

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

ISO New England Inc.

Docket No. ER15-1137-000

**MOTION FOR LEAVE TO ANSWER AND ANSWER OF
THE NEW ENGLAND POWER GENERATORS ASSOCIATION, INC.,**

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),¹ the New England Power Generators Association, Inc. (“NEPGA”)² files this Motion for Leave to Answer and Answer to the *Motion to Intervene and Protest of Utility Workers Union of America Local 464, and Robert Clark* (“UWUA Protest”) filed on April 13, 2015, in this proceeding. In its Protest, UWUA challenges ISO-NE’s filing of the ninth Forward Capacity Auction (“FCA 9”) results³ based on UWUA’s allegation of market behavior in the eighth Forward Capacity Auction, an allegation the Commission has previously considered and rejected. The UWUA Protest is therefore a collateral attack on prior Commission orders and should be rejected. With no other protests filed opposing the FCA 9 Results Filing, NEPGA respectfully requests that the Commission reject the UWUA Protest and approve the FCA 9 Results Filing.

¹ 18 C.F.R. §§ 385.212, 385.213 (2013).

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

³ *ISO New England Inc., Forward Capacity Auction Results Filing*, Docket No. ER15-1137-000 (filed February 27, 2015) (“FCA 9 Results Filing”).

I. MOTION FOR LEAVE TO ANSWER

Rule 213(a)(2) of the Commission's Rules of Practice and Procedure generally prohibits answers to protests.⁴ The Commission has accepted answers that are otherwise prohibited if they clarify the issues in dispute and assist the Commission in its decision-making.⁵ In this Answer, NEPGA responds to arguments and requests not previously raised by UWUA, and explains why its requests for relief should be denied. In addition, this Answer provides the Commission with information directly relevant to issues raised by UWUA in its Protest, and therefore will assist the Commission in its decision-making. NEPGA respectfully requests that the Commission accept this Answer.

II. ANSWER

A. UWUA Bases Its Protest Entirely on an Allegation the Commission and Its Office of Enforcement Has Considered and Rejected

UWUA's Protest of the FCA 9 Results Filing relies entirely on UWUA's allegation that the owners of the Brayton Point generating plant engaged in market manipulation by submitting a Non-Price Retirement Request in the eighth Forward Capacity Auction ("FCA 8"). The Commission rejected this same allegation raised by UWUA and other parties in response to the FCA 8 Results Filing.⁶ UWUA's Protest, therefore, represents a collateral attack on prior Commission orders.⁷ UWUA seeks to renew its allegation by asserting that the Brayton Point

⁴ 18 C.F.R. § 385.213(a)(2) (2012).

⁵ See, e.g., *Florida Gas Transmission Co., LLC*, 141 FERC ¶ 61,161 at P 7 (2012); *California Indep. Sys. Operator Corp.*, 139 FERC ¶ 61,207 at P 13 (2012).

⁶ See, e.g., *UWUA Motion to Intervene and Protest*, Docket No. ER14-1409 (filed April 14, 2014); *UWUA Motion to Answer and Answer*, Docket No. ER14-1409 (filed June 11, 2014); *UWUA Amended Protest*, Docket No. ER14-1409 (filed February 10, 2015).

⁷ *New England Conf. of Pub. Utils Commrs. V. Bangor Hydro-Electric Co.*, 135 FERC ¶ 61,140, at P 27 (2011) (citing *Wall v. Kholi*, 131 S. Ct. 1278, 179 L. Ed. 2d 252, 2011 U.S. LEXIS 1906 at *12 (2011)) ("A collateral attack is '[a]n attack on a judgment in a proceeding other than a direct appeal' and is generally prohibited."); see also *Fla. Gas Transmission Co. LLC*, 132 FERC ¶ 61,222, at P 201 (2010) (finding that a protest is a collateral attack on a prior Commission order where the protest repeats arguments previously rejected by the Commission in the same proceeding).

owners “continued withholding capacity” from the Forward Capacity Auction in FCA 9.⁸ The ISO-NE Tariff, however, prohibited Brayton Point from offering capacity into FCA 9⁹ – to characterize Brayton Point’s failure to offer its capacity in FCA 9 as “withholding” indicates a lack of understanding of the Forward Capacity Market rules. For these reasons, the Commission should reject UWUA’s Protest.

UWUA alleges that the Brayton Point owners engaged in conduct in violation of the Federal Power Act’s anti-manipulation provisions, and in so doing increased the FCA 9 clearing price.¹⁰ The Commission has already addressed and rejected UWUA’s allegation. In its Order to Show Cause following FCA 8, the Commission addressed concerns raised by parties, including UWUA, over alleged market manipulation and insufficient mitigation.¹¹ The Commission directed ISO-NE to amend its Tariff to provide for the review and potential mitigation of Import Capacity Resource offers into the Forward Capacity Auction.¹² With respect to allegations that Brayton Point engaged in market manipulation, the Commission explained:

“Following a non-public referral from ISO-NE and its IMM shortly after the February 3, 2014 FCA 8 auction, the Commission’s Office of Enforcement began a non-public investigation into the bidding behavior in FCA 8. Although Brayton Point was not the focus of the referral, the Office of Enforcement conducted a limited review of Brayton Point’s bidding behavior to determine whether investigation of Brayton Point was warranted. Following the IMM’s rejection of Brayton Point’s Static De-List Bid, the owners of Brayton Point submitted a Non-Price Retirement Request, permanently removing Brayton Point from the FCM. OE staff found credible justifications for the owners’ retirement decision and elected not to widen its investigation to include Brayton Point.”¹³

⁸ UWUA Protest at p. 4.

⁹ ISO-NE Tariff at §§ III.13.1.2.3.1.5.4, III.1.2.3.1.5.1 (“A Non-Price Retirement Request is a binding request to retire all or part of a Generating Capacity Resource” and “[o]nce submitted may not be withdrawn”).

¹⁰ Presumably UWUA means, more specifically, the clearing price in the SEMA/Rhode Island Capacity Zone.

¹¹ *ISO New England Inc., Order to Show Cause*, 148 FERC ¶ 61,201, at P 9 (2014) (explaining that its Order to Show Cause was prompted by its concern that ISO-NE’s Tariff may be insufficient to ensure just and reasonable rates) (“Show Cause Order”).

¹² *Id.* at P 1.

¹³ *Id.* at P 11 (2014).

In its order on ISO-NE's subsequent compliance filing, the Commission reiterated:

“[T]here is no evidence that the owners of Brayton Point engaged in any inappropriate behavior in the eighth FCA. Rather, as stated in the Show Cause Order, the Commission's Office of Enforcement found credible justifications for the owner's decision to permanently remove Brayton Point from the FCM.”¹⁴

UWUA incorporates by reference and relies heavily on the factual assertions contained in its protest of the FCA 8 Results Filing.¹⁵ Its Protest of the FCA 9 Results Filing is based entirely on its allegation regarding offers in FCA 8. UWUA repeats the same arguments and relies on the same evidence addressed and rejected by the Commission in two separate orders. UWUA's Protest is a collateral attack on those prior orders and should be rejected on that basis.

B. UWUA Inaccurately Concludes That Capacity Resources are Required to Offer an Economic Justification for Their Retirement

UWUA asserts that under the ISO-NE Tariff an Existing Generating Capacity Resource must affirmatively demonstrate that its decision to retire is “economic.”¹⁶ UWUA further asserts that the Commission “must adjudicate ... the factual issue of whether the withdrawal of Brayton Point was uneconomic.”¹⁷ UWUA comes to this conclusion based on the Tariff provision stating that when ISO-NE rejects a Non-Price Retirement Request for reliability, the resource may nonetheless retire “as permitted by applicable law.”¹⁸ UWUA's unsupported reading of the ISO-NE Tariff should be rejected.

The Tariff clearly does not require Existing Generating Capacity Resources to provide an economic justification for their retirement. The Tariff explicitly provides that a Non-Price

¹⁴ *ISO New England Inc.*, 149 FERC ¶ 61,227, at P 67 (2014).

¹⁵ UWUA Protest at p. 6.

¹⁶ *Id.* at p. 8.

¹⁷ *Id.* at p. 10.

¹⁸ *Id.* at p. 8, *citing* ISO-NE Tariff, § III.13.2.5.2.5.3(a)(iii).

Retirement Request is subject only to a reliability review,¹⁹ and grants a Existing Generating Capacity Resource the right to retire regardless of ISO-NE's reliability determination.²⁰ The Tariff squarely places the decision to retire within the discretion of the resource, which is entirely consistent with Commission policy to remove any incentives to remain in the Forward Capacity Market when a more efficient market outcome would result from a resource exiting the market.²¹ UWUA's reading of the Tariff to require an Existing Generating Capacity Resource to provide an "economic" justification for its retirement decision should therefore be rejected.

III. Conclusion

NEPGA respectfully requests that the Commission grant NEPGA's Motion for Leave to Answer, reject UWUA's Protest, and approve the FCA 9 Results Filing without condition.

Respectfully Submitted,

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¹⁹ ISO-NE Tariff, § III.13.1.2.3.1.5.1 (A Non-Price Retirement Request is a binding request to retire, may not be withdrawn, and "will be approved subject to review for reliability impacts.").

²⁰ ISO-NE Tariff, § III.2.5.2.5.3(a)(iii) (a resource may retire by giving notice to ISO-NE within six months of receiving notice that ISO-NE did not approve the Non-Price Retirement Request for reliability reasons).

²¹ See, e.g., *ISO-New England Inc.*, 138 FERC P 61,027, at PP 39-40 (2012) (rejecting the mitigation of historical out of market capacity because it would encourage older, higher-cost resources to remain in the market rather than retire).

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the comments by via email upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Boston, Massachusetts, April 28, 2015.

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