



improve the economic efficiency and functioning of the market, and implement necessary consumer protections.

In addition, as discussed below, the market monitoring mechanisms contained in the Retirement Reforms are similar to, and consistent with, other mitigation rules that the Commission has approved. These other mitigation rules, which the Commission has found to be just and reasonable, provide further context for the Retirement Reforms and may inform the Commission's consideration of challenges to the mitigation components of the proposal that are expected to be filed in this proceeding.

## **I. DESCRIPTION OF THE RETIREMENT REFORMS**

ISO-NE has identified a number of deficiencies in current market rules governing resource retirements:

- **Lack of Priced Options**: Under the rules currently in place, resources primarily make use of a Non-Price Retirement Request to retire permanently from the market.<sup>3</sup> Such a request indicates that the resource is seeking to retire irrespective of any price considerations.<sup>4</sup> However, ISO-NE states that some resources close to retirement “may continue to be economic at a particular price [but lack] an effective way” under the current rules to submit their “retirement price.”<sup>5</sup> In addition, while resources have the option of submitting a Permanent De-List Bid, under the existing rules, such bids cannot include future capital costs.<sup>6</sup>
- **Timing**: Current FCM rules allow a resource to submit a Non-Price Retirement Request as late as October of the relevant year, just four months before the next auction and after the February “show of interest” window has closed for potential new resources.<sup>7</sup> This calendar sequence thus “does a poor job of signaling potential new entrants that additional capacity may be needed due to the retirement of existing resources.”<sup>8</sup>

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<sup>3</sup> ISO-NE Filing, Transmittal Letter, at 5.

<sup>4</sup> *Id.* at 4-5.

<sup>5</sup> *Id.* at 5.

<sup>6</sup> *Id.* at 4.

<sup>7</sup> *Id.* at 4, 9.

<sup>8</sup> *Id.* at 5.

- Market Power: Presently, when a resource seeks to exit the market by submitting a Non-Price Retirement Request, it is removed from the FCA “regardless of whether the retirement may benefit the resource owner’s remaining resource portfolio.”<sup>9</sup> Thus, “the current FCM rules do not address the potential for a capacity supplier to exercise market power by retiring a resource prematurely in order to decrease supply, artificially increase prices and benefit the remainder of the supplier’s portfolio.”<sup>10</sup>

ISO-NE proposed the Retirement Reforms in response to these deficiencies. The Retirement Reforms would implement changes in three primary areas: (1) introduction of new and enhanced priced retirement bidding, (2) reordering of the FCM calendar to facilitate new market entry, and (3) safeguarding against uncompetitive auction outcomes in connection with uneconomic exit from the market. Regarding the first area, the Retirement Reforms would establish a new category of de-list bid, a “Retirement De-List Bid.” Such a bid would allow a resource owner to price the retirement of a resource from all of the ISO-NE markets and, importantly, would no longer put resource owners in the position of having “to make an irrevocable retirement decision on the basis of estimated capacity clearing-prices.”<sup>11</sup> Resource owners would still have the option of retiring a resource unconditionally, but under a new “conditional” retirement option, a resource owner can “let the actual auction-clearing price determine whether the resource is retired.”<sup>12</sup> In addition, both Retirement De-List Bids and Permanent De-List Bids can include capital costs over the remaining life of an asset.<sup>13</sup>

The Retirement Reforms would make several modifications to the FCM timeline to provide better signals to potential new entrants. This includes making Permanent De-List Bids

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<sup>9</sup> *Id.* at 4.

<sup>10</sup> *Id.* at 5.

<sup>11</sup> *Id.* at 6.

<sup>12</sup> *Id.* at 6-7. The conditional retirement option is discussed further below.

<sup>13</sup> *Id.* at 6.

and Retirement De-List Bids due in March and moving the “show of interest” window to April, thereby allowing potential new resources to respond to this new information in time for the upcoming FCA.<sup>14</sup>

The Retirement Reforms would also implement new mitigation mechanisms to address ISO-NE’s concern regarding pre-mature, uneconomic retirements and the potential for uncompetitive auction outcomes. Specifically, under the proposed rules, the submission of a priced retirement de-list bid would generally trigger an IMM review process. Under that process, the IMM reviews the bid and makes a determination of that bid’s reasonableness and then issues a Retirement Determination Notification (“RDN”).<sup>15</sup> An RDN includes the IMM-determined price corresponding with the retirement bid.<sup>16</sup> This price is subject to the Commission’s review and approval.<sup>17</sup>

Resource owners have several options following the receipt of an RDN: (1) participate in the FCA using what would ultimately be a Commission-approved price, (2) participate in the FCA conditioned on accepting a Capacity Supply Obligation (“CSO”) only if the auction clears above the resource owner’s retirement bid (*i.e.*, the conditional option), or (3) choose to retire unconditionally.<sup>18</sup> In the latter two cases, the Commission-approved price will be submitted into the FCA as a proxy de-list bid to ensure that capacity prices “are not artificially increased above competitive levels by an uneconomic retirement.”<sup>19</sup>

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<sup>14</sup> *Id.* at 9.

<sup>15</sup> *Id.* at 8, 11.

<sup>16</sup> *Id.* at 11.

<sup>17</sup> *Id.* at 12-13.

<sup>18</sup> *Id.* at 11-12.

<sup>19</sup> *Id.* at 13-14.

ISO-NE describes how the use of the proxy price mechanism may result in an FCA clearing significantly less capacity in the primary auction.<sup>20</sup> ISO-NE states that “while the use of proxy de-list bids produces appropriate prices, there is the possibility that a proxy de-list bid will not ‘clear’ (meaning that the capacity associated with the proxy de-list bid will remain in the supply stack at the end of the auction but there is no actual resource to take on the associated Capacity Supply Obligation).”<sup>21</sup> The proposed rules address this potential outcome by “re-running . . . the FCM clearing algorithm,” which ISO-NE states is “the equivalent of an ‘instant’ reconfiguration auction.”<sup>22</sup> This mechanism would provide the opportunity to secure additional capacity commitments at prices set by this second running of the auction, consistent with the process used in a reconfiguration auction.<sup>23</sup>

## **II. COMMENTS**

### **A. NESCOE Supports the Retirement Reforms as a Reasonable Package of Changes Addressing Market Rule Deficiencies**

#### **1. The Rule Changes Provide New and Improved Options for Resource Owners**

Over the course of multiple auctions, resource owners have expressed concerns regarding current rules governing resource retirements. These resource owners have pointed to an inability under the current rules to reflect certain costs in their de-list bids and have voiced frustration that limitations in the rules are forcing conservative business decisions to exit the market. From a consumer perspective, the pre-mature retirement of resources—which removes otherwise economic units from the supply stack competing to meet New England’s needs at the lowest

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<sup>20</sup> *Id.* at 14.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

possible prices—can lead to avoidable increases to the auction price. The Retirement Reforms concretely address these various concerns.

Under the new structure ISO-NE has proposed, resource owners contemplating the retirement of a resource are no longer forced to base a permanent decision on an estimated FCA price outcome and put themselves at risk of obtaining a CSO at what the resource owner determines to be an inadequate price. Instead, under the new “conditional” option, a supplier may enter the FCA and only obtain a CSO at a price that the resource owner determines to be sufficient. This new opportunity for a supplier to make such a judgment is key. It provides avenues for economic resources to remain in the market, as opposed to addressing price risk by retiring pre-maturely. This improves market efficiency and benefits both market participants and consumers. Owners of profitable resources earn continued returns on their investment and can manage risks pursuant to their judgment. Consumers avoid potential increases to the FCA price arising from uneconomic retirements where higher priced resources replace a unit that could have continued operation.

ISO-NE considered various options to address market manipulation risks associated with pre-mature retirements, including imposition of a controversial “exit charge” on asset owners seeking to retire a resource uneconomically.<sup>24</sup> However, unlike an exit charge, the proposed rule changes do not put an undue financial burden on the resource owner. Instead, the proposed rules provide for pricing flexibility subject to IMM and FERC review. The reforms, for the first time, allow resource owners to price certain operating and capital costs that are likely to be incurred in order for the resource to remain viable over its expected remaining life.

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<sup>24</sup> *Id.* at 7-8.

In short, the Retirements Reforms reflect a prudent and sensible approach to addressing risks from uneconomic exit that ISO-NE, the External Market Monitor, NESCOE, and stakeholders identified. The proposed rules provide improved options for priced retirements that should help reduce uneconomic retirements to the benefit of capacity suppliers and consumers.

## **2. Adjustments to the FCM Calendar Provide New Entrants the Ability to React to Market Developments**

The FCM calendar changes contained in the Retirement Reforms would implement a sound revision to the market rules. By accelerating the deadline for retirement bids and aligning that timeline with the “show of interest” window for new resources, these revisions will signal to the market that new resources may be needed and will allow a potential new resource to react to such information in time for the next auction. To the benefit of consumers, these changes should result in more competitive (and therefore economically efficient) auctions than under the current design.

In New England, consumers have experienced and felt the economic impact of resource retirements on auction prices when there is inadequate supply and an inability for new resources to react to market developments. For example, in FCA 9, the lack of supply to meet resource adequacy needs within the SEMA/RI Capacity Zone triggered administrative pricing provisions, resulting in payments to new resources within that zone at the auction price cap of 17.778/kW-month and an administrative price of \$11.08/kW-month to existing resources in the zone.<sup>25</sup> In contrast, resources in other zones, where competitive supply was adequate, will be paid \$9.551/kW-month.<sup>26</sup> To put this price difference in perspective, consumers in SEMA/RI will

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<sup>25</sup> ISO New England Inc., Forward Capacity Auction Results Filing, Docket No. ER15-1137-000 (filed Feb. 27, 2015), at 2. *See also* ISO New England Inc., Order Accepting Forward Capacity Auction Results Filing, 151 FERC ¶ 61,226, at P 20 (2015) (“FCA 9 Results Order”).

<sup>26</sup> *See* FCA 9 Results Order at P 20.

pay roughly 16% more to existing resources and 86% more to new resources than consumers in other zones because of inadequate supply. This outcome may not have resulted if market participants had a more timely indication that the zone was going to be short of supply.

Under the rules currently in place, an indication of short supply could happen well after the show of interest window closes. This provides absolutely no ability for potential new resources to react to retirements in the instant auction and contribute to resource needs that, if not met, can result in significant cost increases, especially within a single zone. If supply is short, consumers have no option under these rules but to pay a higher clearing price until the price signal can be responded to in the subsequent auction.

The proposed reforms to the FCM timeline would implement common sense changes to the auction calendar. Making Permanent De-List Bids and Retirement De-List Bids due in March and moving the “show of interest” window to April provides more timely information to the market and improves opportunities for new entrants to respond to emerging needs.

### **3. The Retirement Reforms Implement Appropriate Mitigation Features to Protect Against the Potential Exercise of Supplier-Side Market Power**

The Retirement Reforms include prudent consumer safeguards in connection with uneconomic exit. Both the IMM and External Market Monitor have identified a need to address the potential for supplier-side market power in connection with uneconomic retirements,<sup>27</sup> and the Retirement Reforms establish a process to ensure that resources owners do not pre-maturely retire units to artificially inflate auction prices. At minimum, these changes succeed in removing any perception of supplier market power and, in turn, promote greater confidence in auction outcomes.

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<sup>27</sup> ISO-NE Filing at 7.



Importantly, the proposed rules guard against such market power while not putting a resource owner in jeopardy of obtaining a CSO at a rate the resource owner believes is below its costs. Through the conditional retirement option, a resource can remain in the market while consumers are protected through the use in the auction of a Commission-approved exit price.

Moreover, whether through the conditional retirement option or the unconditional retirement option, the proposed rules maintain the current ability of a resource owner to proceed with a retirement based on that owner's business judgment. NESCOE supports ISO-NE's preservation of this ability.

NESCOE also supports the use of a proxy price in the auction under certain circumstances, as ISO-NE proposes. The proxy price mechanism is not a perfect solution for pricing retirements. That is something ISO-NE readily acknowledges in discussing the need to re-run the FCM clearing algorithm.<sup>28</sup> However, contrary to any claims that this results in prohibited two-tier or discriminatory pricing,<sup>29</sup> re-running the auction clearing algorithm immediately following the primary auction ensures that reasonable actions are taken in furtherance of resource adequacy while potentially minimizing costs to consumers. As ISO-NE noted, a different approach might be to wait for the first annual reconfiguration auction to meet any additional needs.<sup>30</sup> Such an approach, however, would require ISO-NE to wait a year before

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<sup>28</sup> *Id.* at 15 (“While it would be ideal if there were a way to produce a single clearing-price in the initial Forward Capacity Auction while ensuring that the price is the result of a workably competitive market and not increased above competitive levels by an uneconomic retirement, neither the ISO nor any stakeholders were able to identify an approach that would achieve this ideal during the stakeholder review process.”).

<sup>29</sup> *See, e.g., ISO-NE/IMM Resource Retirement Proposal*, Presentation by the New England Power Generators Association, Inc., NEPOOL Markets Committee, Oct. 7-9, 2015, at Slide 3, available at [http://www.iso-ne.com/static-assets/documents/2015/10/a04\\_nepga\\_presentation\\_10\\_07\\_15.pdf](http://www.iso-ne.com/static-assets/documents/2015/10/a04_nepga_presentation_10_07_15.pdf).

<sup>30</sup> ISO-NE Filing at 14 (“While it is possible to wait for the first annual reconfiguration auction to determine whether additional capacity should be acquired when a proxy de-list bid has been used to address an uneconomic retirement, waiting that additional year to conduct a reconfiguration auction may mean that some resources that are available immediately after the primary auction will no longer be available.”).

conducting this auction, which “may mean that some resources that are available immediately after the primary auction will no longer be available” (e.g., those requiring three years to become operational).<sup>31</sup> In short, as ISO-NE stated, “taking no action following the initial FCA is likely to result in less supply and higher prices when the first re-configuration auction is eventually administered a year later.”<sup>32</sup>

NESCOE supports the use of proxy pricing under the circumstances described by ISO-NE, and the associated re-running of the auction-clearing algorithm in furtherance of meeting resource adequacy needs and achieving competitive auction outcomes. As a whole, the proposed mitigation reforms effectively and fairly address uneconomic retirement concerns while preserving a resource owner’s ability to exit the market.

#### **B. Mitigation Features Reflected in the Retirement Reforms are Consistent with Other FERC-Approved Market Mitigation Measures**

Based on stakeholder discussions of the Retirement Reforms, NESCOE anticipates that certain parties will file challenges to ISO-NE’s proposed market mitigation features. During these stakeholder discussions, some suppliers complained that bid price mitigation would occur under the ISO-NE proposal “without any demonstration of exercise of market power” and that the “[p]roposed rules are unlike those in any other market.”<sup>33</sup> However, the core mitigation features in the Retirement Reforms are, in fact, similar to and consistent with other current FCM rules and capacity market rules in other regions.

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

<sup>32</sup> *Id.* NESCOE does not recall a consideration of this risk to consumers in connection with uneconomic retirements as part of the broader stakeholder discussion concerning implementation of a sloped demand curve, including the operation of reconfiguration auctions.

<sup>33</sup> *ISO-NE/IMM Retirement Reforms: Gen Group Presentation*, Presentation by GDF Suez Energy Marketing N.A., Exelon Corporation, and NextEra Energy Resources LLC, NEPOOL Participants Committee, Dec. 4, 2015, at Slide 3, available at [http://www.nepool.com/uploads/NPC\\_20151204\\_Composite5.pdf](http://www.nepool.com/uploads/NPC_20151204_Composite5.pdf).

The original FCM framework included features addressing the potential exercise of market power.<sup>34</sup> Consistent with this design element, ISO-NE has proposed, and the Commission has accepted, market rule revisions that take preemptive action against market power, while providing for the flexibility of unit-specific review. Accordingly, a number of current market rules include provisions for IMM review of bids to promote market competitiveness.<sup>35</sup>

For example, to address the potential for supplier-side market power following the implementation of capacity zones, ISO-NE proposed rule changes that lowered the de-list threshold for IMM review.<sup>36</sup> In upholding the Commission’s approval of this rule change, the D.C. Circuit Court of Appeals noted that FERC, ISO-NE, and the IMM all agreed that enhanced IMM review was necessary “given the move to a zonal modeling system, because suppliers are incented to withhold their capacity to create a separately modeled zone with a higher clearing price.”<sup>37</sup>

The Court rejected arguments by suppliers and others that the new rule “mitigated seller-side market power that it never found existed” and found, *inter alia*, that it was “irrelevant that de-list bids were not previously wielded as market power” before zonal modeling was implemented.<sup>38</sup> The Court also stated that the rules did not preclude bid submissions above the de-list threshold, provided that they were static bids and submitted in advance of the auction.<sup>39</sup>

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<sup>34</sup> *New England Power Generators Ass’n v. FERC*, 757 F.3d 283, 287 (D.C. Cir. 2014) (“NEPGA”).

<sup>35</sup> *See id.* at 298.

<sup>36</sup> *Id.* at 298-299.

<sup>37</sup> *Id.* at 299.

<sup>38</sup> *Id.* at 298-299.

<sup>39</sup> *Id.* at 299.

Like the de-list threshold rules, the Retirement Reforms are proposed to address an identified *risk* of market power abuses. As ISO-NE states, there is nothing in the current rules addressing “the potential for a capacity supplier to exercise market power by retiring a resource prematurely in order to decrease supply, artificially increase prices and benefit the remainder of the supplier’s portfolio.”<sup>40</sup> It is, as in *NEPGA*, irrelevant whether retirement bids have been used in the past to exercise market power. That potential exists under the current structure and, as discussed above, the costs to consumers associated with artificial increases in capacity prices could be substantial. Mitigation would thus exist under the proposed rules as a default mechanism to address these concerns, but with flexibility built into the rules for unit-specific review.

Buyer-side mitigation rules currently in place likewise undermine arguments that the Retirement Changes are without precedent. Under ISO-NE’s Minimum Offer Price Rule (“MOPR”), each resource is assigned a benchmark price representing the estimated net cost of new entry.<sup>41</sup> A resource offering below its benchmark price triggers IMM review, with that resource accorded an opportunity to justify its price to the IMM pursuant to a unit-specific determination.<sup>42</sup> This same MOPR construct has been applied in various forms in PJM and NYISO.<sup>43</sup>

Accordingly, like the Retirement Reforms, the MOPR applies preemptive mitigation to address market power concerns, with offers below the benchmark price “deemed uneconomic and . . . subject to mitigation,” while providing the potential for a unit-specific finding that the

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<sup>40</sup> ISO-NE Filing at 5.

<sup>41</sup> *ISO New England Inc.*, 142 FERC ¶ 61,107, at P 13 (2013).

<sup>42</sup> *Id.* at PP 13-14, 38, 44.

<sup>43</sup> See FERC Staff Report, Centralized Capacity Market Design Elements, Docket No. AD13-7-000, Aug. 23, 2013, at 24-25.

offer is competitive.<sup>44</sup> As with the Retirement Reforms, under the MOPR, the IMM makes a determination of the price that the resource may offer into the FCA, and that determination may be subject to ultimate Commission review and approval. The MOPR is essentially the inverse of the mitigation features reflected in the Retirement Reforms: there is no prior determination of *buyer-side* market power before mitigation is triggered. Thus, to argue that the mitigation of resources seeking to *exit* the market is inappropriate prior to a finding that market power has been exercised, as some parties may argue in this proceeding, would also question the appropriateness of market rules applying similar mitigation to resources seeking to *enter* the market.

The mitigation features of the Retirement Reforms cannot be viewed in isolation but rather must be considered together with other mitigation rules.<sup>45</sup> Any claim that the proposed rules are unlike those contained in any other market is not borne out by the mitigation rules currently in effect in New England and, with respect to the MOPR, those in effect in PJM and NYISO.

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<sup>44</sup> *NEPGA* at 292.

<sup>45</sup> The examples discussed above are not exhaustive of the FCM rules and rules in other markets that may be consistent with the mitigation mechanisms contained in the Retirement Reforms. The ISO-NE Filing, for instance, cites not only to the MOPR but also to the Commission's approval of the current de-list structure in 2007 and a more recent proceeding regarding capacity imports to illustrate that the mitigation features in the Retirement Reforms are consistent with other rules prescribing IMM practices. ISO-NE Filing at 10, 13.

### III. CONCLUSION

For the reasons stated herein, NESCOE respectfully requests that the Commission consider the above comments in this proceeding.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

In accordance with Rule 2010 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day served by electronic mail a copy of the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Portsmouth, NH this 11th day of January, 2016.

Respectfully submitted,

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