

Tariff or in a manner that would harm system reliability. This is patently absurd and ignores the foundational principles of the Commission's Reliability Must Run ("RMR") policy. The fact pattern that led to this situation is instructive to understand how such claims are being made at this time and to appreciate that Exelon is now concerned that its stated desire to retire the Mystic units will actually be granted.

On the same day and in the same press release in 2018 that Exelon initially announced the retirement of Mystic Units 8 & 9, the company announced a deal to purchase the Distrigas LNG supply facility from Engie.⁴ At that time, the viability of the Distrigas facility was in peril based on market conditions;⁵ Distrigas did not have the option to seek recourse through an ISO Reliability Must Run contract because as an LNG facility it's not in and of itself a FERC-jurisdictional facility. However, once purchased by Mystic parent Exelon, Exelon was able to exert newfound vertical market power to take advantage of the ISO, leveraging Mystic's status as a unit deemed critical to system operation in 2018 based on fuel security concerns to seek an RMR contract to be awarded not only to Mystic but to its primary fuel source, Exelon's new acquisition Distrigas.

At the time of this fuel security reliability designation, Exelon argued that it was the ISO, not market participants, that should decide whether a unit should be

⁴ Press Release: *Exelon Generation Files to Retire Mystic Generating Station in 2022, Absent Any Regulatory Solution*, March 29, 2018. Available at : <https://www.businesswire.com/news/home/20180329005638/en/Exelon-Generation-Files-Retire-MysticGenerating-Station>.

⁵ *ISO New England Inc.* Docket No. No. ER18-1509, "Petition of ISO New England, Inc. For Waiver of Tariff Provisions," Testimony of Richard L. For Waiver of Tariff Provisions," (May 1, 2018) Testimony of Richard L. Levitan and Sara Wilmer at 7:5-8, 19-22:2 (stating that retirement of Mystic 8 & 9 likely would be the start of a "death spiral" for Distrigas because its other business is insufficient to enable it to recover its estimated going-forward costs). ("ISO-NE Waiver Request")

designated an RMR resource. Exelon explained, “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.”⁶ Now, peculiarly, as the ISO has determined that Mystic 8 & 9 can retire, fulfilling Exelon’s stated desire for the resources, Exelon urges FERC to reject ISO-NE’s assessment.

Attempting to write a new chapter in an already extortive playbook, the instant complaint asks the Commission to overrule the judgment of the ISO and stick New England ratepayers with hundreds of millions of dollars in unnecessary costs by yet again designating Mystic as an RMR resource rather than implementing less costly available options to address reliability concerns.⁷ Exelon’s complaint alleges that ISO-NE’s unfiled revision to Planning Procedure No. 10 allows the ISO to rely on an “unknown outcome” of a nascent competitive transmission procurement process to support the finding that two of Mystic’s generating units will no longer be needed to ensure transmission security in the commitment year associated with the current capacity auction (FCA 15).⁸ Exelon also claims that ISO-NE’s plan to revise Planning

⁶ *ISO New England Inc.*, Docket No. ER18-1509, “Answer and Motion for Leave to Answer of Exelon Corporation,” at pp. 1-2.

⁷ Presentation of Brett Oberlin, (June 12, 2020). *Boston 2028 RFP – Review of Phase One Proposals*. This presentation identifies BOS-017 as the preferred solution. This project has an installed cost of \$49M. Available at: https://www.iso-ne.com/static-assets/documents/2020/06/a2_boston_2028_rfp_phase_one_proposal_review.pdf. This is far less costly than extending an RMR for Mystic 8 & 9. See also: Patel, Sonal. “FERC Thwarts ISO-NE's Attempt to Keep Mystic Gas Units Online.” *POWER Magazine*, July 5, 2018, www.powermag.com/ferc-thwarts-iso-nes-attempt-to-keep-mystic-gas-units-online/. “[Exelon] estimated it would need an annual fixed revenue requirement of about \$219 million for capacity commitment period 2022/2023 and nearly \$187 million for 2023/2024.”

⁸ Exelon Complaint at p. 1.

Procedure No. 10 is “risky” and “short-sighted” and will “cause the premature retirement of two generating units at the expense of reliability in the New England Region.”⁹ As explained below, these claims ignore the realities of the transmission solution identified by ISO-NE, and, if accepted by the Commission, would hold the ISO to an impossible standard going forward.

At bottom, while Exelon sought to de-list the capacity of three of its units as far back as 2017,¹⁰ and permanently retire regardless of the FCA clearing price Mystic Units 8 and 9 in 2018,¹¹ Exelon now appears to have no plans to retire those units having received an RMR lifeline. Rather, Exelon appears poised to try to bring Mystic back as a *new resource* if it is unable to extend its designation as an RMR resource in the upcoming forward capacity auction.¹² This is both offensive and antithetical to the purpose and use of RMR agreements in the competitive ISO/RTO wholesale electricity markets. Connecticut Department of Energy and Environmental Protection Commissioner Katie Dykes summarized this scheme: “Exelon is looking to keep the Mystic units in the market after holding the region hostage for millions of dollars in

⁹ *Id.* at P. 11.

¹⁰ Mystic first submitted Dynamic De-List Bids for Mystic Units 7, 8, and 9 in 2017 for ISO-NE’s twelfth forward capacity auction. ISO-NE rejected the bids for Mystic Units 7 and 8, and Mystic was compensated at its De-List Bid offer price. Unit 9 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 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; see also Tariff at Section III.13.2.5.2.1 (stating when a Retirement De-List Bid clears in the FCA).

¹¹ ISO-NE Waiver Request at pp.1-2. Exelon submitted Retirement De-List Bids for the Mystic Generating Station on March 23, 2018. This request applied to all four units Mystic Units, which are Units 7, 8, 9, and “Mystic Jet.”

¹² See items 1011 and 1012 on ISO-NE’s Interconnection Request Tracking Tool. Available at: <https://irtt.iso-ne.com/reports/external>.

pursuit of short-term financial gain.”¹³ In order to prevent this usurious and unsupported plan from coming to fruition, the Commission should reject this complaint in its entirety.

II. COMMENTS

A. Exelon’s Complaint Is Contrary to Longstanding Commission RMR Policy

The Commission has long recognized that RMR-type agreements should be used only as a last resort, after all other alternatives have been eliminated and for a limited duration, because they are an administrative out-of-market fix that distorts market-clearing prices that drive retirement and investment decisions. The Commission has stated, “RMR filings should be made only to temporarily address the need to retain certain generation until more permanent solutions are in place and that all alternatives should be considered to ensure that designating a generator for RMR service is a last resort option for meeting immediate reliability needs.”¹⁴

Exelon’s complaint perverts the foundation of the Commission’s RMR policy and competitive market principles. An RMR agreement represents a significant intervention by an ISO. Resources that are otherwise prepared to permanently retire are asked to stay in operation longer than their owners desire. This extraordinary step is taken when it is the only option available to ensure the continued near-term reliability and efficient operation of the system. In recognition of this extraordinary intervention, RMR resources are allowed to recover their costs for the limited period their operation is required to sustain system reliability while a market-based, cost-effective long-term solution is

¹³ *Exelon Bid To Keep Mystic Units Running Provokes Outrage*, RTO Insider, by Rich Heidorn, Available at: <https://rtoinsider.com/exelon-to-keep-mystic-units-running-provokes-outrage-162263/> [May 7, 2020].

¹⁴ See, e.g., NYISO, 150 FERC ¶ 61,116 at P 11. NYISO, 150 FERC ¶ 61,116 at P. 16.

developed and implemented.¹⁵ The Commission has long discouraged the use of out-of-market contracts and other mechanisms that distort price signals, recognizing that they “undermine[] effective market performance” and result in “suppressed market clearing prices [that] further erode the ability of other generators to earn competitive revenues in the market and increase the likelihood that additional units will also require [out-of-market] agreements to remain profitable.”¹⁶

In this case, the ISO first awarded a transmission security RMR to Mystic 7 & 8 and then awarded a fuel security RMR to Mystic 8 & 9 for a 2-year period. Inherent in the ISO/RTO rules governing the limited use of RMR designations is the needed flexibility to consider whether there are market-based or lower cost solutions that can be implemented to limit the duration of, and thus replace, an RMR resource. Accordingly, extending the life of these units when a more economic solution is available would be to flout years of Commission policy and precedent. Based on a defined short-term reliability need, the ISO relied on a 2-year RMR agreement as an interim solution to meet reliability needs while identifying awhile offering sufficient time to address a longer-term approach. Extending Mystic’s status as an RMR resource would be inappropriate, unnecessary, overly costly, and disruptive to the market.

Exelon’s claim of harm is premised on a complete misstatement of Commission policy and precedent that disfavors RMR agreements. Exelon appears to suggest that

¹⁵ *Id.* at P 6.at P 2.

¹⁶ *Devon Power, LLC*, 103 FERC ¶ 61,082 at P 29, *on reh’g*, 104 FERC ¶ 61,123 (2003). *See also*, e.g., *California Indep. Sys. Operator Corp.*, 142 FERC ¶ 61,248 at P 64 (2013) (rejecting proposal for an “out-of-market solution that provides payments to resources that may be uneconomic” as such an approach would be “inconsistent with and undermines the need for forward price signals”); *Bridgeport Energy, LLC*, 118 FERC ¶ 61,243 at P 41 (2007) (emphasizing that reliability must-run agreements should be used only as a “last resort” because they “suppress market-clearing prices and deter investment in new generation” (citation omitted)).

ISO-NE's actions to date are somehow forcing Mystic's 8 and 9 to retire in direct contravention of the ISO-NE Tariff. This is a blatant perversion of the Commission's RMR policy. As required by ISO-NE's own rules, Mystic received RMR status in 2018 because it has affirmatively sought to retire by submitting a retirement de-list bid in the FCA. Now, ISO-NE is doing nothing more or less than giving Mystic what it asked for.

Finally, Exelon appears to be arguing that it is the arbiter of reliability in the ISO-NE region. Yet, just two years ago, Exelon offered the Commission sage advice to "give the most weight to the views of entities whose interests are not as economically driven... [and] who have actual responsibility to maintain reliability ... ISO-NE itself." The Commission has stated that an ISO needs flexibility to evaluate possible alternatives.¹⁷ ISO-NE has appropriately determined that there is an alternative, lower cost transmission solution that can maintain reliability in the face of Mystic's retirement. That should be the end of the story. Yet, in its Complaint, Exelon proposes to create

¹⁷ *New York Independent System Operator, Inc.*, Docket Nos. ER16-120-000 and EL15-37-001, Order on Compliance and Rehearing, (April 21, 2016), P 73: "The standard for determining which solution NYISO will select is an important part of NYISO's RMR process. In certain circumstances, the Commission has allowed NYISO some flexibility regarding tariff provisions where a specific, uniform, or formulaic standard may be infeasible. In one instance, **the Commission required NYISO to provide the "conceptual basis and general framework" that NYISO would use, but allowed NYISO's tariff provisions to be "sufficiently broad and flexible" to take into account variations in circumstances.** Therefore, to ensure clarity and transparency, we direct NYISO to submit, within 60 days of the date of this order, a compliance filing with tariff revisions that identify the criteria NYISO will use to implement its "distinctly higher" net present value standard and provide a conceptual basis as to how the standard will be implemented." [Emphasis added.]

See also: *California Independent System Operator Corporation*, Docket No. ER19-1641, Order Accepting Tariff Revisions, (September 27, 2019), P 31: "**We understand that the requirement for CAISO to evaluate whether there are any other options available to avoid the need for an RMR contract will cover all potential alternatives, and we do not require the precise details of this evaluation to be in the tariff. As the Commission has previously stated, we do not find that the precise details of CAISO's technical assessments constitute a practice that will significantly affect rates and service.** Moreover, as explained by CAISO in its Deficiency Answer, the specific studies that CAISO will need to perform, as well as the inputs and assumptions associated with those studies, will be driven by the reliability criteria being assessed. **Thus, we find that it is appropriate to allow CAISO the flexibility to tailor its studies on a case-by-case basis.**" [Emphasis added.]

new standards for evaluating whether an RMR is needed and why certain identified alternatives are not needed, all for the transparent purpose of enabling Mystic to receive an additional cost-of-service agreement plus a healthy return on equity. For example, Exelon appears to argue that ISO-NE can only find that the Mystic units are not needed if ISO-NE *is certain* that a proposed transmission project will be in place upon Mystic's retirement.¹⁸ This ignores the Commission's deference to an ISO's independent judgment as the entity that has actual responsibility to maintain reliability.

The Commission has also stated that rules governing RMR status should be designed to "eliminate, or at least minimize, incentives for a generator needed for reliability to toggle" between RMR and market status.¹⁹ Here, based on the earlier referenced interconnection queue, Exelon may be seeking to game the system in New England and re-enter the market after multiple years of cost-of-service revenue and fuel supply assurance under an RMR. This market re-entry plan certainly seems to signal that these units never actually intended to retire but rather realized an extensive short-term gain based on the extensive leverage and de-facto market power that the acquisition of Distrigas presented to parent Exelon.

The Commission has held that ISOs, as the independent system operator in their regions, are uniquely positioned to assess the need for RMR service.²⁰ Here, Exelon essentially alleges Tariff violations in order to overrule the ISO's determination that the

¹⁸ Exelon complaint at p. 44. "There need to be concrete milestones. There must be reason to believe that milestones can be met. And there must be assurances of performance. Here, unfortunately, there are no such milestones or assurances. The necessary information may not even be collected before the decision is made, and certainly will not be evaluated by then. There is no good reason to believe that any alternative to Mystic 8 and 9 will be in place for the FCA 15 Capacity Commitment Period."

¹⁹ *New York Independent System Operator, Inc.*, Order Instituting Section 206 Proceeding and Directing Filing to Establish Reliability Must Run Tariff Provisions, Docket No EL15-37-000, (February 19, 2015)00, at P 21.

²⁰ *Id.* at P 9.

planned transmission upgrades will preserve reliability in place of the Mystic units, thereby forcing the ISO to retain Mystic for an additional term beyond that which it has already contracted. Exelon argues,

ISO-NE should be less worried about the possibility of paying twice for reliability and more focused on jeopardizing reliability twice – first by letting Mystic 8 and 9 retire and second by hoping one or more non-binding proposals will result in the development, construction and energization of a major upgrade in time to meet the unavoidable reliability need caused by Mystic’s retirement.²¹

Previously Exelon was content to rely on the ISO’s initial determination²² that Mystic 8 & 9 and the Distrigas facility as their designated fuel supply source were needed to preserve reliability; Exelon in fact leveraged this choke point to the tune of hundreds of millions of dollars to keep the Mystic and Distrigas facilities running with a guaranteed profit. Now, when the ISO has deemed Mystic 8 & 9 no longer necessary, Exelon cries foul and insists that the ISO isn’t taking reliability seriously enough. This example captures the ethos at work here: heads we win, tails you lose.

B. Exelon’s Concerns Regarding the Backstop Transmission Solution Finding are Overstated and Unreasonable

In its complaint, Exelon states that the ISO is jeopardizing reliability on the “mere speculation that adequate alternative reliability measures will be in place timely.”²³ Given the nature of markets, there will always be a degree of uncertainty regarding the in-service date of a proposed solution given the forward nature of the FCA. In asking the Commission to require ISO-NE to ignore transmission solutions identified through the

²¹ Exelon Complaint at p. 18.

²² See generally: *ISO-NE Operational Fuel-Security Analysis*, (January 17, 2018). Available at: https://www.iso-ne.com/static-assets/documents/2018/01/20180117_operational_fuel-security_analysis.pdf.

²³ Exelon Complaint at p. 7.

Boston RFP process unless and until there is complete certainty that a project will be built, Exelon is asking the Commission to hold ISO-NE to an impossible standard. If Exelon's complaint is granted, ISO-NE would likely be forced to retain Mystic 8 & 9 until the selected transmission solution had been fully constructed and energized. Such a process cuts against the spirit of the Commission's existing RMR policy, as it would allow Mystic to extend its RMR far longer than is necessary.

In addition, Exelon greatly exaggerates the risks associated with the potential transmission solution.²⁴ The transmission facilities that Mystic points to as demonstrating the purported uncertainty of transmission development in New England are vastly different from the Backstop Transmission Solution that has been identified through the Boston RFP.²⁵ The Backstop Transmission Solution consists of upgrades to the Participating Transmission Owner's existing infrastructure, including installing two 345 kV series reactors at an existing substation, installing a 167 MVAR STATCOM—also at an existing substation—and installing a DTT scheme on a given line to eliminate a very narrow contingency. Such a solution is far more limited in scope than the examples cited by Exelon in its complaint.²⁶

Given that the Backstop Transmission Solution represents an upgrade to existing infrastructure, some of the largest hurdles to traditional transmission projects—including extensive siting and permitting—would be non-factors from the outset of this project. Additionally, as the target in-service date of the Backstop Transmission Solution is 8 months prior to the start of the FCA 15 Capacity Commitment Period, the risk that

²⁴ Exelon Complaint at p. 36-43.

²⁵ *Id.* at p. 39.

²⁶ *Id.* at pp. 39-40.

delays could prevent the solution from being in-service in time to meet the reliability needs at issue are remote at best. To grant Exelon's complaint would be to hold the ISO to a standard beyond what is required, prolong an RMR that is no longer necessary, and deprive New England ratepayers of an efficient reliability solution, potentially exposing them to hundreds of millions in unnecessary costs.

III. **CONCLUSION**

For the reasons outlined above. EPSA respectfully requests that the Commission deny Exelon's complaint.

Respectfully submitted,

ELECTRIC POWER SUPPLY ASSOCIATION

By: *Nancy Bagot*
Nancy Bagot
Senior Vice President
Bill Zuretti
Director, Regulatory Affairs & Counsel
Electric Power Supply Association
1401 New York Ave, NW, Suite 950
Washington, DC 20005

Dated: June 30, 2020

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on each person designated on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

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

/s/ Bill Zuretti

Bill Zuretti