UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England Inc. **and New England Power Pool Participants Committee**	**)**	**Docket No. ER16-2126-000**

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] the New England Power Generators Association, Inc. ("NEPGA")[2] files this Motion to Intervene and Protest in response to ISO New England, Inc.'s ("ISO-NE") July 1, 2016, compliance filing in this proceeding ("Compliance Filing").[3] In addition to complying with the Commission's directive to expressly address whether new incremental and existing Qualified Capacity at the same resource must submit a Composite Offer, ISO-NE proposes to prohibit existing winter Qualified Capacity paired with new incremental summer capacity from electing the seven-year price lock-in otherwise available to resources that newly clear the Forward Capacity Auction ("Price Lock-In").[4] Instead, ISO-NE

[1] 18 C.F.R. §§ 385.211, 385.214 (2013). NEPGA's Comments are timely and in accordance with the Commission's Combined Notice of Filings #2 (July 1, 2016).
[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. and New England Power Pool Participants Committee, Compliance Filing Related to the Treatment of New Summer Incremental Generating Capacity/Significant Increases and Excess Existing Winter Generating Capacity at the Same Generating Resource, and MultiYear Lock-In for New Summer Incremental Generating Capacity*, Docket No. ER16-2616-000 (filed July 1, 2016)
[4] *See* ISO-NE Tariff § III.13.1.1.2.2.4.

proposes to allow the Market Participant to elect the Price Lock-In only for that part of its annual Capacity Supply Obligation that covers the four summer months.

ISO-NE's proposed treatment of Capacity Supply Obligations procured through a Composite Offer is unduly discriminatory and will discourage competition in the Forward Capacity Market, in that it weakens the incentive for owners of existing generation to further develop the resource to provide new capacity to the Forward Capacity Market. Without the price-certainty granted by the Price Lock-In, there is less of an incentive to make the investment necessary to increase summer capacity and make existing winter capacity eligible to offer into the Forward Capacity Auction, thereby denying the market the benefit of competition from what is in all likelihood highly competitive new capacity given the efficiencies of developing new capacity at an existing generating station.

NEPGA therefore respectfully requests that the Commission reject that part of ISO-NE's Compliance Filing that unduly denies the ability to elect the Price Lock-In for an entire annual Capacity Supply Obligation and order ISO-NE to file Tariff changes that allow a Market Participant making a Composite Offer to the elect the Price Lock-In for up to the seven year limit for both its summer and winter capacity that clears in the auction.

I. Motion to Intervene and Communications

NEPGA is the trade association representing competitive power generators in New England. NEPGA's member companies represent approximately 26,000 megawatts, or roughly 80% of the installed capacity in New England. NEPGA's mission is to support competitive wholesale electricity markets in New England. NEPGA believes that open markets guided by stable public policies are the best means to provide reliable and competitively-priced electricity for consumers. A sensible, market-based approach furthers economic development, jobs and balanced environmental policy for the region. 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 individuals:

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II. Background

On May 2 and June 16, 2016, the Commission issued orders on complaints filed by, respectively, Dominion[5] and NextEra.[6] Dominion and NextEra each sought to make a Composite Offer into the tenth Forward Capacity Auction ("FCA 10"), but ISO-NE maintained that their offers did not comply with the Tariff and were therefore disqualified from participating. Dominion and NextEra sought relief, arguing that they had complied with the Tariff in making their Composite Offers. The Commission denied Dominion's complaint, in part, but found that ISO-NE's Tariff is "unclear" regarding the process for making Composite

[5] *Dominion Energy Marketing, Inc., Dominion Energy Manchester Street, Inc., v. ISO New England, Inc., Order on Complaint*, 155 FERC ¶ 61,121, at P 21 (2016), Docket No. EL16-38-000 ("Dominion Complaint Order").
[6] *NextEra Energy Power Marketing, LLC and Northeast Energy Associates, a Limited Partnership, Order on Complaint*, 155 FERC ¶ 61,270 (2016).

Offers.[7] The Commission concluded that the lack of clarity denied market participants reasonable notice of the process requirements, rendering the process unjust and unreasonable.[8] The Commission therefore ordered ISO-NE to file Tariff language expressly defining whether a market participant must make a Composite Offer "and the rationale for any such requirement."[9]

With respect to the Price Lock-In, in its complaint Dominion asked the Commission to address whether new incremental summer capacity at an existing resource offered as part of a Composite Offer should be permitted to elect the Price Lock-In. This was the precise and only question presented to the Commission - ISO-NE had asserted that the Tariff did not permit Dominion's offer of new incremental (summer) capacity to elect the Price Lock-In if it cleared the Forward Capacity Auction as part of a Composite Offer.[10] ISO-NE concluded that had Dominion made a qualified Composite Offer, ISO-NE would have rejected its request to elect the Price Lock-In because under ISO-NE's reading of the Tariff a Composite Offer is not eligible for the Price Lock-In.[11] The Commission rejected ISO-NE's reading of the Tariff, explaining that denying capacity that newly clears the Forward Capacity Auction the option to elect the Price Lock-In denies those resources the ability to respond to the very intent of the Price Lock-In which is to incent "new entry and provide investor assurance."[12]

III. PROTEST

ISO-NE's proposal would reduce the incentives for Market Participants to develop incremental capacity at an existing resource and unduly discriminate against resources that newly

[7] Dominion Complaint Order at P 21 (2016).
[8] *Id.*
[9] *Id.*
[10] *Id*. at 20.
[11] *Id.* at P 22.
[12] *Id.* at P 22.

clear capacity through a Composite Offer made up of winter and summer capacity at the same resource.

Winter Qualified Capacity that clears the Forward Capacity Auction as part of a Composite Offer is subject to all the obligations of all other resources with a Capacity Supply Obligation. Like all other MWs subject to a Capacity Supply Obligation, the MWs associated with cleared winter capacity must be offered into the Day-Ahead Energy Market, are subject to penalties for non-performance during shortage events, become existing capacity in the Forward Capacity Market once they clear, and can exit the Forward Capacity Market only through a de-list bid. ISO-NE proposes to take what are uniform obligation of resources with a Capacity Supply Obligation and create an unduly discriminatory exception for resources that acquire the Capacity Supply Obligation through a Composite Offer made up of winter and summer capacity at the same resource. A new resource offering newly qualified winter and summer capacity may elect the Price Lock-In for all months of its Capacity Supply Obligation, but new capacity developed at an existing resource cannot under ISO-NE's proposal. ISO-NE proposes this disparate treatment despite the fact that in each case a Market Participant is bringing new, competitive entry to the Forward Capacity Auction, the market response the Price Lock-In is intended to incent. ISO-NE offers no reasoned basis for this unduly discriminatory treatment.

A resource that clears in the Forward Capacity Auction assumes a Capacity Supply Obligation for the associated annual Capacity Commitment Period that runs from June 1 through May 31. Under ISO-NE's proposal, incremental summer capacity and winter Qualified Capacity will be combined into a single resource offer into the Forward Capacity Auction, and if that Composite Offer clears it will receive a Capacity Supply Obligation for the associated one-year Capacity Commitment Period. ISO-NE's proposal, however, bifurcates the annual obligation and payment rate of a Capacity Supply Obligation, which in every other respect applies equally to every day of the year, into seasonal payments in those cases where the Composite Offer clears the auction and elects the Price Lock-In for the summer capacity (which would be expected to be most common choice of new capacity that clears). That part of the Capacity Supply Obligation covering the winter months would not be permitted to elect the Price Lock-In but would effectively be obligated to offer into the Forward Capacity Auction each year because the summer capacity portion that elects the Price Lock-In is obligated to offer into the auction each year. Because a capacity resource's MW value is determined by the lower of its summer and winter capacity value, if the winter portion of the Composite Offer were to de-list, the total capacity value of the Composite Offer resource would be reduced to zero MWs. If that were to occur, the resource would violate its Price Lock-In obligation to offer the capacity subject to the Price Lock-In into each Forward Capacity Auction during the duration of the Price Lock-In period (*i.e.*, up to seven years).

ISO-NE and the Commission were presented with similar circumstances in 2007, when ISO-NE proposed to allow a Market Participant to elect a multi-year price lock for both the winter and summer capacity at different resources combined into a Composite Offer. ISO-NE's primary rationale for this treatment was to avoid "seasonal imbalance" concerns. As ISO-NE explained:

> "A complication arises when the summer capacity resource is a new resource. New resources are allowed to elect up to a five year Commitment Period. But if a new resource elects a multi-year commitment when it is the summer resource in a composite offer, and one or more existing resources provide winter capacity in that composite offer and receive, under the current rules, only a one year Capacity Supply Obligation, we could enter future FCAs with 'unbalanced' seasonal needs. That is, we would have summer capacity with an obligation, but no corresponding

> winter capacity, so we would need to procure additional winter capacity to balance the existing summer capacity."[13]

ISO-NE remedied this "seasonal imbalance" concern by allowing winter Qualified Capacity that is combined with new incremental summer capacity to elect a multi-year Capacity Supply Obligation.[14] More specifically, ISO-NE proposed to allow a Composite Offer made up of summer capacity and winter capacity from two different resources to elect a multi-year price lock for the entire annual Capacity Supply Obligation (both winter and summer capacity). According to ISO-NE, to allow only for the summer portion of the Capacity Supply Obligation to elect multi-year pricing, and to assume the associated multi-year obligation to offer the capacity into subsequent Forward Capacity Auctions, could cause subsequent Capacity Commitment Periods to "face unbalanced seasonal needs."[15] As ISO-NE further explained, if all resources that compromise a Composite Offer are not obligated for the same set of Capacity Commitment Periods, a composite resource might be obligated to perform as a capacity resource in the four summer months but not the eight winter months for several years.[16] In order to remedy capacity shortfalls caused by this imbalance, ISO-NE could participate in the Annual Reconfiguration Auctions, but those auctions, like the Forward Capacity Auction, procure annual Capacity Supply Obligations and therefore cannot serve as a remedy for seasonal imbalances in Capacity Supply Obligations. Though monthly bilateral reconfiguration auctions allow willing buyers and sellers to exchange Capacity Supply Obligations on a monthly basis, there is no

[13] *ISO New England Inc., Various Revisions to FCM Rules, Prepared Testimony of Robert Ethier on Behalf of ISO New England Inc.,* Docket No. ER07-1338-000, at p. 8 (filed August 31, 2007).
[14] *ISO New England, Inc.*, 121 FERC 61,106 at P 6 (2007).
[15] *ISO New England Inc., Various Revisions to FCM Rules,* Docket No. ER07-1338-000, at pp. 7-8 (filed August 31, 2007).
[16] *Id*.

certainty that such transactions will occur and ISO-NE is not permitted to participate in the monthly bilateral auctions to satisfy any capacity shortfalls.

A seasonal imbalance could also have an adverse effect on the two-settlement Forward Capacity Market design approved by the Commission in 2014. Under the two-settlement design, a capacity resource's share of system demand is proportional to the balancing ratio, which is equal to the ratio of load plus reserves requirements divided by the sum of all Capacity Supply Obligation MWs. The resource's share of system demand, and how it performs relative to its share of system demand, dictates whether a resource receives revenues or must pay under the second settlement. That is true whether it is dispatched to deliver energy of committed to provide reserves. If a resource's Capacity Supply Obligation is reduced to a summer-only obligation, all other capacity resources will be required to assume a proportional share of the Capacity Supply Obligation during the winter months due to an increase in the balancing ratio caused by the decrease in winter month Capacity Supply Obligation MWs.

The Commission accepted ISO-NE's 2007 proposal on Composite Offers, finding that it created "a positive result for all new summer-only resources as it increases the chance of coupling with a winter-only resource for a composite offer and provides revenue certainty."[17] Now, with respect to Composite Offers from summer and winter capacity at the same resource, ISO-NE proposes to avoid the "seasonal imbalance" problem by obligating the Market Participant to offer the winter portion of the Composite Offer every year of the Price Lock-In period even though only the summer capacity will be eligible for the Price Lock-In. A Price Lock-In resource is entered into the FCA as a price-taker for the duration of the Price Lock-In period elected by the resource, guaranteeing that the resource will clear the Forward Capacity

[17] *ISO New England, Inc.*, 121 FERC ¶ 61,106 at P 18 (2007).

Auction for the duration of the Price Lock-In period. ISO-NE implicitly assumes that the winter capacity, if bifurcated into a separate Capacity Supply Obligation product, will continue to clear in each Forward Capacity Auction during the period of the Price-Lock-In,[18] but the only way to accomplish that would be to require the existing winter capacity not subject to the Price Lock-In to commit to not de-listing the resource until the associated Price Lock-In period ends. This would require the Market Participant to assume the obligations of a Price Lock-In resource for the entire year, without the benefit of the price certainty guaranteed to a resource willing to assume an annual Capacity Supply Obligation for up to seven years.

Though the Tariff changes approved by the Commission in 2007 governed a multi-year price lock-in for Composite Offers comprised of winter and summer capacity at different resources,[19] its reasoning for approving the Composite Offer treatment is just as relevant for Composite Offers of capacity at the same resource. In each case, the multi-year price lock-in provides a greater incentive for a developer, whether it be at an existing resource or at an entirely new resource, to bring new capacity to the Forward Capacity Market to compete. As Dominion explained in its complaint, it invested millions of dollars in upgrades at its Manchester Street Station to bring not only new incremental summer capacity, but its excess winter Qualified Capacity, to the Forward Capacity Market to compete for a Capacity Supply Obligation.[20] Only by making that investment in new incremental summer capacity was Dominion able to offer its excess winter Qualified Capacity into the Forward Capacity Auction. Making the Capacity Supply Obligation procured through a Composite Offer eligible for the Price Lock-In will provide a strong incentive for a resource like Manchester Street to bring competitive new

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[18] Compliance Filing, Transmittal Letter at p. 7.

[19] *ISO New England, Inc.*, 121 FERC ¶ 61,106 at P 18 (2007).

[20] *Complaint and Request for Fast Track Processing of Dominion Energy Marketing, Inc., and Dominion Energy Manchester Street, Inc,*, at p. 9, Docket No. EL16-38-000 (filed February 5, 2016) (“Dominion Complaint”).

capacity to the Forward Capacity Market, both summer and winter capacity, which is the very intent of the Price Lock-In. ISO-NE's proposal will significantly dilute the price certainty the Price Lock-In is intended to give, with only the four summer months enjoying the Price Lock-In, resulting in price certainty for only 33% of the Composite Offer resource capacity.

ISO-NE believes that the Commission has directed it to specifically prohibit a Market Participant from electing the Price Lock-In for the winter months of a Capacity Supply Obligation procured through a Composite Offer.[21] The Commission's Compliance Filing order, however, addresses only the treatment to be afforded the new summer capacity because that was the only question squarely presented to the Commission by the Dominion complaint. In response to that specific question, the Commission found that "ISO-NE offers no rationale for why the lock-in is not available to ***composite resources***" and that it sees "no reason why an existing generating resource with new incremental capacity should not be able to lock-in the price for the new incremental capacity."[22] ISO-NE takes this language to limit the applicability of the Price Lock-In, which instead should be read only to address the treatment of new incremental summer capacity. Indeed, the Commission's directive could be read to expressly dictate that the Price Lock-In be available to a "***composite resource***", *i.e.,* the combination of winter and summer capacity into a single annual Capacity Supply Obligation.

The unduly discriminatory treatment of, and unfair burden placed on Composite Offer resources made up of winter and summer capacity from the same resource can be avoided easily by allowing a Market Participant to elect the Price Lock-In for the entire annual Capacity Supply Obligation. NEPGA respectfully requests that the Commission order ISO-NE to do so

[21] Compliance Filing Transmittal Letter at p. 7 ("It is important to note that the Commission directed the ISO to extend the multi-year lock-in solely to *new incremental capacity*, and not to existing capacity.").
[22] Dominion Complaint Order at P 22 (emphasis added).

expeditiously to provide Market Participants with greater certainty around the market rules governing Composite Offers.

IV. CONCLUSION

NEPGA respectfully requests that the Commission reject that part of ISO-NE's compliance filing that limits the Price Lock-In to the summer months of a Capacity Supply Obligation and direct ISO-NE to file Tariff changes that would allow a Market Participant that clears a Composite Offer of new summer capacity and winter Qualified Capacity at the same resource to elect the Price Lock-In for the entire annual Capacity Supply Obligation.

Respectfully Submitted,

*/s/ Bruce Anderson*___________

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CERTIFICATE OF SERVICE

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

Dated at Boston, Massachusetts, July 22, 2016.

*/s/ Bruce Anderson*_______________

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