

155 FERC ¶ 61,173
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ISO New England Inc.

Docket No. ER08-633-003

ORDER DIRECTING RESETTLEMENTS

(Issued May 19, 2016)

1. In this order, the Commission directs resettlements, consistent with ISO New England's (ISO-NE) proposed methodology, to Connecticut resources that were not able to prorate, or reduce, their capacity offers, due to reliability requirements during ISO-NE's first Forward Capacity Auction (FCA). We also require ISO-NE to charge those resettlements to Regional Network Load within the affected Reliability Region, consistent with ISO-NE's current treatment of such resources.

I. Background

2. As discussed in an earlier order in this proceeding, ISO-NE and its stakeholders have developed the Forward Capacity Market (FCM), pursuant to which capacity resources compete to be selected to provide capacity to the New England region on a three-year forward basis through an FCA held every year, and ISO-NE makes capacity payments to those resources that clear the auction.¹ ISO-NE conducted its first FCA on February 4-6, 2008 (FCA 1), and, on March 3, 2008, it submitted those auction results to the Commission.² In that filing, ISO-NE stated that it had procured capacity equal to the region's Net Installed Capacity Requirement (ICR)³ of 32,305 MW and that, because the

¹ *ISO New England Inc.*, 123 FERC ¶ 61,290 (2008) (Initial Order), *order denying reh'g and on informational filing*, 130 FERC ¶ 61,235 (2010) (Rehearing Order).

² Docket No. ER08-633-000 (March 3, 2008 Filing).

³ The Net ICR is the net amount of capacity to be purchased in the FCA to meet the reliability requirements defined for the New England Control Area.

auction cleared at the floor price of \$4.50/kW-month with excess capacity above the Net ICR, “proration of either the price of capacity or the MW provided will take place.”⁴

3. As the Commission stated in the Rehearing Order, proration was required such that the total payment to all listed capacity resources equaled the clearing price multiplied by the ICR, as specified in ISO-NE’s Transmission, Markets and Services Tariff (Tariff) section III.13.2.7.3(b) (Proration Rule).⁵ Citing to the Proration Rule, ISO-NE stated that resources could elect to receive either a Capacity Supply Obligation⁶ of their full cleared capacity at a price of \$4.254/kW-month (price proration), or could prorate their offers clearing in the FCA by choosing to restore the price to \$4.50/kW-month and reduce their Capacity Supply Obligations by an equivalent percentage (quantity proration). The Proration Rule also specified, however, that all proration was “subject to reliability review.”

4. The PSEG Power Companies (PSEG), an owner of generation resources in New England and a supplier that submitted an offer into the FCA, protested the March 2, 2008 filing, arguing that “[t]he structure of the tariff makes clear that resources not allowed to prorate [due to reliability review] should be paid the otherwise applicable [unprorated] clearing price.”⁷

5. In the Initial Order, the Commission accepted the results of FCA 1, rejecting PSEG’s interpretation of the Proration Rule and of the final sentence, “[a]ny proration shall be subject to reliability review.” The Commission found that, if quantity proration would lead to the violation of reliability criteria (including the transmission security margin), resources could only prorate price.⁸ Therefore, the Commission found, PSEG’s

⁴ March 3, 2008 Filing at 2.

⁵ Rehearing Order, 130 FERC ¶ 61,235 at P 41.

⁶ Resources that receive a Capacity Supply Obligation through the FCA are required to offer their capacity into the Day-Ahead and Real-Time Energy Markets every day that the resource is physically available. In return for that obligation, those resources receive capacity payments.

⁷ PSEG Protest at 8.

⁸ Initial Order, 123 FERC ¶ 61,290 at PP 74-75.

interpretation would violate the ISO-NE Tariff and the FCM Settlement,⁹ both of which limited the total payment for capacity to the amount equal to the ICR multiplied by the clearing price. The Commission explained that the FCM Settlement thus imposed a cap on the total payment that customers were required to make for capacity, and PSEG's interpretation would violate that cap.¹⁰

6. PSEG sought rehearing of the Initial Order, reiterating its previous arguments that, once the Connecticut resources were found to be needed for reliability, they should be paid the full market clearing price under the language of the Proration Rule. The Commission denied PSEG's request for rehearing.¹¹

7. PSEG then appealed the Commission's Initial and Rehearing Orders to the U.S. Court of Appeals for the D.C. Circuit, and the court remanded the case to the Commission.¹² The court found that "the rule does not unambiguously proclaim FERC's position that the total payment cap is sacrosanct even during reliability review."¹³ The court then remanded the case to permit the Commission to exercise its discretion as to "whether it wishes to retain its interpretation knowing that other options are permissible," including PSEG's interpretation (that the phrase "any proration shall be subject to reliability review" means that resources that are required to maintain reliability should not be subject to any proration at all).¹⁴

8. On June 2, 2015, the Commission issued an order on remand reversing its prior determinations. It found that interpreting the Proration Rule "as requiring that, where resources are needed for reliability and cannot prorate quantity, they must also accept a prorated price . . . would result in unjust, unreasonable, and unduly discriminatory rates for resources located in constrained areas," and that therefore, "it is appropriate to look at

⁹ The Forward Capacity Market was put into place by a settlement among ISO-NE and its stakeholders (the FCM Settlement), filed March 6, 2006, Docket No. ER03-563-030, accepted by the Commission in *Devon Power LLC*, 115 FERC ¶ 61,340, *order on reh'g*, 117 FERC ¶ 61,133 (2006). See FCM Settlement, section III.G.4.

¹⁰ *Id.* P 75.

¹¹ Rehearing Order, 130 FERC ¶ 61,235 at P 41.

¹² *PSEG Energy Resources & Trade LLC v. FERC*, 665 F.3d 203 (D.C. Cir. 2011) (Remand Order).

¹³ *Id.* 665 F.3d 203 at 209.

¹⁴ *Id.*, 665 F.3d 203 at 209-10 (citations omitted).

possible resettlements for PSEG and other Connecticut generators that were not able to prorate quantity” in FCA 1.¹⁵

9. Accordingly, the Commission requested additional briefing on the following issues: (1) the identities of the Connecticut resources that were unable to prorate quantity in the first FCA, and the number of megawatts for which each resource received a capacity obligation; (2) any resettlements due to each such entity, based on the difference between (a) the prorated price that the resources did receive, and (b) the un-prorated capacity clearing price that the resources would have received absent price proration, plus interest; (3) the parties to whom the resettlements should be charged;¹⁶ (4) the mechanism by which ISO-NE intends to make such resettlements; and (5) any considerations that would render the resettlements inappropriate or difficult.¹⁷

II. Interventions, Briefs, and Answers

10. On June 2, 2015, the Retail Energy Supply Association (RESA) filed a motion to intervene out of time.¹⁸ On July 17, 2015, ISO-NE, Bridgeport Energy LLC (Bridgeport), PSEG, and Dominion Resources Services, Inc. (Dominion)¹⁹ filed initial

¹⁵ *ISO New England Inc.*, 151 FERC ¶ 61,196, at PP 18, 21 (2015) (Order on Remand).

¹⁶ The Commission required ISO-NE to address whether those resettlements should be charged to Regional Network Load within the affected Reliability Region, consistent with the current version of the Proration Rule, which provides that (emphasis added) “[w]here 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 Regional Network Load within the affected Reliability Region*[.]” *Id.* P 23(c) (emphasis in original).

¹⁷*Id.* P 23.

¹⁸ RESA states that it was not until the Commission issued its Order on Remand that RESA became aware that FCA 1 might be resettled, and resettlement of FCA 1 could directly affect RESA's members and result in an unexpected allocation of associated costs. RESA Motion to Intervene Out of Time at 3.

¹⁹ Dominion includes Dominion Energy Marketing, Inc. and Dominion Nuclear Connecticut, Inc.

briefs. On August 17, 2015, Bridgeport filed a reply brief and on September 2, 2015, ISO-NE filed an answer to Bridgeport's reply brief.

III. Discussion

A. Procedural Issues

11. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2015), we will grant RESA's motion to intervene out of time, given its interest in this proceeding, and because doing so will not disrupt the proceeding or place additional burdens on existing parties. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept ISO-NE's answer to Bridgeport's reply brief because it has provided information that assisted us in our decision-making process.

B. Initial Briefs

12. ISO-NE provides a list of the Connecticut resources that elected quantity proration in FCA 1, but were rejected for reliability reasons. ISO-NE also provides the number of megawatts for which each such resource received a Capacity Supply Obligation for the 12 months of the Capacity Commitment Period.²⁰ ISO-NE makes two observations about Table 1. First, the table includes demand resources because ISO-NE believes that the Commission intends for the potential resettlement to include demand resources; if this is not the case, ISO-NE requests that the Commission so indicate in a final order directing resettlement. Second, all of the Capacity Supply Obligation amounts exclude self-supplied megawatts because, ISO-NE states, under the Tariff,²¹ resources do not receive monthly capacity payments for the portion of each resource designated as self-supplied. Therefore, ISO-NE believes that it is appropriate to exclude such megawatts from any potential resettlement.²²

13. Table 1 shows the base refund due to each resource listed. ISO-NE states that, consistent with the Order on Remand, this amount is "based on the difference between

²⁰ ISO-NE Initial Brief, Attachment A, Table 1, at columns A and B, respectively. ISO-NE also notes that Real-Time Emergency Generation Resources are not included in the resettlements, because they are not subject to the Proration Rule. ISO-NE Initial Brief at 3.

²¹ ISO-NE Tariff section III.13.7.2.6.

²² ISO-NE Initial Brief at 3.

(1) the prorated price that the resources received, and (2) the un-prorated capacity clearing price that the resources would have received absent price proration.”²³ As noted above, for FCA 1, the prorated price in each case was \$4.254/kW-month; the un-prorated price in each case was \$4.50/kW-month.²⁴ Hence, the base refund due to each resource is calculated by multiplying the resource’s average monthly Capacity Supply Obligation megawatts by \$0.246/kW-month (the difference between \$4.50 and \$4.254). This result is a monthly value, so the base refund amount is also multiplied by twelve to cover the entire Capacity Commitment Period. According to Table 1, the total base refund for the Connecticut resources is \$17,328,360.05.

14. As described above, the Commission also directed ISO-NE to include interest in the resettlement calculations.²⁵ According to ISO-NE, the estimated amount of interest due to each resource is shown in column D of Table 1. ISO-NE states that it calculates the interest amount under the method set forth in the Commission’s regulations, 18 C.F.R. § 35.19a (2015), with interest compounding quarterly from the actual monthly payment dates in the first Capacity Commitment Period, using the interest rates provided on the Commission’s website.²⁶ ISO-NE states that it has selected a resettlement date of December 14, 2015 (which requires that interest be estimated through December 18, 2015), which coincides with the ISO-NE regular billing cycle.²⁷ Total interest for the Connecticut resources is shown at \$3,063,759.49. Thus, the total refund (base refund plus interest) due to the Connecticut resources that elected quantity proration in FCA 1 but were rejected for reliability reasons, is \$20,392,119.54. ISO-NE states that when the Commission issues a final order in this proceeding, ISO-NE will recalculate the interest amounts shown in Table 1 to reflect the final resettlement date (if the Commission directs resettlement to occur earlier or later than December 14, 2015) and to reflect updated interest rates posted by the Commission. At that time, ISO-NE will also recalculate the total refund amounts (base refund plus interest).²⁸

²³ Order on Remand, 151 FERC ¶ 61,196 at P 23.

²⁴ Initial Order, 123 FERC ¶ 61,290 at P 5.

²⁵ Order on Remand, 151 FERC ¶ 61,196 at P 23.

²⁶ *Interest Rates*, <http://www.ferc.gov/enforcement/acct-matts/interest-rates.asp>.

²⁷ ISO-NE states that because the Commission has not yet posted interest rates for the fourth quarter of 2015, for that quarter, it has used the same values applicable to the third quarter of 2015. ISO-NE Initial Brief at 5.

²⁸ *Id.*

15. ISO-NE contends that because the payments at issue here would have been made to the resource's Lead Market Participant during the Capacity Commitment Period, it is appropriate that any resettlement directed by the Commission, plus interest, be paid to the resource's Lead Market Participant during the first Capacity Commitment Period. However, according to ISO-NE, 13 resources underwent a change of Lead Market Participant during the first Capacity Commitment Period, and for such resources, ISO-NE states that it will allocate the resource's base refund and associated interest to each Lead Market Participant as appropriate on a monthly basis. For example, if the change occurred halfway through the commitment period, then the first Lead Market Participant will receive the base refund for the first six months of the period, and associated interest on that amount, through the final resettlement date. The second Lead Market Participant will then receive the base refund for the second six months of the period, and associated interest on that amount, through the final resettlement date.²⁹ In addition, ISO-NE states that any questions about which party is entitled to the resettlement payments must be addressed between the parties outside this proceeding based on the specific contractual arrangements surrounding the change in Lead Market Participant or ownership.³⁰

16. With regard to the resettlement charges, ISO-NE adds that, unless directed otherwise by the Commission, it will charge the costs of any resettlement using the mechanism in section III.13.2.7.3(b)(iv) in the currently-effective Tariff, which allocates such costs to Regional Network Load within the affected Reliability Region. Therefore, any resettlement payments directed by the Commission in this proceeding for Connecticut resources that were not able to prorate will be collected from Regional Network Load within Connecticut. Table 2 of Attachment A contains the amounts of those charges and lists the parties that would be charged as a result of the resettlement.³¹

17. PSEG states in its brief that it supports the Commission's finding that the capacity resources should receive the difference between their prorated and full non-prorated price plus interest to ensure the resources are made whole. PSEG asserts that in FCA 1, PSEG Power Connecticut LLC (PSEG Power CT) received a Capacity Supply Obligation of 960.512 MW and received a prorated price of \$4.254/kW-month. PSEG states that the total amount due to PSEG Power CT would be \$2,835,431.42 plus applicable interest

²⁹ ISO-NE further states that Lead Market Participant changes, ownership changes, and resource retirements after the end of the first Capacity Commitment Period will not be reflected in the resettlement. *Id.* at 6.

³⁰ *Id.* at 5-6.

³¹ ISO-NE Initial Brief, Attachment A, Table 2.

from the date on which it would otherwise have received the payment to the actual payment date.³²

18. Dominion, in its brief and supporting affidavit, maintains that Units 2 and 3 of its Millstone nuclear power generating station are eligible for resettlement.³³ Dominion asserts that Millstone Units 2 and 3 offered their capacity into FCA 1 as “price takers.” Millstone Unit 2 received a Capacity Supply Obligation of 880.989 MW and Millstone Unit 3 received a Capacity Supply Obligation of 1,156.519 MW.³⁴ As described in Mr. LaRochelle’s Affidavit, the difference between the prorated price of \$4.254/kW-month Units 2 and 3 received and the un-prorated capacity clearing price of \$4.500/kW-month they should have received is \$6,014,723.62 plus interest.³⁵ Finally, Dominion states that resettlement is appropriate and necessary to ensure non-discriminatory treatment of the Millstone Units 2 and 3. Dominion agrees with the Commission that it is appropriate to charge resettlements to Regional Network Load to ensure that the primary beneficiaries of the reliability benefits that Connecticut resources provided during the 2010-2011 Capacity Commitment Period are responsible for the corresponding costs. Dominion additionally asserts that assessing such charges to Regional Network Load addresses any concern with respect to whether load serving entities may have changed since the Capacity Commitment Period.³⁶

³² PSEG Brief at 2.

³³ Dominion Brief, attached Affidavit of Robert LaRochelle (LaRochelle Affidavit) at ¶ 2.

³⁴ LaRochelle Affidavit at ¶ 5. Dominion also notes that in FCA 1 it served as the Lead Market Participant for the North Attleborough Electric Department, a municipal utility in Massachusetts that maintains a small entitlement to Millstone capacity, and 2.153 MW of the 1,156.519 MW of Unit 3’s Capacity Supply Obligation is attributable to the North Attleborough Electric Department. *Id.*

³⁵ LaRochelle Affidavit ¶¶ 7-8. Of this amount, \$6,355.66 is attributable to North Attleborough, which Dominion states that it will remit upon resettlement.

³⁶ Dominion Initial Brief at 6-7.

19. Bridgeport states in its initial brief that it owns and operates a unit that was one of the Connecticut resources whose bids in FCA 1 were prohibited from prorating quantity under ISO-NE's proration rule due to reliability review.³⁷ Bridgeport maintains that in FCA 1 it received a Capacity Supply Obligation of 447.876 MW at a prorated price of \$4.254 / kW-month. Bridgeport states that it is entitled to any resettlement amounts resulting from the proration at issue in this proceeding. Bridgeport states that it is owed \$1,322,128.95 plus applicable interest.³⁸

C. Reply Brief

20. In its reply brief, Bridgeport disputes ISO-NE's assertion that additional payments for capacity (i.e., payments in addition to the capacity payments that resources received previously) sold in FCA 1 should go to the Lead Market Participant during the associated Capacity Commitment Period, not the entity that owned the asset at the time. Bridgeport argues that this approach fails to comport with the fundamental principle in section 205 of the Federal Power Act (FPA)³⁹ that monies collected for jurisdictional power sales must go to the entity with the rate on file, rather than being based on an entity's relationship with ISO-NE at the time of the sale.⁴⁰ According to Bridgeport, only an entity with such rates on file with the Commission is legally authorized to collect charges for jurisdictional sales. Bridgeport argues that additional FCA 1 payments directed in this proceeding should be made by ISO-NE to the capacity resource's current legal owner.

21. Bridgeport explains that, at the time of FCA 1, throughout the Capacity Commitment Period, it was and continues to be the owner of the Bridgeport Energy Unit 1. Bridgeport states that, in contrast, the Lead Market Participant for Bridgeport Energy Unit 1 during the FCA 1 Capacity Commitment Period was the resource owner's

³⁷ The Bridgeport Energy Unit 1 is an approximately 540 MW (winter rating) natural gas-fired, combined cycle electric generating facility located in Bridgeport, Connecticut, which is interconnected to the ISO-NE transmission system. Bridgeport Initial Brief at 1.

³⁸ Bridgeport Initial Brief at 2-3.

³⁹ 16 U.S.C. § 824d (2012).

⁴⁰ Bridgeport maintains that this is "a \$1.5 million issue" (Bridgeport Reply Brief at 2) and estimates that there is at least another \$1.7 million in FCA 1 payments at issue in this proceeding tied to 21 capacity resources that have changed hands or Lead Market Participants since FCA 1 or the start of its Capacity Commitment Period (*id.*).

designee at that time (and, in fact, was not even an affiliate of the owner), and is no longer the Lead Market Participant for Bridgeport Energy Unit 1. Bridgeport further argues that the status of Lead Market Participant is “an arrangement of administrative convenience for ISO-NE, wherein the Lead Market Participant is designated by a resource owner to act on behalf of the resource in a limited, circumscribed context. When the resource owner ends that designation, the former Lead Market Participant no longer has authority to act on behalf of the resource or to collect payments on its behalf.”⁴¹ Bridgeport further argues that ISO-NE provides no legal support for its position that the additional FCA 1 payments should go the Lead Market Participant during the Capacity Commitment Period.⁴²

22. Bridgeport adds that ISO-NE’s approach also fails to comport with the FCM rules in effect at the time of FCA 1, which, according to Bridgeport, dictated that FCM obligations run with the participating resource. Bridgeport contends that, at the time of FCA 1, the FCM rules clearly stated that it is the *resource supplying the capacity* that is entitled to payment from ISO-NE. Bridgeport argues that ISO-NE Market Rule 1, section III.13.7.2 stated that “[r]esources acquiring or shedding a Capacity Supply Obligation shall be subject to payments and charges in accordance with this Section III.13.7.2.”⁴³ Similarly, Bridgeport states that section III.13.7.2.1.1 provided that “[e]ach *resource* that has: (i) cleared in a Forward Capacity Auction. . . shall be entitled to a monthly payment.”⁴⁴ Bridgeport argues that these FCM rules expressly contemplated that resources with Capacity Supply Obligations from an FCA might change ownership, and that in such an event, the resource—not the owner or the resource’s Lead Market Participant—continued to hold the Capacity Supply Obligation, absent reconfiguration, transfer, or express assumption by the new owner.⁴⁵

23. Bridgeport contends that the Commission should apply its broad remedial discretion and grant resettlement funds to affected resource owners and those owners

⁴¹ Bridgeport Reply Brief at 4.

⁴² *Id.*

⁴³ ISO-NE, Market Rule 1 section III.13.7.2 (1st Rev. Sheet No. 7318E, issued on Aug. 31, 2007) (emphasis added).

⁴⁴ ISO-NE, Market Rule 1 section III.13.7.2.1.1 (1st Rev. Sheet No. 7318E, issued on Aug. 31, 2007) (emphasis added).

⁴⁵ Bridgeport Reply Brief at 5-6.

only.⁴⁶ In addition, Bridgeport believes that it is impractical and imprudent for ISO-NE to require that “[a]ny questions or disputes about what party is entitled to the resettlement payments must be addressed between the parties outside this proceeding based on the specific contractual arrangements surrounding the Lead Market Participant or ownership change.”⁴⁷ Finally, Bridgeport requests that the Commission find that additional FCA 1 payments determined in this proceeding should be paid: (1) to the legal entity that owned the subject resource at the time of the FCA 1 Capacity Commitment Period, or (2) if such legal entity no longer exists, to the successor in interest to ownership of the subject resource.⁴⁸

D. Answer to Reply Brief

24. ISO-NE, in its response to Bridgeport’s reply brief, states that it continues to believe that: (i) any additional payments required in the Order on Remand should be made to the entities that were Lead Market Participants during the Capacity Commitment Period associated with FCA 1; and (ii) the entities that should be charged to fund these additional payments are those that constituted Regional Network Load within the affected Reliability Region during that same Capacity Commitment Period.⁴⁹ ISO-NE clarifies that it intended to convey that the load to be charged would be the entities constituting Regional Network Load as it existed *during the first Capacity Commitment Period*.⁵⁰ According to ISO-NE, these are the entities that paid the capacity charges associated with FCA 1, and received resource adequacy benefits during the first Capacity Commitment

⁴⁶ Bridgeport Reply Brief at 7.

⁴⁷ *Id.* at 8.

⁴⁸ *Id.* at 1-2.

⁴⁹ ISO-NE Answer to Reply Brief at 1.

⁵⁰ ISO-NE states: “This approach – of tying charges to existing load at the time of the underpayment – is consistent temporally with refund methodologies approved by the Commission with respect to other load-related payments or charges.” ISO-NE Answer to Reply Brief at 3 n.10 (citing Order Approving New England Parties’ Allocation and Distribution Proposal, Docket No. IN12-7-000, at PP 10, 14 (issued by Deputy Chief Administrative Law Judge McCartney on October 18, 2012) (the “New England Allocation Order”) (refunds were “based on loads reported at the various metering domains within [each New England] state over the time period of September 1, 2007 to December 31, 2008,” the period of market manipulation that triggered the refunds).

Period. ISO-NE argues that these entities should also bear responsibility for the additional payments.⁵¹

25. ISO-NE also maintains that any additional payments should be made to the entities that were the Lead Market Participant(s) for the pertinent resources *during the first Capacity Commitment Period*. ISO-NE states that its relationship in the functioning of the FCM is with the Lead Market Participant.⁵² For example, Tariff section III.13.7 provides that “[t]he Lead Market Participant for the resource at the start of an Obligation Month shall be responsible for all payments and charges associated with that resource in that Obligation Month.” Further, the Tariff section I.2.2 definition of Lead Market Participant states that “[f]or purposes of the Forward Capacity Market, the Lead Market Participant is the entity designated to participate in that market on behalf of an Existing Capacity Resource or a New Capacity Resource.” Additionally, under the Financial Assurance Policy (Tariff Schedule IA, section VII), ISO-NE notes, it is the Lead Market Participant (referred to as the “Designated FCM Participant”) that provides the additional FCM-related financial assurance. ISO-NE states that, therefore, consistent with these Tariff provisions, the Lead Market Participants (and not resource owners) were the recipients of the capacity payments during the first Capacity Commitment Period, and should therefore receive the additional payments contemplated in this proceeding.⁵³

26. ISO-NE further argues that this payment approach is consistent with an earlier proceeding involving the California Independent System Operator (CAISO),⁵⁴ in which the Commission refused to direct CAISO to release collateral to the owner of a generating facility, rather than to the Scheduling Coordinator that provided services to the owner. According to ISO-NE, the Commission relied on language in the CAISO tariff stating that (i) Scheduling Coordinators “have the primary responsibility to the [CAISO], as principal, for all Scheduling Coordinator payment obligations under the [CAISO] tariff;” (ii) Scheduling Coordinators are the financially responsible parties that must satisfy credit obligations to cover all applicable liabilities; and (iii) generator owners are not subjected under the CAISO tariff to any credit requirements because the Scheduling Coordinators are the principals in all transactions. ISO-NE states that the role of the

⁵¹ ISO-NE Answer to Reply Brief at 3.

⁵² *Id.* at 4.

⁵³ *Id.*

⁵⁴ *La Paloma Generating Company, LLC v. Cal. Independent System Operator Corp.*, 110 FERC ¶ 61,386 (2005) (*La Paloma*), *reh’g denied*, 118 FERC ¶ 61,189 (2007).

Scheduling Coordinator in CAISO is similar to that of the Lead Market Participant in ISO-NE, and accordingly, the principle of *La Paloma* – namely, that transfers by independent system operators of payments should be consistent with the roles and relationships of the parties under the pertinent tariffs – applies here.⁵⁵

27. ISO-NE also states that it lacks access to any of the contractual arrangements between the potentially affected parties during the first Capacity Commitment Period, and without such knowledge, it would be inappropriate for it to make resettlement payments to the resource owner. ISO-NE further adds that, even if it could make payment to an entity other than the Lead Market Participant, Bridgeport's support for payment of the additional amounts to the current owner appears inconsistent with the context of the Order on Remand, which calls for a resettlement that focuses on particular capacity resources during a particular, past time frame. Therefore, ISO-NE argues, to direct payments to a current owner that may not be the entity that owned the unit during the first Capacity Commitment Period is illogical and inequitable. Finally, ISO-NE states that, if the Commission directs otherwise, it requests that the Commission explicitly direct specific payments to specific parties, stating that the Commission is better equipped to evaluate and adjudicate questions of fact than ISO-NE.⁵⁶

E. Determination

28. We find the resettlements (based on the difference between (a) the prorated price that the resources received, and (b) the un-prorated capacity clearing price that the resources would have received absent price proration, plus interest) appropriate to ensure that PSEG and other Connecticut resources that were not able to prorate quantity be paid the full capacity clearing price for each of the megawatts that cleared FCA 1. ISO-NE has selected a resettlement date of December 14, 2015 (which requires that interest be estimated through December 18, 2015), which coincides with its regular billing cycle, and, when the Commission issues a final order in this proceeding, ISO-NE has committed to recalculate the interest amounts to reflect the final resettlement date and to reflect updated interest rates posted by the Commission.⁵⁷ We accept these commitments, and direct ISO-NE to conduct resettlements in accordance with its proposed methodology.

⁵⁵ ISO-NE Answer to Reply Brief at 4-5.

⁵⁶ *Id.* at 5-7.

⁵⁷ ISO-NE Initial Brief at 4-5.

29. We also find it appropriate that resettlements plus applicable interest be charged to “entities constituting Regional Network Load as it existed during the first Capacity Commitment Period”⁵⁸ within the affected Reliability Region, consistent with the current version of the Proration Rule. As ISO-NE notes, the resettlement mechanism that it proposes will ensure that the entities who received capacity benefits during the pertinent time period will also make the additional payments at issue here.⁵⁹

30. We are not persuaded by Bridgeport’s assertion that the resettlement payments directed in this proceeding should be made by ISO-NE to the capacity resource’s current legal owner and not to the Lead Market Participant. We agree with ISO-NE that its relationship in the functioning of the FCM has been with the Lead Market Participant (i.e., the “Designated FCM Participant”). As noted in section III.13.7 of ISO-NE’s Tariff, “[t]he Lead Market Participant for the resource at the start of an Obligation Month shall be responsible for all payments and charges associated with that resource in that Obligation Month.” Further, section I.2.2 of the Tariff specifically stated that “[f]or purposes of the Forward Capacity Market, the Lead Market Participant is the entity designated to participate in that market on behalf of an Existing Capacity Resource or a New Capacity Resource.” Additionally, under schedule IA, section VII, of the ISO-NE Tariff, it would have been a Lead Market Participant that provided the additional FCM-related financial assurance. These Tariff provisions show that the Lead Market Participant received a resource’s capacity payments (since it was “responsible for all payments and charges” associated with that resource, as noted above).” The Lead Market Participant also managed the resource’s compliance with the obligations of the FCM. The Lead Market Participants (and not resource owners) were the recipients of the capacity payments during FCA 1, and should therefore receive the additional payments contemplated in this proceeding. As ISO-NE states, “[w]hether the resettlement payments should accrue to the previous or current owner, and what portion of the resettlement payment the Lead Market Participant is entitled to (if any) are questions of fact based entirely on the specific contractual arrangements” between a resource and its Lead Market Participant.⁶⁰

31. Furthermore, Bridgeport has not provided any evidence that for the first Capacity Commitment Period, the capacity resource’s owner had the primary responsibility to ISO-NE. In addition, ISO-NE states that it lacks access to any of the contractual arrangements between the potentially affected parties during the first Capacity

⁵⁸ ISO-NE Answer to Reply Brief at 3 n.10.

⁵⁹ *Id.* at 3.

⁶⁰ ISO-NE Answer to Reply Brief at 6.

Commitment Period. Based upon the foregoing, we find that it would be inappropriate for ISO-NE to depart from its practice of transacting with the Lead Market Participant to instead make resettlement payments to the resource owner. Accordingly, we agree with ISO-NE, that any resettlement plus applicable interest should be paid to Lead Market Participants.

The Commission orders:

ISO-NE is hereby directed to conduct resettlements in accordance with its proposed resettlement approach, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.