

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

ISO New England Inc.

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Docket No. ER19-291-000

**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 hereby submits this Motion for Leave to Answer and Answer to the answer recently filed in this proceeding by ISO New England Inc. (“ISO-NE Answer”).³ ISO-NE asks the Commission to deny NEPGA’s Conditional Protest⁴ on either of two bases: (1) it is procedurally improper in that NEPGA seeks relief that can be granted only through a Section 206 complaint;⁵ and (2) NEPGA has otherwise failed to show that the Installed Capacity Requirement (“ISO-NE”) and Marginal Reliability Impact (“MRI”) Demand Curve values ISO-NE proposes for FCA 13 are unjust and unreasonable. Neither argument is persuasive.

ISO-NE’s procedural argument is unavailing, in that the Commission may grant NEPGA’s relief under either Section 205 or Section 206 of the Federal Power Act. As for its

¹ 18 C.F.R. §§ 385.212, 385.213 (2018).

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

³ *Motion for Leave to File Answer and Answer of ISO New England Inc.*, Docket No. ER19-291-000 (filed Dec. 12, 2018).

⁴ *Motion to Intervene and Conditional Protest of the New England Power Generators Association, Inc.*, Docket No. ER19-291-000 (filed Nov. 27, 2018); *see also Supplemental Protest of the New England Power Generators Association, Inc.*, Docket No. ER19-291-000 (filed Dec. 12, 2018).

⁵ ISO-NE Answer at pp. 12-13.

arguments on the merits, ISO-NE takes the position that the Forward Capacity Auction should on the one hand account for resources made eligible for a cost-of-service agreement based on fuel security requirements (“Fuel Security Resource”) while on the other hand not account for this reliability requirement in establishing its demand. ISO-NE cannot have it both ways. Either a Fuel Security Resource should be priced into the FCA according to its competitive Retirement De-List Bid price, or the capacity requirement must account for the fuel security requirement. With the Commission recently accepting ISO-NE’s request to re-price Fuel Security Resources beginning in FCA 13 (“Fuel Security Order”)⁶, it must require ISO-NE to account for the fuel security requirement in setting ICR and the MRI Demand Curve values beginning in FCA 13 for the FCA outcome to be just and reasonable.

Good cause exists to permit this answer because it clarifies the record and law in this proceeding.

I. ANSWER

A. THE COMMISSION MAY GRANT NEPGA’S RELIEF UNDER EITHER SECTION 205 OR SECTION 206 OF THE FEDERAL POWER ACT

ISO-NE’s procedural argument rests on its belief that the relief NEPGA seeks requires a change to the Tariff when it in fact does not. NEPGA is not seeking a change to the Tariff, but instead protesting ISO-NE’s application of the Tariff following the Fuel Security Order,⁷ pursuant to which the Commission accepted the reliability standard ISO-NE will apply to determine whether a resource is needed to meet ISO-NE’s winter reliability need in FCAs 13-15. The Tariff presently provides for an adjustment to the generator availability assumption (forced outage rate or “EFORd”) for purposes of the ICR calculation to ensure that it is consistent with

⁶ *ISO New England Inc.*, 165 FERC ¶ 61,202 (2018).

⁷ *Id.*

the Forward Capacity Market design and incentives. Specifically, ISO-NE's Transmission, Markets and Services Tariff ("Tariff") explains:

"Once sufficient data are collected under the availability incentives in the Forward Capacity Market, a resource availability metric, which reflects resource availability in a manner that is consistent with the availability incentives in the Forward Capacity Market, shall be developed and reviewed with Governance Participants, the state regulatory agencies in New England and, as appropriate, other state agencies and used in the calculation of the Installed Capacity Requirement...and capacity requirement values for the System-Wide Demand Curve."⁸

The "availability incentives" refer to, most notably, the Pay for Performance charges and payments which took effect in FCA 9. Through its Fuel Security Filings,⁹ and more recently in a presentation to the NEPOOL Reliability Committee ("RC"), ISO-NE has provided data and analyses defining a new resource availability metric demonstrating ISO-NE's view of the impact winter operations will have on forced outage rates under the availability incentives in effect in FCAs 13-15.¹⁰ In its RC presentation, ISO-NE re-evaluated the levels of energy not served and ten-minute reserve deficiencies in its fuel security scenarios to reflect the changes in fuel refill, LNG injections and energy import assumptions adopted in the Fuel Security Filings.¹¹ The level of energy not served in the Fuel Security Filings and in this more recent analysis demonstrates that the unavailability of fuel resulting from those scenarios causes much greater resource unavailability than reflected in the historical EFORD values.¹² If ISO-NE expects generating and import capacity resources to respond to the FCM availability incentives in FCAs 13-15 by

⁸ Tariff § 12.7.3(c).

⁹ *ISO-NE Filing Re: Compliance Filing to Establish a Fuel Security Reliability Standard, Short-Term Cost-of-Serve Mechanism, and Related Cost Allocation for Out-of-Market Compensation*, Docket Nos. EL18-182-000 and ER18-2364-000 (filed Aug. 31, 2018); *Petition of ISO New England Inc. for Waiver of Tariff Provisions*, No. ER18-1509-000 (filed May 1, 2018).

¹⁰ ISO-NE Presentation to the NEPOOL Reliability Committee, *Forward Capacity Auction 13 (FCA 13): Informational Refresh of Mystic 8 & 9 Analysis*, Dec. 18, 2018, available at: <https://www.iso-ne.com/committees/reliability/reliability-committee/?eventId=134595>.

¹¹ *Id.*

¹² *Id.*

performing at historical forced outage rates, the fuel security criteria would not produce the higher forced outage rates needed to yield the energy not served levels that form the basis of its rejection of resources for fuel security.

This disconnect results in ISO-NE proposing to calculate the system-wide resource adequacy requirement in one way, and effectively a second, larger system-wide resource adequacy requirement in another – in this case driven by lower availability of capacity resources in the winter months. In calculating the ICR value, the Tariff requires ISO-NE to develop a resource availability metric “in a manner that is consistent with the availability incentives in the Forward Capacity Market.” Though ISO-NE may have filed it for an “entirely different purpose,” the Commission has accepted as reasonable ISO-NE’s outlook on likely EFORd rates under the FCM incentive structure, which are much higher than ISO-NE assumes for purposes of its FCA 13 ICR and MRI Demand Curve values. ISO-NE cannot pick and choose which outlook to use based on the purpose.

Notwithstanding this Tariff provision, the Commission itself of course may find that the FCA 13 ICR and Demand Curve values ISO-NE proposes are unjust and unreasonable, and order the same relief NEPGA seeks under the Commission’s own FPA Section 206 authority. It is well-settled that the Commission has the duty to ensure that rates are just and unreasonable, and to remedy the rate upon its finding that a rate is unjust and unreasonable.¹³ This is so whether raised by complaint or by the Commission acting under its authority under FPA Section 206 to “initiate changes to existing utility rates and practices.”¹⁴ Thus, the Commission may act under its FPA Section 206 authority if it agrees with NEPGA and finds that the ICR and MRI Demand Curve values ISO-NE proposes for FCA 13 are unjust and unreasonable. If the Commission

¹³ 16 U.S.C. § 824e(a) (2018).

¹⁴ *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 10 (D.C. Cir. 2002).

finds that ISO-NE's application of the Tariff renders it unjust and unreasonable, or that the Tariff itself is unjust and unreasonable, it must deny ISO-NE's requests or order a change to the Tariff whether by virtue of NEPGA bringing it to the Commission's attention or *sua sponte*. Thus, the Commission may in fact grant the relief NEPGA requests, and ISO-NE's arguments to the contrary should be rejected.

**B. USING THE RESOURCE ADEQUACY PROCUREMENT TO MEET FUEL
SECURITY REQUIRES RESOURCE ADEQUACY TO REFLECT FUEL SECURITY**

In the Fuel Security Order proceeding, NEPGA argued that Fuel Security Resources are not needed to meet a region-wide resource adequacy requirement that does not reflect fuel security criteria.¹⁵ As the Commission accepted ISO-NE's request to re-price Retirement De-list Bids rejected for fuel security as price-takers, the same contradiction now exists in this docket. By authorizing the re-pricing of a Fuel Security Resource as price-taking supply in the FCA, the region-wide FCA demand must now determine the resource adequacy requirement consistent with the fuel security criteria. The Forward Capacity Auction cannot on the one hand include Fuel Security Resources as capacity resources (through their re-pricing) while on the other hand ignore the fuel security requirement in establishing a demand for capacity.

ISO-NE argues unconvincingly that ICR need not account for the fuel security requirement because, as it argues, the need is only in high demand winter periods and ICR is set (today) by the summer peak demand. The Tariff and North American Electric Reliability Corporation ("NERC") assessments, however, support NEPGA's position that if fuel security needs are to be reflected in the net FCA demand, then the gross FCA demand must be

¹⁵ See, e.g., *Motion to Intervene and Protest of the New England Power Generators Association, Inc.*, Docket No. ER18-2364-000 (filed Sept. 21, 2018).

determined in a manner that reflects fuel security criteria.¹⁶ Under these circumstances, capacity cannot be divorced from energy, and “fuel security” cannot be argued as solely an operational consideration as ISO-NE would have the Commission believe. The central mechanism by which ISO-NE changed the Capacity Supply Obligation under the two-settlement design was to credit charges or payments based on real-time operations, *i.e.*, by providing energy or reserves. ISO-NE explained that “changes to the capacity market’s Pay for Performance is built around a well-defined product – the delivery of energy and reserves when they are needed most,” particularly during the winter months.¹⁷ Due to the Fuel Security Order, ISO-NE cannot now justify the ICR and Demand Curve values it proposes for FCA 13 based on the distinction between capacity and energy it draws.

NERC takes the view that resource adequacy is defined as “the ability of the electric system to supply the aggregate electric power and energy requirements of the electricity consumers *at all times* taking into account scheduled and reasonably expected unscheduled outages of system components.”¹⁸ Whether or not the resource adequacy requirement is set by summer peak loads is self-fulfilling, in that it is due to the input assumptions and factors considered. The resource adequacy requirement, however, must also take into account the resource adequacy need in every hour or every day. Thus, material resource adequacy considerations other than peak summer load must be considered when more recent information, analyses or circumstances, show that meeting demand and a reserve margin in the winter months

¹⁶ NEPGA maintains that Mystic Units 8 and 9 should be priced in the FCA according to their Retirement De-List Bid prices, but given the Fuel Security Order, NEPGA must now seek to resolve the issue through the determination of the FCA13 capacity values.

¹⁷ *ISO New England Inc., and New England Power Pool. Filing of Market Rule Changes to Implement Pay for Performance in the Forward Capacity Market*, Docket No. ER14-1050-000, Attachment I-1a, *Transmittal letter on behalf of the ISO*, p. 2-3 (filed Jan. 17, 2014) (describing the region’s “growing dependence” on natural gas leaving it “extremely vulnerable to interruptions to gas supply.”).

¹⁸ See, *e.g.*, *NERC 2018 Long-Term Reliability Assessment*, December 2018, at p. 5, available at: https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_LTRA_2018_12202018.pdf.

requires a higher resource adequacy requirement. This is particularly so when the capacity market design compels the consideration of other material factors, for example where Capacity Scarcity Conditions under the two-settlement FCM design are not limited to high summer demand periods but in all hours of the year.

NERC recently encouraged the Commission to consider requiring a change to the calculation of resource adequacy requirements to “account for reliability ramifications associated with the ‘just-in-time’ natural gas fuel delivery model.”¹⁹ This follows a prior NERC assessment focused on the availability of natural gas for generation, where NERC identified methodologies that allow for a resource adequacy requirement to reflect the uncertainties in the supply of natural gas (which would just as well apply to the fuel oil and energy import assumptions adopted by ISO-NE).²⁰ According to NERC, “resource adequacy models that do not capture power–gas interdependence may underestimate the probability of loss of load.”²¹ But for the Fuel Security Order (specifically, the treatment of Fuel Security Resources in the FCA), fuel security could be met outside of resource adequacy, and the capacity values ISO-NE proposed for FCA13 would be reasonable. However, given the decision to integrate fuel security resources into resource adequacy requirements, the Commission must now require that the integration is done fairly. This is not the case with the ICR and MRI Demand Curve values proposed by ISO-NE for FCA 13. By not reflecting the extent of fuel unavailability ISO-NE uses to reject Mystic Units 8 and 9 (and force its capacity into FCA13 as a price-taker), the ICR and Demand Curve values proposed by ISO-NE fail to capture power-fuel interdependence,

¹⁹ *Comments of the North American Electric Reliability Corporation in Response to Notice of Proposed Rulemaking*, at p. 12, Docket No. RM18-1 (filed Oct. 23, 2017).

²⁰ *NERC 2013 Special Reliability Assessment: Accommodating an Increased Dependence on Natural Gas for Electric Power*, available at: https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_PhaseII_FINAL.pdf#search=resource%20adequacy%20unavailability%20fuel.

²¹ *Id.* at p. 60.

underestimate probability of loss of load (and with it understate region-wide FCA demand), and will yield an unjust and unreasonable result if not corrected.

Given that ISO-NE has found fuel security sufficiently at risk to deny the retirements of Mystic Units 8 and 9, it would be unjust and unreasonable to permit ISO-NE to consider the fuel security need as the equivalent of a binding constraint within a region-wide resource adequacy requirement, when the requirement fails to reflect the same extent of fuel unavailability in the resource forced outage rates. Under the Commission's rationale that the treatment of Fuel Security Resources administratively mirrors a binding constraint,²² the Commission now must require that ISO-NE calculate the FCA 13 ICR and MRI Demand Curve values consistent with that finding. This remedy simply applies the existing Tariff provision at Section 12.7.3(c), cited above, and sets resource availability consistent with the fuel availability ISO-NE believes will result under the FCM resource availability incentives, a necessary condition of incorporating the fuel security requirement (or the resources rejected for fuel security) as a constraint in FCA 13. ISO-NE's claim that fuel security can be considered outside of resource adequacy when it previously argued to integrate the fuel security requirement into FCA13 is simply not credible, especially when it rationalizes offering Mystic Units 8 and 9 as price-takers in part on the belief that the re-pricing action causes administratively what would be the case if fuel security was in fact modelled as a region-wide constraint.

²² Fuel Security Order at P 84.

II. CONCLUSION

For the reasons explained above, NEPGA respectfully requests that the Commission grant this Motion for Leave to Answer and Answer, and grant the relief NEPGA asks for in its Conditional and Supplement Protest.

Respectfully Submitted,

/s/ Bruce Anderson

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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, December 20, 2018.

/s/ Bruce Anderson

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