at risk, either. A repowered resource must post FA on MWs that are currently operational but which cannot be commercialized under the ISO's interpretation of the tariff. **Results in roughly five times more FA posted per non-operational MW for repowered resources**

	Greenfield New	Minor Uprate ($\leq 20\%$)	Repowerings ($>20\%$)
Project Description	A new 64 MW gen separate from OSP	A 53 MW uprate at OSP (19% increase)	A 64 MW uprate at OSP (24% increase)
FA at risk	64 MW	53 MW	334 MW
CNRC at risk	64 MW	53 MW	334 MW
Currently operational capacity at risk	0 MW	0 MW	270 MW

Preferred Outcome

- If OSP had cleared as greenfield new or as a minor uprate, we would not be here today: the tariff is unambiguous in the ability of these resources to shed incremental obligations
- OSP would like to clarify the tariff to make clear that it has the right to shed its 64 MW of incremental obligations while also maintaining the ability of its 270 MW of currently operational capacity to continue to participate in the FCM
- **The most reasonable outcome would have OSP face the same set of penalties that would occur if a minor uprate or a greenfield new project were terminated.** This would require OSP to:
 - **Forfeit FA on the 64 MW of non-operational capacity that OSP cleared in FCAs 15-17.** If these MWs do not get built, OSP should lose the FA posted to support them
 - **Forfeit the price lock on the full 334 MW resource.** OSP should not benefit from a price lock on new or existing capacity if it does not build an uprate
- Allowing OSP to shed its repowering benefits both load *and* generators
 - **Load** would receive three benefits:
 - (1) **~\$2mm in Financial Assurance** forfeited by OSP and refunded to load
 - (2) SENE customers would avoid having to pay \$3.98/kWm for 334 MW of capacity in FCA 16-21. Based on the two most recent auctions, which cleared around \$2.6/kwm, this would **save customers \$15mm in just FCA 16 and FCA 17**
 - (3) Allow a 270 MW firm-fuel, flexible resource continue to participate in FCM and provide winter energy security benefits
 - **Generators** would receive a benefit, too:
 - (1) The elimination of 64 MW of capacity from the supply stack in future FCAs

Repowerings, market prices, & market power

Repowering provisions were designed for the purpose of allowing existing capacity to get a price-lock. Price-locks are now gone

- Repowering provisions have their origin in the FCM Settlement. At that time, a repowering's treatment as "new" had two important market impacts. Only new resources could:
 1. Obtain price locks (first five years, later seven, now none)
 2. Set the market clearing price (originally, existing resources were treated as price takers)
- The uprate and repowering rules were explicitly designed to enable existing resources to clear as "new" in order to secure a price-lock. Per the Settlement Order, they were "intended to provide predictable revenues and facilitate financing for new capacity" – including incremental capacity at repowered sites [1]
- No party opposed the concept of repowering provisions. The only dispute related to the threshold between an uprate ($\leq 20\%$ increase) and a repowering ($> 20\%$ increase). The threshold question was about the tradeoff between:
 - Generator benefit in securing a price lock to enable the financing of incremental capacity
 - Load not being subject to price-locks on too much capacity [2]

1. FERC 16-June-2006 Order Accepting Proposed Settlement (ER03-563) at 16, 133. Settlement at 11.II.B.2.

2. 16-June-2006 Order at 139.

Market power concerns were originally focused on “toggling capacity” which does not have the same market impact today

- Market power concerns, such as they were, were focused on the fact that under the Settlement, only new resources could set the clearing price.^[1] Today, of course existing resources can set clearing prices so concerns about toggling between new/existing do not matter in same way
- On the quantity front, a repowering offer in the FCM should *increase* supply in the market, not remove it
 - Greenfield new and uprated resources can also offer new capacity into the market before that capacity is operational, leading to risk of “phantom MWs.” This is not a unique phenomenon to repowerings; it is simply a fact of life in a forward market that allows non-commercial capacity to participate
 - Repowering resources offer as both new and existing in the FCM, so the clearing engine can select between the “existing” resource size or the “new” resource size. We see this with how both parts of OSP cleared in FCA 15: one repowering proposal cleared and the other unit cleared as existing because it was the least-cost outcome
- The 20% threshold for repowering is largely arbitrary for purposes of mitigation because it is percentage-based. Market impacts occur due to aggregate MW in the market
 - Our 64 MW “repowering” (reflecting a 23% increase in summer capacity) would have been considered an uprate if OSP had a starting capacity of 320 MW instead of 270 MW. That resource could have shed its incremental MWs without issue
 - LS could have proposed a 64 MW greenfield new build adjacent to OSP, which could have affected clearing price/quantity. That resource could have shed its incremental MWs without issue
- On the pricing front, repowerings do not circumvent offer review or mitigation
 - The existing resource offer is mitigated if priced above the DDBT and the “new resource” (repowering) offer is subject to review as well as part of resource qualification

1. ISO-NE Filing Letter in ER03-563 at 10.

Repowering rules were designed, in part, to enhance reliability. ISO's interpretation runs contrary to that intent

- FERC found that the repowering rules would allow existing resources to quickly and cost-effectively increase their capacity. Given concerns about prospective capacity shortfalls at that time, FERC noted that these increments could “provide important reliability protection”

“The Commission finds that the threshold provision [...] provides incentives to attract more supply to New England because it will encourage existing suppliers to expand their facilities. We further find that the level of the 20 percent/40 megawatt threshold is sufficient to provide incentives for significant additions to capacity levels, while preventing existing capacity from being reclassified as new capacity by means of minor additions. **We note that both Load Supporters and Capacity Suppliers argue that investment in existing capacity may be more cost efficient than new construction as well as quicker to come online.** Results of recent ISO-NE analyses, presented in the 2005 Regional System Plan, show that “New England will likely face an increased risk of operating with less capacity than needed by 2008.” The 2005 Regional System Plan further states that results indicate that the region “will not have sufficient capacity to meet the IC Requirement in the 2008 to 2010 timeframe, depending on load growth, weather conditions, generator performance and attrition, and the conditions in specific load pockets, such as Connecticut.” **Given these projections and that new generation requires two to four years to be built, increased output from existing resources could provide important reliability protection.** The Commission thus accepts the 20 percent/40 megawatt threshold agreed to by settling parties as an appropriate means for attracting additional capacity.” [1] (emphasis added)

- It is hard to fathom how the ISO's tariff interpretation, leading to termination of operational capacity, aligns with FERC's intent of enabling projects which enhance reliability in a fast/cost-effective manner

1. FERC 16-June-2006 Order Accepting Proposed Settlement (ER03-563) at 138.

Modifications to the Proposed Tariff Changes

Updated proposal ties ability to partially commercialize resource to withdrawal from CPS monitoring

- Our original proposal did not limit when, how, or how often a repowered resource could partially commercialize
- A stakeholder expressed concern that our original tariff proposal could provide a repowered resource with the ability to prematurely receive FA back by repeatedly commercializing a portion of the facility. The stakeholder thought that this would be a more fundamental change to FA treatment of repowered resources, rather than simply an off-ramp for non-viable projects
 - LS thinks broader changes to repowering rules are warranted after the termination of the price-lock provisions, but that these broader changes are outside the scope of our proposal.
- To accommodate this stakeholder concern, we have updated our tariff proposal to allow for partial commercialization of repowered resources only when they withdraw from CPS monitoring
 - Withdrawal from CPS monitoring can occur only once, which avoids the ability to repeatedly commercialize a portion of a facility
- Separately, we have made several stylistic changes to aid with clarity

A separate word document provides tracked changes to our original 4/13/2023 tariff language.

Conceptual Tariff Language for Partial Commercialization

Partial Commercialization allows for Partial Termination under existing provisions

- Changes to the FCM Commercial Operation provision (III.13.3.8) would clarify that a repowered resource can commercialize up to its current audited output level – irrespective of whether all CPS monitoring milestones are met
 - Language would limit this pathway to repowerings that withdraw from CPS monitoring
 - Language would be limited to resources where no network upgrades required or upgrades are complete
- Updated proposal eliminates the “like-for-like” technology requirement, because the CPS withdrawal modification obviates its need. A resource of any technology can be commercialized at its audit level when it withdraws from monitoring.
- Partial commercialization allows for partial termination of non-commercial MWs by the ISO (or by us) under current market rules (III.13.3.4A)
- **Allows OSP to commercialize (i.e. retain) its operational 270 MW unit and the ISO to terminate the incremental 64 MW**

If a resource:

1. qualified and cleared as a New Generating Capacity Resource pursuant to repowering provisions
2. ~~did not change its prime mover or primary energy source in its Show of Interest Form from the resource that was previously counted as a capacity resource, and~~ ← Proposed Elimination
3. completed any transmission upgrade(s) necessary for the resource to obtain the requisite interconnection service on the uprated facility, and,
4. **Withdraws from CPS monitoring** ← Proposed Addition

Then,

the ISO shall confirm FCM Commercial Operation of the portion of the re-powered resource equal to the repowered resource’s Establish Claimed Capability audit value

FCM Commercial Operation Changes (III.13.3.8)

Proposed Additions in Red

A resource (or portion thereof) achieves FCM Commercial Operation when (1) the ISO has determined that the resource (or portion thereof) has achieved all its critical path schedule milestones, including completion of any transmission upgrades necessary for the resource to obtain the requisite interconnection service; and (2) the ISO verifies the resource's (or a portion of the resource's) summer capacity rating (or, for a resource with winter capacity only, its winter capacity rating).

- (a) For a Generating Capacity Resource (or portion thereof) that has achieved all its critical path schedule milestones, the ISO shall confirm FCM Commercial Operation as soon as practicable following the ISO's verification of the resource's summer capacity rating (or, for a resource with winter capacity only, its winter capacity rating), which may take place in any month of the year. The ISO shall verify the summer capacity rating of a Generating Capacity Resource that is an Intermittent Power Resource following no fewer than 30 consecutive calendar days of operation (for periods from October 1 through May 31, a Market Participant must request such verification).
- (b) For a Demand Capacity Resource (or portion thereof) ...
- (c) For an Import Capacity Resource (or portion thereof) ...

For a resource that (1) previously qualified and cleared in a Forward Capacity Auction as a New Generating Capacity Resource pursuant to Section III.13.1.1.1.2 (re-powering), (2) completed any transmission upgrade(s) necessary for the re-powered resource to obtain the requisite interconnection service, and (3) subsequently is withdrawn by its Project Sponsor (or deemed withdrawn by the ISO) from critical path schedule monitoring pursuant to Section III.13.3.6, the ISO shall confirm FCM Commercial Operation of the portion of the re-powered resource equal to the re-powered resource's summer capacity rating (or, for a resource with winter capacity only, its winter capacity rating). The summer capacity rating can be established using an Establish Claimed Capability Audit, which may take place in any month of the year.

Conceptual Tariff Language for Price Lock Termination

Allows for the ISO to terminate a price lock if certain provisions are met and clarifies pricing treatment for auctions in which a price-locked resource has already cleared.

- Allows ISO to terminate a price lock on a repowered resource if the resource **withdraws from CPS monitoring**
 - Does **not** affect truly *new* resources with a price-lock obtained prior to FCA 15 (those do not clear as repowering)
 - Does **not** affect DR resources with a price-lock obtained prior to FCA 15 (those are not Generating Capacity Resources)
 - Does **not** affect generating capacity resources which cleared a minor uprate (<20%) under III.13.1.1.1.3
 - Does **not** affect repowered resources with active price-locks that are currently commercial
 - No new resources will fall into this category because resources can no longer obtain a price-lock
- Updated proposal allows ISO to terminate a price-lock on withdrawal from CPS monitoring – better aligning both provisions
- Based on our review, the repowered portion of OSP is the only resource that fits into this bucket
- It is reasonable to assume that the price-locked resource would have cleared the FCM as an existing resource for auctions already run. The portion of OSP which is an existing resource (with no price-lock) has cleared every FCA.

The ISO ~~may~~ **shall** terminate a price-lock if a resource:

1. qualified and cleared as a New Generating Capacity Resource pursuant to repowering provisions
- ~~2. Has not commercialized~~ ← Proposed Elimination
3. **Withdraws from CPS monitoring** ← Proposed Addition

When the ISO terminates a price-lock, then,

- **For auctions already run:** the resource shall be paid the zonal FCM price of that CCP (not the price-locked rate)
- **For future auctions:** the resource participates like any other existing generating capacity resource (i.e., can delist, no guaranteed clear, paid prevailing market price)

Price Lock Changes (III.13.1.1.2.2.4)

Proposed Additions in Red

Project Sponsors shall be required to specify whether they are making the election set forth in this Section III.13.1.1.2.2.4 for each Forward Capacity Auction up to and including the auction held in February 2021 for the June 1, 2024 through May 31, 2025 Capacity Commitment Period, and no election shall be permitted thereafter.

For each Forward Capacity Auction occurring up to and including the February 2021 auction, in the New Capacity Qualification Package, the Project Sponsor must specify whether, if its New Capacity Offer clears in the Forward Capacity Auction, the associated Capacity Supply Obligation and Capacity Clearing Price (indexed for inflation) shall continue to apply after the Capacity Commitment Period associated with the Forward Capacity Auction in which the offer clears, for up to six additional and consecutive Capacity Commitment Periods, in whole Capacity Commitment Period increments only. For incremental capacity qualified pursuant to Section III.13.1.1.1.3.A, this election shall apply to both the incremental amount of capacity and the existing Qualified Capacity matched to the incremental capacity at the same generating resource. If no such election is made in the New Capacity Qualification Package, the Capacity Supply Obligation and Capacity Clearing Price associated with the New Capacity Offer shall apply only for the Capacity Commitment Period associated with the Forward Capacity Auction in which the New Capacity Offer clears. If a New Capacity Offer clears in the Forward Capacity Auction, the capacity associated with the resulting Capacity Supply Obligation may not be subject to any type of de-list or export bid in subsequent Forward Capacity Auctions for Capacity Commitment Periods for which the Project Sponsor elected to have the Capacity Supply Obligation and Capacity Clearing Price continue to apply pursuant to this Section III.13.1.1.2.2.4.

The ISO shall terminate the a multi-year rate election of an Existing Generating Capacity Resource or a New Generating Capacity Resource obtained pursuant to this Section III.13.1.1.2.2.4 if the resource (1) previously qualified and cleared in a Forward Capacity Auction as a New Generating Capacity Resource pursuant to Section III.13.1.1.1.2 (re-powering), and (2) is withdrawn by its Project Sponsor (or deemed withdrawn by the ISO) from critical path schedule monitoring pursuant to Section III.13.3.6. When the ISO terminates a multi-year rate election of a qualifying resource, then that resource shall be paid the Capacity Clearing Price of each Forward Capacity Auction in which the resource already obtained a Capacity Supply Obligation. Upon termination of the multi-year rate election, the Existing Generating Capacity Resource can participate in the Forward Capacity Auction pursuant to Section III.13.1.2.

Withdrawal from Critical Path Schedule Monitoring (III.13.3.6)

Proposed Additions in Red

Rationale

- With the new partial commercialization language in III.13.3.8(d) being tied to withdrawal from CPS monitoring, we clarify that a resource withdrawing from CPS monitoring may first partially commercialize before being subject to termination.
- Without this change, there could be ambiguity about sequencing and whether CSO termination occurs before partial commercialization can be achieved.

III.13.3.6. Withdrawal from Critical Path Schedule Monitoring.

A Project Sponsor may withdraw its resource from critical path schedule monitoring by the ISO at any time by submitting a written request to the ISO. The ISO also may deem a resource withdrawn from critical path schedule monitoring if the Project Sponsor does not adhere to the requirements of this Section III.13.3. Any resource withdrawn from critical path schedule monitoring shall be subject to the provisions of Section III.13.3.4A. A resource that (1) previously qualified and cleared in a Forward Capacity Auction as a New Generating Capacity Resource pursuant to Section III.13.1.1.1.2 (re-powering) and (2) is withdrawn by its Project Sponsor (or deemed withdrawn by the ISO) from critical path schedule monitoring pursuant to this Section III.13.3.6 may achieve FCM Commercial Operation under Section III.13.3.8 prior to being subject to the provisions of Section III.13.3.4A.

Are other tariff changes required? No.

- **Do we need to make changes to Financial Assurance? No.** The tariff already has rules that make a distinction between Commercial and Non-Commercial Capacity. For example FAP VII.B.1-2 explain that FA is only required on non-commercial capacity (i.e., capacity which has not been commercialized under III.13.3.8). When capacity is commercialized, FA on the commercial MWs should be refunded per VII.B.3
 - Our proposal does not make any changes to the definition of Non-Commercial Capacity so does not require any changes to FA rules
- **Do we need to make changes to treatment of Interconnection Agreements? No.** III.13.3.5 provides the ISO with the right to terminate an Interconnection Agreement (“IA”) when the associated CSO has been terminated. This provision has been used previously to adjust downward an IA to match the CSO of a resource which was also adjusted downward (under III.13.3.4A)
 - Note that Section III.13.3.5 does not require termination. Instead, the Tariff leaves the termination decision to the ISO’s discretion. We understand that the ISO’s general practice is that the ISO will amend an IA or terminate the IA and replace it with a new IA to reflect the termination or partial termination of a CSO
- **What about changes to CNR Capability? No.** In ER18-704, the ISO stated that a resource may achieve partial Commercial Operation for purposes of CNRC when it can show that it can meet some of its CSO. Section II.48.3 notes that partial termination of a resource by the ISO (or by us) would reduce our capacity network rights down to our FCM qualified capacity

Conclusions & Next Steps

- LS Power has uncovered confusion about tariff rules that lead to discriminatory treatment of repowered resources
 - The ISO’s interpretation of these rules leads to an inadvertent “bet-the-plant” situation if a resource is not developed for any reason then it will be terminated in its **totality**, which would result in the loss of the **whole plant’s** ability to participate in the FCM in perpetuity and forfeit FA associated with MWs which are currently operational
- LS proposes tariff changes that clarify the treatment of repowered resources
 - Proposed treatment aligns with outcome when a greenfield project or minor uprate is unwound
 - Not clear that this language is even needed, but codifies a reasonable outcome
- Proposed language would allow OSP to prospectively unwind its repowering without losing its existing facility, while still paying a reasonable penalty for non-delivery of cleared capacity and forfeiting its price-lock
- Allowing LS to unwind these obligations would:
 - save consumers tens-of-millions of dollars between FA refunds, price-lock termination, and continued FCM participation
 - enhance winter energy security by allowing a firm-fuel resource to remain a capacity resource and participate in the FCM and all other ISO markets
 - rationalize the supply stack
- **Schedule:** Because OSP remains under a CPS monitoring we request that the committee move expeditiously
 - **April 13:** Issue Discussion and Proposed Tariff Changes
 - **April 25 (Today):** Markets Committee Vote on Proposed Tariff Changes
 - **May 4:** Participants Committee Vote on Proposed Tariff Changes

Contact Information

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Appendix on Tariff & Tariff Interpretation

Summary of Key Tariff Provisions

- **III.13.1.1.1.2 (a)** requires an *existing* capacity resource to clear as *new* if it increases its capacity by at least 20%
- **III.13.1.1.2.2.4** allowed *new* resources, through FCA 15, to secure a 7-year price lock
 - These provisions also forbid a price-locked resource from making any sort of “de-list or export bid” on the price-locked capacity meaning that a price-locked cannot terminate incremental capacity using a Retirement De-List bid or a Permanent De-List bid
- **III.13.2.3.2 (e)** is an accounting provision which notes that a resource which *clears* as new under III.13.1.1.1.2 will have its existing capacity “permanently de-listed”. This provision makes sure that there is no duplicate capacity in the market (i.e., that the original MWs from the “existing” resource is netted out from the “new” expanded resource)
 - This provision *intentionally* relies on the undefined and ambiguous phrase “permanently de-listed.” The ISO stated in the Filing Letter from ER08-199 that “the phrase ‘permanently de-listed’ was intentionally made lower-case so as to not implicate the formal requirements associated with clearing Permanent De-List Bids...”
- **III.13.3.4A** describes how the ISO can terminate or “adjust” downward the CSO of capacity resources
- **III.13.3.8** describes how a resource can demonstrate FCM Commercial Operation on its full output or a “portion thereof” if it completes CPS milestones, any transmission upgrades for network service, and does a commercialization audit.

OSP's Predicament

- **III.13.1.1.1.2 (the repowering provision)** specifies that a resource shall clear as a new resource if investment will increase output by at least 20%. **III.13.2.3.2 (e)** notes that “If any portion of the New Generating Capacity Resource clears in the Forward Capacity Auction, the associated Existing Generating Capacity Resource shall be permanently de-listed”
 - Reading these provisions together, ISO-NE has concluded that if an existing resource clears in an FCA as a New Capacity Resource then the Existing Capacity Resource must be “permanently delisted”, **irrespective of whether the new resource is actually built**. This interpretation means that a resource must exit the FCM in perpetuity (unless it re-enters as a repowering), even if the a significant amount of capacity have been, and could remain operational and commercial
- **III.13.3.8** describes how a resource can demonstrate FCM Commercial Operation on its full output or a “portion thereof” if it completes CPS milestones, any transmission upgrades for network service, and does a commercialization audit
 - OSP’s uprate has no required network upgrades and is willing to do a commercialization audit, but the ISO has concluded that it can not commercialize *any* of its 270 MW of currently operational capacity because it has not achieved all of the CPS milestones contemplated in its original Show of Interest
 - Although this provision nominally allows for partial commercialization, it is not clear if there is any mechanism, in practice, to partially commercialize a facility if it has not met *all aspects of its SOI or CPS milestones*
 - Uncertainty remains as to what would happen if OSP were to try to develop the uprate and it was unable to deliver a full 334 MW, as part of CPS monitoring includes MW thresholds (e.g. what happens if a project comes in 1 MW short?)
 - Additionally, the ISO has indicated that it still might not be willing to allow OSP to be commercialized because if it comes up with less than a 20% uprate because it should not have been able to clear under III.13.1.1.1.2 in the first place
- OSP cannot partially terminate, retire, or delist the 64 incremental MWs under **III.13.3.4A** because they are not currently FCM operational and because the price lock, **III.13.1.1.2.2.4**, does not allow OSP to make any “de-list or export bid” on the price-locked capacity

III.13.1.1.1.2. Resources Previously Counted as Capacity

A resource that has previously been counted as a capacity resource, including a deactivated or retired capacity resource, may elect to participate in the Forward Capacity Auction as a New Generating Capacity Resource, as described in this Section III.13.1.1.1.2. The incremental expenditure required to reactivate a resource that previously has been deactivated or retired pursuant to Section I.3.9 of the Transmission, Markets and Services Tariff (or its predecessor provisions) may be included in the calculation of the dollar per kilowatt thresholds in this Section III.13.1.1.1.2. **A resource accepted for participation in the Forward Capacity Auction as a New Generating Capacity Resource pursuant to this Section III.13.1.1.1.2 shall participate in the Forward Capacity Auction pursuant to Section III.13.2.3.2(e).** A Market Participant that elects to have a resource that has previously been counted as a capacity resource participate in the Forward Capacity Auction as a New Generating Capacity Resource, must notify the ISO when the existing resource ceases to operate and the New Generating Capacity Resource commences operation. If a Market Participant with a resource that has previously been counted as a capacity resource elects, pursuant to Section III.13.3.4(a)(iii), to have the resource that has previously been counted as a capacity resource cover the Capacity Supply Obligation of a New Generating Capacity Resource and the resource that has previously been counted as a capacity resource must take an outage in order for the New Generating Capacity Resource to commence Commercial Operation (as defined in Schedule 22, 23, or 25 of Section II of the Transmission, Markets and Services Tariff), then the Market Participant must notify the ISO that the outage is for the purpose of the New Generating Capacity Resource commencing Commercial Operation (as defined in Schedule 22, 23, or 25 of Section II of the Transmission, Markets and Services Tariff). **A resource shall be accepted for participation as a new resource if it complies with one of the following three subsections:**

(a) Where investment in the resource will result, by the commencement of the Capacity Commitment Period, in an increase in output by an amount exceeding the greater of: (i) 20 percent of the summer Qualified Capacity of the resource at the time of the qualification process for the Forward Capacity Auction; or (ii) 40 MW above the summer Qualified Capacity of the resource at the time of the qualification process for the Forward Capacity Auction, the whole resource shall participate in the Forward Capacity Auction as a New Generating Capacity Resource...

III.13.2.3.2 (e) Step 2: Compilation of Offers and Bids – Repowering

Offers and bids associated with a resource participating in the Forward Capacity Auction as a New Generating Capacity Resource pursuant to Section III.13.1.1.1.2 (resources previously counted as capacity resources) shall be addressed in the Forward Capacity Auction in accordance with the provisions of this Section III.13.2.3.2(e). The Project Sponsor shall offer such a New Generating Capacity Resource into the Forward Capacity Auction in the same manner and pursuant to the same rules as other New Generating Capacity Resources, as described in Section III.13.2.3.2(a). As long as any capacity is offered from the New Generating Capacity Resource, the amount of capacity offered is the amount that the auctioneer shall include in the aggregate supply curve at the relevant prices, and the quantity of capacity offered from the associated Existing Generating Capacity Resource shall not be included in the aggregate supply curve. **If any portion of the New Generating Capacity Resource clears in the Forward Capacity Auction, the associated Existing Generating Capacity Resource shall be permanently de-listed as of the start of the associated Capacity Commitment Period.** If at any price, no capacity is offered from the New Generating Capacity Resource, then the auctioneer shall include capacity from the associated Existing Generating Capacity Resource at that price, subject to any bids submitted and accepted in the qualification process for that Existing Generating Capacity Resource pursuant to Section III.13.1.2.5. Bids submitted and accepted in the qualification process for an Existing Generating Capacity Resource pursuant to Section III.13.1.2.5 shall only be entered into the Forward Capacity Auction after the associated New Generating Capacity Resource is fully withdrawn (that is, the Forward Capacity Auction reaches a price at which the resource’s New Capacity Offer is zero capacity), and shall only then be subject to the reliability review described in Section III.13.2.5.2.5.

LS views this provision as an accounting exercise. Permanently de-listing an existing resource’s capacity when it receives a CSO as a new resource simply removes capacity from an existing resource and transfers the same capacity to a new resource.

This provision *intentionally* relies on the undefined and ambiguous phrase “permanently de-listed.” The ISO stated in the Filing Letter from ER08-199 that “the phrase ‘permanently de-listed’ was intentionally made lower-case so as to not implicate the formal requirements associated with clearing Permanent De-List Bids...”

III.13.3.4A Termination of Capacity Supply Obligations

If a Project Sponsor fails to comply with the requirements of Sections III.13.3.2 or III.13.3.3, or if a Project Sponsor covers a Capacity Supply Obligation for two Capacity Commitment Periods, or if, as a result of milestone date revisions, the date by which a resource will have achieved all its critical path schedule milestones is more than two years after the beginning of the Capacity Commitment Period for which the resource first received a Capacity Supply Obligation, then **the ISO, after consultation with the Project Sponsor, shall have the right, through a filing with the Commission, to terminate the resource's Capacity Supply Obligation for any future Capacity Commitment Periods and the resource's right to any payments associated with that Capacity Supply Obligation in the Capacity Commitment Period, and to adjust the resource's qualified capacity for participation in the Forward Capacity Market; provided that, where a Project Sponsor voluntarily withdraws its resource from critical path schedule monitoring in accordance with Section III.13.3.6, no filing with the Commission shall be necessary to terminate the resource's Capacity Supply Obligation.** Upon Commission ruling, the Project Sponsor shall forfeit any financial assurance provided with respect to that Capacity Supply Obligation. If in these circumstances, however, the ISO does not take steps to terminate the resource's Capacity Supply Obligation and instead permits the Project Sponsor to continue to cover its Capacity Supply Obligation, such continuation shall be subject to the ISO's right to revoke that permission and to file with the Commission to terminate the resource's Capacity Supply Obligation, and subject to continued reporting by the Project Sponsor as described in this Section III.13.3....

LS views this provision as allowing the ISO to “adjust” downward the CSO at OSP from 334 MW to the currently operational 270.18 MW. Nothing in this provision requires ISO-NE to terminate the entire facility should it not complete its uprate.

III.13.1.1.2.2.4. Capacity Commitment Period Election

Project Sponsors shall be required to specify whether they are making the election set forth in this Section III.13.1.1.2.2.4 for each Forward Capacity Auction up to and including the auction held in February 2021 for the June 1, 2024 through May 31, 2025 Capacity Commitment Period, and no election shall be permitted thereafter.

For each Forward Capacity Auction occurring up to and including the February 2021 auction, in the New Capacity Qualification Package, **the Project Sponsor must specify whether, if its New Capacity Offer clears in the Forward Capacity Auction, the associated Capacity Supply Obligation and Capacity Clearing Price (indexed for inflation) shall continue to apply after the Capacity Commitment Period associated with the Forward Capacity Auction in which the offer clears, for up to six additional and consecutive Capacity Commitment Periods, in whole Capacity Commitment Period increments only.** For incremental capacity qualified pursuant to Section III.13.1.1.1.3.A, this election shall apply to both the incremental amount of capacity and the existing Qualified Capacity matched to the incremental capacity at the same generating resource. If no such election is made in the New Capacity Qualification Package, the Capacity Supply Obligation and Capacity Clearing Price associated with the New Capacity Offer shall apply only for the Capacity Commitment Period associated with the Forward Capacity Auction in which the New Capacity Offer clears. **If a New Capacity Offer clears in the Forward Capacity Auction, the capacity associated with the resulting Capacity Supply Obligation may not be subject to any type of de-list or export bid in subsequent Forward Capacity Auctions for Capacity Commitment Periods for which the Project Sponsor elected to have the Capacity Supply Obligation and Capacity Clearing Price continue to apply pursuant to this Section III.13.1.1.2.2.4.**

OSP secured a 7-year price lock in FCA 15. The price lock provisions forbid OSP from making any sort of “de-list or export bid”, meaning that we cannot retire the 64 MW of incremental capacity using a Retirement De-List bid or a Permanent De-List bid. The only method for MW reductions is via a “partial termination” under III.13.3.4A.

III.13.3.8 FCM Commercial Operation

A resource (**or portion thereof**) achieves FCM Commercial Operation when (1) the ISO has determined that the resource (or portion thereof) has achieved all its critical path schedule milestones, including completion of any transmission upgrades necessary for the resource to obtain the requisite interconnection service; and (2) the ISO verifies the resource's (or a portion of the resource's) summer capacity rating (or, for a resource with winter capacity only, its winter capacity rating).

- (a) **For a Generating Capacity Resource (or portion thereof)** that has achieved all its critical path schedule milestones, the ISO shall confirm FCM Commercial Operation as soon as practicable following the ISO's verification of the resource's summer capacity rating (or, for a resource with winter capacity only, its winter capacity rating), which may take place in any month of the year. The ISO shall verify the summer capacity rating of a Generating Capacity Resource that is an Intermittent Power Resource following no fewer than 30 consecutive calendar days of operation (for periods from October 1 through May 31, a Market Participant must request such verification). ...