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July 30, 2015

VIA ELECTRONIC MAIL
AND HAND DELIVERY

Melanie Bachman, Esq.
Acting Executive Director
Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06051

RE: **DOCKET NO. 192B** - An application by Towantic Energy, LLC for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a proposed electric generating facility located north of the Prokop Road and Towantic Hill Road intersection in the Town of Oxford, Connecticut -- CPV Towantic, LLC, Quarterly Progress Report, Q2-2015

Dear Attorney Bachman:

Pursuant to Condition No. 5.a of the Connecticut Siting Council's Decision and Order, dated May 14, 2015, CPV Towantic, LLC hereby submits its Quarterly Progress Report for the 2nd Quarter of 2015.

If you have any questions or require additional information, please contact Franca L. DeRosa or me at 860-509-6500.

Very truly yours,

BROWN RUDNICK LLP

By: _____
Philip M. Small

PMS:ct
Enclosures

cc: Michael Perrone
Fred Cunliffe
Service List Docket No. 192B
Andrew J. Bazinet

CERTIFICATE OF SERVICE

This is to certify that on this 30th day of July, 2015, the foregoing documents were sent via electronic mail, and/or first class mail, to the persons on the attached service list.

By: _____
Philip M. Small

LIST OF PARTIES AND INTERVENORS
SERVICE LIST

Status Granted	Status Holder (name, address & phone number)	Representative (name, address & phone number)
Applicant	CPV Towantic, L.L.C.	Franca L. DeRosa, Esq. Philip M. Small, Esq. Brown Rudnick LLP 185 Asylum Street Hartford, CT 06103 (860) 509-6500 (860) 509-6501 – fax fderosa@brownrudnick.com psmall@brownrudnick.com
Party	Jay Halpern 58 Jackson Cove Road Oxford, CT 06478 h: 203-888-4976 zoarmonster@sbcglobal.net Peter Thomas 72 Towantic Hill Rd. Oxford, CT 06478 203-720-1536	
Intervenor	Town of Middlebury	Attorney Dana A. D'Angelo Law Offices of Dana D'Angelo, LLC 20 Woodside Avenue Middlebury, CT 06762 (203) 598-3336 (203) 598-7283 – fax Dangelo.middlebury@snet.net Stephen L. Savarese, Esq. 103 South Main Street Newtown, CT 06470 203-270-0077 attystephensavarese@gmail.com
Intervenor	The Connecticut Light and Power Company (CL&P)	Stephen Gibelli, Esq. Associate General Counsel The Connecticut Light and Power Company P.O. Box 270 Hartford, CT 06141-0270 (860) 665-5513 (860) 665-5504 –fax gibels@nu.com

Status Granted	Status Holder (name, address & phone number)	Representative (name, address & phone number)
	CL&P continued…	John R. Morissette Manager-Transmission Siting and Permitting The Connecticut Light and Power Company P.O. Box 270 Hartford, CT 06141-0270 (860) 665-2036 morisjr@nu.com Christopher R. Bernard Manager, Regulatory Policy (Transmission) The Connecticut Light and Power Company P.O. Box 270 Hartford, CT 06141-0270 (860) 665-5967 (860) 665-3314 – fax bernacr@nu.com Stella Pace, Senior Engineer The Connecticut Light and Power Company Transmission and Interconnection Dept. P.O. Box 270 Hartford, CT 06141-0270 (860) 665-3569 pacess@nu.com Jeffery D. Cochran Northeast Utilities Service Company 107 Selden Street Berlin, CT 06037 860-665-3548 cochrjd@nu.com
Party	Town of Oxford	Kevin W. Condon, Esq. Condon & Savitt PC P.O. Box 570 Ansonia, CT 06401 203-734-2511 condonsavitt@comcast.net
Party	Naugatuck Valley Chapter Trout Unlimited	Robert M. Perrella, Vice President TU Naugatuck/Pomperaug Valley Chapter 278 W. Purchase Road Southbury, CT 06488-1004 johnnytroutseed@charter.net

Intervenor	Town of Southbury	Ed Edelson First Selectman Town of Southbury 501 Main Street Southbury, CT 06488 selectman@southbury-ct.gov (203) 262-0647 (203) 264-9762 – fax
Party	The Pomperaug River Watershed Coalition	Len DeJong, Executive Director Pomperaug River Watershed Coalition 39 Sherman Hill Road, C103 Woodbury, CT 06798 203-263-0076 LDeJong@pomperaug.org
Intervenor (approved 06/07/06)	Raymond Pietrorazio 764 Charcoal Avenue Middlebury, CT 06762-1311 (203) 758-2413 (203) 758-9519 – fax ray@ctcombustion.com	
Intervenor (approved 10/10/06)	GE Energy Financial Services, Inc.	Jay F. Malcynsky The Law Offices of Jay F. Malcynsky, P.C. One Liberty Square New Britain, CT 06051 (860) 229-0301 (860) 225-4627 – fax Jmalcynsky@gaffneybennett.com
Intervenor (Approved on November 13, 2014)	Borough of Naugatuck and Borough of Naugatuck Water Pollution Control Authority	Edward G. Fitzpatrick, Esq. Alicia K. Perillo, Esq. Fitzpatrick, Mariano, Santos, Sousa, PC 203 Church Street Naugatuck, CT 06770 203-729-4555 Fitz@fmslaw.org alicia@fmslaw.org Ronald Merancy, Chairman Water Pollution Control Authority 229 Church Street Naugatuck, CT 06770 203-720-7000 Rjm62156@aol.com

Intervenor ***(Approved on January 8, 2015)***	Wayne McCormack 593 Putting Green Lane Oxford, CT 06478 wayne@waynemccormack.com	
Intervenor (Approved on January 8, 2015)	Naugatuck River Revival Group, Inc.	Kevin R. Zak, President Naugatuck River Revival Group, Inc. 132 Radnor Avenue Naugatuck, CT 06770 kznrrg@sbcglobal.net 203-530-7850
Intervenor (Approved on January 8, 2015)	Westover Hills Subdivision Homeowners	Chester Cornacchia Westover Hills Subdivision Homeowners 53 Graham Ridge Road Naugatuck, CT 06770 203-206-9927 cc@necsonline.com
Intervenor (Approved on January 8, 2015)	Westover School	Kate J. Truini Alice Hallaran Westover School 1237 Whittemore Road Middlebury, CT 06762 203-758-2423 ktruini@westoverschool.org ahallaran@westoverschool.org
Intervenor (Approved on January 8, 2015)	Greenfields, LLC and Marian Larkin	Edward S. Hill, Esq. Cappalli & Hill, LLC 325 Highland Avenue Cheshire, CT 06410 203-272-2607 ehill@cappallihill.com
Intervenor (Approved on January 8, 2015)	Lake Quassapaug Association, LLC	Ingrid Manning, Vice President Lake Quassapaug Association, LLC P.O. Box 285 Middlebury, CT 06762 203-758-1692 Ingridmanning2@gmail.com

Intervenor (Approved on January 8, 2015)	Middlebury Land Trust, Inc.	W. Scott Peterson, M.D., President Middlebury Land Trust, Inc. 317 Tranquility Road Middlebury, CT 06762 203-574-2020 wsp@aya.yale.edu
Intervenor (Approved on January 15, 2015)	Quassy Amusement Park	George Frantzis Quassy Amusement Park P.O. Box 1107 Middlebury, CT 06762 203-758-2913 ext 108 george@quassy.com
Intervenor (Approved on January 15, 2015)	Middlebury Bridle Land Association	Nancy Vaughan Middlebury Bridle Land Association 61 Sandy Hill Road Middlebury, CT 06762 203-598-0697 ndzijavaughan@gmail.com
Intervenor (Approved on January 15, 2015)	Dennis Kocyla 28 Benz Street Ansonia, CT 06401 203-736-7182 Dennis3141@yahoo.com	
Intervenor (Approved on January 15, 2015)	Naugatuck Valley Audubon Society	Sophie Zyla Jeff Ruhloff Carl Almonte Naugatuck Valley Audubon Society 17 Stoddard Place Beacon Falls, CT 06403 203-888-7945 NVASeditor@mail.com
Intervenor (Approved on January 15, 2015)	Oxford Flying Club	Burton L. Stevens Oxford Flying Club, Inc. P.O. Box 371 Woodbury, CT 06798 203-236-5158 bstevens@snet.net

CPV TOWANTIC, LLC
c/o Competitive Power Ventures, Inc.
50 Braintree Hill Office Park, Suite 300
Braintree, MA 02184

July 28, 2015

Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06051

Attention: Melanie Bachman, Esq., Acting Executive Director

RE: Docket 192B: CPV Towantic, LLC, Quarterly Progress Report, Q2-2015

Ladies and Gentlemen:

Pursuant to Condition No. 5.a of Connecticut Siting Council's Decision and Order dated May 14, 2015 for CPV Towantic, LLC ("CPV Towantic") hereby submits its Quarterly Progress Report for the 2nd Quarter 2015.

The status of the Project's permits during Q2-2015 was as follows:

- On April 16, 2015, the Naugatuck Water Pollution Control Authority (WPCA) approved CPV Towantic's Discharge Permit Application (No. 199902285). CPV Towantic filed the approval with the Connecticut Siting Council on July 21, 2015.
- On June 5, 2015, the Federal Aviation Administration (FAA) completed its aeronautical study of CPV Towantic's eleven (11) applications for a Determination of No Hazard, concluding that the proposed structures "would have no substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft or on the operation of air navigation facilities," and issuing eleven (11) Determinations of No Hazard to Air Navigation. CPV Towantic filed copies of the Determinations with the Connecticut Siting Council on July 21, 2015. CPV Towantic also filed a copy of a FAA "Notice of Valid Petition Received" with the Connecticut Siting Council on July 21, 2015.
- On June 18, 2015, the Federal Energy Regulatory Commission (FERC) issued its Order Accepting Forward Capacity Auction Results Filing (attached hereto) in Docket No. ER15-1137-000, finding that "ISO-NE has demonstrated that the results of FCA 9 are just and reasonable." These auction results include the award of a 725 MW Capacity Supply Obligation to CPV Towantic, beginning on June 1, 2018 and continuing through at least May 31, 2025.

Please contact Andrew Bazinet at (781) 848-3611 or Franca DeRosa at Brown Rudnick LLP at (860) 509-6500 with questions regarding the project or this report.

Sincerely,

CPV Towantic, LLC
By: CPV Towantic Holding Company, LLC as Managing Member of CPV Towantic, LLC

By: _____

Name: Peter J. Podurgiel
Title: Senior Vice President

151 FERC ¶ 61,226
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

ISO New England Inc. Docket No. ER15-1137-000

ORDER ACCEPTING FORWARD CAPACITY AUCTION RESULTS FILING

(Issued June 18, 2015)

1. In this order, the Commission accepts ISO New England Inc.'s (ISO-NE) filing detailing the results of its ninth Forward Capacity Auction (FCA) (FCA 9 Results Filing), to become effective June 27, 2015, as requested.

I. Background

2. ISO-NE administers a Forward Capacity Market (FCM), in which capacity resources compete in an annual FCA to provide capacity for a one-year Capacity Commitment Period three years in the future.[1] Pursuant to its Transmission, Markets and Services Tariff (Tariff), ISO-NE is required to submit a filing with the Commission detailing the FCA results,[2] including the final set of capacity zones resulting from the auction, the capacity clearing price in each capacity zone, the capacity clearing price

[1] *See, e.g., ISO New England Inc.*, 137 FERC ¶ 61,056 (2011); *ISO New England Inc.*, 130 FERC ¶ 61,145 (2010); *ISO New England Inc.*, 127 FERC ¶ 61,040 (2009); *ISO New England Inc.*, 123 FERC ¶ 61,290 (2008). *See generally Devon Power LLC*, 115 FERC ¶ 61,340 (FCM Settlement Order), *order on reh'g*, 117 FERC ¶ 61,133 (2006) (FCM Rehearing Order), *aff'd in relevant part sub nom. Maine Public Utilities Comm'n v. FERC*, 520 F.3d 464 (D.C. Cir. 2008), *order on remand*, *Devon Power LLC*, 126 FERC ¶ 61,027 (2009).

[2] ISO-NE Tariff, § III.13.8.2 (Filing of Forward Capacity Auction Results and Challenges Thereto) (14.0.0).

associated with certain imports,[3] a list of resources that received capacity supply obligations in each capacity zone, and the amount of those capacity supply obligations.

3. ISO-NE conducted its ninth FCA on February 2, 2015, for the June 1, 2018 through May 31, 2019 Capacity Commitment Period. ISO-NE submitted the FCA 9 Results Filing on February 27, 2015.

II. The FCA 9 Results Filing

4. ISO-NE states that FCA 9 was the first auction to use a system-wide sloped demand curve, which is designed to procure over time capacity sufficient to meet the resource adequacy requirement for the New England Control Area. ISO-NE states that four capacity zones were included in FCA 9: Connecticut, Northeastern Massachusetts (NEMA)/Boston, Southeastern Massachusetts (SEMA)/Rhode Island (RI) and Rest-of-Pool.[4] ISO-NE states that FCA 9 commenced with a starting price of $17.728/kW-month. It states that in the NEMA/Boston, Connecticut, and Rest-of-Pool Capacity Zones, the descending clock auction concluded after three rounds with a capacity clearing price of $9.551/kW-month.[5]

5. With respect to the SEMA/RI capacity zone, ISO-NE explains that the administrative pricing provisions in the Tariff relating to Inadequate Supply determined the payment rates in this capacity zone. As described in the Tariff, an import-constrained capacity zone has Inadequate Supply if, at the FCA starting price, the amount of new qualified capacity is less than the amount of New Capacity Required.[6] New Capacity Required is defined as the capacity zone's Local Sourcing Requirement minus the amount of existing resources.[7] In the case of the SEMA/RI capacity zone, ISO-NE states that there were only 7,241 MW (6,888 MW of existing resources and 353 MW of new resources) that qualified to meet the SEMA/RI Local Sourcing Requirement of 7,479 MW.[8]

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[3] ISO-NE Tariff, § III.13.2.3.3(d) (Treatment of Import Capacity) (32.0.0).

[4] Transmittal at 3.

[5] *Id.* at 2.

[6] ISO-NE Tariff, § III.13.2.8.1.1 (Inadequate Supply in an Import-Constrained Capacity Zone) (32.0.0).

[7] *Id.*

[8] Transmittal at 4. ISO-NE explains that it will seek to procure additional resources to make up for this shortfall in the upcoming reconfiguration auctions for the 2018-2019

(continued...)

6. According to ISO-NE, pursuant to the Tariff, if the Inadequate Supply rule is triggered, existing resources receive the maximum applicable Net Cost of New Entry (Net CONE) value or the capacity clearing price for the Rest-of-Pool capacity zone, whichever is greater, and new resources will be paid the FCA starting price.[9] ISO-NE states that Net CONE was $11.08/kW-month and the capacity clearing price for the Rest-of-Pool Capacity zone was $9.551/kW-month. Therefore, ISO-NE states, existing resources in the SEMA/RI capacity zone will be paid a price of $11.08/kW-month, and new resources will be paid the FCA starting price of $17.728/kW-month.

7. With respect to New England's external interfaces, ISO-NE states that the capacity clearing price for imports over the New York AC Ties external interface was $7.967/kW-month and $3.94/kW-month for imports over the New Brunswick external interface.[10] It states that the capacity clearing price on the remaining external interfaces was $9.551/kW-month.

8. ISO-NE states that the Tariff requires it to specify in each FCA Results filing the resources that received capacity supply obligations in each capacity zone.[11] ISO-NE states that these resources are listed in Attachment A to the FCA 9 Results Filing. The Tariff also requires ISO-NE to list which resources cleared as Conditional Qualified New Generating Capacity Resources and to provide certain information relating to Long Lead Time Generating Facilities.[12] ISO-NE states that no resources cleared as Conditional Qualified New Generating Capacity Resources in FCA 9.[13] Additionally, as required by its Tariff, ISO-NE reports that there were no Long Lead Time Generating Facilities that secured a queue position to participate as a New Generating Capacity Resource in FCA 9,

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Capacity Commitment Period. Transmittal, Attachment C, Testimony of Robert Ethier (Ethier Testimony) at 13.

[9] ISO-NE Tariff, § III.13.2.8.1.1(a) (Inadequate Supply in an Import-Constrained Capacity Zone) (32.0.0).

[10] Transmittal at 4.

[11] ISO-NE Tariff, § III.13.8.2(a) (Filing of Forward Capacity Auction Results and Challenges Thereto) (14.0.0).

[12] *Id.*

[13] Transmittal at 4.

nor were any resources with a lower queue priority "selected in the [FCA] subject to a Long Lead Time Facility with a higher queue priority."[14]

9. ISO-NE states that the Tariff requires it to identify in its FCA Results filings any form of de-list bids it rejects for reliability reasons.[15] In its FCA 9 Results Filing, ISO-NE reports that it reviewed 5,537 MW of static de-list bids to determine if those resources were needed for reliability. ISO-NE states that no de-list bids were rejected for reliability reasons.[16]

10. Finally, as required by the Tariff,[17] ISO-NE included in its FCA 9 Results Filing documentation regarding the competitiveness of the auction.[18] Included in this documentation is an affidavit by the Internal Market Monitor, Jeffrey McDonald, certifying the results of FCA 9. Mr. McDonald confirms that the outcome of FCA 9 system-wide was the result of a competitive auction.[19] Only the capacity price for the SEMA/RI capacity zone was not considered competitive since Inadequate Supply in this zone required that suppliers be paid in accordance with administrative pricing rules rather than a market clearing price. Mr. McDonald also states that each round of the auction was evaluated by the Internal Market Monitor, and no evidence of manipulative behavior was noted.[20]

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[14] ISO-NE Tariff, § III.13.8.2 (Filing of Forward Capacity Auction Results and Challenges Thereto) (14.0.0).

[15] *Id.*

[16] Transmittal at 4.

[17] ISO-NE Tariff, § III.13.8.2(b) (Filing of Forward Capacity Auction Results and Challenges Thereto) (14.0.0).

[18] Transmittal at 5.

[19] Transmittal, Attachment D, Testimony of Jeffrey McDonald (McDonald Testimony) at 4.

[20] *Id.* at 5.

III. Notice of the Filing

11. Notice of the filing was published in the *Federal Register*, 80 Fed. Reg. 12,160 (2015), with interventions and protests due on or before April 13, 2015.[21] H.Q. Energy Services (U.S.) Inc.; New England States Committee on Electricity; Electric Power Supply Association; Calpine Corporation; Entergy Nuclear Power Marketing, LLC; New England Power Pool Participants Committee; EquiPower Resources Corp.; Essential Power, LLC, Essential Power Massachusetts, LLC, Essential Power Newington, LLC; TransCanada Power Marketing Ltd.; PSEG Companies;[22] Emera Energy Services Inc.; Exelon Corporation; NRG Companies;[23] Northeast Utilities Service Company; Utility Workers Union of America Local 464 and Robert Clark (Utility Workers Union); CPV Towantic, LLC; and New England Power Generators Association, Inc. (NEPGA) filed timely motions to intervene. NextEra Energy Resources, LLC filed an out-of-time motion to intervene.

12. On April 13, 2015, Utility Workers Union submitted a protest.

13. On April 28, 2015, NEPGA submitted an answer, and on May 13, 2015, Utility Workers Union submitted an answer to NEPGA's answer.

IV. Responsive Pleadings

14. Utility Workers Union states that the Commission should reject the FCA 9 Results Filing, asserting that the results are the product of continued illegal market manipulation by Energy Capital Partners, the owner of the Brayton Point Power Station (Brayton Point), at the time of FCA 8 and FCA 9.[24] Utility Workers Union argues that the retirement of Brayton Point is a continued violation of the Tariff, which only allows and recognizes

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[21] Pursuant to section III.13.8.2(c) of the Tariff, any objection to the FCA results must be filed with the Commission within 45 days from the date of the FCA Results filing.

[22] The PSEG Companies include PSEG Power LLC, PSEG Energy Resources & Trade LLC, and PSEG Power Connecticut LLC.

[23] The NRG Companies include NRG Power Marketing LLC and GenOn Energy Management, LLC.

[24] Utility Workers Union Protest, Docket No. ER15-1137-000, at 3.

retirements of existing resources if the resource is shown to be uneconomic to run on a stand-alone basis.[25]

15. Referring to its previously filed protest, answer, and amended protest to the FCA 8 Results Filing,[26] Utility Workers Union alleges that Energy Capital Partners could have earned a profit by offering Brayton Point's capacity into FCA 8, but instead withheld that capacity, with the intent of raising the profits earned by Energy Capital Partners' other assets.[27] Utility Workers Union requests, at a minimum, that the FCA 9 Results Filing be stayed while the parties conduct discovery and adjudicate the legality of Energy Capital Partners' actions.

16. In its answer to Utility Workers Union's protest, NEPGA states that the Commission previously considered and rejected the allegation that the owners of Brayton Point engaged in market manipulation by submitting a Non-Price Retirement Request in FCA 8 and that Utility Workers Union's argument is a collateral attack on prior Commission orders.[28] NEPGA also argues that the Tariff does not require existing generating capacity resources to provide an economic justification for their retirement and that the Tariff squarely places the decision to retire within the discretion of the resource.[29]

17. In its answer to NEPGA's answer, Utility Workers Union argues that neither of NEPGA's two arguments have merit. Specifically, it states that OE staff's previous findings regarding allegations of market manipulation do not bar Utility Workers Union's

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[25] *Id.* at 3 (referring to ISO-NE Tariff, § III.13.2.5.2.5.3 (Retirement of Resources) (32.0.0)).

[26] Utility Workers Union, Protest, Docket No. ER14-1409-000 (filed April 14, 2015); Utility Workers Union, Answer, Docket No. ER14-1409-000 (filed June 10, 2014); Utility Workers Union, Amended Protest, Docket No. ER14-1409-000 (filed February 10, 2015).

[27] Utility Workers Union Protest, Docket No. ER15-1137-000, at 4.

[28] NEPGA Answer at 3-4 (citing to *ISO New England Inc.*, 148 FERC ¶ 61,201, at P 11 (2014) (". . . the Office of Enforcement [OE] conducted a limited review of Brayton Point's bidding behavior to determine whether investigation of Brayton Point was warranted. . . . OE staff found credible justifications for the owners' retirement decision and elected not to widen its investigation to include Brayton Point") and *ISO New England Inc.*, 149 FERC ¶ 61,227, at P 67 (2014)).

[29] NEPGA Answer at 4-5.

arguments by the doctrine of collateral estoppel.[30] Utility Workers Union states that collateral estoppel requires such allegations to have been litigated in a proceeding to which the applicable interveners were a party, which it argues is not the case here. Utility Workers Union also argues that although the Tariff does not require a retiring resource to show that a proposed retirement is economically justified in all circumstances, the Tariff does require such a showing in circumstances where a retirement would directly cause market price increases.[31] Specifically, Utility Workers Union argues that pursuant to the Tariff, a resource seeking to retire but needed for reliability is only allowed to retire "as permitted by applicable law."[32] It argues that Brayton Point retirement is illegal under the Federal Power Act, applicable regulations, and the precedents of the Commission regarding uneconomic withholding of supply for the purpose of intentionally increasing prices for other generation in the market.

V. Discussion

A. Procedural Issues

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely-filed unopposed motions to intervene serve to make the entities filing them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), we will grant NextEra Energy Resources, LLC's late-filed motion to intervene given their interests in this proceeding, the early stage of this proceeding, and the absence of undue prejudice or delay.

19. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers filed by NEPGA and Utility Workers Union because they have provided information that has assisted us in our decision-making process.

B. Determination

20. Based on the evidence presented, we find that ISO-NE has demonstrated that the results of FCA 9 are just and reasonable. Accordingly, we accept the FCA 9 Results

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[30] Utility Workers Union Answer, Docket No. ER15-1137-000, at 3-4.

[31] *Id.* at 5.

[32] *Id.* at 7 (citing ISO-NE Tariff, § III.13.2.5.2.5.3(a)(iii) (Retirement of Resources) (32.0.0)).

Filing, effective July 27, 2015, as requested. As described by ISO-NE, FCA 9, which was conducted for the first time using the system-wide sloped demand curve, resulted in a capacity clearing price of $9.551/kW-month for the NEMA/Boston, Connecticut, and Rest-of-Pool capacity zones. ISO-NE explains that this clearing price was determined by the clearing engine maximizing social surplus (i.e., finding smaller capacity offers instead of choosing a larger, non-divisible offer that would have resulted in deadweight loss).[33] For New York AC Ties and New Brunswick imports, the capacity clearing price was $7.967/kW-month and $3.94/kW-month, respectively. Finally, due to Inadequate Supply in the SEMA/RI capacity zone, which triggered the administrative pricing provisions of the Tariff that address market power concerns, new resources in the SEMA/RI capacity zone will be paid the auction starting price of $17.728/kW-month, and existing resources will be paid the price of Net CONE, $11.08/kW-month.

21. The FCA 9 Results Filing includes a certification from ISO-NE's Internal Market Monitor, Mr. McDonald, that all offers and bids required by the Tariff to be reviewed by the Internal Market Monitor were properly reviewed, and that the outcome of FCA 9 system-wide was the result of a competitive auction. Furthermore, Mr. McDonald has certified that no anti-competitive behavior in FCA 9 was evident. The Internal Market Monitor makes this finding based on rigorous qualification requirements, the competitive bidding of new resources, and the absence of any anti-competitive behavior affecting the auction outcome.[34]

22. Regarding Utility Workers Union's protest, we note, as an initial matter, that this proceeding is limited to the FCA 9 Results Filing; thus, we will not consider arguments regarding FCA 8.[35] We are not persuaded by Utility Workers Union's allegations that market manipulation affected FCA 9, as the record is devoid of any evidence to that effect. Further, Utility Workers Union's argument is premised on the possibility that Brayton Point would be able to participate in FCA 9, which is not the case.[36] Brayton Point

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[33] Ethier Testimony at 7-9.

[34] McDonald Testimony at 4.

[35] We do note that during a non-public investigation into the bidding behavior in FCA 8, OE staff conducted a limited review of Brayton Point's bidding behavior and found credible justifications for the owners' retirement decision and elected not to widen its investigation to include Brayton Point. *ISO New England Inc.*, 148 FERC ¶ 61,201, at P 11 (2014).

[36] In Docket No. EL14-99-000, the Commission stated in its order to show cause that, following the Internal Market Monitor's rejection of Brayton Point's static de-list bid, the owners of Brayton Point submitted a Non-Price Retirement Request,

(continued...)

submitted a Non-Price Retirement Request prior to FCA 8, and has notified ISO-NE of its intent to retire despite identified reliability needs.[37] Under ISO-NE's Tariff, once a resource submits a Non-Price Retirement Request, that resource is not allowed to offer capacity into subsequent auctions under the Tariff.[38] This binding obligation to retire is critical in addressing the Commission's concern that absent such a binding obligation, a resource may use de-list bids or Non-Price Retirement Requests to obtain cost-based rate treatment in years when cost-of-service treatment would provide more revenue than the resource might earn in the market only to then re-enter the capacity market at market rates in years when market-based treatment is likely to produce more revenue, thus inappropriately toggling between cost-based and market-based compensation.[39] Thus,

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permanently removing Brayton Point from the FCM. *See ISO New England, Inc.*, 148 FERC ¶ 61,201, at P 9 (2014).

[37] ISO New England, Forward Capacity Auction Results Filing, Docket No. ER14-1409-000, Transmittal, Attachment B, Testimony of Stephen J. Rourke at 6 (February 28, 2014) (footnote omitted):

> Brayton Point Station generators 1 – 4 submitted a NPRR on October 6, 2013 and, on December 20, 2013, the ISO provided the determination that the four resources, totaling 1,525 MW, were needed for reliability. However, on January 27, 2014, the ISO was informed that these four resources would seek retirement effective June 1, 2017. As a result, the Brayton Point Station 1 – 4 generators did not participate in the eighth FCA.

[38] *See* ISO-NE Tariff, § III.13.1.2.3.1.5.1: "A Non-Price Retirement Request is a binding request to retire all or part of a Generating Capacity Resource. . . . Once submitted, a Non-Price Retirement Request may not be withdrawn." *See also ISO New England Inc.*, 125 FERC ¶ 61,102, at P 41 (2008) ("[I]t is not accurate to state that resources are compelled to remain in the market against their will. Under ISO-NE's proposal, any resource that wishes to retire can do so by submitting a non-price retirement request, and the resource is allowed to retire even if ISO-NE concludes that it is needed for reliability").

[39] "Resources whose permanent de-list bids or non-price retirement requests are rejected for local reliability concerns will have the option of receiving cost-based payments, but once the reliability concern is resolved, any cost-based payments will terminate and *that resource will be unable to participate in any future auctions, eliminating the ability for the resource to receive market-based capacity payments*. This, in coordination with a security review of bilateral transfers of capacity, prevents gaming by holding these units needed for reliability to their committed capacity obligation." *ISO New England Inc.*, 125 FERC ¶ 61,102, at P 47 (2008) (emphasis added).

under the Tariff, Brayton Point's owner would not have been able to offer its capacity into FCA 9. Moreover, requiring Brayton Point to offer in FCA 9 after it committed to retire in FCA 8, as requested by Utility Workers Union, would run contrary to the Commission's reasoning behind this rule. Based upon the foregoing, we reject Utility Workers Union's challenges to the FCA 9 Results Filing.[40]

The Commission orders:

ISO-NE's FCA 9 Results Filing is hereby accepted for filing, to become effective June 27, 2015, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

[40] UWUA points to section III.13.2.5.2.5.3(a)(iii) of the Tariff, which provides that "[i]n cases where [a resource] has submitted a Non-Price Retirement Request and the request is not approved because the resource is determined to be needed for reliability pursuant to Section III.13.2.5.2.5, . . . the resource subject to the Non-Price Retirement Request may nonetheless retire as permitted by applicable law[.]" UWUA argues that under this provision, Brayton Point may not be retired, since according to UWUA, the owner of Brayton Point retired the unit prior to FCA 8 with the intent of manipulating the market, and UWUA argues that this is inconsistent with the "applicable law" of the Federal Power Act's anti-manipulation provisions. *See* Utility Workers Union Protest, Docket No. ER15-1137-000, at 9. The alleged act of market manipulation of which UWUA complains, however, took place in the context of FCA 8, and the Commission's actions with regard to the results of FCA 8 were taken in Docket No. ER14-1409-000 and are currently pending appeal. *Public Citizen, Inc., and George Jepsen, Attorney General of Conn. v. FERC*, Nos. 14-1244 and 14-1246 (D.C. Cir. filed 11/14/2014).

Document Content(s)