

ORAL ARGUMENT NOT YET SCHEDULED

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

No. 10-1103

**PSEG ENERGY RESOURCES & TRADE LLC AND
PSEG POWER CONNECTICUT LLC**
Petitioner

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent

On Petition for Review of Orders of the
Federal Energy Regulatory Commission

**BRIEF OF INTERVENOR ISO NEW ENGLAND INC.
IN SUPPORT OF RESPONDENT**

Raymond W. Hepper
Kerim P. May
ISO New England Inc.
One Sullivan Road
Holyoke, MA 01040-2841
413-540-4592 (telephone)

Sherry A. Quirk
Monica M. Berry
Schiff Hardin LLP
1666 K Street, NW Suite 300
Washington, D.C. 20006
202-778-6400 (telephone)
202-778-6460 (fax)
Counsel for ISO New England Inc.

Brief Dated: March 31, 2011
Final Brief: May 4, 2011

**CERTIFICATE AS TO
PARTIES, RULINGS, AND RELATED CASES**

Pursuant to Fed. R. App. P. 28 and D.C. Circuit Rule 28, Intervenor ISO New England Inc. hereby submits this Certificate as to Parties, Rulings, and Related Cases.

A. Parties and Amici.

All parties, intervenors and amici appearing before the Federal Energy Regulatory Commission and this Court are listed in the Brief for Petitioner.

B. Rulings Under Review.

References to the rulings at issue appear in the Brief for Petitioner.

C. Related Cases.

There are no related cases involving substantially the same parties and the same or similar issues currently pending in this Court or in any other court.

Respectfully submitted,

/s/ Sherry A. Quirk
Sherry A. Quirk
Schiff Hardin LLP
1666 K Street, NW Suite 300
Washington, D.C. 20006
202-778-6400 (telephone)
202-778-6460 (fax)
Counsel for ISO New England Inc.

Brief Dated: March 31, 2011
Final Brief: May 4, 2011

**CORPORATE DISCLOSURE STATEMENT OF
ISO NEW ENGLAND INC.**

Pursuant to Circuit Rule 26.1, counsel for ISO New England Inc. hereby certifies that:

ISO New England Inc. is a private, not-for-profit corporation organized under the laws of the State of Delaware that is responsible for operation of New England's bulk-power system. The New England region controlled by ISO New England Inc. encompasses Connecticut, Maine (portions), Massachusetts, New Hampshire, Rhode Island and Vermont. ISO New England Inc. has no corporate parents and no publicly held company owns a 10 percent or more interest in ISO New England Inc.

Respectfully submitted,

/s/ Sherry A. Quirk

Sherry A. Quirk

Schiff Hardin LLP

1666 K Street, NW Suite 300

Washington, D.C. 20006

202-778-6400 (telephone)

202-778-6460 (fax)

Counsel for ISO New England Inc.

Brief Dated: March 31, 2011

Final Brief: May 4, 2011

TABLE OF CONTENTS

I.	STATUTES AND REGULATIONS	1
II.	STATEMENT OF THE CASE	1
III.	SUMMARY OF ARGUMENT.....	1
IV.	ARGUMENT.....	2
	A. Standard of Review.....	2
	B. PSEG’s Assault on the Fairness of a Rule in the Context of a Compliance Filing Implementing that Rule Should not be Permitted....	2
	C. The Commission’s Interpretation of the ISO’s Tariff Clearly Passes Muster under the <i>Chevron</i> Standard	6
	1. The Commission’s Interpretation of Section III.13.2.7.3(b) is Reasonable.....	7
	a. PSEG Ignores Rule Provisions that are at Odds with PSEG’s Interpretation.....	7
	b. The Reliability Review Applies Only to Megawatt Prorationing, Not to Price Prorationing.....	9
	(1) Reading Section III.13.2.7.3(b) as a Whole	11
	(2) The Commission’s Reading Gives Reasonable Meaning to All of the Provisions of the Section	15
	c. Later Modifications to the Section at Issue Here in No Way Support PSEG’s Contentions	16
	d. PSEG’s Interpretation of Section III.13.2.7.3(b) is Not Based Upon Plain Language But Rather on PSEG’s Desired Outcome	18

2.	The Commission’s interpretation is consistent with the structure of the Forward Capacity Market	20
a.	Rather than Seek Equal Treatment, PSEG Seeks Superior Treatment for Itself	21
b.	The Commission’s Interpretation is Consistent With the Forward Capacity Market Design	22
V.	CONCLUSION.....	26
CERTIFICATE OF COMPLIANCE WITH RULE 32(a)		
CERTIFICATE OF SERVICE		

REGULATORY ADDENDUM

Tariff Section III.13.1.1.2.2.3	1
Tariff Section III.13.1.4.2.4(a).....	3
Tariff Section III.13.2.3.2(a)(i)	4
Tariff Section III.13.2.5.2.5	5
Tariff Section III.13.4	9
Tariff Section III.13.5	25
Tariff Section III.13.8.2	33

TABLE OF AUTHORITIES

Cases

<i>*Chevron U.S.A. Inc. v. NRDC</i> , 467 U.S. 837 (1984)	1, 7, 16, 20, 21
<i>Con. Edison Co. of N.Y., Inc. v. FERC</i> , 510 F.3d 333 (D.C. Cir. 2007)	18
<i>Morgan Stanley Capital Group Inc. v. Public Utility Dist. No. 1 of Snohomish Co.</i> , 554 U.S. 527 (2008)	7
<i>Murphy Explor. & Prod. Co. v. U.S. Dept. of the Interior</i> 252 F.3d 473 (D.C.Cir 2001)	9
<i>Nat'l Cable & Telecomm. Ass'n v. Brand X Internet Servs.</i> , 545 U.S. 967 (2005)	19
<i>Nuclear Energy Institute Inc. v. EPA</i> , 373 F.3d 1251 (2004)	4
<i>Sottera, Inc. v. Food & Drug Admin.</i> , 627 F.3d 891 (2010)	19
<i>United States of America v. Philip Morris USA Inc.</i> , 396 F.3d 1190 (2005)	9

Administrative Proceedings

<i>Devon Power LLC</i> , 117 FERC ¶ 61,133 (2006)	6
<i>Devon Power LLC</i> , 115 FERC ¶ 61,340 (2006)	6
<i>ISO New England Inc.</i> , 130 FERC ¶ 61,235 (2010)	3, 24
<i>ISO New England Inc.</i> , 121 FERC ¶ 61,106 (2007)	3
<i>ISO New England, Inc.</i> , 119 FERC ¶ 61,239 (2007)	3, 24

Statutes

16 U.S.C. 824d (2006)	4, 6
16 U.S.C. 824e (2006)	6

* Cases chiefly relied upon are marked with an asterisk.

GLOSSARY OF ABBREVIATIONS

Commission	Federal Energy Regulatory Commission
Compliance Filing	Filing, in Docket No. ER08-633, providing the results of the first forward capacity auction, JA 1-42.
Compliance Order	Order Accepting Filing, <i>ISO New England Inc.</i> , 123 FERC ¶ 61,290 (June 20, 2008), JA 87-101.
De-List Bid	A supplier's bid that indicates the price at which it will exit the auction.
FCM	Forward Capacity Market
FPA	Federal Power Act
ICAP	Installed Capacity
ISO	ISO New England Inc.
Orders on Review	Compliance Order and Rehearing Order
Proration Rule	Tariff Section III.13.2.7.3(b), JA 178.
PSEG	Petitioners PSEG Energy Resources & Trade LLC and PSEG Power Connecticut LLC
Rehearing Order	Order Denying Rehearing and on Informational Filing, <i>ISO New England Inc.</i> , 130 FERC ¶ 61,235 (Mar. 24, 2010), JA 147-155.
Tariff	ISO New England Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3, Market Rule 1, JA 156-216.

I. STATUTES AND REGULATIONS

Statutes and regulations are attached to the Commission's Brief. In addition, the ISO submits the attached Regulatory Addendum.

II. STATEMENT OF THE CASE

The ISO concurs with and supplements the Commission's Statement of the Case.

The ISO is the independent entity that administers the bulk-power market and plans the system in order to serve electric customers in New England. It operates the system according to established reliability standards.¹

III. SUMMARY OF ARGUMENT

The ISO fully supports the Commission. The Commission has set forth a straightforward and reasonable interpretation of Tariff Section III.13.2.7.3(b), the section of the ISO's tariff that governs how offers to sell capacity are treated when surplus capacity remains in the Forward Capacity Auction after the floor price is reached. PSEG's attack on this provision falls short for at least three reasons: first, the Commission has adequately addressed the arguments that were appropriately before it in the ISO's annual Compliance Filing, and PSEG is wrong

¹ PSEG states that the ISO acts as a "purchasing agent for wholesale power customers." PSEG Initial Brief at 2, 25. This is incorrect. The ISO is neither an agent nor purchaser of capacity, but rather conducts the auction for the region.

to assert that the Commission failed to do so; second, despite PSEG's efforts to demonstrate that the Commission's interpretation of Section III.13.2.7.3(b) fails under *Chevron*,² it is abundantly clear that the Commission's interpretation is reasonable; and third, PSEG's argument that the Commission's interpretation of Section III.13.2.7.3(b) must be set aside because it is contrary to the "core purpose" of the Forward Capacity Market is incorrect. Upon close examination, it is clear that rather than pursuing equal treatment, PSEG in this case seeks discriminatory rates to its benefit.

IV. ARGUMENT

A. Standard of Review

The Commission accurately describes the standard of review.

B. PSEG's Assault on the Fairness of a Rule in the Context of a Compliance Filing Implementing that Rule Should not be Permitted

PSEG's central argument is that in the Orders on Review, the Commission failed to address PSEG's arguments that the Compliance Order "unduly discriminates between those capacity resources that may choose between price proration and megawatt proration, and those who may not," which PSEG argues "is inconsistent with the policy goals of the FCM" to compensate resources "in a

² *Chevron U.S.A. Inc. v. NRDC*, 467 U.S. 837 (1984).

manner that reflects their value to [a] constrained area.”³ However, PSEG raises these fairness issues in the context of a compliance filing, long after the relevant rules provisions of which PSEG complains were vetted among stakeholders and approved by the Commission. The ISO concurs with the Commission that its decision in this case was properly limited to interpreting the language of a Commission-approved rule, Section III.13.2.7.3(b), rather than treating this provision as a newly filed rule subject to review on the merits.⁴

The Commission in this proceeding interpreted an approved Tariff provision, Tariff Section III.13.2.7.3(b) (the version in effect at the time of the first Forward Capacity Auction), in the context of a compliance filing where the content of the rule itself was not at issue. Accordingly, the instant proceeding is not the proper forum for PSEG’s arguments challenging the merits of the Proration Rule.⁵ Moreover, as the Commission noted in the Rehearing Order, PSEG had the

³ PSEG Initial Brief at 29.

⁴ Commission Brief at 32-34.

⁵ Rehearing Order at PP 41-42 and n.40, JA 154. The Proration Rule and reliability review were accepted in separate proceedings. *ISO New England Inc.*, 121 FERC ¶ 61,106 at P 16 (2007), JA 379-382; *ISO New England, Inc.*, 119 FERC ¶ 61,239 (2007), JA 365-378.

opportunity to protest this rule when it was filed, but did not.⁶ Having failed to do so, PSEG cannot take up its challenge in this proceeding.⁷

The distinction that the Commission has drawn between the arguments properly available to a party in the context of the auction results filing at issue here as opposed to a rules filing under Section 205 of the Federal Power Act is vitally important for the proper functioning of the Forward Capacity Market.⁸ The ISO has filed, and the Commission has reviewed and approved or modified literally thousands of provisions that govern the conduct of the capacity market. There can be no finality or market certainty if each of these provisions, although approved by the Commission, is subject to challenge after it is applied in the Forward Capacity Auction and the results are reflected in the type of compliance filing that is at issue here. If PSEG's attack is permitted, in the future when faced with a filing of

⁶ PSEG seeks to side-step its failure to challenge the rule when proposed by professing surprise at the ISO's and the Commission's interpretation of Section III.13.2.7.3(b). PSEG participates actively in the New England stakeholder process and should properly be charged with reviewing rule changes, and timely questioning those with which it disagrees. PSEG's untimely attack should not be permitted, as it is simply a collateral attack on the Commission's orders approving the rules.

⁷ *Nuclear Energy Institute Inc. v. EPA*, 373 F.3d 1251, 1298 (D.C. Cir. 2004) ("It is a hard and fast rule of administrative law, rooted in simple fairness, that issues not raised before an agency are waived and will not be considered by a court on review.").

⁸ Commission Brief at 32-36.

market rules that a party deems objectionable, that party will be free to stand down during the Commission's proceeding in which the rules are reviewed, and then initiate its assault when the rules are applied. The ISO respectfully requests that this Court not adopt PSEG's contention that an auction results filing is equivalent to an open season on the rules governing the auction. The Forward Capacity Auction results filing is a recurrent Tariff obligation that occurs annually after each auction.⁹ Thus, as described further below, such a ruling would result in market disruption that would threaten the viability of the Forward Capacity Market.

To permit challenges to approved rules, lodged after the market has been run and the ISO has reported the results, will disrupt the finality of the market results for the first Forward Capacity Auction. This is unjustified and contrary to the fundamental tenet of price certainty upon which the Forward Capacity Market was built. In fact, stability is critical "to the health of New England's electricity infrastructure."¹⁰ In this regard, the Commission stated that "price certainty is important to ensure that the Forward Capacity Market achieves its goals of attracting and retaining generators needed for reliability."¹¹ Price certainty and stability is particularly critical in the Forward Capacity Market given that it was

⁹ Tariff Section III.13.8.2. *See infra* at RA-33.

¹⁰ *Devon Power LLC*, 115 FERC ¶ 61,340 at P 186 (2006), JA 264-302.

¹¹ *Devon Power LLC*, 117 FERC ¶ 61,133 at P 95 (2006), JA 303-325.

created “in part because of the unstable nature of ICAP revenues and the negative effect that it has had on New England’s infrastructure.”¹²

C. The Commission's Interpretation of the ISO's Tariff Clearly Passes Muster under the *Chevron* Standard

The Commission acted in accordance with the principles set forth by the Supreme Court in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.* Consequently, it is appropriate for this Court to defer to the Commission’s reasonable decision as to the ISO’s application of the Proration Rule. Under the first step of the *Chevron* test, if Congress has directly spoken to the precise question at issue, the unambiguously expressed intent of Congress must be given effect. Neither § 205 nor § 206 of the Federal Power Act speaks directly “to the precise question at issue” in this case – whether the ISO complied with its Tariff in requiring price prorationing for excess capacity when suppliers were not allowed to reduce their quantities of capacity on account of local reliability needs – and thus under *Chevron* step two, the Commission’s interpretation of the Proration Rule must be upheld as long as it is reasonable.¹³ Indeed, because “[t]he statutory requirement that rates be ‘just and reasonable’ is obviously incapable of precise judicial definition,” courts “afford great deference to the Commission in its rate

¹² *Id.*

¹³ *Chevron*, 467 U.S. at 842-43.

decisions.”¹⁴ As discussed further below, the Commission acted in accordance with the principles set forth by the Supreme Court in *Chevron*. Consequently, it is appropriate for this Court to defer to the Commission’s reasonable decision as to the implementation of the ISO’s Proration Rule.¹⁵

1. The Commission’s Interpretation of Section III.13.2.7.3(b) is Reasonable

a. PSEG Ignores Rule Provisions that are at Odds with PSEG’s Interpretation

PSEG argues that the Commission’s decision in this case fails under *Chevron* because Section III.13.2.7.3(b) unambiguously supports PSEG’s interpretation, not the Commission’s interpretation.¹⁶ Instead of supporting its claim with the language of that section, however, PSEG simply, and without explanation, disregards most of the language in Section III.13.2.7.3(b).¹⁷ Of the more than 200 words found in the version of Section III.13.2.7.3(b) that is at issue here, PSEG selects 23 of those words (one short complete sentence and a fragment of another sentence), declares those words to be controlling, and dismisses the

¹⁴ *Morgan Stanley Capital Group Inc. v. Public Utility Dist. No. 1 of Snohomish County*, 554 U.S. 527, 532 (2008).

¹⁵ If there is ambiguity in statutory language, a court will ordinarily defer to an agency’s reasonable construction of that ambiguity. *Chevron*, 467 U.S. at 843.

¹⁶ PSEG Initial Brief at 41-43.

¹⁷ *Id.* at 33-34.

balance of that section. PSEG asserts that the section contains only two directives: a sentence fragment stating that “offers shall be prorated such that no more than the Installed Capacity Requirement is procured” and a short sentence stating that “[a]ny proration shall be subject to reliability review.”¹⁸ Then PSEG makes the novel argument that “[m]any other things are sandwiched between those fundamental rules, but those things are either not rules, or are lesser rules.”¹⁹ However, this Court has explicitly rejected attempts at “effectively ignoring the words” in a statute, finding that it “nullifies the plain meaning of the terms and violates our canon of statutory construction that we should strive to give meaning to every word[.]”²⁰

Furthermore, PSEG offers no explanation why only the 23 words that it has selected deserve to be given weight. And there is no canon of statutory construction that supports PSEG’s theory, whereby a party may select a few words to give effect to and simply dismiss the rest. In fact, all of the provisions of Section III.13.2.7.3(b) are “rules” with equal status. The entirety of Section III.13.2.7.3(b) was vetted in the stakeholder process and was filed with and

¹⁸ *Id.* at 33-34 (citing Tariff Section III.13.2.7.3(b)).

¹⁹ PSEG Initial Brief at 34.

²⁰ *United States of America v. Philip Morris USA Inc.*, 396 F.3d 1190 at 1199 (2005) (citing *Murphy Explor. & Production Co. v. United States Dept. of the Interior*, 252 F.3d 473, 481 (D.C. Cir. 2001)).

approved by the Commission. The whole section was in effect at the time that the first Forward Capacity Auction was run, and all provisions of that section were implemented by the ISO. As discussed further below, Section III.13.2.7.3(b) must be read in its entirety,²¹ and the large portions of that section that PSEG discounts are central to the section's meaning.

b. The Reliability Review Applies Only to Megawatt Prorationing, Not to Price Prorationing

PSEG asserts that the two directives that it has selected from Section III.13.2.7.3(b) – the sentence fragment and the short complete sentence – both only refer to quantity proration, and not price proration. PSEG states that “[i]t is pellucidly clear that two directives bookending the Proration Rule can only refer to quantity proration, not price proration.”²² PSEG's assertion is inaccurate, however. The first of the two directives refers to price proration, not quantity proration. PSEG's erroneous conclusion is necessary to its argument because the term “reliability review” is obviously and correctly only associated with quantity – price proration has no reliability impacts.

For PSEG's argument to hold together, the final sentence in Section III.13.2.7.3(b) (“[a]ny proration shall be subject to reliability review”) must apply

²¹ Elsewhere in its brief, PSEG acknowledges as much, stating that “[t]he Tariff should be read as a harmonious whole.” PSEG Initial Brief at 51.

²² PSEG Initial Brief at 34.

to all proration discussed elsewhere in the section. In that manner, PSEG argues that if prorationing is rejected for reliability reasons, no prorating of any kind can apply to the resource, and the resource must be paid the non-prorated Capacity Clearing Price. Specifically, PSEG states that:

Therefore, if “any proration” is rejected for reliability under the second directive, that *quantity* cannot be prorated under the first directive either. Logically, if the quantity of a resource cannot be diminished consistent with reliability requirements, then there will not be “any proration” for that resource of any sort—the supplier is “in” for the full amount of quantity, and it must receive the full price. The Commission’s orders below render the words “[a]ny proration” a nullity or “mere surplusage.”²³

Again, this logic can only hold together by maintaining the fiction that all proration discussed in Section III.13.2.7.3(b) is quantity proration. As discussed in detail below, this fiction is not sustainable when Section III.13.2.7.3(b) is read as a whole.

(1) Reading Section III.13.2.7.3(b) As A Whole

The meaning of the relevant version of Section III.13.2.7.3(b), read as a whole, by both the ISO and the Commission,²⁴ can be summarized at a high level as follows: where the Capacity Clearing Price reaches the floor price, in order to

²³ *Id.* at 35.

²⁴ Commission Brief at 21-22; *Motion for Leave to Answer and Answer of ISO New England Inc.*, Docket No. ER08-633-000 (filed May 2, 2008) at pp. 23-25, JA 81-83.

respect the total payment cap in the second sentence of the section, all capacity remaining in the auction will be subjected to price proration as a default. Instead of that default, participants may elect megawatt (quantity) prorationing. That megawatt prorationing alternative, however, will be subject to a reliability review. If megawatt prorationing is rejected for reliability reasons, the participant is left with the default price prorationing.

While Section III.13.2.7.3(b) may contain some ambiguity, the Commission's reading of the section is amply supported by the text itself and by common sense. The first sentence of the section simply states that the Capacity Clearing Price will not fall below the floor price of 0.6 times the cost of new entry. The next portion of the section, beginning with the second sentence, states that:

Where the Capacity Clearing Price reaches 0.6 times CONE, offers shall be prorated such that no more than the Installed Capacity Requirement is procured in the Forward Capacity Auction, as follows: the total payment to all listed capacity resources during the associated Capacity Commitment Period shall be equal to 0.6 times CONE times the Installed Capacity Requirement applicable in the Forward Capacity Auction. Payments to individual listed resources shall be prorated based on the total number of MWs of capacity clearing in the Forward Capacity Auction (receiving a Capacity Supply Obligation for the associated Capacity Commitment Period).²⁵

²⁵ Tariff Section III.13.2.7.3(b), 2d Rev. Sheet No. 7314Q (effective Jan. 9, 2008), JA 178.

PSEG fixes only on the sentence fragment “offers shall be prorated such that no more than the Installed Capacity Requirement is procured,” ignoring the important material that follows. Indeed, the very next two words after PSEG’s chosen fragment are “as follows:”. The words “as follows” signal that what comes next will describe *how* “offers shall be prorated such that no more than the Installed Capacity Requirement is procured.” The specific words after the colon cannot simply be ignored: they explain the default method by which offers will be prorated when the Capacity Clearing Price reaches the floor price. And that default method is clearly price proration – the portion of the second sentence after the colon and the entire third sentence (which together constitute a large portion of the section) describe how both *total payments* and *payments to individual resources* will be determined. To ignore this substantial and specific discussion about payments, especially when it has been flagged by the words “as follows” to denote that the payments discussion will explain *how* the initial, default proration will be accomplished, cannot be supported.

Moreover, even if it was appropriate to ignore the portion of the section following the phrase “as follows:”, PSEG would still be incorrect in asserting that

“the phrase ‘offers shall be prorated’ can only refer to quantity.”²⁶ PSEG’s support for this contention consists entirely of the following three sentences:

The “offer” is made by the supplier, and it is for a quantity of capacity. The offer is not a disembodied price. It is instead an offer of a capacity quantity made in response to the auction’s announcement of a price using the descending clock format.²⁷

It is true that the offer is not a disembodied price, but it is also not a disembodied quantity. The word “offer” is not defined, but in the context of the Forward Capacity Market rules, it refers to both the quantity and price submitted. For example, Section III.13.1.1.2.2.3,²⁸ regarding offers below 0.75 times the Cost of New Entry states that “[a]ll New Generating Capacity Resources that might submit offers in the Forward Capacity Auction at prices below 0.75 times the Cost of New Entry (“CONE”) must have included such offers in the New Capacity Qualification Package in the form of a supply curve (up to five price-quantity pairs) for all prices below 0.75 times CONE.”²⁹

The fourth sentence of the section clearly positions megawatt prorationing as an alternative to the default price prorationing approach. That sentence states that:

²⁶ PSEG Initial Brief at 34.

²⁷ *Id.* at 34-35.

²⁸ *See infra* at RA-1.

²⁹ See also Tariff Sections III.13.2.3.2(a)(i), *infra* at RA-4 and III.13.1.4.2.4(a), *infra* at RA-3.

Suppliers *may instead* prorate their bid MWs of participation in the Forward Capacity Market by partially de-listing one or more resources (*e.g.*, proration *may* be done by reducing, through bilateral contracts, the capacity of one resource by the amount equal to the entire prorated amount of the Market Participant).³⁰

The fifth sentence explains how prorated capacity clearing in the Forward Capacity Auction will be treated in subsequent Forward Capacity Auctions. And finally, as already noted, the sixth and final sentence of the section states that “[a]ny proration shall be subject to reliability review.”

In sum, when read as a whole, Section III.13.2.7.3(b) contains several important elements: the price floor itself, a specific cap on the total payment to all listed capacity resources, a default price proration mechanism, an alternative megawatt proration mechanism, and a requirement that prorationing be subject to reliability review. Each of these parts must be considered in reading the section as a whole.

**(2) The Commission’s Reading Gives Reasonable
Meaning to All of the Provisions of the Section**

It is necessary to acknowledge that the rule language at issue here contains some ambiguity. The final sentence in Section III.13.2.7.3(b) refers to “[a]ny proration...” as being subject to reliability review. Because the section discusses

³⁰ Tariff Section III.13.2.7.3(b) (emphasis added).

both a price prorationing mechanism and a megawatt prorationing mechanism, “any proration” could be read as referring to either of those methods.

However, that sentence – in the context of the entire section – nonetheless does not permit PSEG’s interpretation. This is because the term “reliability review” *can* only apply to megawatt prorationing. And because it can only apply to megawatt prorationing, it is properly read as only applying to the portion of the section that addresses megawatt prorationing, and not to the portion of the section that addresses price prorationing. This point is so clear that PSEG is forced to argue that the phrase “offers shall be prorated” earlier in the section can only refer to quantity and that the substantial portion of the section that discusses price prorationing is “not rules.” Each of these arguments by PSEG are disposed of above.

At bottom, then, the Commission’s reading of Section III.13.2.7.3(b) gives reasonable meaning to all of the provisions of that section, and should be sustained under the second prong of *Chevron*. PSEG’s approach, on the other hand, is to elide large swaths of the relevant language and to apply a strained interpretation to what remains. The Commission’s determination should be upheld.

c. Later Modifications to the Section at Issue Here in No Way Support PSEG's Contentions

PSEG notes, correctly, that Section III.13.2.7.3(b) was more recently modified to expressly adopt the approach advocated by PSEG here.³¹ However, PSEG's argument that a more recent change to the Forward Capacity Market rules proves that the Commission's construction of the original rule was unreasonable lacks merit.³² What is at issue here is the proper interpretation of the rules in existence at the time the Commission made its ruling, not rules that would have or could have been just and reasonable if they had been in place. Rather than supporting PSEG's case, the later rule revisions show that PSEG's interpretation of the earlier version of the language cannot be sustained.

PSEG incorrectly argues that the more recent rule change actually supports its position here because that later rule change merely clarified what was always intended.³³ However, rather than a simple clarification, the revision adopted a

³¹ See PSEG Initial Brief at 39-41.

³² *Id.* at 26.

³³ PSEG asserts that the later rule change "occupies the clarification end of the spectrum" and that "the plain meaning of a communication is not modified merely because it is clarified." *Id.* at 23.

major change to the original rule by explicitly removing the total payment cap that was a primary impediment to PSEG's interpretation of the original rule.³⁴

PSEG further argues that if the recent revisions are more than a clarification, then the earlier provision, and the Commission's interpretation of it, "conflicted with fundamental principles and policies at the core of both the FCM Market and the FPA."³⁵ That an exception to that total payment cap in the narrow instance where megawatt proration is rejected for reliability reasons has been subsequently and deliberately created in no way suggests that the cap itself is at odds in any way with core principles of the Forward Capacity Market. Moreover, PSEG's statement is irrelevant because a subsequent change to tariff language in no way implicates the prior language as unjust and unreasonable.³⁶

³⁴ Commission Brief at 23-25. The rule revision in question added entirely new language stating that:

Where proration is rejected for reliability reasons, the resource's payment shall not be prorated as described in subsection (ii) above, and the difference between its actual payment based on the Capacity Clearing Price and what its payment would have been had prorationing not been rejected for reliability reasons shall be allocated to Network Load within the affected Reliability Region. *In this case, the total payment described in subsection (i) above will increase accordingly.*

³⁵ PSEG Initial Brief at 40-41.

³⁶ The Commission's orders were not wrong just because FERC subsequently approved the new prorationing rule. The D.C. Circuit found in *Consolidated Edison Co. of N.Y., Inc. v. FERC* that "the fact that FERC approved
(continued...)

d. PSEG’s Interpretation of Section III.13.2.7.3(b) is Not Based Upon Plain Language But Rather on PSEG’s Desired Outcome

Ultimately, PSEG’s argument about the “plain meaning” of this provision is anchored only by PSEG’s contention that the rule should not be applied as the Commission has held because to do so would be unfair to PSEG. In fact, PSEG goes so far as to assert that the rule language is unambiguous *because* to interpret it any other way would be unfair to PSEG. PSEG states that:

price proration cannot be imposed on resources critical for reliability because that would cause them to receive less per kW-month of capacity than non-critical resources. And, to confirm that the Commission’s interpretation lacks practical or equitable sense, we need look no farther than its perverse outcome.³⁷

This is not an isolated example. Elsewhere, PSEG states that it has “consistently argued that resources prevented from reducing their capacity obligation for reliability purposes should not also be required to accept a prorated price.”³⁸ Still elsewhere in that same section, PSEG states that “neither proration method –

prospective filings by the NYISO to change aspects of the reserves market in response to the market irregularities of early 2000 does not mean that it is also required to order retroactive relief” *Consolidated Edison Co. of N.Y., Inc. v. FERC*, 510 F.3d 333, 340 (D.C. Cir. 2007). According to the Court, “[c]oncluding otherwise would . . . open the gates to retroactive changes in tariffs any time the power markets’ rules were adjusted.” *Id.*

³⁷ PSEG Initial Brief at 39.

³⁸ *Id.* at 37.

quantity or price – is appropriately applied to critical resources needed for reliability in particular zones.”³⁹

If the rule language at issue here is as unambiguous as PSEG asserts, there would be no need for PSEG to discuss equity and practicality in the portion of its brief devoted to the plain meaning of the language. If, on the other hand, the rule language does contain any ambiguity, the Commission has properly read that section, in its entirety, to arrive at the most reasonable outcome (and the outcome that was intended by the ISO).⁴⁰

What is at issue here is whether the Commission properly interpreted the rule language as written, as set forth in Section C.1, above. As shown above, once PSEG’s arguments about equity are set aside, what little PSEG actually does say about the plain meaning of Tariff Section III.13.2.7.3(b) does not withstand scrutiny. There is no reasonable reading of that section that supports PSEG’s position. Read as a whole, the section supports the Commission’s interpretation,

³⁹ *Id.* at 38.

⁴⁰ *Sottera, Inc. v. Food & Drug Admin.*, 627 F.3d 891, 903 (D.C. Cir. 2010) (citing *Nat’l Cable & Telecomm. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 980 (2005)) (“If a statute is ambiguous, and if the implementing agency’s construction is reasonable, *Chevron* requires a federal court to accept the agency’s construction of the statute, even if the agency’s reading differs from what the court believes is the best statutory interpretation.”).

which is consistent with the ISO's intent. It is also consistent with the Forward Capacity Market design, as shown below in Section C.2.

2. The Commission's Interpretation is Consistent with the Structure of the Forward Capacity Market

PSEG seeks to demonstrate that the Commission is not entitled to deference under the *Chevron* standard because the Commission's interpretation of Section III.13.2.7.3(b) "flatly contradict[s] the core purpose of the entire FCM construct," which is to compensate resources in a manner that reflects their locational value to system reliability.⁴¹ PSEG believes that because the ISO found that all capacity resources within Connecticut that remained in the auction at the floor price were needed for reliability and could not be permitted to reduce their Capacity Supply Obligations (thus indicating their locational value, a core purpose of the Forward Capacity Market), resources in Connecticut are treated unfairly because, according to PSEG, they receive less per kW-month than capacity resources outside of Connecticut.⁴² This argument should be rejected and, under *Chevron*, the Commission's order affirmed. The Commission's interpretation of Section III.13.2.7.3(b) does not conflict with, but rather advances, the purposes of the Forward Capacity Market.

⁴¹ PSEG Initial Brief at 42.

⁴² *Id.* at 25, 39.

a. Rather than Seek Equal Treatment, PSEG Seeks Superior Treatment for Itself

PSEG's implication that its remedy seeks compensation that is only equivalent to the payments received by resources outside of Connecticut is incorrect. Rather, PSEG seeks to receive the superior, unprorated floor price for *all* of its cleared capacity in Connecticut, while resources outside of Connecticut in the first Forward Capacity Auction were required to accept either a prorated floor price or prorated megawatts. PSEG seeks a better result for itself – to sell unprorated megawatts at the unprorated floor price – than the other resources that remained in the auction and assumed a Capacity Supply Obligation received. In effect, it seeks discriminatory rates in its favor. PSEG seeks this superior result based upon the locational value of its resources. However, PSEG's reliance on general statements of the Forward Capacity Market's "core purpose" of "locational value," should not be permitted to undermine the reasonableness of the Commission's decision in interpreting a specific tariff provision, as discussed above in Section C.1, particularly when the Commission's interpretation results in harmony, rather than disharmony, with other provisions of the Tariff and the Forward Capacity Market design, as shown below.

b. The Commission's Interpretation Is Consistent With the Forward Capacity Market Design

As a general matter, the Forward Capacity Market design contemplates that if a resource clears in the Forward Capacity Auction,⁴³ as PSEG's resources did, it is signaling its willingness to assume a Capacity Supply Obligation and to receive the Capacity Clearing Price. PSEG, like all other resources remaining in the auction when the auction reached the price floor, assumed a Capacity Supply Obligation and received a prorated capacity price pursuant to the Tariff's Proration Rule for all of its megawatts.

Generally, a resource having a Capacity Supply Obligation may reduce that obligation by entering into a bilateral contract with another resource⁴⁴ or by submitting a bid into a reconfiguration auction.⁴⁵ However, for all resources

⁴³ Under the Forward Capacity Market rules, existing resources may submit de-list bids to opt out of the capacity auction. When a resource seeks to de-list, the ISO is required to analyze whether the resource can leave the capacity market for that auction year or must be retained to meet reliability requirements. Tariff Section III.13.2.5.2.5, JA 171-174. *See infra* at RA-5.

⁴⁴ Tariff Section III.13.5 provides that the owner of a resource that has taken on a Capacity Supply Obligation may transfer that obligation to another resource by bilateral contract. The parties to that contract must submit their contract to the ISO for review. *See infra* at RA-25.

⁴⁵ Tariff Section III.13.4. *See infra* at RA-9. An Annual Reconfiguration Auction allows a resource to relieve itself of a previously acquired Capacity Supply Obligation. It also allows capacity resources to sell capacity not cleared in the Forward Capacity Auction. Annual Reconfiguration Auctions are held
(continued...)

seeking to reduce a capacity obligation either through a bilateral contract or a reconfiguration auction, the ISO will conduct a reliability review, and the resource will not be permitted to shed its obligation if the resource is needed for reliability.⁴⁶ Critically, if a resource is not permitted to reduce its Capacity Supply Obligation by entering into a bilateral contract or through a reconfiguration auction, the resource will receive no additional compensation. Rather, the resource will receive the capacity payment it became entitled to when it assumed the Capacity Supply Obligation.⁴⁷

approximately two years, one year and several months before the start of the Commitment Period. Participation in annual reconfiguration auctions is generally voluntary.

⁴⁶ See e.g., Tariff Section III.13.5.1.1.3(b), *infra* at RA-27-28, (providing that bilateral contracts are subject a reliability review by the ISO to determine whether the transaction would result in a violation of any North American Electric Reliability Corporation (“NERC”) or Northeast Power Coordinating Council (“NPCC”) criteria, or the ISO’s system rules) and Tariff Sections III.13.4.2.1.5, *infra* at RA-20, and III.13.4.2.2(c), *infra* at RA-21 (providing for similar reliability review of bids in reconfiguration auctions).

⁴⁷ Importantly, the precise argument raised by PSEG – that a resource is entitled to extra compensation if seeks to reduce its capacity obligation but is prevented from doing so based upon a reliability determination – has been rejected by the Commission. In an order adopting rules governing bilateral contracting, the Commission stated as follows:

As noted previously, NRG asserts that to the extent any review of a transfer [via bilateral contract] among qualified suppliers within the same zone is rejected, this demonstrates that the services provided by the suppliers are not the same and the resource whose transfer was rejected should be paid
(continued...)

Similarly, in this case, the Commission found that PSEG, having assumed a capacity obligation in the auction and having received the prorated floor price, was not entitled to extra compensation when it was not permitted to reduce its obligation.⁴⁸ Far from violating a “core purpose,” the Commission’s ruling here is in harmony with other, similar provisions of the Forward Capacity Market. Moreover, as the Commission has accurately described,⁴⁹ it is abundantly clear that the cap on total payments to capacity resources was and is a central element of protections afforded to the purchasers of capacity in exchange for the certainty afforded to sellers by the existence of a floor price. PSEG ignores this obvious point, in favor of its more general, but inapplicable references to locational value.

additional compensation. We disagree with NRG’s position that suppliers providing local reliability needs should be paid additional compensation through the FCM market.

ISO New England Inc., 119 FERC ¶ 61,239 at P 37 (2007), JA 372.

⁴⁸ Rehearing Order at PP 40-41, JA 154.

⁴⁹ Commission Brief at 23-25.

V. CONCLUSION

The Court should deny PSEG's petition for review.

Respectfully submitted,

/s/ Sherry A. Quirk

Sherry A. Quirk

Monica M. Berry

Schiff Hardin LLP

1666 K Street, NW Suite 300

Washington, D.C. 20006

202-778-6400 (telephone)

202-778-6460 (fax)

Raymond W. Hepper

Kerim P. May

ISO New England Inc.

One Sullivan Road

Holyoke, MA 01040-2841

(413) 540-4592

Counsel for ISO New England Inc.

Brief Dated: March 31, 2011

Final Brief: May 4, 2011

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

This brief complies with the type-volume limitation set by the Court's Order filed on September 27, 2010 in this Proceeding and Fed. R. App. P. 32(a)(7)(B), because this brief contains 5,538 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). The "Word Count" function of Microsoft Word 2003 was used for this purpose.

This brief complies with the typeface requirements of D.C. Cir. Rule 32(a)(1) and Fed. R. App. P. 32(a)(5) and the typestyle requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in 14 point Times New Roman.

/s/ Sherry A. Quirk
Sherry A. Quirk
Counsel for ISO New England Inc.

CERTIFICATE OF SERVICE

In accordance with Fed. R. App. P. 25(d), and the court's Administrative Order Regarding Electronic Case Filing, I hereby certify that I have this day served the foregoing document upon each of the persons on the attached list of parties to this case via e-mail through the court's CM/ECF system or by United States first class mail, postage prepaid.

Dated at Washington, D.C. this 4th day of May, 2011.

By: /s/ Sherry A. Quirk
Sherry A. Quirk

SERVICE LIST IN CASE No. 10-1103

Kenneth Richard Carretta, Esquire
PSEG Services Corporation
80 Park Plaza, T5G
Newark, NJ 07102-4194

Jennifer Shepherd Amerkhail
Federal Energy Regulatory Comm'n
Office of the Solicitor
888 First Street, NE
Washington, DC 20426

John L. Shepherd, Jr.
Skadden, Arps, Slate, *et al.*
1440 New York Avenue, NW
Washington, DC 20005

Ashley Charles Parrish
King & Spalding, LLP
1700 Pennsylvania Avenue, NW
Suite 200
Washington, DC 20006-4706

Robert Harris Solomon, Esquire
Solicitor
Federal Energy Regulatory Comm'n
Office of the Solicitor
Room 9A-01
888 First Street, NE
Washington, DC 20426

David Gardner Tewksbury
King & Spalding, LLP
1700 Pennsylvania Avenue, NW
Suite 200
Washington, DC 20006-4706

Michael C. Wertheimer
Office of the Att'y Gen., State of CT
10 Franklin Square
Dept. of Public Utility Control
New Britain, CT 06051-0000

John Story Wright
Office of the Att'y Gen., State of CT
10 Franklin Square
Dept. of Public Utility Control
New Britain, CT 06051-0000

Randall L. Speck, Esquire
Kaye Scholer LLP
901 15th Street, NW
The McPherson Building Suite 1100
Washington, DC 20005

Joseph Arnold Rosenthal
Office of Consumer Counsel
10 Franklin Square
New Britain, CT 06051-0000

Regulatory Addendum

Tariff Section III.13.1.1.2.2.3	1
Tariff Section III.13.1.4.2.4(a).....	3
Tariff Section III.13.2.3.2(a)(i)	4
Tariff Section III.13.2.5.2.5	5
Tariff Section III.13.4	9
Tariff Section III.13.5	25
Tariff Section III.13.8.2	33

III.13.1.1.2.2.3. Offer Information.

(a) All New Generating Capacity Resources that might submit offers in the Forward Capacity Auction at prices below 0.75 times the Cost of New Entry (“CONE”) must have included such offers in the New Capacity Qualification Package in the form of a supply curve (up to five price-quantity pairs) for all prices below 0.75 times CONE. The supply curve may in no case increase the quantity offered as the price decreases. Offers from New Generating Capacity Resources below 0.75 times CONE are subject to review by the Internal Market Monitor pursuant to Section III.13.1.1.2.6 and must include the additional documentation described in that Section. During the Forward Capacity Auction, at each price below 0.75 times CONE, a New Generating Capacity Resource may not offer more capacity than submitted in its

New Capacity Qualification Package at that price. Any offer below 0.75 times CONE from a New Generating Capacity Resource that was not submitted in the New Capacity Qualification Package will be removed from the Forward Capacity Auction. A New Generating Capacity Resource may not change offers below 0.75 times CONE or supporting documentation after the New Capacity Qualification Deadline.

(b) The Project Sponsor for a New Generating Capacity Resource must indicate in the New Capacity Qualification Package if an offer from the New Generating Capacity Resource may be rationed. A Project Sponsor may specify a single MW quantity at or above the Economic Minimum Limit to which offers may be rationed. Without such indication, offers will only be accepted or rejected in whole. This rationing election shall apply for the entire Forward Capacity Auction.

(c) By submitting a New Capacity Qualification Package, the Project Sponsor certifies that an offer from the New Generating Capacity Resource will not include any anticipated revenues the resource is expected to receive for its capacity cost as a Qualified Reactive Resource pursuant to Schedule 2 of Section II of this Tariff.

III.13.1.4.2.4. Offers From New Demand Resources Below 0.75 Times CONE.

(a) All New Demand Resources that might submit offers in the Forward Capacity Auction at prices below 0.75 times CONE must have included such offers in the New Demand Resource Qualification Package in the form of a supply curve (up to five price-quantity pairs) for all prices below 0.75 times CONE. The supply curve may in no case increase the quantity offered as the price decreases. During the Forward Capacity Auction, at each price below 0.75 times CONE, a New Demand Resource may not offer more capacity than submitted in its New Demand Resource Qualification Package at that price. Any offer below 0.75 times CONE from a New Demand Resource that was not submitted during qualification will be removed from the Forward Capacity Auction. A New Demand Resource may not change offers below 0.75 times CONE or supporting documentation after the New Capacity Qualification Deadline.

III.13.2.3.2. Step 2: Compilation of Offers and Bids.

The auctioneer shall compile all of the offers and bids for that round, as follows:

(a) Offers from New Generating Capacity Resources, New Import Capacity Resources, and New Demand Resources.

(i) The Project Sponsor for any New Generating Capacity Resource, New Import Capacity Resource, or New Demand Resource accepted in the qualification process for participation in the Forward Capacity Auction may submit an offer (a “New Capacity Offer”) indicating the quantity of capacity that the Project Sponsor would commit to provide from the resource (in the associated modeled Capacity Zone during the qualification process) during the Capacity Commitment Period at that round’s prices. A New Capacity Offer shall be defined by the submission of one to five prices, each strictly less than the Start-of-Round Price but greater than or equal to the End-of-Round Price, and an associated quantity in the associated modeled Capacity Zone. Each price shall be expressed in units of dollars per kilowatt-month to an accuracy of at most three digits to the right of the decimal point, and each quantity shall be expressed in units of MWs to an accuracy of at most three digits to the right of the decimal point. Such a New Capacity Offer shall imply a supply curve indicating quantities offered at all of that round’s prices, pursuant to the convention of Section III.13.2.3.2(a)(iii).

III.13.2.5.2.5. Bids Rejected for Reliability Reasons.

The ISO shall review each Non-Price Retirement Request, Permanent De-List Bid, Static De-List Bid, Export Bid, Administrative Export De-List Bid, and Dynamic De-List Bid entered into the Forward Capacity Auction to determine whether the capacity associated with that Non-Price Retirement Request

or de-list bid is needed for reliability reasons during the Capacity Commitment Period associated with the Forward Capacity Auction. The capacity shall be deemed needed for reliability reasons if the absence of the capacity would result in the violation of any NERC or NPCC (or their successors) criteria, or ISO New England System Rules. Non-Price Retirement Requests and de-list bids shall not be rejected pursuant to this Section III.13.2.5.2.5 solely on the basis that acceptance of the Non-Price Retirement Request or de-list bid may result in the procurement of less capacity than the Installed Capacity Requirement (net of HQICCs) or Local Sourcing Requirement for Load Zones or aggregations of Load Zones considered for modeling in a Forward Capacity Auction. Where a Non-Price Retirement Request would otherwise be accepted, or a Permanent De-List Bid, Static De-List Bid, Export Bid, Administrative Export De-List Bid, or Dynamic De-List Bid would otherwise clear in the Forward Capacity Auction, but the ISO has determined that some or all of the capacity associated with the Non-Price Retirement Request or de-list bid is needed for reliability reasons, then the de-list bid having capacity needed for reliability will not clear in the Forward Capacity Auction and the Non-Price Retirement Request will not be approved as described in Section III.13.1.2.3.2.5.3, and the following provisions will apply:

(a) The Lead Market Participant shall be notified that its de-list bid did not clear for reliability reasons at the later of: (i) immediately after the end of the Forward Capacity Auction round in which the auction price reaches the price of the de-list bid; or (ii) as soon as practicable after the time at which the ISO has determined that the de-list bid must be rejected for reliability reasons.. In no event, however, shall a Lead Market Participant be notified that a bid submitted pursuant to Section III.13.1.2.5 and accepted in the qualification process for an Existing Generating Capacity Resource did not clear for reliability reasons if the associated New Generating Capacity Resource remains in the Forward Capacity Auction. In such a case, the Lead Market Participant shall be notified that its bid did not clear for reliability reasons at the later of: (i) immediately after the end of the Forward Capacity Auction round in which the auction price reaches the price of the bid; (ii) immediately after the end of the Forward Capacity Auction round in which 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); or (iii) as soon as practicable after the time at which the ISO has determined that the bid must be rejected for reliability reasons.

(i) In the case of Non-Price Retirement Request, the Lead Market Participant will be notified whether or not the request has been rejected for reliability reasons within 90 days of the submission of the request.

- (b) A resource that has a de-list bid rejected pursuant to this Section III.13.2.5.2.5 shall be compensated pursuant to the terms set out in Section III.13.2.5.2.5.1. A Generating Capacity Resource that has a Non-Price Retirement Request rejected pursuant to this Section III.13.2.5.2.5 shall have the option to retire pursuant to Section III.2.5.2.5.3(a)(iii) or to continue operation and be compensated pursuant to Section III.13.2.5.2.5.1. A resource receiving payment under this Section III.13.2.5.2.5 and Section III.13.2.5.2.5.1 shall have the obligations of listed capacity resources as described in Section III.13.6.1. Such resources shall be counted towards the Installed Capacity Requirement (net of HQICCs) for the Capacity Commitment Period.
- (c) The ISO shall review the results of each annual reconfiguration auction and determine whether the reliability need which prevented the de-listing of the resource has been met through the annual reconfiguration auction. The ISO may also attempt to address the reliability concern through other reasonable means (including transmission enhancements).
- (d) If the reliability need that prevented the de-listing of the resource is met through a reconfiguration auction or other means, the resource shall be de-listed, be relieved of its Capacity Supply Obligation and no longer be eligible to receive the compensation specified in Section III.13.2.5.2.5(b). The ISO shall enter bids at 2.0 times CONE to replace the capacity on behalf of load in subsequent annual reconfiguration auctions associated with the Capacity Commitment Period (and subsequent Capacity Commitment Periods, in the case of a Permanent De-List Bid).
- (e) If a Permanent De-List Bid that would otherwise clear in a Forward Capacity Auction or a Non-Price Retirement Request is rejected for reliability reasons, that resource is no longer eligible to participate as an Existing Generating Capacity Resource in any reconfiguration auction, Forward Capacity Auction or Capacity Supply Obligation Bilateral for that and subsequent Capacity Commitment Periods. If the resource continues to be needed for reliability reasons, it shall be counted as capacity in the Forward Capacity Auction and shall be compensated as described in Section III.13.2.5.2.5.1 until such time as it is no longer needed for reliability reasons.
- (f) Beginning in April 2007, the ISO will evaluate, in consultation with NEPOOL stakeholders and state utility regulatory agencies, whether to modify the treatment of de-list bids rejected for reliability reasons pursuant to this section, including but not limited to an evaluation of the application of the Alternative Capacity Price Rule, or similar mechanism, to Forward Capacity Auctions affected by de-list bids rejected for reliability reasons. Pursuant to Section 205 of the Federal Power Act, the ISO will file

with FERC on or before May 17, 2010 either: (i) any potential rule changes relating to the treatment of de-list bids rejected for reliability reasons or (ii) its recommendation not to institute any rule changes and to delete this subsection (f).

(g) In instances where there is the possibility that the reliability need leading to the rejection of a Non-Price Retirement Request, Permanent De-List Bid, Export De-List Bid, Administrative Export De-List Bid, Static De-List Bid, or Dynamic De-List Bid for a Commitment Period may not be resolved before the subsequent Commitment Period, prior to the start of the New Capacity qualification period for the FCA for that subsequent Commitment Period, the ISO shall (i) review the status of the specific reliability need, identify alternatives to resolve that reliability need and the time to implement those solutions with the Reliability Committee and (ii) in instances where it is determined that the reliability need leading to the rejection of a Non-Price Retirement Request or Permanent De-List Bid cannot be resolved before that subsequent Commitment Period, make a FERC filing indicating the need to include the capacity seeking retirement in the FCA.

III.13.4. Reconfiguration Auctions.

For each Capacity Commitment Period, the ISO shall conduct annual and monthly reconfiguration auctions as described in this Section III.13.4. Reconfiguration auctions only permit the trading of Capacity Supply Obligations; load obligations are not traded in reconfiguration auctions. Each reconfiguration auction shall use a static double auction (respecting internal and external transmission limits and regional and local sourcing requirements updated using a methodology that is consistent with the Forward Capacity Auction) to clear supply offers (i.e., offers to assume a Capacity Supply Obligation) and demand bids (i.e., bids to shed a Capacity Supply Obligation) for each Capacity Zone included in the reconfiguration auction. Supply offers and demand bids will be modeled in the Capacity Zone where the associated resources are electrically interconnected. Resources that are able to meet the requirements in other Capacity Zones shall be allowed to clear to meet such requirements, subject to the constraints modeled in the auction.

III.13.4.1. Capacity Zones Included in Reconfiguration Auctions.

Each reconfiguration auction associated with a Capacity Commitment Period shall include each of, and only, the final Capacity Zones and external interfaces as determined through the Forward Capacity Auction for that Capacity Commitment Period, as described in Section III.13.2.3.4.

III.13.4.2. Participation in Reconfiguration Auctions.

Each supply offer and demand bid in a reconfiguration auction must be associated with a specific resource, and must satisfy the requirements of this Section III.13.4.2. All resource types except Real-Time Emergency Generation Resources may participate in reconfiguration auctions. In accordance with Section III.A.9.2 of *Appendix A* of this Market Rule 1, supply offers and demand bids submitted for reconfiguration auctions shall not be subject to mitigation by the Internal Market Monitor. A supply offer or demand bid submitted for a reconfiguration auction shall not be limited by the associated resource's Economic Minimum Limit. Offers composed of separate resources may not participate in reconfiguration auctions. Participation in any reconfiguration auction is conditioned on full compliance with the applicable financial assurance requirements as provided in the Financial Assurance Policy at the time of the offer and bid deadline. For annual reconfiguration auctions, the offer and bid deadline will be announced by the ISO no later than 30 days prior to that deadline. No later than 15 days before the offer and bid deadline for an annual reconfiguration auction, the ISO shall notify each resource of the amount of capacity that it may offer or bid in that auction, as calculated pursuant to this Section III.13.4.2. For monthly reconfiguration auctions, the offer and bid deadline will be announced by the ISO no later than 10 Business Days prior to that deadline. Upon issuance of the monthly bilateral results for the associated

obligation month, the ISO shall notify each resource of the amount of capacity that it may offer or bid in that monthly auction, as calculated pursuant to this Section III.13.4.2.

III.13.4.2.1. Supply Offers.

Submission of supply offers in reconfiguration auctions shall be governed by this Section III.13.4.2.1. All supply offers in reconfiguration auctions shall be submitted by the Project Sponsor or Lead Market Participant, and shall specify the resource, the amount of capacity offered in MW, and the price, in dollars per kW/month. In no case may capacity associated with a Non-Price Retirement Request or a Permanent De-List Bid that cleared in the Forward Capacity Auction for a Capacity Commitment Period be offered in a reconfiguration auction for that, or any subsequent, Capacity Commitment Period, or any portion thereof. In no case may capacity associated with an Export Bid or an Administrative Export De-List Bid that cleared in the Forward Capacity Auction for a Capacity Commitment Period be offered in a reconfiguration auction for that Capacity Commitment Period, or any portion thereof.

III.13.4.2.1.1. Amount of Capacity That May Be Submitted in a Supply Offer in an Annual Reconfiguration Auction.

For each month of the Capacity Commitment Period associated with the annual reconfiguration auction, the ISO shall calculate the difference between the Summer ARA Qualified Capacity or Winter ARA Qualified Capacity, as applicable, and the amount of capacity from that resource that is already subject to a Capacity Supply Obligation for the month. The minimum of these 12 values shall be the amount of capacity up to which a resource may submit a supply offer in the annual reconfiguration auction.

III.13.4.2.1.2. Calculation of Summer ARA Qualified Capacity and Winter ARA Qualified Capacity.

III.13.4.2.1.2.1. First Annual Reconfiguration Auction and Second Annual Reconfiguration Auction.

III.13.4.2.1.2.1.1. Generating Capacity Resources Other than Intermittent Power Resources.

III.13.4.2.1.2.1.1.1. Summer ARA Qualified Capacity.

For the first and second annual reconfiguration auctions associated with a Capacity Commitment Period, the Summer ARA Qualified Capacity of a Generating Capacity Resource that is not an Intermittent Power Resource shall be the sum of the values determined pursuant to subsections (a) and (b) below, limited, as

applicable, by the resource's CNR Capability and any relevant overlapping interconnection impacts as described in Section III.13.1.1.2.3(f):

(a) For capacity that has achieved Commercial Operation, the higher of the resource's summer Qualified Capacity as calculated for the Forward Capacity Auction for that Capacity Commitment Period and any summer Seasonal Claimed Capability values for summer periods completed after the Existing Capacity Qualification Deadline for the Forward Capacity Auction for the Capacity Commitment Period and before the start of the Capacity Commitment Period. The amount of capacity described in this Section III.13.4.2.1.2.1.1(a) shall be zero, however, where the resource cleared in the Forward Capacity Auction for the Capacity Commitment Period as a new resource pursuant to Section III.13.1.1.2 and where the project has not become commercial.

(b) Any amount of capacity that has not yet achieved Commercial Operation but: (i) is being monitored by the ISO pursuant to the provisions of Section III.13.3; (ii) has a Commercial Operation milestone date that is prior to the start of the relevant Capacity Commitment Period; and (iii) for which the Lead Market Participant or Project Sponsor has met all relevant financial assurance requirements as described in Section III.13.1.9 and in the Financial Assurance Policy.

III.13.4.2.1.2.1.1.2. Winter ARA Qualified Capacity.

For the first and second annual reconfiguration auctions associated with a Capacity Commitment Period, the Winter ARA Qualified Capacity of a Generating Capacity Resource that is not an Intermittent Power Resource shall be the sum of the values determined pursuant to subsections (a) and (b) below, limited, as applicable, by the resource's CNR Capability and any relevant overlapping interconnection impacts as described in Section III.13.1.1.2.3(f):

(a) For capacity that has achieved Commercial Operation, the higher of the resource's winter Qualified Capacity as calculated for the Forward Capacity Auction for that Capacity Commitment Period and any winter Seasonal Claimed Capability values for winter periods completed after the Existing Capacity Qualification Deadline for the Forward Capacity Auction for the Capacity Commitment Period and before the start of the Capacity Commitment Period. The amount of capacity described in this Section III.13.4.2.1.2.1.1.2(a) shall be zero, however, where the resource cleared in the Forward Capacity Auction for the Capacity Commitment Period as a new resource pursuant to Section III.13.1.1.2 and where the project has not become commercial.

(b) Any amount of capacity that has not yet achieved Commercial Operation but: (i) is being monitored by the ISO pursuant to the provisions of Section III.13.3; (ii) has a Commercial Operation milestone date that is prior to the start of the relevant Capacity Commitment Period; and (iii) for which the Lead Market Participant or Project Sponsor has met all relevant financial assurance requirements as described in Section III.13.1.9 and in the Financial Assurance Policy.

III.13.4.2.1.2.1.2. Intermittent Power Resources.

III.13.4.2.1.2.1.2.1. Summer ARA Qualified Capacity.

For the first and second annual reconfiguration auctions associated with a Capacity Commitment Period, the Summer ARA Qualified Capacity of an Intermittent Power Resource shall be the sum of the values determined pursuant to subsections (a) and (b) below, limited, as applicable, by the resource's CNR Capability and any relevant overlapping interconnection impacts as described in Section III.13.1.1.2.3(f):

(a) For capacity that has achieved Commercial Operation, the resource's most recently-determined summer Qualified Capacity. The amount of capacity described in this Section III.13.4.2.1.2.1.2.1(a) shall be zero, however, where the resource cleared in the Forward Capacity Auction for the Capacity Commitment Period as a new resource pursuant to Section III.13.1.1.1.2 and the project has not become commercial.

(b) Any amount of capacity that has not yet achieved Commercial Operation but: (i) is being monitored by the ISO pursuant to the provisions of Section III.13.3; (ii) has a Commercial Operation milestone date that is prior to the start of the relevant Capacity Commitment Period; and (iii) for which the Lead Market Participant or Project Sponsor has met all relevant financial assurance requirements as described in Section III.13.1.9 and in the Financial Assurance Policy.

III.13.4.2.1.2.1.2.2. Winter ARA Qualified Capacity.

For the first and second annual reconfiguration auctions associated with a Capacity Commitment Period, the Winter ARA Qualified Capacity of an Intermittent Power Resource shall be the sum of the values determined pursuant to subsections (a) and (b) below, limited, as applicable, by the resource's CNR Capability and any relevant overlapping interconnection impacts as described in Section III.13.1.1.2.3(f):

(a) For capacity that has achieved Commercial Operation, the resource's most recently-determined winter Qualified Capacity. The amount of capacity described in this Section III.13.4.2.1.2.1.2.2(a) shall

be zero, however, where the resource cleared in the Forward Capacity Auction for the Capacity Commitment Period as a new resource pursuant to Section III.13.1.1.1.2 and the project has not become commercial.

(b) Any amount of capacity that has not yet achieved Commercial Operation but: (i) is being monitored by the ISO pursuant to the provisions of Section III.13.3; (ii) has a Commercial Operation milestone date that is prior to the start of the relevant Capacity Commitment Period; and (iii) for which the Lead Market Participant or Project Sponsor has met all relevant financial assurance requirements as described in Section III.13.1.9 and in the Financial Assurance Policy.

III.13.4.2.1.2.1.3. Import Capacity Resources.

For the first and second annual reconfiguration auctions associated with a Capacity Commitment Period, the Summer ARA Qualified Capacity and Winter ARA Qualified Capacity of an Import Capacity Resource shall be equal to its summer Qualified Capacity and winter Qualified Capacity, respectively, as determined for the Forward Capacity Auction for that Capacity Commitment Period.

III.13.4.2.1.2.1.4. Demand Resources.

III.13.4.2.1.2.1.4.1. Summer ARA Qualified Capacity.

For the first and second annual reconfiguration auctions associated with a Capacity Commitment Period, the Summer ARA Qualified Capacity of a Demand Resource shall be the sum of the values determined pursuant to subsections (a) and (b) below:

(a) For capacity that has achieved Commercial Operation, the resource's most recently-determined summer Qualified Capacity.

(b) Any amount of capacity that has not yet achieved Commercial Operation but: (i) is being monitored by the ISO pursuant to the provisions of Section III.13.3; (ii) has a Commercial Operation milestone date that is prior to the start of the relevant Capacity Commitment Period; and (iii) for which the Lead Market Participant or Project Sponsor has met all relevant financial assurance requirements as described in Section III.13.1.9 and in the Financial Assurance Policy.

III.13.4.2.1.2.1.4.2. Winter ARA Qualified Capacity.

For the first and second annual reconfiguration auctions associated with a Capacity Commitment Period, the Winter ARA Qualified Capacity of a Demand Resource shall be the sum of the values determined pursuant to subsections (a) and (b) below:

(a) For capacity that has achieved Commercial Operation, the resource's most recently-determined winter Qualified Capacity.

(b) Any amount of capacity that has not yet achieved Commercial Operation but: (i) is being monitored by the ISO pursuant to the provisions of Section III.13.3; (ii) has a Commercial Operation milestone date that is prior to the start of the relevant Capacity Commitment Period; and (iii) for which the Lead Market Participant or Project Sponsor has met all relevant financial assurance requirements as described in Section III.13.1.9 and in the Financial Assurance Policy.

III.13.4.2.1.2.2. Third Annual Reconfiguration Auction.

III.13.4.2.1.2.2.1. Generating Capacity Resources other than Intermittent Power Resources.

III.13.4.2.1.2.2.1.1. Summer ARA Qualified Capacity.

For the third annual reconfiguration auction associated with a Capacity Commitment Period, the Summer ARA Qualified Capacity of a Generating Capacity Resource that is not an Intermittent Power Resource shall be the sum of the values determined pursuant to subsections (a) and (b) below, limited, as applicable, by the resource's CNR Capability and any relevant overlapping interconnection impacts as described in Section III.13.1.1.2.3(f):

(a) For capacity that has achieved Commercial Operation, the resource's summer Seasonal Claimed Capability value in effect after the most recently completed summer period. The amount of capacity described in this Section III.13.4.2.1.2.2.1.1(a) shall be zero, however, where the resource cleared in the Forward Capacity Auction for the Capacity Commitment Period as a new resource pursuant to Section III.13.1.1.1.2 and the project has not become commercial.

(b) Any amount of capacity that has not yet achieved Commercial Operation but: (i) is being monitored by the ISO pursuant to the provisions of Section III.13.3; (ii) has a Commercial Operation milestone date that is prior to the start of the relevant Capacity Commitment Period; and (iii) for which

the Lead Market Participant or Project Sponsor has met all relevant financial assurance requirements as described in Section III.13.1.9 and in the Financial Assurance Policy.

III.13.4.2.1.2.2.1.2. Winter ARA Qualified Capacity.

For the third annual reconfiguration auction associated with a Capacity Commitment Period, the Winter ARA Qualified Capacity of a Generating Capacity Resource that is not an Intermittent Power Resource shall be the sum of the values determined pursuant to subsections (a) and (b) below, limited, as applicable, by the resource's CNR Capability and any relevant overlapping interconnection impacts as described in Section III.13.1.1.2.3(f):

(a) For capacity that has achieved Commercial Operation, the resource's winter Seasonal Claimed Capability value in effect after the most recently completed winter period. The amount of capacity described in this Section III.13.4.2.1.2.2.1.2(a) shall be zero, however, where the resource cleared in the Forward Capacity Auction for the Capacity Commitment Period as a new resource pursuant to Section III.13.1.1.1.2 and the project has not become commercial.

(b) Any amount of capacity that has not yet achieved Commercial Operation but: (i) is being monitored by the ISO pursuant to the provisions of Section III.13.3; (ii) has a Commercial Operation milestone date that is prior to the start of the relevant Capacity Commitment Period; and (iii) for which the Lead Market Participant or Project Sponsor has met all relevant financial assurance requirements as described in Section III.13.1.9 and in the Financial Assurance Policy.

III.13.4.2.1.2.2.2. Intermittent Power Resources.

III.13.4.2.1.2.2.2.1. Summer ARA Qualified Capacity.

For the third annual reconfiguration auction associated with a Capacity Commitment Period, the Summer ARA Qualified Capacity of an Intermittent Power Resource shall be the sum of the values determined pursuant to subsections (a) and (b) below, limited, as applicable, by the resource's CNR Capability and any relevant overlapping interconnection impacts as described in Section III.13.1.1.2.3(f):

(a) For capacity that has achieved Commercial Operation, the lesser of its most recently-determined summer Qualified Capacity and its summer Seasonal Claimed Capability value in effect after the most recently competed summer period. The amount of capacity described in this Section III.13.4.2.1.2.2.2.1(a) shall be zero, however, where the resource cleared in the Forward Capacity Auction

for the Capacity Commitment Period as a new resource pursuant to Section III.13.1.1.1.2 and the project has not become commercial.

(b) Any amount of capacity that has not yet achieved Commercial Operation but: (i) is being monitored by the ISO pursuant to the provisions of Section III.13.3; (ii) has a Commercial Operation milestone date that is prior to the start of the relevant Capacity Commitment Period; and (iii) for which the Lead Market Participant or Project Sponsor has met all relevant financial assurance requirements as described in Section III.13.1.9 and in the Financial Assurance Policy.

III.13.4.2.1.2.2.2.2. Winter ARA Qualified Capacity.

For the third annual reconfiguration auction associated with a Capacity Commitment Period, the Winter ARA Qualified Capacity of an Intermittent Power Resource shall be the sum of the values determined pursuant to subsections (a) and (b) below, limited, as applicable, by the resource's CNR Capability and any relevant overlapping interconnection impacts as described in Section III.13.1.1.2.3(f):

(a) For capacity that has achieved Commercial Operation, the lesser of its most recently-determined winter Qualified Capacity and its winter Seasonal Claimed Capability value in effect after the most recently completed winter period. The amount of capacity described in this Section III.13.4.2.1.2.2.2.2(a) shall be zero, however, where the resource cleared in the Forward Capacity Auction for the Capacity Commitment Period as a new resource pursuant to Section III.13.1.1.1.2 and the project has not become commercial.

(b) Any amount of capacity that has not yet achieved Commercial Operation but: (i) is being monitored by the ISO pursuant to the provisions of Section III.13.3; (ii) has a Commercial Operation milestone date that is prior to the start of the relevant Capacity Commitment Period; and (iii) for which the Lead Market Participant or Project Sponsor has met all relevant financial assurance requirements as described in Section III.13.1.9 and in the Financial Assurance Policy.

III.13.4.2.1.2.2.2.3. Adjustment for Certain Intermittent Power Resources and Intermittent Settlement Only Resources.

For an Intermittent Power Resource or an Intermittent Settlement Only Resource that was not part of an Offer Composed of Separate Resources and that has a winter Capacity Supply Obligation that was adjusted as described in Section III.13.2.7.6, if the difference between the resource's winter Capacity Supply Obligation and its Winter ARA Qualified Capacity for the third annual reconfiguration auction is

greater than the difference between the resource's summer Capacity Supply Obligation and Summer ARA Qualified Capacity for the third annual reconfiguration auction, then the resource's winter Capacity Supply Obligation shall be reduced such that the difference between the resource's winter Capacity Supply Obligation and its Winter ARA Qualified Capacity for the third annual reconfiguration auction equals the difference between the resource's summer Capacity Supply Obligation and Summer ARA Qualified Capacity for the third annual reconfiguration auction. For settlement purposes, any such reduction in Capacity Supply Obligation shall be at the same payment rate applicable to the reduced MW, such that there is a net zero payment for the reduced MW.

III.13.4.2.1.2.2.3. Import Capacity Resources.

For the third annual reconfiguration auction associated with a Capacity Commitment Period, the Summer ARA Qualified Capacity of an Import Capacity Resource shall be equal to the lesser of its summer Qualified Capacity as determined for the Forward Capacity Auction for that Capacity Commitment Period and the amount of capacity available to back the import. For the third annual reconfiguration auction associated with a Capacity Commitment Period, the Winter ARA Qualified Capacity of an Import Capacity Resource shall be equal to the lesser of its winter Qualified Capacity as determined for the Forward Capacity Auction for that Capacity Commitment Period and the amount of capacity available to back the import.

III.13.4.2.1.2.2.4. Demand Resources.

III.13.4.2.1.2.2.4.1. Summer ARA Qualified Capacity.

For the third annual reconfiguration auction associated with a Capacity Commitment Period, the Summer ARA Qualified Capacity of a Demand Resource shall be the sum of the values determined pursuant to subsections (a) and (b) below:

- (a) For capacity that has achieved Commercial Operation, the lesser of its most recently-determined summer Qualified Capacity and its summer Seasonal Claimed Capability value (or equivalent value as applicable to Demand Resources) in effect after the most recently completed summer period.
- (b) Any amount of capacity that has not yet achieved Commercial Operation but: (i) is being monitored by the ISO pursuant to the provisions of Section III.13.3; (ii) has a Commercial Operation milestone date that is prior to the start of the relevant Capacity Commitment Period; and (iii) for which

the Lead Market Participant or Project Sponsor has met all relevant financial assurance requirements as described in Section III.13.1.9 and in the Financial Assurance Policy.

III.13.4.2.1.2.2.4.2. Winter ARA Qualified Capacity.

For the third annual reconfiguration auction associated with a Capacity Commitment Period, the Winter ARA Qualified Capacity of a Demand Resource shall be the sum of the values determined pursuant to subsections (a) and (b) below:

- (a) For capacity that has achieved Commercial Operation, the lesser of its most recently-determined winter Qualified Capacity and its winter Seasonal Claimed Capability value (or equivalent value as applicable to Demand Resources) in effect after the most recently completed winter period.
- (b) Any amount of capacity that has not yet achieved Commercial Operation but: (i) is being monitored by the ISO pursuant to the provisions of Section III.13.3; (ii) has a Commercial Operation milestone date that is prior to the start of the relevant Capacity Commitment Period; and (iii) for which the Lead Market Participant or Project Sponsor has met all relevant financial assurance requirements as described in Section III.13.1.9 and in the Financial Assurance Policy.

III.13.4.2.1.3. Adjustment for Significant Decreases in Capacity.

For each month of the Capacity Commitment Period associated with the third annual reconfiguration auction, for each resource that has achieved Commercial Operation, the ISO shall subtract the resource's Summer ARA Qualified Capacity or Winter ARA Qualified Capacity, as applicable, from the amount of capacity from the resource that is subject to a Capacity Supply Obligation for the month. For the month associated with the greatest of these 12 values, if the resource's Summer ARA Qualified Capacity or Winter ARA Qualified Capacity (as applicable) is below the amount of capacity from that resource that is subject to a Capacity Supply Obligation for that month by more than the lesser of 20 percent of the amount of capacity from that resource that is subject to a Capacity Supply Obligation for that month or 40 MW, then the following provisions shall apply:

- (a) The Lead Market Participant may submit a written plan to the ISO with any necessary supporting documentation describing the measures that will be taken and demonstrating that the resource will be able to provide an amount of capacity consistent with its total Capacity Supply Obligation for the Capacity Commitment Period by the start of all months in that Capacity Commitment Period in which the resource has a Capacity Supply Obligation. If submitted, such a plan must be received by the ISO no later than 10

Business Days after the ISO has notified the Lead Market Participant of its Summer ARA Qualified Capacity and Winter ARA Qualified Capacity for the third annual reconfiguration auction.

(b) If no such plan as described in Section III.13.4.2.1.3(a) is timely submitted to the ISO, or if such a plan is timely submitted but the ISO determines that the plan does not demonstrate that the resource will be able to provide the necessary amount of capacity by the start of all months in the Capacity Commitment Period in which the resource has a Capacity Supply Obligation, then the ISO shall enter a demand bid at 2.0 times CONE on behalf of the resource (with all payments, charges, rights, obligations, and other results associated with such bid applying to the resource as if the resource itself had submitted the bid) in the third annual reconfiguration auction in an amount equal to the greatest of the 12 monthly values determined pursuant to this Section III.13.4.2.1.3.

(c) If the ISO determines that the resource is not able to provide the necessary amount of capacity by the start of all months in the Capacity Commitment Period in which the resource has a Capacity Supply Obligation, and if the resource was part of an offer composed of separate resources when it qualified to participate in the relevant Forward Capacity Auction, then before a demand bid is entered for the resource pursuant to subsection (b) above, the resource may submit monthly Capacity Supply Obligation Bilaterals to cover the deficiency for the months of the Capacity Commitment Period in which the Capacity Supply Obligation is associated with participation in an offer composed of separate resource prior to the third annual reconfiguration auction, but in no case may such a Capacity Supply Obligation Bilateral for a month be for an amount of capacity greater than the difference between the resource's Capacity Supply Obligation for the month and the resource's lowest monthly Capacity Supply Obligation during the Capacity Commitment Period.

III.13.4.2.1.4. Amount of Capacity That May Be Submitted in a Supply Offer in a Monthly Reconfiguration Auction.

A resource that has not achieved Commercial Operation by the offer and bid deadline for a monthly reconfiguration auction may not submit a supply offer for that reconfiguration auction, unless the resource has a negative Capacity Supply Obligation, in which case it may submit a supply offer for that reconfiguration auction in an amount up to the absolute value of its Capacity Supply Obligation. The amount of capacity up to which a resource may submit a supply offer in a monthly reconfiguration auction shall be the difference (but in no case less than zero) between (i) the resource's Summer ARA Qualified Capacity or Winter ARA Qualified Capacity, as applicable, for the auction month for the third annual reconfiguration auction for the relevant Capacity Commitment Period; and (ii) the amount of

capacity from that resource that is already subject to a Capacity Supply Obligation for that month. However, a resource may not submit a supply offer for a monthly reconfiguration auction if it is on an approved outage during that month.

III.13.4.2.1.5. ISO Review of Supply Offers.

Supply offers in reconfiguration auctions shall be reviewed by the ISO to ensure the regional and local adequacy achieved through the Forward Capacity Auction and other reliability needs are maintained. The ISO's reviews will consider the location and operating and rating limitations of resources associated with cleared supply offers to ensure reliability standards will remain satisfied if the offer is accepted. The ISO shall determine whether the capacity associated with supply offers that would otherwise clear in a reconfiguration auction will result in a violation of any NERC or NPCC (or their successors) criteria, or ISO New England System Rules during the Capacity Commitment Period associated with the reconfiguration auction. The ISO's reliability reviews will assess such offers, beginning with the marginal resource, based on operable capacity needs while considering any approved or interim approved transmission outage information and any approved generation outage information, and will include transmission security studies. Supply offers that cannot meet the applicable reliability needs will be rejected in their entirety and the resource will not be rejected in part. Rejected resources will not be further included in clearing the reconfiguration auction and the Lead Market Participant or Project Sponsor, as appropriate, shall be notified as soon as practicable after the reconfiguration auction of the rejection and of the reliability need prompting such rejection.

III.13.4.2.2. Demand Bids in Reconfiguration Auctions.

Submission of demand bids in reconfiguration auctions shall be governed by this Section III.13.4.2.2. All demand bids in reconfiguration auctions shall be submitted by the Project Sponsor or Lead Market Participant, and shall specify the amount of capacity bid in MW, and the price, in dollars per kW/month.

(a) To submit a demand bid in a reconfiguration auction, a resource must have a Capacity Supply Obligation for the Capacity Commitment Period (or portion thereof, as applicable) associated with that reconfiguration auction. Where capacity associated with a Self-Supplied FCA Resource that cleared in the Forward Capacity Auction for the Capacity Commitment Period is offered in a reconfiguration auction for that Capacity Commitment Period, or any portion thereof, a resource acquiring a Capacity Supply Obligation shall not as a result become a Self-Supplied FCA Resource.

(b) Each demand bid submitted to the ISO for reconfiguration auction shall be no greater than the amount of the resource's capacity that is already obligated for the Capacity Commitment Period (or portion thereof, as applicable) as of the offer and bid deadline for the reconfiguration auction.

(c) All demand bids in reconfiguration auctions shall be reviewed by the ISO to ensure the regional and local adequacy achieved through the Forward Capacity Auction and other reliability needs are maintained. The ISO's reviews will consider the location and operating and rating limitations of resources associated with cleared demand bids to ensure reliability standards will remain satisfied if the committed capacity is withdrawn. The ISO shall determine whether the capacity associated with demand bids that would otherwise clear in a reconfiguration auction is needed to avoid a violation of any NERC or NPCC (or their successors) criteria, or ISO New England System Rules during the Capacity Commitment Period associated with the reconfiguration auction. For monthly reconfiguration auctions, the ISO shall obtain and consider information from the Local Control Center regarding whether the capacity associated with demand bids that would otherwise clear from resources with a Capacity Supply Obligation is needed for local system conditions. The ISO's reliability reviews will assess such bids, beginning with the marginal resource, based on operable capacity needs while considering any approved or interim approved transmission outage information and any approved generation outage information, and will include transmission security studies. Where the applicable reliability needs cannot be met if a Demand Bid is cleared, such Demand Bids will be rejected in their entirety and the resource will not be rejected in part. Demand Bids from rejected resources will not be further included in clearing the reconfiguration auction, and the Lead Market Participant or Project Sponsor, as appropriate, shall be notified as soon as practicable after the reconfiguration auction of the rejection and of the reliability need prompting such rejection.

III.13.4.3. ISO Participation in Reconfiguration Auctions.

The ISO shall not submit supply offers or demand bids in monthly reconfiguration auctions. The ISO shall submit supply offers and demand bids in annual reconfiguration auctions as appropriate to address year-to-year changes in the Installed Capacity Requirement (net of HQICCs) (including Local Sourcing Requirements and Maximum Capacity Limits for Capacity Zones for which price separation occurred in the Forward Capacity Auction for that Capacity Commitment Period) for the associated Capacity Commitment Period, to procure capacity not purchased in the Forward Capacity Auction as a result of Inadequate Supply and as a result of incomplete replacement in the Forward Capacity Auction of capacity associated with cleared Permanent De-List Bids, Static De-List Bids, Export Bids, to procure any shortfall in capacity resulting from a resource's achieving Commercial Operation at a level less than that

resource's Capacity Supply Obligation or other significant decreases in capacity, to release excess capacity procured as a result of the Capacity Clearing Price Collar described in Section III.13.2.7.3, and to address any changes in interface transfer limits, as follows:

(a) The ISO shall submit supply offers and demand bids in annual reconfiguration auctions as appropriate to ensure that the applicable Installed Capacity Requirement (net of HQICCs), Local Sourcing Requirements, Maximum Capacity Limits, and interface transfer limits are respected. Where less capacity than needed is obligated, the ISO shall submit demand bids as appropriate to procure the additional needed capacity in each subsequent annual reconfiguration auction until the need is met. Where more capacity than needed is obligated, the ISO may in its discretion submit supply offers in subsequent annual reconfiguration auctions to release the excess capacity, but in any case the ISO shall be required to submit supply offers as appropriate in the third annual reconfiguration auction for a Capacity Commitment Period to release the excess capacity. No later than 10 Business Days prior to the start of each annual reconfiguration auction, the ISO shall provide notice regarding whether the ISO will be submitting supply offers or demand bids in that auction.

(b) Any demand bid submitted by the ISO in an annual reconfiguration auction shall be at a price of 2.0 times CONE

(c) Any supply offer submitted by the ISO in an annual reconfiguration auction shall be in the form of a supply curve having the following characteristics:

(i) at prices equal to or greater than 0.75 times the Capacity Clearing Price, as adjusted pursuant to Section III.13.2.7.3(b), from the Forward Capacity Auction for the Capacity Commitment Period covered by the annual reconfiguration auction, the ISO shall offer the full amount of the surplus;

(ii) at prices between 0.75 times such Capacity Clearing Price and 0.25 times such Capacity Clearing Price, the amount of the surplus offered by the ISO shall decrease linearly (for example, at 0.5 times such Capacity Clearing Price, the ISO shall offer half of the amount of the surplus); and

(iii) At prices equal to or below 0.25 times such Capacity Clearing Price, the ISO shall offer no capacity.

(d) For purposes of this Section III.13.4.3, CONE shall be the CONE associated with the Forward Capacity Auction for the same Capacity Commitment Period addressed by the reconfiguration auction, as determined pursuant to Section III.13.2.4.

(e) Supply offers and demand bids submitted by the ISO in annual reconfiguration auctions are not subject to the requirements and limitations described in Section III.13.4.2.

(f) Supply offers and demand bids submitted by the ISO in annual reconfiguration auctions are not associated with a resource and create no obligation on the ISO to supply or purchase capacity.

III.13.4.4. Clearing Offers and Bids in Reconfiguration Auctions.

All supply offers and demand bids may be cleared in whole or in part in all reconfiguration auctions. If after clearing, a resource has a Capacity Supply Obligation below its Economic Minimum Limit, it must meet the requirements of Section III.13.6.2.1.1.

III.13.4.5. Annual Reconfiguration Auctions.

Except as provided below, after the Forward Capacity Auction for a Capacity Commitment Period, and before the start of that Capacity Commitment Period, the ISO shall conduct three annual reconfiguration auctions for capacity commitments covering the whole of that Capacity Commitment Period.

III.13.4.5.1. Timing of Annual Reconfiguration Auctions.

Except for the first five Capacity Commitment Periods, the first annual reconfiguration auction for the Capacity Commitment Period shall be held in the month of June that is approximately 24 months before the start of the Capacity Commitment Period. The second annual reconfiguration auction for the Capacity Commitment Period shall be held in the month of May that is approximately 13 months before the start of the Capacity Commitment Period. The third annual reconfiguration auction for the Capacity Commitment Period shall be held in the month of March that is approximately 3 months before the start of the Capacity Commitment Period. There shall be no first annual reconfiguration auction for the first five Capacity Commitment Periods. The table below illustrates the annual reconfiguration auction timing provisions stated above, providing the schedule of annual reconfiguration auctions for the first eight Capacity Commitment Periods.

First Annual Reconfiguration Auction	Second Annual Reconfiguration Auction	Third Annual Reconfiguration Auction	Capacity Commitment Period Begins
N/A	May 2009	March 2010	June 1, 2010
N/A	May 2010	March 2011	June 1, 2011
N/A	May 2011	March 2012	June 1, 2012
N/A	May 2012	March 2013	June 1, 2013
N/A	May 2013	March 2014	June 1, 2014
June 2013	May 2014	March 2015	June 1, 2015
June 2014	May 2015	March 2016	June 1, 2016
June 2015	May 2016	March 2017	June 1, 2017

III.13.4.5.2. Acceleration of Annual Reconfiguration Auction.

If the difference between the forecasted Installed Capacity Requirement (net of HQICCs) for a Capacity Commitment Period and the amount of capacity obligated for that Capacity Commitment Period is sufficiently large, then the ISO may, upon reasonable notice to Market Participants, conduct an annual reconfiguration auction as much as six months earlier than its normally-scheduled time.

III.13.4.6. [Reserved.]

III.13.4.7. Monthly Reconfiguration Auctions.

Prior to each month in the Capacity Commitment Period, the ISO shall conduct a monthly reconfiguration auction for whole-month capacity commitments during that month.

III.13.4.8. Adjustment to Capacity Supply Obligations.

For each supply offer that clears in a reconfiguration auction, the resource's Capacity Supply Obligation for the relevant Capacity Commitment Period (or portion thereof, as applicable) shall be increased by the amount of capacity that clears. For each demand bid that clears in a reconfiguration auction, the resource's Capacity Supply Obligation for the relevant Capacity Commitment Period (or portion thereof, as applicable) shall be decreased by the amount of capacity that clears.

III.13.5. Bilateral Contracts in the Forward Capacity Market.

Market Participants shall be permitted to enter into Capacity Supply Obligation Bilaterals and Capacity Load Obligation Bilaterals in accordance with this Section III.13.5. Market Participants may not offset a Capacity Load Obligation with a Capacity Supply Obligation.

III.13.5.1. Capacity Supply Obligation Bilaterals.

A resource having a Capacity Supply Obligation seeking to shed that obligation (“Capacity Transferring Resource”) may enter into a bilateral transaction to transfer its Capacity Supply Obligation, in whole or in part (“Capacity Supply Obligation Bilateral”), to a resource, or portion thereof, having Qualified Capacity for that Capacity Commitment Period that is not already obligated (“Capacity Acquiring Resource”), subject to the following limitations

- (a) A monthly Capacity Supply Obligation Bilateral must be coterminous with a calendar month, and an annual Capacity Supply Obligation Bilateral must be coterminous with a Capacity Commitment Period.
- (b) A Capacity Supply Obligation Bilateral may not transfer a Capacity Supply Obligation amount that is greater than the lowest monthly Capacity Supply Obligation of the Capacity Transferring Resource during the period covered by the Capacity Supply Obligation Bilateral. A Capacity Supply Obligation Bilateral may not transfer a Capacity Supply Obligation amount that is greater than the lowest monthly amount of unobligated Qualified Capacity (that is, Qualified Capacity as determined in the most recent Forward Capacity Auction or reconfiguration auction qualification process that is not subject to a Capacity Supply Obligation for the relevant time period) of the Capacity Acquiring Resource during the period covered by the Capacity Supply Obligation Bilateral, as determined in the qualification process for the most recent Forward Capacity Auction or annual reconfiguration auction prior to the submission of the Capacity Supply Obligation Bilateral to the ISO.
- (c) A Capacity Supply Obligation Bilateral may not transfer a Capacity Supply Obligation to a Capacity Acquiring Resource where that Capacity Acquiring Resource’s unobligated Qualified Capacity is unobligated as a result of an Export Bid or Administrative Export De-List Bid that cleared in the Forward Capacity Auction.
- (d) A Real-Time Emergency Generation Resource may participate in a Capacity Supply Obligation Bilateral as either a Capacity Transferring Resource or a Capacity Acquiring Resource, provided,

however, that where a Real-Time Emergency Generation Resource participates in a Capacity Supply Obligation Bilateral as a Capacity Acquiring Resource, the Capacity Transferring Resource must also be a Real-Time Emergency Generation Resource.

(e) [Reserved.]

(f) The Capacity Transferring Resource and the Capacity Acquiring Resource that are parties to a Capacity Supply Obligation Bilateral must be located in the same Capacity Zone, or the path from the Capacity Transferring Resource to the Capacity Acquiring Resource must flow across adjacent Capacity Zones in the direction of the modeled interface constraint(s), as such Capacity Zones and interface constraints are defined following the Forward Capacity Auction conducted for the Capacity Commitment Period to which the transferred Capacity Supply Obligation applies.

(g) If the Capacity Acquiring Resource is an Import Capacity Resource, then the Capacity Transferring Resource must also be an Import Capacity Resource on the same external interface.

(h) A resource, or a portion thereof, that has been designated as a Self-Supplied FCA Resource may transfer the self-supplied portion of its Capacity Supply Obligation by means of Capacity Supply Obligation Bilateral. In such a case, however, the Capacity Acquiring Resource shall not become a Self-Supplied FCA Resource as a result of the transaction.

(i) A monthly Capacity Supply Obligation may not be acquired by any resource on an approved outage for the relevant Capacity Commitment Period month.

(j) A resource that has not achieved Commercial Operation by the submission deadline for a monthly Capacity Supply Obligation Bilateral may not submit a transaction as a Capacity Acquiring Resource for that Capacity Commitment Period month, unless the resource has a negative Capacity Supply Obligation, in which case it may submit a Capacity Supply Obligation Bilateral in an amount up to the absolute value of its Capacity Supply Obligation.

III.13.5.1.1. Process for Approval of Capacity Supply Obligation Bilaterals.

III.13.5.1.1.1. Timing.

The Lead Market Participant or Project Sponsor for either the Capacity Transferring Resource or the Capacity Acquiring Resource may submit a Capacity Supply Obligation Bilateral to the ISO during submittal windows, as defined in the ISO New England Manuals and ISO New England Operating Procedures. The ISO will issue a submission schedule for annual Capacity Supply Obligation Bilaterals as soon as practicable after the issuance of Forward Capacity Auction results. Monthly Capacity Supply Obligation Bilaterals may only be submitted and confirmed after the results of the third annual reconfiguration auction have been issued (except as described in Section III.13.4.2.1.3(c)) and prior to the closing of the monthly Capacity Supply Obligation Bilateral window, which will occur prior to the monthly reconfiguration auction. ISO New England will review all confirmed monthly Capacity Supply Obligation Bilaterals for each upcoming Obligation Month for reliability needs immediately preceding the monthly reconfiguration auction. A Capacity Supply Obligation Bilateral must be confirmed by the party other than the party submitting the Capacity Supply Obligation Bilateral to the ISO during the same submittal window and no later than the same deadline that applies to submission of the Capacity Supply Obligation Bilateral.

III.13.5.1.1.2. Application.

The submission of a Capacity Supply Obligation Bilateral to the ISO shall include the following: (i) the resource identification number of the Capacity Transferring Resource; (ii) the amount of the Capacity Supply Obligation being transferred in MW amounts up to three decimal places; (iii) the term of the transaction; and (iv) the resource identification number of the Capacity Acquiring Resource. If the parties to a Capacity Supply Obligation Bilateral so choose, they may also submit a price, in \$/kW-month, to be used by the ISO in settling the Capacity Supply Obligation Bilateral. If no price is submitted, the ISO shall use a default price of \$0.00/kW-month.

III.13.5.1.1.3. ISO Review.

(a) The ISO shall review the information provided in support of the Capacity Supply Obligation Bilateral, and shall reject the Capacity Supply Obligation Bilateral if any of the provisions of this Section III.13.5.1 are not met.

(b) Each Capacity Supply Obligation Bilateral shall be subject to a reliability review by the ISO to determine whether the transaction would result in a violation of any NERC or NPCC (or their successors) criteria, or ISO New England System Rules, during the Capacity Commitment Period associated with the transaction. Capacity Supply Obligation Bilaterals shall be reviewed by the ISO to ensure the regional and local adequacy achieved through the Forward Capacity Auction and other reliability needs are

maintained. The ISO's review will consider the location and operating and rating limitations of resources associated with the Capacity Supply Obligation Bilateral to ensure reliability standards will remain satisfied if the capacity associated with the Transferring Resource is withdrawn and the capacity associated with the Acquiring Resource is accepted. The ISO's reliability reviews will assess transactions based on operable capacity needs while considering any approved or interim approved transmission outage information and any approved generation outage information, and will include transmission security studies. For a monthly Capacity Supply Obligation Bilateral, the ISO shall obtain and consider information from the Local Control Center regarding whether the Capacity Supply Obligation of the Capacity Transferring Resource is needed for local system conditions and whether it is adequately replaced by the Acquiring Resource. The ISO will approve or reject Capacity Supply Obligation Bilaterals based on the order in which they are confirmed. If multiple Capacity Supply Obligation Bilaterals are submitted between the same resources, they may be reviewed together as one transaction and the most recent confirmation time among the related transactions will be used to determine the review order of the grouped transaction. Transactions that cannot meet the applicable reliability needs will only be accepted or rejected in their entirety and the resources will not be accepted or rejected in part for purposes of that transaction. Where the ISO has determined that a Capacity Supply Obligation Bilateral must be rejected for reliability reasons the Lead Market Participant or Project Sponsor, as appropriate, for the Capacity Transferring Resource and the Capacity Acquiring Resource shall be notified as soon as practicable of the rejection and of the reliability need prompting such rejection.

(c) Each Capacity Supply Obligation Bilateral shall be subject to a financial assurance review by the ISO. If the Capacity Transferring Resource and the Capacity Acquiring Resource are not both in compliance with all applicable provisions of the Financial Assurance Policy, including those regarding Capacity Supply Obligation Bilaterals, the ISO shall reject the Capacity Supply Obligation Bilateral.

III.13.5.1.1.4. Approval.

Upon approval of a Capacity Supply Obligation Bilateral, the Capacity Supply Obligation of the Capacity Transferring Resource shall be reduced by the amount set forth in the Capacity Supply Obligation Bilateral, and the Capacity Supply Obligation of the Capacity Acquiring Resource shall be increased by the amount set forth in the Capacity Supply Obligation Bilateral.

III.13.5.2. Capacity Load Obligations Bilaterals.

A Market Participant having a Capacity Load Obligation seeking to shed that obligation ("Capacity Load Obligation Transferring Participant") may enter into a bilateral transaction to transfer all or a portion of its

Capacity Load Obligation in a Capacity Zone (“Capacity Load Obligation Bilateral”) to any Market Participant seeking to acquire a Capacity Load Obligation (“Capacity Load Obligation Acquiring Participant”). A Capacity Load Obligation Bilateral must be in whole calendar month increments, may not exceed one year in duration, and must begin and end within the same Capacity Commitment Period. A Capacity Load Obligation Transferring Participant will be permitted to transfer, and a Capacity Load Obligation Acquiring Participant will be permitted to acquire, a Capacity Load Obligation if after entering into a Capacity Load Obligation Bilateral and submitting related information to the ISO within the specified submittal time period, the ISO approves such Capacity Load Obligation Bilateral.

III.13.5.2.1. Process for Approval of Capacity Load Obligation Bilaterals.

III.13.5.2.1.1. Timing.

Either the Capacity Load Obligation Transferring Participant or the Capacity Load Obligation Acquiring Participant may submit a Capacity Load Obligation Bilateral to the ISO. All Capacity Load Obligation Bilaterals must be submitted to the ISO in accordance with resettlement provisions as described in ISO New England Manuals. However, to be included in the initial settlement of payments and charges associated with the Forward Capacity Market for the first month of the term of the Capacity Load Obligation Bilateral, a Capacity Load Obligation Bilateral must be submitted to the ISO no later than 12:00 pm on the second Business Day after the end of that month (though a Capacity Load Obligation Bilateral submitted at that time may be revised by the parties to the transaction throughout the resettlement process). A Capacity Load Obligation Bilateral must be confirmed by the party other than the party submitting the Capacity Load Obligation Bilateral to the ISO no later than the same deadline that applies to submission of the Capacity Load Obligation Bilateral.

III.13.5.2.1.2. Application.

The submission of a Capacity Load Obligation Bilateral to the ISO shall include the following : (i) the amount of the Capacity Load Obligation being transferred in MW amounts up to three decimal places; (ii) the term of the transaction; (iii) identification of the Capacity Load Obligation Transferring Participant and the Capacity Load Obligation Acquiring Participant; and (iv) the Capacity Zone in which the Capacity Load Obligation is being transferred is located.

III.13.5.2.1.3. ISO Review.

The ISO shall review the information provided in support of the Capacity Load Obligation Bilateral and shall reject the Capacity Load Obligation Bilateral if any of the provisions of this Section II.13.5.2 are not met.

III.13.5.2.1.4. Approval.

Upon approval of a Capacity Load Obligation Bilateral, the Capacity Load Obligation of the Capacity Load Obligation Transferring Participant in the Capacity Zone specified in the submission to the ISO shall be reduced by the amount set forth in the Capacity Load Obligation Bilateral and the Capacity Load Obligation of the Capacity Load Obligation Acquiring Participant in the specified Capacity Zone shall be increased by the amount set forth in the Capacity Load Obligation Bilateral.

III.13.5.3. Supplemental Availability Bilaterals.

A resource's availability score during a Shortage Event may be supplemented by entering into a Supplemental Availability Bilateral as described in this Section III.13.5.3.

III.13.5.3.1. Designation of Supplemental Capacity Resources.

III.13.5.3.1.1. Eligibility.

Only Generating Capacity Resources that are not Intermittent Power Resources or Settlement Only Resources may be designated as Supplemental Capacity Resources. A Generating Capacity Resource may be designated as a Supplemental Capacity Resource in a MW amount up to the difference between the resource's CNR Capability (reduced by the hourly integrated delivered MW for any External Transaction sale or sales submitted in accordance with Section III.1.10.7(f) from that resource) and its Capacity Supply Obligation in each day of the term in which it is designated to be a Supplemental Capacity Resource.

III.13.5.3.1.2. Designation.

The designation of a Supplemental Capacity Resource must be made by the resource's Lead Market Participant. The designation shall indicate the term for which the resource is designated as a Supplemental Capacity Resource, which shall be in Operating Day increments, no less than one Operating Day, and no greater than one calendar month. Such designation shall indicate the MW amount being designated as a Supplemental Capacity Resource, and the Capacity Zone in which the resource is located. Such designation must be submitted to the ISO no later than the deadline for the submission of Supply Offers in the Day-Ahead Energy Market for the first Operating Day of the indicated term.

III.13.5.3.1.3. ISO Review.

The ISO shall review the information provided in submission of the designation as a Supplemental Capacity Resource, and shall reject the designation for any of the hours in which any of the provisions of this Section III.13.5.3.1 are not met.

III.13.5.3.1.4. Effect of Designation.

Regardless of whether it ever becomes subject to a Supplemental Availability Bilateral as described in Section III.13.5.3.2, the portion of a resource designated as a Supplemental Capacity Resource is subject to the same energy market offer requirements applicable to a resource having a Capacity Supply Obligation as described in Sections III.13.6.1.1.1 and III.13.6.1.1.2 for the entire term indicated in the designation described in Section III.13.5.3.1.2.

III.13.5.3.2. Submission of Supplemental Availability Bilaterals.

The Lead Market Participant for a resource previously designated as a Supplemental Capacity Resource in accordance with the provisions of Section III.13.5.3.1 for a term that included a Shortage Event may submit a Supplemental Availability Bilateral to the ISO assigning all or a portion of its available capability up to its designated supplemental capacity in each hour of that Shortage Event to a Generating Capacity Resource having a Capacity Supply Obligation during that Shortage Event (“Supplemented Capacity Resource”). No other Market Participant may submit a Supplemental Availability Bilateral. The Supplemental Capacity Resource and the Supplemented Capacity Resource must be located in the same Reserve Zone. A Supplemental Capacity Resource may submit Supplemental Availability Bilaterals with multiple Supplemented Capacity Resources, but each MW of supplemental capacity may only be assigned to one Supplemented Capacity Resource. No Supplemental Capacity Resource may itself be a Supplemented Capacity Resource for an hour.

III.13.5.3.2.1. Timing.

A Supplemental Availability Bilateral must be submitted in accordance with resettlement provisions as described in ISO New England Manuals. However, to be included in the initial settlement of payments and charges associated with the Forward Capacity Market for the month associated with the Supplemental Availability Bilateral, a Supplemental Availability Bilateral must be submitted to the ISO no later than 12:00 pm on the second Business Day after the end of that month, or at such later deadline as specified by the ISO upon notice to Market Participants (though a Supplemental Availability Bilateral may be revised by the parties to the transaction throughout the resettlement process). A Supplemental Availability

Bilateral must be confirmed by the Lead Market Participant for the Supplemented Capacity Resource no later than the same deadline that applies to submission of the Supplemental Availability Bilateral.

III.13.5.3.2.2. Application.

The submission of a Supplemental Availability Bilateral to the ISO shall include the following: (i) the resource identification number for the Supplemental Capacity Resource; (ii) the resource identification number for the Supplemented Capacity Resource; (iii) the MW amount of capacity being assigned from the Supplemental Capacity Resource to the Supplemented Capacity Resource; (iv) the term of the transaction, which shall be in hourly increments coinciding with hourly boundaries, no less than one hour, and no greater than one calendar month.

III.13.5.3.2.3. ISO Review.

The ISO shall review the information provided in submission of the Supplemental Availability Bilateral, and shall reject the Supplemental Availability Bilateral if any of the provisions of this Section III.13.5.3 are not met. The ISO shall reject the applicability of a Supplemental Availability Bilateral in any hour of a Shortage Event unless: (i) the Supplemental Capacity Resource was on-line and following ISO dispatch instructions during that hour of the Shortage Event and the MW amount of capacity being assigned from the Supplemental Capacity Resource is less than or equal to the difference between the resource's Economic Maximum Limit as submitted or redeclared by the Lead Market Participant and the Supplemental Capacity Resource's Capacity Supply Obligation; or (ii) the Supplemental Capacity Resource was offline for the hour of the Shortage Event and the MW amount of capacity being assigned from the Supplemental Capacity Resource is less than or equal to the difference between the sum of the Supplemental Capacity Resource's Real-Time Reserve Designations of TMNSR and TMOR and the Supplemental Capacity Resource's Capacity Supply Obligation.

III.13.5.3.2.4. Effect of Supplemental Availability Bilateral.

A Supplemental Availability Bilateral does not affect in any way either party's Capacity Supply Obligation or the rights and obligations associated therewith. The sole effect of a Supplemental Availability Bilateral is to modify the Supplemented Capacity Resource's availability score as described in Section III.13.7.1.1.4.

III.13.8.2. Filing of Forward Capacity Auction Results and Challenges Thereto.

(a) As soon as practicable after the Forward Capacity Auction is complete, the ISO shall file the results of that Forward Capacity Auction with the Commission pursuant to Section 205 of the Federal Power Act, including the final set of Capacity Zones resulting from the auction, the Capacity Clearing Price in each of those Capacity Zones (and the Capacity Clearing Price associated with certain imports pursuant to Section III.13.2.3.3(d), if applicable), and a list of which resources received Capacity Supply Obligations in each Capacity Zone and the amount of those Capacity Supply Obligations. Upon completion of the fourth and future auctions, such list of resources that receive Capacity Supply

Obligation shall also specify which resources cleared as Conditional Qualified New Generating Capacity Resources. Upon completion of the fourth and future auctions, the filing shall also list each Long Lead Time Generating Facility, as defined in Schedule 22 of Section II of the Transmission, Markets and Services Tariff, that secured a Queue Position to participate as a New Generating Capacity Resource in the Forward Capacity Auction and each resource with lower Queue priority that was selected in the Forward Capacity Auction subject to a Long Lead Time Generating Facility with the higher Queue priority. The filing shall also enumerate bids rejected for reliability reasons pursuant to Section III.13.2.5.2.5, and the reasons for those rejections.

(b) The filing of Forward Capacity Auction results made pursuant to this Section III.13.8.2 shall also include documentation regarding the competitiveness of the Forward Capacity Auction, which may include a certification from the auctioneer and the ISO that: (i) all entities offering and bidding in the Forward Capacity Auction were properly qualified in accordance with the provisions of Section III.13.1; and (ii) the Forward Capacity Auction was conducted in accordance with the provisions of Section III.13.

(c) Any objection to the Forward Capacity Auction results must be filed with the Commission within 45 days after the ISO's filing of the Forward Capacity Auction results. The filing of a timely objection with the Commission will be the exclusive means of challenging the Forward Capacity Auction results.

(d) Any change to the Transmission, Markets and Services Tariff affecting the Forward Capacity Market or the Forward Capacity Auction that is filed after the results of a Forward Capacity Auction have been accepted or approved by the Commission shall not affect those Forward Capacity Auction results.