132 FERC ¶ 61,044
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris and Cheryl A. LaFleur.

ISO New England Inc. Docket No. ER10-1185-000

ORDER ACCEPTING INFORMATIONAL FILING

(Issued July 15, 2010)

1. On May 4, 2010, ISO New England Inc. (ISO-NE) filed an informational filing regarding the qualification of capacity resources to participate in the fourth Forward Capacity Auction scheduled to begin August 2, 2010. In this order, we accept ISO-NE's informational filing.

I. Background

A. Forward Capacity Market (FCM)

2. ISO-NE has implemented a forward market for capacity, in which capacity resources compete in an annual Forward Capacity Auction to provide capacity to New England on a three-year-forward basis. Providers whose capacity clears the Forward Capacity Auction acquire Capacity Supply Obligations, which they must fulfill three years later. Under the FCM Rules, all existing resources participate in the Forward Capacity Auction, although existing resources may submit de-list bids to opt out of the capacity auction.[1] ISO-NE held the first two Forward Capacity Auctions in 2008, the third Forward Capacity Auction in October 2009, and the fourth Forward Capacity Auction is scheduled to begin on August 2, 2010 for the 2013-2014 Capacity Commitment Period. The FCM Rules at section III.13.8.1(a) require ISO-NE to submit to the Commission a filing no later than 90 days prior to each Forward Capacity Auction.

[1] *See* ISO-NE Transmission, Markets, & Services Tariff (ISO-NE Tariff), § III.13.2.3(c).

3. The information required to be filed includes the details of the resources accepted or rejected in the qualification process for participation in the Forward Capacity Auction. For de-list bids rejected by ISO-NE's Internal Market Monitor (Market Monitor),[2] the filing must include an alternate bid reflecting the Market Monitor's determination of the resource's net-risk adjusted going-forward costs and opportunity costs.[3] At that point, a resource may either elect to (a) use the Market Monitor's alternate de-list bid in the auction, or (b) challenge that alternate bid before the Commission prior to the Forward Capacity Auction.[4] Pursuant to section III.13.8.1(b), any comments or challenges to ISO-NE's determinations must be filed with the Commission no later than 15 days from the date of the filing.

4. In addition, to prevent over-recovery of common costs,[5] section III.13.1.2.3.1.6 of the FCM Rules provides the methodology the Market Monitor will use to evaluate de-list bids submitted by resources at a station with common costs. Section III.13.2.5.2.5.1(e) provides the methodology to establish the appropriate compensation for resources at stations with common costs that submit de-list bids that are rejected for reliability reasons.

B. The Instant Filing

5. As required by the FCM Rules, on May 4, 2010, ISO-NE made a filing setting forth, *inter alia*, the list of de-list bids that it rejected from participation in the August 2, 2010 Forward Capacity Auction. ISO-NE states that in its review of de-list bids for Dominion Resources Services, Inc.'s (Dominion) Salem Harbor Station, the

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[2] The Market Monitor reviews bids from Existing Generating Capacity Resources that seek to permanently or statically de-list by bidding above 1.25 times the Cost of New Entry (CONE) and 0.8 times CONE, respectively, and new resources that seek to offer below 0.75 times CONE.

[3] ISO-NE Tariff, § III.13.1.2.3.2.1.2. Net Risk-Adjusted Going Forward Costs, or "going-forward costs," are defined in section III.13.1.2.3.2.1.2 as those "costs that might otherwise be avoided or not incurred if the resource were not subject to the obligations of the listed capacity resource during the Capacity Commitment Period."

[4] The resource may also choose to abandon its attempt to de-list and participate in the auction as a price taker.

[5] Common costs at a multiple-resource station are those costs that must be incurred to operate the station but are independent of how many of the station's resources are operating.

Market Monitor had to evaluate the static de-list bids submitted by each of the four resources of the station, in which each resource included all of Salem Harbor Station's common costs in its going-forward costs. ISO-NE states that the Market Monitor rejected the static de-list bids submitted by the four resources at the Salem Harbor Station because the de-list bids were not consistent with those units' going-forward costs.

6. ISO-NE explains that the de-list bids submitted by Salem Harbor Units 1, 2, 3, and 4 included, in each unit's avoidable costs calculation, costs associated with various projects that were amortized over a three-year period. The Market Monitor, however, found that these expenses should be amortized over a six-year period for Units 1, 2, and 3 and a fourteen-year period for Unit 4, consistent with a previous Commission order[6] and factoring in the elapse of an additional year against the unit's service life. In addition, for Units 3 and 4, the Market Monitor removed the amortization of capital projects developed to enable the Salem Harbor units to meet the obligations they acquired in the third Forward Capacity Auction. The Market Monitor did so because those costs were approved as part of those units' going-forward costs in the third Forward Capacity Auction and they are now sunk costs that cannot be included in going-forward costs for the fourth Forward Capacity Auction. ISO-NE explains that the revenue adjustments that Dominion submitted for Unit 4 reflect the inclusion of Salem Harbor's Unit 3 costs to enable operation of Unit 4 at 437 MW to comply with Massachusetts's nitrogen oxide (NO_x) emission restrictions; however, the Market Monitor removed those adjustments on the basis that the static de-list bid for Unit 4 should include only the revenues and expenses associated with the operation of Unit 4. In addition, ISO-NE states that Dominion made adjustments to its actual costs to account for Unit 4's dependence on the future operation of Unit 3, therefore, the Market Monitor removed all Unit 3 costs from the Unit 4 static de-list bid and adjusted the labor costs and incremental core costs to reflect the operation of only Unit 4.

7. ISO-NE explains that, because Dominion submitted separate bids for each Salem Harbor unit, the going-forward costs for each unit included the station common costs so that if more than one unit is determined by ISO-NE to be needed for reliability and not allowed to de-list, common costs would be over-recovered. Therefore, ISO-NE states that the Market Monitor developed ISO-NE-determined bids using each unit's net risk-adjusted going forward residual costs based on the successive de-listing of the station units. According to ISO-NE, based on this methodology, all units will leave the auction at the same auction price of $5.224/kW-mo.

[6] *See ISO New England Inc.*, 128 FERC ¶ 61,266, at P 47 (2009) (September 2009 Order), *reh'g denied*, 130 FERC ¶ 61,108 (2010).

8. Finally, ISO-NE states that the third Forward Capacity Auction resulted in retention of Salem Harbor Units 3 and 4 for reliability. Therefore, ISO-NE submitted the Asset-Specific Going-Forward Costs (the going-forward costs of each unit), plus a portion of the Station Going-Forward Common Cost, for the Salem Harbor units, under the assumption that different combinations of units are retained for reliability.

C. Interventions, Protests, and Answers

9. Notice of the filing was published in the *Federal Register*, with interventions and protests due on or before May 19, 2010.[7] Exelon Corporation, Dynegy Power Marketing Inc., NRG Companies, and Northeast Utilities Service Company filed timely motions to intervene. Mirant Parties and New England Power Pool Participants Committee (NEPOOL) filed motions to intervene out of time. Dominion filed a motion to intervene and protest.

10. NEPOOL and ISO-NE filed answers in response to Dominion's protest.

II. Discussion

A. Procedural Issues

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely-filed unopposed motions to intervene serve to make the entities filing them parties to this proceeding. We will grant Mirant Parties' and NEPOOL's motions to intervene out-of-time given their interest in this proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers filed by ISO-NE and NEPOOL because they have provided information that has assisted us in our decision-making process.

B. Analysis

13. The Commission accepts ISO-NE's informational filing, as we find that ISO-NE has correctly administered the qualification of capacity resources in accordance with the FCM Rules. We now address the specific issues raised by the sole protester, Dominion.

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[7] 75 Fed. Reg. 27,335 (2010).

1. Dominion's Protest

14. Dominion states that, because in the third Forward Capacity Auction Units 3 and 4 were determined to be needed for reliability and will not be permitted to leave the market, it expects to incur the capital costs reflected in its third Forward Capacity Auction de-list bids for those units in order to meet the identified reliability need beginning with the 2012-2013 Capacity Commitment Period. Dominion states that it will begin to amortize such costs at that time based on the Commission-approved seven- and fifteen-year amortization periods. Dominion explains that in submitting static de-list bids for the fourth Forward Capacity Auction, it included the unamortized portion of the same capital costs based on the fact that if Units 3 and 4 continue to be needed for reliability beyond the 2012-2013 Capacity Commitment Period, such unamortized costs must be included in the units' going-forward costs. Dominion states that this is because the units' going-forward costs form the basis for the level of compensation the units will receive if their de-list bids clear the market, but the units are retained for reliability. Dominion explains that ISO-NE removed the amortization of the third Forward Capacity Auction capital projects from the Market Monitor's alternate de-list bid, and the failure to include such costs in its calculation of "reliability compensation" for the units for the fourth Forward Capacity Auction is in error and would unjustly prevent Salem Harbor from recovering costs incurred to meet a continuing reliability need.

15. Dominion states that the Commission recognized that the amortization of capital costs associated with Salem Harbor's de-list bids for the third Forward Capacity Auction would continue in the event that the Salem Harbor units continue to be needed to serve the same reliability need over successive Commitment Periods. Dominion asserts that any contrary conclusion would render meaningless the Commission's approval of an amortization period in the third Forward Capacity Auction for capital costs incurred to meet a reliability need. Further, Dominion contends that ISO-NE's decision to prevent Salem Harbor from continuing to amortize capital costs from the third Forward Capacity Auction is inconsistent with the Commission's determination related to compensation for resources retained for reliability that "when a resource is paid its going forward costs, the resource is no worse off by providing capacity than if it were allowed to de-list."[8]

16. Dominion argues that if ISO-NE is allowed to treat the capital costs that will be incurred as a direct result of the determination that Units 3 and 4 are needed for reliability as sunk, then Salem Harbor would be worse off by providing capacity than if it were allowed to de-list. Dominion explains that Salem Harbor would not incur the subject

[8] Dominion Protest at 8, n.18, citing *ISO New England Inc.*, 125 FERC ¶ 61,102, at P 40 (2008).

capital costs absent ISO-NE’s third Forward Capacity Auction reliability determination because the units would have been permitted to exit the FCM. Dominion asserts that if that reliability need continues for successive Commitment Periods, Units 3 and 4 must be provided with a reasonable opportunity to recover such costs under the Commission-approved amortization schedule. Dominion states that the Commission’s concern that a unit could “toggle” between charging market-based rates (through the FCM) and cost-based rates (if the unit is not permitted to de-list for reliability reasons) and thus over-recover its costs, is unfounded. Dominion asserts that, if the Salem Harbor units are retained for reliability again, they will have been prevented from participating in the market because they will be meeting the same reliability need as the previous year. Dominion asserts, though, if the reliability need is not present in the fifth Forward Capacity Auction, and the units are no longer needed, they will be back in the market as price-takers and not be able to continue amortizing costs from the third Forward Capacity Auction. Dominion argues that treating Salem Harbor’s investment for reliability as “sunk” would force Salem Harbor to effectively bid below its going-forward costs, and, therefore, the Commission should direct ISO-NE to permit the continued amortization of the third Forward Capacity Auction capital costs in the event Units 3 and 4 are needed for reliability in the fourth Forward Capacity Auction.

17. If the Commission determines that the FCM Rules do not permit Salem Harbor Units 3 and 4 from continuing to amortize capital costs incurred to meet a reliability need over successive Commitment Periods, Dominion requests that the Commission direct ISO-NE to work with stakeholders to revise the rules relating to the compensation of resources retained for reliability. Dominion asserts that currently the FCM Rules could be narrowly interpreted to preclude the recovery of capital costs incurred to meet a reliability need in subsequent Forward Capacity Auctions. According to Dominion, at a minimum, the FCM Rules should ensure that resources that incur capital costs to meet an ongoing reliability need are afforded a reasonable opportunity to recover such costs.

2. NEPOOL’s Answer

18. NEPOOL urges the Commission not to allow the instant filing to be used as a vehicle for seeking changes to the FCM Rules. NEPOOL states that the issue for consideration is whether the unamortized capital costs referenced by Dominion should be considered costs that may be avoidable in the subsequent Capacity Commitment Period(s) if retained for reliability. NEPOOL argues that the only issue in this proceeding is whether the ISO-NE has administered the fourth Forward Capacity Auction properly in accordance with the FCM Rules, and the Commission has previously directed that concerns with the FCM Rules be addressed in the stakeholder process, rather than in response to the auction results filings. NEPOOL urges the Commission to provide similar direction if and to the extent proper interpretation of the existing FCM Rules does not fully resolve the concerns raised in this proceeding.

3. ISO-NE's Answer

19. ISO-NE states that the exclusion of the annual amortization cost of a previously incurred capital cost is consistent with the tariff. ISO-NE states that Dominion's capital costs for Salem Harbor Units 3 and 4 for the third Forward Capacity Auction were determined to be avoidable and therefore the depreciation of the capital costs was included in the static de-list bids approved by the Commission for the third Forward Capacity Auction. ISO-NE asserts that in order to comply with its third Forward Capacity Auction obligations, Dominion must make these capital investments prior to the 2012-2013 Capacity Commitment Period. ISO-NE explains that for the 2013-2014 Capacity Commitment Period for the fourth Forward Capacity Auction, Dominion will have already incurred the capital costs associated with its third Forward Capacity Auction de-list bids; thus, the capital investment is sunk, no longer avoidable, and not recoverable as part of Dominion's static de-list bids in the fourth Forward Capacity Auction. Therefore, ISO-NE states that, consistent with the tariff, it excluded the depreciation of the previously incurred capital costs.

20. In response to Dominion's request that the Commission direct ISO-NE to work with stakeholders regarding compensation, ISO-NE states that this proceeding is not the appropriate forum to challenge the tariff. Further, ISO-NE states that exclusion of Dominion's annual amortization of capital costs is consistent with Commission precedent. For example, ISO-NE states that the Commission-approved FCM Rules define going-forward costs. Thus, ISO-NE explains that capital costs that are sunk in one Capacity Commitment Period cannot be costs that are capable of being avoided in a subsequent Capacity Commitment Period.

21. ISO-NE argues that Dominion appears to confuse the recovery of capital costs with the question of whether a cost is a legitimate Going-forward cost for a de-list bid in a single FCM Capacity Commitment Period. ISO-NE explains that the length of a depreciation period has relevance to the amount of a capital cost to be included in a de-list bid for a *single* Commitment Period, so long as the capital cost is legitimately an avoidable (or going-forward) cost for that Capacity Commitment Period. However, ISO-NE states that the length of the depreciation period says nothing about subsequent Capacity Commitment Periods, the Going-forward costs in subsequent Capacity Commitment Periods, or what is appropriate for inclusion in de-list bids for subsequent Capacity Commitment Periods. ISO-NE argues that the length of a depreciation period has relevance to the amount of a capital cost to be included in a de-list bid for a *single* Capacity Commitment Period so long as the capital cost is legitimately an avoidable (or going-forward) cost for that Capacity Commitment Period. ISO-NE states that, contrary to Dominion's statement, the length of the depreciation period does not have a connection to serving "the same" reliability need over successive Commitment Periods.

22. ISO-NE explains that its exclusion of the continuing amortization costs of Dominion's capital expenditures from the third Forward Capacity Auction does not mean Dominion is worse off than if it were allowed to de-list. ISO-NE states that Dominion is correct that, absent ISO-NE's reliability determination, Dominion would have been able to "exit" the market, but this fact has nothing to do with Dominion's decision to incur the capital costs, although it may have impacted the timing of when those costs were incurred. ISO-NE asserts that Dominion's decision to incur the relevant capital costs in the third Capacity Commitment Period, presumably, was a reasoned decision for time periods beyond the third Capacity Commitment Period.

23. ISO-NE argues that Dominion's claim that the exclusion of capital costs prevents Dominion from having the opportunity to recover its fixed or capital costs is without merit. ISO-NE explains that by submitting a static de-list bid, Dominion has made an economic decision to preserve its opportunity to participate in the FCM in future years and to receive revenues that contribute to the recovery of its fixed or capital costs (which Dominion claims it will not be able to recover) in future years. ISO-NE states that the notion that Dominion should be guaranteed complete recovery of fixed costs, especially in a single year, is incorrect because Dominion is not *guaranteed* recovery of its fixed or capital costs; rather, it has the *opportunity* to recover those costs. According to ISO-NE, there is no requirement that Dominion recover its fixed or capital costs for the Salem Harbor units only from the FCM. For example, Dominion's units can participate in other electric markets during the Capacity Commitment Period for the fourth Forward Capacity Auction and can participate in future Forward Capacity Auctions.

24. ISO-NE states that its categorization of certain capital costs as going-forward costs in the third Forward Capacity Auction was due to the fact that Dominion demonstrated that the costs were in fact going-forward costs for that Capacity Commitment Period, but for purposes of future Capacity Commitment Periods, the capital costs are sunk and no longer "avoidable" costs.

4. Commission Determination

25. We find that ISO-NE has correctly calculated the static de-list bids for Salem Harbor, and thus we reject Dominion's protest and deny the requested relief. Dominion argues that, if its Salem Harbor units are required for reliability, as Units 3 and 4 were required in the third Forward Capacity Auction, it should be allowed to include the unamortized costs in the units' going-forward costs. We disagree. Dominion is allowed to amortize its costs related to the reliability need for the 2012-2013 Capacity Commitment Period, as the Commission approved previously.[9] As ISO-NE explained,

[9] September 2009 Order, 128 FERC ¶ 61,266 at 44.

Dominion is required to make the capital investments before the 2012-2013 Capacity Commitment Period in order to meet the reliability need. The capital costs related to those investments were already included in Dominion's static de-list bids for the third Forward Capacity Auction and thus are sunk.[10]

26. As noted above, the FCM Rules define Net Risk-Adjusted Going Forward Costs as "costs that might otherwise be avoided or not incurred if the resource were not subject to the obligations of a listed capacity resource during the Capacity Commitment Period."[11] Dominion is required to incur the capital investment costs to which it refers prior to the 2012-2013 Capacity Commitment Period and so the costs are only considered going-forward costs for that one Capacity Commitment Period, regardless of whether there is a continuing reliability need for the Salem Harbor units. Rather, if any of the Salem Harbor units are prevented from de-listing due to such a continuing reliability need, then any additional avoidable capital investment costs would be included in the going-forward costs for the current static de-list bids for the 2013-2014 Capacity Commitment Period. Therefore, ISO-NE was correct in determining that the capital investment costs from the third Forward Capacity Auction static de-list bids are no longer avoidable and not recoverable as part of Dominion's static de-list bids in the fourth Forward Capacity Auction.

27. Dominion asserts that the Commission recognized that the amortization of capital costs associated with Salem Harbor's de-list bids for the third Forward Capacity Auction would continue in the event that the Salem Harbor units continue to be needed to serve the same reliability need over successive Commitment Periods. We do not agree this accurately captures the intent of our prior ruling. We found that the appropriate depreciation period should reflect the useful service of the Salem Harbor units. Accordingly, the Market Monitor adjusted Dominion's proposed static de-list bids for the fourth Forward Capacity Auction to reflect the elapse of an additional year against the unit's service life. We agree with ISO-NE that the length of the depreciation period says nothing about the going-forward costs of subsequent Capacity Commitment Periods. Capital costs, which involve all markets and revenue streams associated with Dominion's units, may be depreciated according to the depreciation periods we previously approved,

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[10] Section III.13.2.5.2.5.1(e) of the ISO-NE Tariff provides that "Existing Generating Capacity Resource[s] retained for reliability will be paid the sum of the Asset-Specific Going Forward Costs for the assets associated with that Existing Generating Capacity Resource plus a portion of the Station Going Forward Common Costs . . . ."

[11] ISO-NE Tariff, § III.13.1.2.3.2.1.2.

but that does not make them going-forward costs for future de-list bids in a single FCM Capacity Commitment Period.

28. Dominion argues that it must be provided with a reasonable opportunity to recover capital costs under the Commission-approved amortization schedule because otherwise, in its view, it will be made worse off by providing capacity than if it were allowed to de-list. In reality, however, Dominion is requesting a guarantee that it will at least recover its costs while retaining the possibility of receiving revenues in future years (both from the capacity market and the energy and ancillary services markets) in excess of its capital costs. As we have stated previously, and we reiterate here, resources are provided only an opportunity to recover their costs, not a guarantee that they will recover those costs.[12] And, as ISO-NE explained, Dominion can participate and earn revenues in other ISO-NE markets to contribute to recovery of those fixed or capital costs, and by submitting a static de-list bid, Dominion retained the ability for the Salem Harbor units to participate in future FCM auctions, where prices may increase sufficiently to provide Dominion with revenues in excess of its costs.

29. Dominion asserts that if the Salem Harbor units are retained for reliability again, they will have been prevented from participating in the market because they will be meeting the same reliability need as the previous year. Dominion's arguments are incorrect because it has been given a reasonable opportunity to recover its costs and because Dominion submitted static de-list bids for the Salem Harbor units knowing that there is a possibility that its units might be needed for reliability. Prior to the third Forward Capacity Auction, Dominion was able to choose whether to submit into that auction either static de-list bids, permanent de-list bids, or Non-Price Retirement Requests. By submitting static de-list bids for its units, Dominion was able to keep open the door to participation in future Forward Capacity Auctions, where prices could exceed those de-list bids. By contrast, submitting a permanent de-list bid or a Non-Price Retirement Request would have required the Salem Harbor units to permanently leave ISO-NE's capacity market (in the case of a permanent de-list bid), or to permanently leave ISO-NE's capacity, energy and ancillary services markets (in the case of a Non-Price Retirement Request) once the resource was no longer needed for reliability. By submitting static de-list bids, therefore, Dominion chose to preserve its opportunity to participate in the FCM and to offer into the energy and ancillary services markets in

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[12] *See Bridgeport Energy, LLC*, 113 FERC ¶ 61,311, at P 29 (2005) ("[T]he Commission has no obligation in a competitive marketplace to guarantee Bridgeport its full traditional cost-of-service. Rather, in a competitive market, the Commission is responsible only for assuring that Bridgeport is provided the *opportunity* to recover its costs.").

future years, with the associated possibility of receiving revenues in excess of its costs. Dominion made this choice even though, as Dominion was aware, it could potentially be required to accept a capacity price that would not, in Dominion's view, enable it to fully recover its costs. If, by contrast, Dominion had chosen to submit a permanent de-list bid or a Non-Price Retirement Request, it would have been eligible to receive compensation covering its cost-of-service,[13] including the disputed costs at issue here, for the period when its resource was needed for reliability, while giving up the opportunity to receive revenues in excess of its costs in future years.

30. Finally, we will not direct ISO-NE to work with stakeholders to review the rules relating to the compensation of resources retained for reliability. As NEPOOL stated, the only issue in this proceeding is whether ISO-NE conducted the qualification process for the fourth Forward Capacity Auction in accordance with its FCM Rules. We find that ISO-NE has done so, and we will therefore order no further relief.

The Commission orders:

ISO-NE's informational filing is hereby accepted.

By the Commission. Commissioner LaFleur voting present.

(S E A L)

Kimberly D. Bose,
Secretary.

[13] *See*, ISO-NE Tariff §13.2.5.2.5.1 (b)(i) and (c)(i).