

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

**ISO New England Inc.**

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**Docket No. ER16-551-001**

**PROTEST OF THE  
NEW ENGLAND POWER GENERATORS ASSOCIATION, INC.**

Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the “Commission”),<sup>1</sup> and the Commission’s March 1, 2016 notice,<sup>2</sup> the New England Power Generators Association, Inc. (“NEPGA”)<sup>3</sup> hereby submits this protest to the response filed on February 29, 2016<sup>4</sup> by ISO New England Inc. (“ISO-NE”) to the Commission’s letter requesting additional information on ISO-NE’s proposed revisions<sup>5</sup> to provisions of the Forward Capacity Market (“FCM”) rules relating to resource retirement.<sup>6</sup> As discussed herein, the February 29 Response only serves to highlight the potential for ISO-NE’s proposed Tariff revisions to result in over-mitigation and infringe on suppliers’ rights to set their own Retirement

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<sup>1</sup> 18 C.F.R. § 385.211 (2015).

<sup>2</sup> Combined Notice of Filings #1, Docket Nos. EC16-82-000, *et al.* (Mar. 1, 2016) (unreported).

<sup>3</sup> NEPGA, a non-profit entity duly organized and existing under the laws of the Commonwealth of Massachusetts, is a trade organization that advocates for the business interests of non-utility electric power generators in New England. NEPGA’s member companies represent approximately 26,000 MW of electrical generating capacity throughout the New England region. The positions set forth in this filing represent the position of NEPGA as an organization, but not necessarily the views of any particular member with respect to any issue.

<sup>4</sup> Response to Letter Dated February 12, 2016, Regarding Forward Capacity Market Resource Retirement Reforms, Docket No. ER16-551-001 (filed Feb. 29, 2016) (the “February 29 Response”).

<sup>5</sup> *See* Forward Capacity Market Retirement Reforms, Docket No. ER16-551-000 (filed Dec. 17, 2016) (the “December 17 Filing”). Capitalized terms not otherwise defined herein have the meaning set forth in ISO-NE’s Transmission, Markets and Services Tariff (the “Tariff”), or if not set forth therein, the December 17 Filing.

<sup>6</sup> *ISO New England, Inc.*, Docket No. ER16-551-000 (Feb. 12, 2016) (unreported).

De-List Bids and Permanent De-List Bids (“Exit Bids”). Accordingly, NEPGA renews its prior objections to the December 17 Filing.

## I.

### PROTEST

NEPGA’s prior filings in this proceeding pointed out that, under the ISO-NE proposal, ISO-NE has usurped the right to file generators’ Exit Bids pursuant to Section 205 of the Federal Power Act (the “FPA”),<sup>7</sup> in violation of the statutory scheme of the FPA. This proposal gives ISO-NE’s Internal Market Monitor (the “IMM”) the power to determine the upper bounds of what is considered a “just and reasonable” bid,<sup>8</sup> meaning that the Commission will not have the ability to review and accept higher Exit Bids by suppliers that may also deemed be just and reasonable.<sup>9</sup> Accordingly, NEPGA explained that ISO-NE’s proposal will result in over-mitigation because suppliers will not be permitted to set their own Exit Bids, even if those bids are just and reasonable, but must instead use Exit Bids set by the IMM.<sup>10</sup>

Nothing in the February 29 Response allays these concerns. Notwithstanding its prior assurances that it and the IMM understand that there may be a range of just and reasonable Exit Bids,<sup>11</sup> ISO-NE now takes the position that the IMM-calculated price is the sole “*correct price*”

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<sup>7</sup> 16 U.S.C. § 824d (2012).

<sup>8</sup> See Protest of the New England Power Generators Association, Inc. at 18-22, Docket No. ER16-551-000 (filed Jan. 11, 2016) (the “NEPGA Protest”); Motion for Leave to Answer and Limited Answer of the New England Power Generators Association, Inc. at 8-12, Docket No. ER16-551-000 (filed Feb. 5, 2016) (the “NEPGA Answer”).

<sup>9</sup> See NEPGA Answer at 11-12.

<sup>10</sup> See *id.* at 19-21.

<sup>11</sup> See Motion for Leave to Answer and Answer of ISO New England Inc. at 4-5, Docket No. ER16-551-000 (filed Jan. 27, 2016)

that should be used in the FCM auctions.<sup>12</sup> As a result, ISO-NE states that the IMM will replace suppliers' assumptions that, in the IMM's opinion, "do[] not appear to be reasonable and/or well supported" with its own inputs or inputs derived from a third-party vendor or vendors.<sup>13</sup> The problem, as NEPGA has previously pointed out, is that ISO-NE's proposed filing scheme forecloses the possibility that a supplier would be able to make a showing to the Commission that its inputs were, in fact, reasonable and adequately supported. Instead, by usurping suppliers' Section 205 filing rights, ISO-NE makes the IMM the ultimate arbiter of what is "reasonable" because the Commission will not be in a position to consider alternatives put forward by suppliers themselves so long as the IMM's Exit Bids are just and reasonable.<sup>14</sup> The use of these IMM-determined bids in the Forward Capacity Auctions ("FCAs") could then result in suppressed clearing prices that fail to reflect suppliers' actual expectations and cost calculations, and thereby create a barrier to economic exit. Moreover, under ISO-NE's proposed discriminatory two-tiered pricing scheme, most suppliers will receive the suppressed clearing price resulting from the use of the IMM-determined bids, but then a small group of resources will arbitrarily receive a higher price that reflects a more realistic picture of actual supply conditions.<sup>15</sup>

In fact, the February 29 Response demonstrates the very real threat of over-mitigation posed by ISO-NE's proposal. Specifically, the IMM explains that it will allow a market participant to reflect regulatory risk in its offer only if the risk satisfies the IMM's very narrow

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<sup>12</sup> February 29 Response, Attachment A at 15 (emphasis in original).

<sup>13</sup> *Id.* at 2. Although ISO-NE and the IMM apparently accept that forecasted values involve some degree of subjective assessment, they then suggest that vendor forecasts will provide the "correct" forecast that can be used to evaluate suppliers' bids. *See, e.g., id.* at 1.

<sup>14</sup> *See* NEPGA Protest at 19-20 & nn.82-83 (citing cases).

<sup>15</sup> *See id.* at 12-17.

and unsupported definition of regulatory risk. After acknowledging that “[r]egulatory uncertainty is the perceived *inability to predict* the future state of the regulatory environment, including risks (or opportunities) arising from *proposed*, new, and existing regulations or market rules,”<sup>16</sup> ISO-NE then goes on to state that, in calculating Exit Bids, the IMM will not permit the inclusion of any risk adders if “a regulation has not yet been approved by the relevant regulatory body” because the risk would otherwise be “unquantifiable and unsupported.”<sup>17</sup> Similarly, ISO-NE takes the position that only “relevant risk that can be quantified and analytically supported” can be included as a risk adder in an Exit Bid.<sup>18</sup> In short, ISO-NE and its IMM apparently believe that it is appropriate to account for “regulatory *uncertainty*” only when there is “*certainty*” regarding a proposed regulation and when a risk is “[q]uantifiable and [s]upportable.”<sup>19</sup>

ISO-NE’s position is facially absurd and would result in the disallowance of even reasonably foreseeable regulatory risks. For example, suppliers would not be able to account for the risks of increased penalties under revised FCM rules until such rules were actually approved by the Commission. This would be the case if such penalties enjoyed broad stakeholder support and had been filed by ISO-NE under Section 205 of the FPA. In addition, suppliers would not be able to account for the risks associated with proposed legislation that would allow resources or transmission facilities receiving subsidies under state-sponsored contracts to participate in the ISO-NE markets, even risks as massive as those posed by legislation that would subsidize imports of Canadian hydroelectric resources. Although not “approved” yet, this legislation poses

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<sup>16</sup> February 29 Response, Attachment A at 5 (emphasis added).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 4.

<sup>19</sup> *Id.* at 5.

an enormous risk that suppliers ought to be allowed to reflect in their Exit Bids, particularly in light of the fact that it appears to have widespread support in the Massachusetts legislature.<sup>20</sup>

The ISO-NE filing scheme would deprive suppliers of the opportunity to use Exit Bids that include reasonable risk adders, including adders reflecting true uncertainty as to future regulatory requirements, in their Exit Bids unless the Commission finds the IMM's Exit Bid to be unjust and unreasonable. The result will be over-mitigation, artificial price suppression and a barrier to economic exit, with the IMM's Exit Bid being substituted for competitive suppliers' bids that would have reflected reasonable risk adjustments.

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<sup>20</sup> See Bill S. 1965, *An Act relative to energy sector compliance with the Global Warming Solutions Act* (Mass. 2015), <https://malegislature.gov/Bills/189/Senate/S1965>.

**II.**

**CONCLUSION**

For the reasons set forth herein, NEPGA respectfully requests that the Commission reject, or condition its acceptance of, the December 17 Filing.

Respectfully submitted,

**NEW ENGLAND POWER GENERATORS  
ASSOCIATION, INC.**

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On behalf of the **New England Power  
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Dated: March 14, 2016

**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 D.C., this 14<sup>th</sup> day of March, 2016.

/s/ Stephanie S. Lim  
Stephanie S. Lim