

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Constellation Mystic Power, LLC)	Docket No. EL20-52-000
v.)	
ISO New England, Inc.)	

**PROTEST OF THE
NEW ENGLAND POWER GENERATORS ASSOCIATION OF THE
CONSTELLATION MYSTIC POWER, LLC COMPLAINT**

Pursuant to the notice issued by the Federal Energy Regulatory Commission (“FERC” or “Commission”) on June 11, 2020,¹ the New England Power Generators Association, Inc. (“NEPGA”)² submits this protest to Constellation Mystic Power, LLC’s (“Mystic”) complaint against ISO New England, Inc. (“ISO-NE”).³ As discussed further herein, NEPGA requests that the Commission deny Mystic’s complaint in its entirety.

In the complaint, Mystic alleges a host of violations of ISO-NE’s Transmission, Markets, and Services Tariff (“Tariff”) in an attempt to convince the Commission that ISO-NE is rushing forward to retire Mystic Units 8 & 9 prematurely without regard to the limits of its authority under the Tariff or to system reliability. As discussed further below, Mystic’s claims ignore the history of its own efforts to retire the Mystic Units, are unsupported by the Tariff, and are contrary to Commission precedent. ISO-NE has been engaged in a Tariff-directed competitive solicitation process to identify a long-term solution that would allow ISO-NE to accommodate Mystic’s

¹ *Constellation Mystic Power, LLC v. ISO New England, Inc.*, Notice of Complaint, Docket No. EL20-52 (June 11, 2020).

² The comments expressed herein represent those of NEPGA as an organization, but not necessarily those of any particular member.

³ Complaint and Request for Shortened Answer Period and Fast Track Processing of Constellation Mystic Power, LLC, Docket No. EL20-52 (June 10, 2020) (“Complaint”).

retirement request in accordance with its obligations to maintain the reliability of the ISO-NE grid. Consistent with its long-standing practice of clarifying in its planning procedures the details of the local transmission reliability review required under Section III.13.2.5.2.5 of the Tariff, ISO-NE has modified Planning Procedure No. 10 (“PP-10”) to provide market participants with clarity regarding the manner in which ISO-NE will take into account solutions identified through the competitive solicitation process when re-evaluating Mystic’s rejected De-List Bids in accordance with the Tariff. Granting the complaint would itself require a change to the Tariff to remove ISO-NE authority to establish the nature of the re-evaluation of previously rejected Retirement De-List Bids and require ISO-NE to ignore the availability of transmission solutions identified through the solicitation.

Holding a competitive solicitation process to find solutions to the reliability concerns presented by the retirement of the Mystic Units, only to ignore these solutions in re-evaluating whether the Mystic Retirement De-List Bids should be accepted, makes no sense and is inconsistent with the ISO-NE Tariff and PP-10. Such an outcome would only unnecessarily delay the retirement of the Mystic Units and pass higher costs onto ISO-NE transmission customers.

I. BACKGROUND

Mystic has been attempting to retire the Mystic Units now for several years.⁴ Mystic first submitted Dynamic De-List Bids⁵ for Mystic Units 7, 8, and 9 in 2017 for ISO-NE’s twelfth forward capacity auction (“FCA 12”). ISO-NE rejected the bids for Mystic Units 7 and 8, and Mystic was compensated at its De-List Bid offer price.⁶

⁴ See Mystic Complaint at Exh. MYS-0001 at PP 11-15.

⁵ A Dynamic De-List Bid is a bid requesting that an existing capacity resource be permitted to remove itself for a one-year period. ISO-NE Tariff, Section 1 (definition of Dynamic De-List Bid).

⁶ Unit 9 was not required for transmission reliability and subsequently assumed a Capacity Supply Obligation for FCA 12 in order to allow Unit 7 to shed its capacity obligation. See *Constellation Mystic Power, LLC*, 170 FERC ¶ 61,006

Mystic subsequently submitted a Retirement De-List Bid for the Mystic Generating Station on March 23, 2018, effective June 1, 2022. Mystic's Retirement De-List Bid was unconditional, meaning that in the absence of a cost-of-service agreement it would retire the units regardless of the clearing price in FCA 13.⁷ In other words, the submission of a Retirement De-List Bid represents a request to remove capacity from the ISO-NE markets permanently at the start of the relevant Capacity Commitment Period. If accepted, it will lead to the exit of all ISO-NE markets and the surrender of interconnection rights.⁸ However, immediately following the submission of Mystic's Retirement De-List Bid, ISO-NE announced that it would seek a waiver at FERC to keep Mystic Units 8 & 9 on the basis of a fuel security concern.⁹

Importantly, the decision of ISO-NE to reject a Retirement De-List Bid for reliability reasons does not mean that the resource will never be permitted to retire. By design, the retention of a unit for reliability represents a temporary measure to preserve system reliability while ISO-NE takes steps to address the underlying reliability needs. Once ISO-NE identifies potential solutions to meet those needs, the Tariff provides that the resource shall be retired no later than the first day of the Capacity Commitment Period when the resource is able to shed its Capacity Supply Obligation.¹⁰

Given its conclusion that Mystic Units 8 & 9 were needed for system reliability in the FCA 13 Capacity Commitment Period, ISO-NE took steps to retain these units on a temporary basis.

at PP 2-3 (2020) (explaining briefly the history of Mystic's De-List Bids); *see also* Mystic Complaint at Exh. MYS-0001 at 3.

⁷ Tariff at Sections III.13.1.2.3.1.5.1, III.13.1.2.4.1(a).

⁸ *Id.* at Section III.13.1.2.3.1.5.

⁹ *See Constellation Mystic Power, LLC*, 170 FERC ¶ 61,006 at PP 2-3 (2020) (explaining briefly the history of Mystic's De-List Bids).

¹⁰ Tariff at Section III.13.2.5.2.5(f).

At the time, however, the Tariff did not give ISO-NE the authority to retain units for fuel security. To ensure that it did not violate the provisions of its Tariff, ISO-NE submitted a petition for waiver of certain Tariff provisions to allow ISO-NE to retain Mystic Units 8 & 9.¹¹

The Commission denied the petition, but concluded that the existing ISO-NE Tariff was unjust and unreasonable because it failed to address regional fuel security issues.¹² As a result, the Commission directed ISO-NE to adopt interim Tariff revisions that provided for the filing of a “short-term, cost-of-service agreement to address demonstrated fuel security concerns.”¹³ At the same time, the Commission reaffirmed its “support for market solutions as the most efficient means to provide reliable electric service to New England consumers at just and reasonable rates” and directed ISO-NE to expeditiously move forward to implement permanent solutions capable of eliminating the need for the retention of the Mystic Units.¹⁴

In accordance with these directives, ISO-NE submitted Tariff revisions to establish an interim process to facilitate the retention of generation resources needed for fuel security while ISO-NE moved forward with implementation of a longer-term market solution.¹⁵ When submitting these revisions, ISO-NE noted that the implementation details regarding the assumptions and methodology that would be employed when evaluating whether to retain a unit for fuel security would be provided in PP-10 consistent with its existing practices respecting

¹¹ ISO New England Inc., Petition for Waiver of Tariff Provisions, Docket No. ER18-1509-000 (filed May 1, 2018).

¹² *ISO New England Inc.*, 164 FERC ¶ 61,003 at PP 1-2 (2018) (denying the waiver request and instituting a FPA section 206 proceeding to investigate whether ISO-NE’s tariff was just and reasonable).

¹³ *Id.* at P 55.

¹⁴ *Id.* at PP 53-55.

¹⁵ ISO New England Inc., Compliance Filing to Establish a Fuel Security Reliability Standard, Short-Term Cost-of-Service Mechanism, and Related Cost Allocation for Out-of-Market Compensation, Docket Nos. EL18-182-000 & ER18-2364-000 (filed Aug. 31, 2018).

reliability evaluations.¹⁶ After the Commission approved the Tariff revisions, ISO-NE entered into a cost-of-service agreement with Mystic for two Capacity Commitment Periods, ensuring the retention of Mystic Units 8 & 9 through the end of the FCA 14 Capacity Commitment Period.¹⁷

On September 14, 2018, consistent with Attachment K of the Tariff, ISO-NE initiated the Boston Area Needs Assessment to identify local transmission needs associated with the Mystic Generating Station.¹⁸ In December 2019, after presenting the results of that assessment to the NEPOOL Planning Advisory Committee, ISO-NE announced that it was moving forward with the region's first Order No. 1000¹⁹ competitive solicitation process to identify a "competitively-selected transmission solution to address reliability concerns associated with the upcoming retirement of the Mystic Generating Station" (the "Boston RFP").²⁰

On March 4, 2020, prospective transmission developers submitted 36 proposals in response to the Boston RFP, including a "Backstop Transmission Solution."²¹ After applying the evaluation criteria set forth in the RFP and the Tariff, ISO-NE determined that five proposals met the applicable criteria and RFP requirements, and has made a preliminary finding that the Backstop Transmission Solution is the most competitive option.²² ISO-NE is expected to post the final

¹⁶ *Id.*, Exhibit ISO-1 at 3-4.

¹⁷ See Mystic Complaint at Exh. MYS-0001, P 14.

¹⁸ Notice of Initiation of 2028 Boston Area Needs Assessment (Sept. 14, 2018), https://www.iso-ne.com/static-assets/documents/2018/09/notice_of_initiation_of_boston_2028_needs_assessment_study.pdf.

¹⁹ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

²⁰ Memorandum from Brent Oberlin, Director of Transmission Planning, on the issuance of the Boston 2028 Request for Proposal to the Planning Advisory Committee and Qualified Transmission Project Sponsors of ISO-NE (Dec. 20, 2019), *available at* https://www.iso-ne.com/static-assets/documents/2019/12/boston_2028_rfp_announcement.pdf.

²¹ ISO-NE, Draft Boston 2028 Request for Proposal (RFP) – Review of Phase One Proposals at 10 (June 16, 2020) ("Phase One Report"), *available at* https://www.iso-ne.com/static-assets/documents/2020/06/draft_boston_2028_rfp_review_of_phase_one_proposals.docx.

²² Mystic Complaint at Exh. MYS-0016, Slides at 17-34.

listing of qualifying proposals by July 17, 2020, after giving stakeholders an opportunity to comment on ISO-NE's analysis and selection process.²³

With the ongoing Boston RFP process representing ISO-NE's first Order No. 1000 competitive solicitation process, ISO-NE also commenced a process to revise PP-10 to clarify the manner in which it would take into account solutions identified through competitive solicitation processes when conducting the re-evaluation of previously-rejected Retirement De-List Bids. ISO-NE proposed to revise Section 7.5 of PP-10 to clarify that it may consider whether some of the competitive solicitation proposals are reasonably likely to timely meet the reliability need, and if so, conclude that the reliability need identified by the rejected Retirement De-List Bid will be timely met.²⁴ After vetting its proposal through the NEPOOL process and receiving the support of 99.12% of the NEPOOL Participants Committee, ISO-NE adopted the proposed revisions to PP-10, effective June 4, 2020.

II. PROTEST

Having previously accepted that “any resource, including Mystic 8 & 9, which agrees to be retained under a cost of service agreement must be prepared to retire permanently,”²⁵ Mystic now seeks to create a barrier intended to prevent ISO-NE from retiring the units for FCA 15 and potentially subsequent FCAs. After a multi-year process to identify permanent solutions to accommodate Mystic's retirement request, Mystic has filed a complaint requesting that the Commission direct ISO-NE to *ignore* the results of the Boston RFP when re-evaluating Mystic's

²³ *Id.* at Slide 51.

²⁴ PP-10 (rev. 26) at 32.

²⁵ Constellation Mystic Power, LLC Answer and Motion for Leave to Answer at 9, Docket No. ER18-1639-000 (filed June 19, 2018) (quoting ISO-NE Motion and Answer at 20, Docket No. ER18-1509-000 (filed June 7, 2018) (footnotes omitted)).

De-List Bids for FCA 15 based on its assertions that ISO-NE's revisions to PP-10 and conduct of the Boston RFP violate the Tariff. These claims have no merit.

The ISO-NE Tariff already gives ISO-NE the flexibility to holistically consider whether there have been changes in resources, transmission solutions, or other facts or circumstances when reevaluating a previously rejected De-List Bid to determine whether a suitable alternative to the resource has been identified, thus enabling that resource to retire. ISO-NE's revisions to PP-10 appropriately clarify this existing authority by addressing the manner in which transmission solutions identified through competitive solicitation processes will be taken into account when re-evaluating previously rejected De-List Bids. Granting the complaint would essentially undermine ISO-NE's flexibility in a manner inconsistent with the Tariff and the Planning Procedures. It also would require ISO-NE to abide by an impossible standard when re-evaluating previously rejected De-List Bids—a standard which would prevent resources operating under a cost-of-service agreement from being timely retired once the underlying reliability need has been met.

Mystic's claims regarding the conduct of the Boston RFP are a distraction from the central issue in this proceeding: whether the Tariff requires ISO-NE to ignore information about the availability of transmission solutions when re-evaluating previously rejected De-List Bids. The fact is that the Boston RFP has provided ISO-NE with information about transmission solutions that can be implemented by the anticipated retirement date of the Mystic Units, and the Tariff provides ISO-NE with the authority necessary to take this information into account when re-evaluating the continued need for the Mystic Units. And while Mystic attempts to convince the Commission that it should "second guess" ISO-NE's reliability determinations by claiming that ISO-NE is hastily moving forward with the Boston RFP in a desperate attempt to retire the Mystic Units, these arguments have no basis in fact and are undermined by the very evidence that Mystic

has submitted in its complaint. Moreover, “second guessing” ISO-NE’s determinations regarding solutions that could enable the retirement of the Mystic Units would be wholly inconsistent with the Commission’s long-standing practice of deferring to RTOs and ISOs with respect to their reliability determinations.

A. ISO-NE’s Changes To The Planning Procedure Are Consistent With The Tariff And The Rule Of Reason

1. The Planning Procedure 10 Revisions Are Appropriate And Implement ISO-NE’s Existing Authority Under The Tariff

Mystic devotes the majority of its complaint to attempting to convince the Commission that ISO-NE has impermissibly rewritten the terms of the Tariff through PP-10. At their core, these arguments are founded upon the assumption that ISO-NE may take into account only transmission solutions identified through the Boston RFP if they meet the requirements set out in the Tariff for the inclusion of transmission facilities in the Network Model. In support, Mystic points to several provisions of the Tariff that provide that transmission facilities may not be incorporated into the Network Model unless the project sponsor has executed a Selected Qualified Transmission Project Sponsor Agreement or met certain certification criteria set out in the Tariff.²⁶

But Mystic’s arguments overlook a key fact: the Tariff provisions governing the *re-evaluation* of previously rejected Retirement De-List Bids do not prescribe how ISO-NE must undertake that review. In other words, the two provisions on which Mystic relies pertain to only what must be included in the Network Model and are inapposite to the *re-evaluation* required by Section III.13.2.5.2.5.²⁷ More specifically, the Tariff sections governing re-evaluations of

²⁶ Mystic Complaint at 27 (referring to various sub-sections in Section III.12.6 of the Tariff).

²⁷ See Tariff at III.12.6 (identifying the modeling assumptions for determining the Network Model, the process for establishing the Network Model, thresholds for inclusion in the Network Model, and evaluation criteria for inclusion in the Network Model, and when competitively selected transmission projects are to be included in the Network Model).

previously rejected Retirement De-List Bids—Sections III.13.2.5.2.5(e) and (h)—neither reference the Network Model nor provide any specifics regarding how ISO-NE must conduct that re-evaluation. Instead, these provisions provide that ISO-NE will re-evaluate periodically whether the reliability need that caused the rejection of the De-List Bid has been resolved through a subsequent auction or “through other reasonable means . . . including transmission enhancements[.]”²⁸ and leaves the details of how this review will be conducted to the planning procedures.²⁹

In the case of re-evaluation of previously rejected De-List Bids, this detail is supplied by Section 7.5 of PP-10. Notably, Section 7.5 does not limit ISO-NE to considering only those solutions that merit inclusion in the Network Model. Instead, Section 7.5 provides ISO-NE with flexibility regarding the manner in which it re-reviews previously rejected De-List Bids and contemplates a holistic evaluation of whether the underlying reliability need will be met by new transmission projects, new capacity resources, or other factors.³⁰ Nor does any other provision of PP-10 suggest that ISO-NE may only consider transmission solutions that meet the criteria for inclusion in the Network Model. For instance, while Section 3 of PP-10 requires the use of the Network Model for certain purposes and provides extensive detail regarding the process for updating the model, it does not include any language limiting the information that may be taken into account by ISO-NE when re-evaluating a previously rejected De-List Bid.³¹

²⁸ *Id.* at Section III.13.2.5.2.5(e).

²⁹ *See, e.g., id.* at Section III.13.2.5.2.5(h) (stating that “the ISO shall (i) review each specific reliability need with the Reliability Committee in accordance with the timing provided for in the ISO New England Operating Documents”).

³⁰ PP-10 (rev. 26), Section 7.5.

³¹ *Id.*, Section 3. The tariff provision addressing updates to the Network Model—Section III.12.6—also does not limit the factors that ISO-NE may take into account when reevaluating a previously rejected De-List Bid.

ISO-NE's revisions to PP-10 therefore provide transparency regarding the manner in which ISO-NE will implement its existing Tariff authority to take into account transmission solutions identified through a competitive solicitation process. And while Mystic would have the Commission believe that the timing of these revisions shows that ISO-NE is attempting to go "behind the back" of the Commission to retire Mystic without regard to the Tariff or system reliability, ISO-NE's decision to make these revisions after commencing the Boston RFP is unremarkable, as the Boston RFP represents the first competitive solicitation process that has been held in ISO-NE in accordance with Order No. 1000. This process was initiated solely to address the Boston area transmission needs and allow ISO-NE to honor the long-standing request to retire the Mystic Units. ISO-NE's revisions to PP-10 are appropriate and consistent with the objective of ensuring that market participants are provided transparency into the assumptions that ISO-NE employs when re-evaluating De-List Bids.

The nature of Mystic's requested remedy further undermines its claims that ISO-NE was required to make a Tariff filing. Notably, Mystic does not ask the Commission to direct ISO-NE to submit a proposed Tariff revision. Instead, Mystic asks the Commission to apply the previous version of PP-10 when re-evaluating the Mystic Retirement De-List Bids.³² Mystic's proposed remedy is flawed in several respects.

First, the prior version of PP-10 was never approved by the Commission, as PP-10—both before and after the revisions at issue—contain only implementation details. As explained above, the Tariff already gives ISO-NE flexibility to take into account a range of factors when re-evaluating a previously rejected De-List Bid. There is no basis for the Commission to direct ISO-

³² Mystic Complaint at 50.

NE to apply a previous version of an unfiled business practice when the Tariff already gives it the authority to consider information acquired through the Boston RFP process.

Second, neither the prior version of PP-10 nor the Tariff contain any specific guidance on how to address proposals identified through a competitive solicitation process conducted to address the reliability need associated with a previously rejected Retirement De-List Bid; instead, the Tariff grants ISO-NE discretion regarding the factors that it takes into account in its review of a previously rejected De-List Bid. And the transparency provided in the revised version of PP-10 does just that. Thus, directing ISO-NE to follow the previous version of PP-10 and the current Tariff would not, as Mystic suggests, require ISO-NE to ignore information obtained through the Boston RFP process merely because a particular solution did not meet the criteria for inclusion in the Network Model.

2. The Commission Has Recognized That ISO-NE Should Be Given Flexibility When Evaluating Reliability And Operational Needs

The Commission has recognized the importance of giving ISO-NE flexibility when making decisions regarding what is needed to maintain reliability, including when conducting re-evaluations of previously rejected De-List Bids. Specifically, the Commission has rejected arguments that the Tariff provisions respecting the re-evaluation of previously rejected De-List Bids gave ISO-NE too much discretion in a proceeding concerning proposed revisions to Section III.13.2.5.2.5(h) of the Tariff.³³ In that case, a number of parties opposed ISO-NE's proposed revisions on the basis that they would eliminate the existing framework for reliability reviews, allowing ISO-NE to "conduct an unspecified 'review [of] each specific reliability need' associated

³³ *ISO New England Inc.*, 140 FERC ¶ 61,088 (2012). The order addresses Section III.13.2.5.2.5(g), which was subsequently renumbered to Section III.13.2.5.2.5(h).

with the rejection of any de-list bid.”³⁴ ISO-NE pointed out, however, that that the protesters’ assertions regarding the framework of reliability reviews did not align with the actual language of the Tariff—“which requires no specific studies and specified no level of detail”—and that it was critical that ISO-NE be given the ability to exercise judgment in the conduct of reliability reviews in consultation with the Reliability Committee and stakeholders.³⁵ While the Commission emphasized the importance that ISO-NE make reasonable efforts to provide stakeholders with transparency into the manner in which ISO-NE conducts its reviews, the Commission agreed with ISO-NE that the Tariff afforded it with an appropriate level of discretion and found that, as “an independent administrator” and “neutral party,” ISO-NE is best positioned to determine how to conduct reliability evaluations.³⁶

Nor is there anything remarkable about ISO-NE exercising its judgment to determine whether a solution identified through the Boston RFP is reasonably likely to be in-service prior to the Capacity Commitment Period for FCA 15. While Mystic argues that the language of PP-10 will give ISO-NE an inappropriate level of discretion over whether to take into account a transmission solution in its re-evaluation of Mystic’s Retirement De-List Bids, the Commission has recognized that it is appropriate to give RTOs discretion when addressing operational and reliability-related matters.³⁷ Indeed, there are numerous provisions of the ISO-NE Tariff that

³⁴ *Id.* at P 22; *see also Cal. Indep. Sys. Operator Corp.*, 168 FERC ¶ 61,199 at P 31 (2019) (declining to require in the tariff precise details of CAISO’s study methodology for reviewing whether transmission solutions would alleviate a RMR agreement).

³⁵ *ISO New England Inc.*, 140 FERC ¶ 61,088 at P 26.

³⁶ *Id.* at P 30.

³⁷ *Big Sandy Peaker Plant, LLC, et al. v. PJM Interconnection, L.L.C.*, 154 FERC ¶ 61,216 at P 50 (2016) (“*Big Sandy*”).

already call upon ISO-NE to determine whether an event is reasonably likely to occur such that it should be taken into account in ISO-NE's operational and planning determinations.³⁸

3. Mystic Mischaracterizes The Commission's March 2020 Order

Mystic claims that the Commission's March 6, 2020 order rejecting proposed revisions concerning the eligibility of resources retained for fuel security to meet transmission needs demonstrates that ISO-NE's changes to PP-10 had to be made through a Tariff filing.³⁹ In particular, Mystic notes that the Commission stated that it remained open to ISO-NE "proposing to revise the relevant reliability review timeline to ensure that resources are not unnecessarily retained when transmission solutions will be in place in time to address identified reliability needs."⁴⁰

Mystic fundamentally mischaracterizes the Commission's statements. Nothing in the March 2020 order suggests that the Commission was seeking to constrain ISO-NE's discretion in the types of information it could consider in conducting reliability reviews of De-List Bids. Nor did the order provide that the only way to account for such solutions is to submit revisions to the Tariff. Instead, the Commission was inviting ISO-NE to take proactive steps to avoid unnecessarily retaining resources during periods that they are no longer needed to maintain reliability. While the Commission noted that these steps could include revising the timeline for reliability reviews, the Commission never suggested that revisions to the Tariff were necessary for

³⁸ See, e.g., Tariff at Section III.12.6 (giving ISO-NE discretion to determine whether a generating unit or External Elective Transmission Upgrade is "reasonably expected" to be in commercial operation prior to the first day of a Capacity Commitment Period); Section III.13.1.1.2.4(e) (giving ISO-NE discretion to determine whether data provided by intermittent resource "reasonably supports" the claimed summer and winter capacity).

³⁹ Mystic Complaint at 47 (citing *ISO New England Inc.*, 170 FERC ¶ 61,183 at P 30 (2020) ("March 2020 Order")).

⁴⁰ *Id.* (quoting *ISO New England Inc.*, 170 FERC ¶ 61,183 at P 30).

ISO-NE to take into account solutions identified through the Boston RFP when re-evaluating the need for the Mystic Units.⁴¹

Mystic also overlooks the fact that none of ISO-NE's changes to PP-10 have the effect of modifying the timeline for ISO-NE's re-evaluation of previously rejected Retirement De-List Bids. These revisions merely clarify how ISO-NE plans to take into account the results of projects evaluated under an Order No. 1000 competitive process when conducting re-evaluations of previously rejected Retirement De-List Bids. In addition, Mystic misreads the statement "transmission solutions *will be in place*" to suggest that any transmission solution must be virtually certain to be in-service to support Mystic's request to retire its units.⁴² ISO-NE's Tariff does not impose such an unrealistically high standard, and Mystic's attempt to misconstrue the Commission's statements in an attempt to read in a new, impossibly high standard into the Tariff should be rejected.

4. Mystic's Concerns Regarding A Potential De-Link With The Network Model Are Baseless

Once it is recognized that the Tariff gives ISO-NE discretion regarding how to re-evaluate previously rejected Retirement De-List Bids, it becomes clear that Mystic's arguments criticizing the potential for a "de-link" between ISO-NE's analysis of the Mystic Units and the Network Model for conducting the FCA are inapposite and completely without merit. Because the Tariff does not limit ISO-NE to considering only transmission solutions included in the Network Model when conducting its re-evaluation of Retirement De-List Bids, there is nothing inherently problematic with there being a difference between the assumptions employed by ISO-NE in its re-

⁴¹ The logic of Mystic's argument implies that the Commission proactively took steps to review all Tariff provisions that might relate to the issue at hand, but there is no suggestion in the order that the Commission undertook such a review.

⁴² *ISO New England Inc.*, 170 FERC ¶ 61,183 at P 30 (emphasis added).

evaluation of Mystic's Retirement De-List Bids and the Network Model used for other purposes in the FCA. Even Mystic concedes that there have been instances where the Network Model *has* been updated in the months leading up to the FCA.⁴³ As a result, Mystic's arguments respecting the potential for a de-link are speculative.

It also is worth noting that the Forward Capacity Market and the retention of Mystic address separate and distinct reliability needs. As the Commission has recognized, while forward capacity markets are intended to ensure resource adequacy, reliability-must-run agreements, such as the cost-of-service agreement in place for Mystic, address fuel-security, local transmission issues and other needs that are not captured by the capacity market.⁴⁴ The distinction between resource adequacy and the reliability needs addressed by the retention of Mystic further highlight the limits of Mystic's arguments.

In short, Mystic's arguments that ISO-NE's revisions to PP-10 violate the Tariff do not survive scrutiny. Rather than seeking to enforce the Tariff, the complaint seeks to change the Tariff by restricting the scope of ISO-NE's re-evaluations of rejected Retirement De-List Bids in a manner that is unsupported by the Tariff and Commission precedent. The reason for this is clear: forcing ISO-NE to ignore transmission solutions identified in the Boston RFP—an RFP conducted specifically for the purpose of addressing reliability issues associated with the retirement of the Mystic Units—will inevitably lead to the conclusion that the Mystic Units must be retained for reliability and continue to operate under a cost-of-service agreement for yet another Capacity

⁴³ Mystic Complaint at n.127.

⁴⁴ See, e.g., *New York Indep. Sys. Operator, Inc.*, 161 FERC ¶ 61,189 at PP 62-63 (2017) (differentiating between reliability evaluations for resource adequacy (capacity markets) and RMR agreements (local transmission security needs); *PJM Interconnection, L.L.C.*, 150 FERC ¶ 61,122, at PP 52-53 (2015) (finding that an out-of-market RMR agreement was not needed for resource adequacy concerns).

Commitment Period. This outcome that stands in direct contradiction to Mystic’s presumed objective when it submitted Retirement De-List Bids more than two years ago.

5. ISO-NE’s Revisions Do Not Violate The Rule of Reason

Mystic’s arguments that ISO-NE’s decision to provide clarity through PP-10 revisions—rather than through Tariff amendments—violates the Rule of Reason policy fare no better. As an initial matter, Mystic’s claim that ISO-NE’s revisions to PP-10 violate the Rule of Reason because they “substantively change[] the rules” is based on the flawed premise that ISO-NE may only take into account in its local transmission reliability reviews those transmission solutions that meet the criteria for inclusion in the Network Model. As described above, however, ISO-NE’s revisions do not change any Tariff rules or otherwise stray from the only relevant Tariff provisions at Section III.13.2.5.2.5; they merely clarify how ISO-NE plans to exercise its existing authority under the Tariff to conduct re-evaluations of previously rejected Retirement De-List Bids.

Mystic’s claim that the revisions to PP-10 violate the Rule of Reason because they could impact the rates paid to generators is similarly flawed. By Mystic’s logic, every assumption employed by ISO-NE when re-evaluating a previously rejected De-List Bid would need to be set forth in the Tariff, as these assumptions would necessarily affect whether a resource continued to operate under a cost-of-service agreement or not. In practice, however, the Commission has consistently recognized that the fact that a particular assumption or input has the potential to affect rates is not determinative of whether it must be set forth in a filed tariff. To the contrary, the Rule of Reason recognizes that there are an “infinite of practices affecting rates and services” and allows FERC to exercise its discretion to allow utilities to forgo filing particular practices.⁴⁵

⁴⁵ *New York Indep. Sys. Operator, Inc.*, 165 FERC ¶ 61,011 at P 53 (2018).

In applying the Rule of Reason, the Commission has explained that RTOs may use their manuals and procedures to set out “implementation details” providing market participants with notice of how the RTO conducts its operations under the tariff.⁴⁶ The Commission has been particularly reluctant to require RTOs to attempt to specify every rule or practice employed when analyzing the operational and reliability needs of the system in order to provide the RTO and stakeholders the flexibility needed in the “context of a proactive, dynamic . . . planning process”⁴⁷ and in recognition of the need to “provide operational and reliability-related discretion to independent system operators, and to not second-guess their decisions[.]”⁴⁸ This has been particularly true where the rule or practice was developed in consultation with, and ultimately approved by, stakeholders and where the rule or practice was within the scope of existing tariff authority.⁴⁹

ISO-NE’s decision to provide clarity regarding the treatment of transmission solutions identified pursuant to the Boston RFP through revisions to PP-10—rather than through Tariff revisions—is fully consistent with the Rule of Reason. ISO-NE’s revisions merely provide transparency regarding how ISO-NE will implement its authority to re-evaluate previously rejected De-List Bids. These revisions were developed in consultation with stakeholders, with these revisions ultimately receiving the support of 99.12% percent of the NEPOOL Participants

⁴⁶ *Cal. Indep. Sys. Operator Corp.*, 122 FERC ¶ 61,271 at P 16 (2008); *see also Cal. Indep. Sys. Operator Corp.*, 168 FERC ¶ 61,199 at P 31 (2019) (declining to require in the tariff precise details of CAISO’s study methodology for reviewing whether transmission solutions would alleviate a RMR agreement).

⁴⁷ *See Sw. Power Pool, Inc.*, 132 FERC ¶ 61,042 at P 57 (2010); *see also ISO New England Inc.*, 154 FERC ¶ 61,008 at P 32 (2016); *Big Sandy* at P 50 (finding that requiring PJM Interconnection, L.L.C. (“PJM”) “to set forth in the PJM Tariff an exclusive list of all specific, reliability-related reasons that could result in the deselection of a generating resource . . . would necessarily limit PJM to those tariff criteria, and could compromise PJM’s ability to respond to changes in operations or characteristics of the PJM system, a class of generating resources, or individual generating resources.”).

⁴⁸ *Big Sandy*, 154 FERC ¶ 61,216 at P 50.

⁴⁹ *See Sw. Power Pool, Inc.*, 132 FERC ¶ 61,042 at P 57.

Committee. To hold that ISO-NE is required to set out every rule, practice, or assumption employed when evaluating previously rejected De-List Bids would prevent ISO-NE from taking into account changes in the characteristics of the system and other changes in facts and circumstances merely because they had not been precisely described in the Tariff. Such a result would be fundamentally inconsistent with the Commission’s recognition of the importance of affording ISO-NE and other RTOs flexibility when dealing with operational or reliability matters.⁵⁰

B. Mystic’s Concerns Regarding Reliability Are Unfounded

Throughout the complaint Mystic tries to convince the Commission that ISO-NE is shirking its reliability obligations by gambling on speculative and uncertain transmission solutions.⁵¹ According to Mystic, the effect of ISO-NE’s revisions to PP-10 will be to allow ISO-NE to retire the Mystic Units based on “guesswork and gut feeling” regarding whether any of the proposals identified through the Boston RFP could address the transmission security issues associated with the retirement of the Mystic Units.⁵² Mystic also asserts that ISO-NE should cast aside concerns about excessive costs borne by ratepayers and instead implement an impossibly high standard that would prevent all but in-service projects from being considered in the re-evaluation of a previously rejected Retirement De-List Bids.

Mystic’s concerns are unfounded and unsupported by law or evidence. At its core, Mystic’s complaint asks the Commission to accept Mystic’s view of when transmission solutions would be sufficiently advanced to take into account when re-evaluating previously rejected Retirement De-List Bids—a case of asking the fox to watch the hen house. The Commission has

⁵⁰ See, e.g., *Milford Power Co., LLC*, 110 FERC ¶ 61,299 at P 42 (2005).

⁵¹ Mystic Complaint at 7, 16-25, 32-35, 36-44.

⁵² *Id.* at 18 (emphasis in original), 22.

emphasized, however, that ISO-NE is best positioned to determine what measures are needed to maintain reliability and regularly rejects requests to “second guess” ISO-NE’s reliability determinations.⁵³ Mystic’s arguments that ISO-NE is “gambling” with reliability strain credulity and are undercut by Mystic’s own statements in related proceedings and the very evidence that Mystic has submitted with the complaint.⁵⁴

1. Mystic Mischaracterizes The PP-10 Revisions

Mystic mischaracterizes ISO-NE’s revisions to PP-10 by claiming that these changes will allow ISO-NE to retire the Mystic Units if any of the proposals identified through the Order No. 1000 process “could possibly be constructed in time”⁵⁵ to address the transmission security issues associated with the retirement of the Mystic Units. To the contrary, ISO-NE’s changes to PP-10 merely clarify what ISO-NE has authority to do under the Tariff: to exercise its judgment to determine whether the reliability need that led to the rejection of Mystic’s Retirement De-List Bids will be addressed by the commencement of the FCA 15 Capacity Commitment Period.

Mystic claims that ISO-NE will endanger reliability by taking into account solutions identified through the Boston RFP process when there is no guarantee that they will actually be built. In effect, Mystic suggests that ISO-NE cannot take into account the existence of a transmission solution if there is *any possibility* that the solution may not be constructed by the beginning of the relevant Capacity Commitment Period.⁵⁶ Because the FCA is a three-year

⁵³ See, e.g., *Milford Power Co., LLC*, 110 FERC ¶ 61,299 at P 42 (“We also will not second-guess the reliability determinations of ISO-NE, the independent grid operator responsible for ensuring reliability in the region.”).

⁵⁴ See *Exelon Corp., Answer and Motion for Leave to Answer*, Docket No. ER18-1509-000 (June 7, 2018) (“In addressing ISO-NE’s proposal to maintain reliability in the interim, the Commission should give the *most weight to the views of entities whose interests are not as economically driven as the protesters*, like the gas LDCs, *who have actual responsibility to maintain reliability*, the External Market Monitor, and ISO-NE itself, who all support granting the waiver now.” (emphasis added)).

⁵⁵ Mystic Complaint at 18.

⁵⁶ *Id.* at 36-44.

forward auction, however, there will always be a certain degree of uncertainty regarding the in-service date of any solution at the time that ISO-NE re-evaluates a previously rejected De-List Bid. Endorsing Mystic’s view would effectively guarantee that resources retained for reliability would not be retired until years *after* the underlying reliability need had been met. Mystic’s reasoning would allow the Mystic Units to be held and clear in FCA 15, and potentially through FCA 18,⁵⁷ when it would not be needed for reliability in any of those Capacity Commitment Periods.

Indeed, Mystic acknowledges that the implication of its position is that ISO-NE would only be able to take into account solutions identified through the Boston RFP in “FCA 16 at the earliest,” with the possibility that this may be further delayed until “FCA 17 or beyond.”⁵⁸ By asking the Commission to require ISO-NE to ignore transmission solutions identified through the Boston RFP process unless there is near certainty that a project will be built, Mystic is asking the Commission to endorse an impossible standard—one that would undermine the Order No. 1000 process and effectively force ISO-NE to retain the Mystic Units until the selected transmission solution had been fully constructed and energized.⁵⁹

Mystic’s reliance on the Commission’s statements in the March 2020 Order to support its argument that ISO-NE may only take into account a transmission solution in its re-evaluation if it is virtually certain it will be in-service by the relevant Capacity Commitment Period is misplaced.⁶⁰ Importantly, the March 2020 Order was not establishing a substantive standard that ISO-NE was required to meet in determining whether a solution identified through the Boston RFP should be taken into account in its reliability review. To the contrary, the Commission was merely

⁵⁷ FCA 18 commences in February 2024, four months prior to the beginning of the FCA 15 Capacity Commitment Period.

⁵⁸ Mystic Complaint at Exh. MYS-0001 at P 48.

⁵⁹ *Id.* at 39-40 (describing various projects that were delayed and implying an even higher standard is needed).

⁶⁰ *Id.* at 47 (citing March 2020 Order at P 30).

responding to concerns raised by ISO-NE—when the Boston RFP was still in its early stages—about the possibility that the timing of the identification of solutions through the competitive solicitation process might not align with the timing of its reliability re-evaluation.

ISO-NE’s plan to take into account transmission solutions that it determines are “reasonably likely to be in-service” is fully compatible with the March 2020 Order. The Commission did not determine that ISO-NE may take into account transmission solutions only if there was *no uncertainty* whether they would be timely constructed as Mystic suggests. Instead, the Commission recognized that ISO-NE would need to make a determination in its reliability review regarding the future availability of transmission, but observed that ISO-NE had not yet had an opportunity to evaluate the solutions identified through the Boston RFP—responses that had only been submitted two days before the Commission’s order. ISO-NE’s revisions to PP-10 merely clarify the standard that it will apply in analyzing whether a transmission solution identified through the Boston RFP or other similar competitive transmission RFP will be in-service in time to address the relevant reliability need.

In addition, Mystic exaggerates the uncertainty surrounding the development of solutions identified through the Boston RFP.⁶¹ As an initial matter, the transmission facilities that Mystic points to as demonstrating the purported uncertainty of transmission development in New England bear no resemblance to the Backstop Transmission Solution that has been identified through the Boston RFP.⁶² In particular, the Backstop Transmission Solution,⁶³ which entails substituting several components at an existing substation, is far more limited in scope than the examples cited

⁶¹ *Id.* at 36-43.

⁶² Mystic Complaint at 39.

⁶³ The Backstop Transmission Solution consists of upgrades to the PTO’s existing infrastructure, including installing two 345 kV series reactors, installing a 167 MVAR STATCOM at an existing substation, and installing a DTT scheme on a given line to eliminate a contingency. Mystic Complaint at Exh. MYS-0016, Slide 53.

by Mystic.⁶⁴ The target in-service date of the Backstop Transmission Solution—which is 8 months prior to the start of the FCA 15 Capacity Commitment Period—also mitigates the risk that delays could prevent the solution from being in-service in time to meet the reliability needs at issue.

Mystic appears to concede that it “may” be appropriate to consider a transmission solution if the developer has entered into a binding commitment to build, but claims that none of the solutions identified through the solicitation process have met this requirement.⁶⁵ Mystic ignores, however, that the Tariff imposes an affirmative obligation on the relevant Participating Transmission Owner (“PTO”) to build the Backstop Transmission Solution.⁶⁶ Specifically, by definition, a Backstop Transmission Solution is a solution proposed to address a reliability need identified by ISO-NE in a Needs Assessment “by the PTO or PTOs with an obligation . . . to address the identified need.”⁶⁷ The obligation to build is further reflected in Section 4.3(a) of Attachment K, which provides that the PTO identified by ISO-NE as the “Backstop Transmission Solution provider” shall submit a Backstop Transmission Solution for any need identified in the request for proposal that would be “solved by a project located within or connected to its . . . existing electric system, and which it . . . would therefore have an obligation to build under Section 3.09(a)” of the Transmission Operating Agreement (“TOA”).⁶⁸

⁶⁴ Mystic Complaint at 39-40. Mystic’s comparison examples are different orders of magnitude in complexity and scale than the Backstop Transmission Solution. For instance, Mystic points to the DesertLink Project, a new 60-mile 500 kV line in Nevada. Besides the CAISO process, this project also had to be reviewed by California, obtain rights-of-way from the Bureau of Land Management, obtained an amended right-of-way after the engineering was substantially complete, receive a revised state authorization, and seek FERC approval for its formula rates. This project bears no resemblance to the limited scale of Backstop Transmission Solution.

⁶⁵ Mystic Complaint at 12, 22, 39-44.

⁶⁶ Tariff at Attachment K, § 4.3(a).

⁶⁷ Tariff at Section I (“General Terms and Conditions”).

⁶⁸ Tariff at Attachment K, § 4.3(a).

In short, there is no basis for concluding that ISO-NE is using the revisions to PP-10 to grant itself unfettered discretion to act in a manner that is inconsistent with the Tariff or that otherwise gambles with system reliability. Mystic clearly would prefer that ISO-NE be required to ignore cheaper solutions to meet local reliability that have been identified through the Boston RFP when re-evaluating Mystic’s Retirement De-List Bids. But the result would be that ratepayers would continue to be saddled with the much higher costs of subsidizing the Mystic Units for several years beyond its anticipated retirement date—even if the Backstop Transmission Solution is placed in service eight months before the start of the FCA 15 Capacity Commitment Period.⁶⁹ Such a result would be unjust and unreasonable and fundamentally inconsistent with the Commission’s repeated recognition that the retention of the Mystic Units is intended to be an interim solution to meet reliability needs.⁷⁰

2. Mystic’s Concerns Regarding The Boston RFP Are A Distraction

Mystic attempts to cloud the core issues in this proceeding by making vague assertions that ISO-NE violated Tariff provisions governing the Order No. 1000 competitive solicitation process when conducting the Boston RFP.⁷¹ Even if Mystic were able to demonstrate that ISO-NE had committed some technical Tariff violation when conducting the Boston RFP—which it has not—that would not change the fact that the Tariff unequivocally gives ISO-NE the flexibility to take into account information that it receives through the Boston RFP process when re-evaluating previously rejected De-List Bids. The fact remains that ISO-NE identified numerous solutions that met the RFP and Tariff requirements and had the potential to be in place prior to start of the

⁶⁹ Mystic Complaint at Exh. MYS-0016, Slide 53 (stating that the Backstop Transmission Solution would be in service in October 2023).

⁷⁰ See, e.g., Mystic Complaint at 9 (noting that “the forward capacity market itself was designed and implemented to end ISO-NE’s frequent reliance on out-of-market “reliability-must-run” agreements....” (citations omitted)).

⁷¹ Mystic Complaint at 32-35.

FCA 15 Capacity Commitment Period. As demonstrated above, taking into account information about these solutions is consistent with the ISO-NE Tariff.

In addition, Mystic’s arguments that ISO-NE rushed “some aspects” of the RFP analysis are undercut by ISO-NE’s June 9, 2020 presentation—one that Mystic acknowledges it had “not fully reviewed” prior to filing the complaint—providing an overview of the analyses performed for each of the proposals submitted in response to the Boston RFP and an explanation of how this process comported with its Tariff.⁷² ISO-NE explains how it performed a preliminary review, evaluated whether Proposals complied with the requirements of the RFP and Attachment K, and provided project sponsors with an opportunity to cure minor deficiencies.⁷³ ISO-NE also explains how it determined that five Proposals met the foregoing requirements and how it applied a competitiveness evaluation to arrive at the Backstop Transmission Solution.

The Commission should not allow vague and unsupported allegations regarding ancillary issues to distract it from the key issue in this proceeding: whether the Tariff allows ISO-NE to take into account information obtained through the Boston RFP when re-evaluating the need for the Mystic Units. As demonstrated above, the ISO-NE Tariff gives ISO-NE ample flexibility to take into account this information; ISO-NE’s revisions to PP-10 merely implement ISO-NE’s existing Tariff authority. For that reason, the Commission should deny the complaint.

⁷² *See id.* at 32, Exh. MYS-0016. This presentation was subsequently updated by ISO-NE on June 12, 2020. ISO-NE rejected requests that it prematurely release the results of the competitive solicitation process prior to conducting its evaluation. As noted in the March 19, 2020 letter provided as Exhibit No. MYS-0004 to the complaint, ISO-NE rejected initial stakeholder requests that ISO-NE immediately post the proposals received in response to the competitive solicitation process in order to allow it to complete its evaluation.

⁷³ *Id.* at Exh. MYS-0016. Since the June 9th presentation, ISO-NE has continued to share information with stakeholders regarding its analysis. *See, e.g.*, ISO New England Inc., Planning Advisory Committee, Meeting Documents (June 17, 2020), *available at* <https://www.iso-ne.com/event-details?eventId=140525>.

III. CONCLUSION

As demonstrated herein, the Commission should deny Mystic's complaint.

Respectfully submitted,

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Dated: June 30, 2020

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service lists compiled by the Secretary in these proceedings.

Dated at Washington, DC, this 30th day of June 2020.

/s/ Boris Shkuta
Boris Shkuta