

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

ISO-New England Inc.)
New England Power Pool Participants Committee) **Docket No. ER15-1650-000**
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**MOTION TO INTERVENE AND PROTEST OF
THE NEW ENGLAND POWER GENERATORS ASSOCIATION, INC.**

Pursuant to Rules 211 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),¹ and in accordance with the Commission’s Combined Notice of Filings #2, dated May 1, 2015, the New England Power Generators Association, Inc. (“NEPGA”)² hereby files this Motion to Intervene and Protest in response to the ISO New England Inc. (“ISO-NE”) Internal Market Monitor’s (“IMM”), and New England Power Pool Participants Committee’s joint May 1, 2015, filing of several proposed changes to supply-side offer mitigation beginning in the tenth Forward Capacity Auction (“FCA 10”).³

The IMM proposes changes to the Pivotal Supplier Test (“PST”), the Dynamic De-List Bid Threshold, and to the ability of Existing Capacity Resources to make changes to their Static De-List Bids. The PST proposed by the IMM fails to consider New Capacity Resources as competitive supply offers into the FCA, even though a New Capacity Resource must demonstrate that its offer is competitive by satisfying the IMM’s offer floor mitigation review. The failure to count all competitive supply in the PST would render unjust and unreasonable the mitigation of any offer from a supplier found pivotal in FCA 10. NEPGA therefore asks that the Commission order ISO-NE to return to the NEPOOL stakeholder process and develop a method

¹ 18 C.F.R. §§ 385.211, 385.214 (2014).

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. filing Re: Market Monitoring-Related Capacity Market Changes*, Docket No. ER15-1650-000 (filed May 1, 2015) (“ISO-NE Filing”).

by which to count competitive New Capacity Resource offers into the FCA as supply for purposes of the PST in FCA 10. There is ample time between now and the PST, which will be conducted no sooner than January 26, 2016,⁴ to develop a just and reasonable methodology to reflect new competitive supply as supply in the PST.

The IMM's proposal to prohibit an Existing Capacity Resource from modifying its Static De-List Bid by more than \$1.00/kw-month, during the eight months between when it submitted its Static De-List bid and the running of the FCA, is likewise unjust and unreasonable. The IMM's proposal would disallow Static De-List Bids below the \$1.00/kw-month threshold, thereby mitigating competitive capacity supply offers into the FCA even where the IMM has made no finding that the suppliers are "pivotal" or that they can exert undue market power. NEPGA asks the Commission to reject that part of the IMM's proposal, and order ISO-NE to modify its proposal to allow Existing Capacity Resources to withdraw from the FCA at any price below their accepted or mitigated Static De-List Bid price, consistent with the relief requested by NextEra Energy Resources, LLC, the PSEG Companies and the NRG Companies ("Joint Companies") in their protest in this proceeding.⁵

I. Motion to Intervene and Communications

NEPGA is a private, non-profit trade association advocating for the business interests of competitive electric power generators in New England. NEPGA's member companies represent approximately 26,000 megawatts of installed capacity throughout the New England region.

⁴ The IMM proposes to conduct the PST no earlier than the time that suppliers that submitted a Non-Price Retirement Request must elect to retire for that auction, which is approximately two weeks before the auction is conducted. FCA 10 is scheduled to commence on February 9, 2016 – two weeks prior to January 26, 2016. See ISO Filing, Joint Testimony of Jeffery D. McDonald and Robert V. Laurita on Behalf of ISO New England Inc., at p. 45. ("McDonald/Laurita Testimony").

⁵ *Protest and Comment of NextEra Energy Resources, LLC, the NRG Companies and the PSEG Companies*, Docket No. ER15-1650-000 (filed May 22, 2015) ("Joint Companies Protest").

NEPGA's mission is to promote sound energy policies which will further economic development, jobs, and balanced environmental policy. NEPGA's member companies are responsible for generating and supplying electric power for sale within the New England bulk power system. As active participants in the ISO-NE capacity and wholesale electricity markets, NEPGA's member companies have substantial and direct interests in the outcome of these proceedings, and those interests cannot be adequately represented by any other party in the proceeding.

All correspondence and communications related to this proceeding should be addressed to the following individual:

Bruce Anderson
Vice President, Market and Regulatory Affairs
New England Power Generators Association, Inc.
141 Tremont Street, Floor 5
Boston, MA 02111
Tel: 617-902-2347
Fax: 617-902-2349
Email: banderson@nepga.org

II. Protest

A. The Pivotal Supplier Test Proposed by the Internal Market Monitor Ignores the Contribution to a Competitive Auction From New Capacity Resource Offers

The PST is intended to determine whether a supplier “control[s] enough capacity in the market to exercise market power in the auction.”⁶ A supplier is considered pivotal if the capacity controlled by the supplier is necessary to meet either the system-wide Net Installed Capacity Requirement (“NICR”) or an import-constrained Capacity Zone’s Local Sourcing Requirement

⁶ ISO-NE Filing, Joint Testimony of Jeffery D. McDonald and Scott S. Hodgdon on Behalf of ISO New England Inc., at p. 28 (“McDonald/Hodgdon Testimony”).

(“LSR”).⁷ A supplier’s capacity is necessary to meet either the NICR or LSR if, by removing the suppliers’ capacity from the FCA, the remaining capacity is less than the NICR or LSR. The remaining capacity is the sum of Existing Capacity Resources and New Import Capacity Resources not controlled by the supplier and available to meet the NICR or LSR, taking into account transmission interface limits. What is materially missing from the PST is any consideration of offers from New Capacity Resources, which are either subject to IMM mitigation review and represent competitive offers into the FCA, or are permitted to bid below competitive offer levels under the Minimum Offer Price Rule exemption for Renewable Technology Resources. The PST proposed by the IMM does not consider New Capacity Resources as competitive supply and therefore fails to represent the actual FCM conditions that dictate whether the opportunity for undue market power exists. Any offer, whether from a new or existing resource, reflects a competitive offer to supply capacity in New England, and therefore should count towards the sum of supply available to meet the NICR or LSR.⁸ The failure to consider New Capacity Resource offers as capacity available to meet ISO-NE’s resource adequacy needs artificially decreases the supply available to meet demand below actual FCM conditions, and therefore skews the PST to more likely identify a supplier as pivotal when the competitive conditions in the FCA dictate that the supplier does not have the opportunity to exercise undue market power.

To date, the IMM has justified its treatment of New Capacity Resource offers by asserting that a New Capacity Resource offer is not necessarily a competitive offer into the FCA because a new resource may offer at a price above its offer floor price. According to the IMM,

⁷ *Id.*

⁸ All existing capacity offers (*i.e.*, de-list bids) above the Dynamic De-List Bid threshold are reviewed and approved by the IMM. New capacity resources increase the contestability of the market. Generally, the concern with new capacity offers is preventing the opportunity to exercise undue monopsony power, which may occur when a new resource seeks to offer capacity into the FCA at an uncompetitive low price.

because a new resource offer is limited only in that it cannot be less than the resource's offer floor price,⁹ there is no IMM review of whether the new resource is offering at a price greater than its competitive offer price. For this reason, the IMM has decided to effectively consider all New Capacity Resource offers in FCA 10 as uncompetitive offers, and therefore not count any of the MWs offered from New Capacity Resources as able to compete with existing resources to meet the system-wide NICR or an import-constrained Capacity Zone's LSR. The IMM's proposal defies reality, especially in light of the 16,000 MW of expressions of interest from New Capacity Resources for FCA 10, 8,500 MW of New Capacity Resources that qualified for FCA 9, and over 1,700 MW of New Capacity Resources that cleared in recent auctions and are presently under development. New England is in the midst of substantial turnover in the capacity resources that are used to satisfy ISO-NE's resource adequacy needs, with new resources competing with existing generation for Capacity Supply Obligations. For the PST to ignore all competitive offerings from the large class of qualified New Capacity Resources is simply illogical.

The IMM's reasoning also contradicts the FCM mitigation design, which recognizes that a New Capacity Resource may have an incentive to offer below its competitive price and therefore, except for mitigation-exempt Renewable Technology Resources, mitigates New Capacity Resource offers when they are "too low." This mitigation design recognizes that New Capacity Resources have no incentive to offer above their competitive price lest they risk not clearing in the FCA. The requirement that all resources participating in the FCA must submit offers below the FCA starting price is the mitigation tool guarding against uncompetitive high offers, while also requiring all qualified resources to participate. It is this mitigation scheme that

⁹ A New Capacity Resource offer is limited on the upper end of the price range by the FCA Starting Price.

leads to a competitive auction process between both qualified new and existing resources. The IMM's implicit presumption that no New Capacity Resource is offering into the FCA competitively is therefore both unrealistic and contradictory to the principles behind New Capacity Resource offer mitigation.

The PST, as proposed by the IMM, will allow the IMM to find that a resource has the opportunity to exercise undue market power (as it is defined by the IMM) when the resource in fact does not have that opportunity. If the IMM makes such an erroneous finding and has mitigated the resource's Static De-List Bid,¹⁰ the IMM will have nullified a competitive offer into the FCA, an unjust and unreasonable outcome. The PST must account for the competitive supply, and mitigation-exempt Renewable Technology Resource MWs, offered into the FCA by New Capacity Resources in order for the PST to accurately reflect the competitive conditions in the FCA. During the NEPOOL stakeholder process prior to the IMM's filing in this proceeding, the IMM recognized NEPGA's objections to its proposal and indicated a willingness to work with NEPOOL stakeholders in the coming months to discuss and address this deficiency in the PST for effect in FCA 11, asserting that there is insufficient time to modify the PST for effect in FCA 10. NEPGA welcomes the opportunity to work with the IMM and NEPOOL stakeholders to develop modifications to the PST, but disagrees with the IMM that there is insufficient time prior to FCA 10 to make the necessary changes. The IMM will conduct the PST seven months from now.¹¹ It appears that there is sufficient time to develop a methodology to reflect in the PST competitive New Capacity Resource offers prior to FCA 10. At the very least, that effort should not be abandoned seven months in advance of the PST and FCA 10, when the PST

¹⁰ Upon an IMM finding that a resource is pivotal, the IMM will replace the resource-submitted de-list price with the IMM's mitigated de-list bid price.

¹¹ The IMM proposes to conduct the PST no sooner than two weeks prior to the FCA, which will commence on February 9, 2016. *See* McDonald/Laurita Testimony at p. 45.

proposed by the IMM for FCA 10 would unjustly and unreasonably ignore some of the competitive supply offered into FCA 10.

NEPGA therefore asks the Commission to order ISO-NE to initiate a NEPOOL stakeholder process immediately following a Commission order in this proceeding, and to file with the Commission a revised version of the PST, to include competitive New Capacity Resource offers as supply, at least sixty days prior to January 26, 2016, the presumptive earliest date for the IMM to conduct the PST.¹²

B. The IMM's Proposal Unreasonably and Unjustly Limits the Ability of Existing Resources to Offer Competitively in the Forward Capacity Auction

The IMM proposes significant changes to the ability of an Existing Capacity Resource to modify its Static De-List Bid price, the price below which a resource is not willing to assume a Capacity Supply Obligation. As explained in greater detail by the Joint Companies in their joint protest in this proceeding,¹³ the IMM's proposal is an unjust and unreasonable limit on the ability of a resource to reflect its competitive offer price, and will create a less efficient Forward Capacity Market by forcing a resource to offer at a price that may be higher than a competitive offer. For these reasons, NEPGA asks the Commission to reject this part of the IMM's proposal and order ISO-NE to allow an Existing Capacity Resource to withdraw or reduce its Static De-List Bid to any price below its original Static De-List Bid price or the IMM-mitigated price, consistent with the Joint Companies' request for relief.

At present, an Existing Capacity Resource may reduce its Static De-List Price from the time it is first required to submit a price to the IMM (in early June of the calendar year prior the FCA, *i.e.*, about eight months prior to the FCA) until a period of time after it has received its

¹² FCA 10 will commence on February 9, 2016 – two weeks prior is January 26, 2016.

¹³ Joint Companies Protest at pp. 2-12.

Qualification Determination Notice from the IMM.¹⁴ The IMM is proposing to restrict the amount by which a resource may reduce its Static De-List Bid during that period of time to \$1.00/kw-month, asserting that the ability to reduce a Static De-List Bid is an “incentive for inflating Static De-List Bids.”¹⁵ The IMM’s proposal to prohibit competitive offers *below* an arbitrary price threshold, however, is inapposite to a market design that limits offers from existing resources only to the extent they are *above* a competitive offer level, and rightly assumes that any offer from an Existing Capacity Resource less than the IMM-established upper limit on competitive offer prices is likewise competitive. Mitigating competitive offers will create a less efficient market, in that a resource willing to assume a Capacity Supply Obligation at a lower price will be ignored because the IMM will mitigate its offer to a higher level. That the IMM asserts that some resources are “inflating” Static De-List Bids does not justify its proposed remedy. The IMM already has within its power the ability to address its perceived concern that some resources may submit Static De-List Bids that are “too high.” The IMM may evaluate whether in its opinion a Static De-List Bid is “too high,” and if in the IMM’s opinion a Static De-List Bid is “too high” or “inflated” it can mitigate the bid. The IMM does not need to prohibit competitive offers into the FCA in order to mitigate “inflated” bids.

Rather than being prohibited from making a competitive offer below a certain price, a resource should be permitted to withdraw from the FCA at any price below its offered or mitigated Static De-List Bid price. As explained in greater detail by the Joint Companies,¹⁶ an approved Static De-List Bid price does not necessarily represent the lowest price at which a resource is willing to accept a Capacity Supply Obligation. A resource’s lowest competitive

¹⁴ ISO-NE Filing, Transmittal Letter, at p. 8.

¹⁵ McDonald/Laurita Testimony at p. 15.

¹⁶ Joint Companies’ Protest at pp. 5-6.

offer is a business decision of the resource owner that wisely takes into account quantitative and qualitative information – information rightfully outside ISO-NE’s review. As ISO-NE has explained, it “is not in a position to discern the soundness of, or reasoning behind, the business-related actions (or inactions) of active and sophisticated market participants... much less to prevent them from making costly mistakes.”¹⁷ Stated otherwise, once the IMM has reviewed a Static De-List Bid and established an allowable upper bound for a resource offer into the Forward Capacity Auction, any offer below that price is a resource-specific decision left to the business judgment of the resource owner.

Until the Commission issues an order on the IMM’s proposed Tariff change, Market Participants will not know what rules will be in effect in FCA 10. Given that the Comment Date in this proceeding is May 22, 2015, it appears unlikely that the Commission will be able to issue an order prior to the Existing Capacity Qualification Deadline of June 1, 2015, the date by which an Existing Capacity Resource must submit its Static De-List Bid, if any, to the IMM. Without certainty as to the market rules that will be in effect for FCA 10, a Market Participant cannot make its most reasoned, competitive offer into the FCA, which in turn decreases market efficiency. In FCA 9, ISO-NE postponed the Existing Capacity Qualification Deadline for two weeks, from June 2 to June 16, 2014,¹⁸ in order to afford Market Participants, prior to submitting de-list bids, with rule certainty and a reasonable period of time to consider recently approved FCM design changes and increases to the Reserve Constraint Penalty Factors. Market Participants should likewise be afforded the opportunity to consider the rules that will bear on

¹⁷ *Answer of ISO New England Inc. to the Emergency Complaint Requesting Fast Track Processing or, in the Alternative, Request for Waiver of GenOn Energy Management, LLC*, Docket No. EL15-57-000 (filed May 6, 2015).

¹⁸ *See, e.g.,* ISO-NE Memo to NECPUC Re: Update on Recent and Upcoming Regional Activities, May 30, 2014, at p. 2, available at: http://www.iso-ne.com/committees/comm_wkgrps/othr/clg/mnthly_issu_memo/may_2014_necpuc_memo.pdf (“[M]oving the deadline to June 16, 2014 will ensure that participants will be able to incorporate FERC’s determination into their de-list bids for FCA #9.”).

their commercial decision-making prior to the deadline to submit Static De-List Bids for FCA 10. In order to promote efficient market outcomes, and to recognize Market Participants' reliance on the finality of the market rules that will apply to a particular FCA, NEPGA asks that the Commission order ISO-NE to postpone the FCA 10 Existing Capacity Qualification Deadline from June 1, 2015, to two weeks after the Commission issues an order in this proceeding.

The IMM's proposal is inconsistent with the FCM design, is unnecessary to mitigate Static De-List Bids that are "inflated," and will create a less efficient FCA. NEPGA therefore requests that the Commission reject the IMM's proposal to disallow competitive offers below a certain price, and approve the Tariff changes offered by the Generators, namely, to allow a resource to withdraw or reduce its Static De-List Bid price at any price below the upper price threshold established by the IMM in its mitigation review. NEPGA also requests that the Commission order ISO-NE to postpone the Existing Capacity Qualification Deadline for FCA 10 from June 1, 2015, to two weeks after the Commission issues an order in this proceeding.

III. Conclusion

Wherefore, NEPGA respectfully asks the Commission to grant its Motion to Intervene and order the IMM and ISO-NE to: (1) file Tariff changes no later than November 27, 2015, modifying the Pivotal Supplier Test to count competitive New Capacity Resource offers into the FCA as supply, for effect in FCA 10; (2) file Tariff changes for effect in FCA 10 consistent with the Joint Companies' request for relief to allow an Existing Capacity Resource to withdraw or reduce its Static De-List Bid to any price below the upper bid limit established by the IMM for that resource in its mitigation review; and (3) postpone the Existing Capacity Qualification Deadline until two weeks following the Commission's initial order in this proceeding.

Respectfully Submitted,

/s/ Bruce Anderson

Bruce Anderson
Vice President, Market and Regulatory Affairs
New England Power Generators Association, Inc.
141 Tremont Street, Floor 5
Boston, MA 02111
Tel: 617-902-2347
Fax: 617-902-2349
Email: banderson@nepga.org

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, May 22, 2015.

/s/ Bruce Anderson _____

Bruce Anderson
Vice President, Market and Regulatory Affairs
New England Power Generators Association, Inc.
141 Tremont Street, Floor 5
Boston, MA 02111
Tel: 617-902-2347
Fax: 617-902-2349
Email: banderson@nepga.org