

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

<b>ISO New England Inc.</b>	)	
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	)	<b>Docket No. ER18-1509-000</b>
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**MOTION TO INTERVENE AND CONDITIONAL 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”),<sup>1</sup> the New England Power Generators Association, Inc. (“NEPGA”)<sup>2</sup> files this Motion to Intervene and Conditional Protest of ISO New England Inc.’s (“ISO-NE”) request for waivers<sup>3</sup> of several sections of the ISO-NE Transmission, Markets and Services Tariff (“Tariff”). ISO-NE asks for the waivers in order retain Mystic Station Units 8 and 9 (“Mystic Units”) to “ensure the fuel security necessary for reliable operation of the New England electric grid.”<sup>4</sup> NEPGA protests ISO-NE’s assertion that the waivers, if granted, will not cause undesirable consequences such as harm to third parties.<sup>5</sup> To the contrary, the waivers, if granted according to the terms asked for by ISO-NE, will cause significant harm to capacity suppliers by unjustly and unreasonably suppressing capacity prices

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<sup>1</sup> 18 C.F.R. §§ 385.211, 385.214 (2018). This Motion to Intervene and Conditional Protest is timely in accordance with the Commission’s Combined Notice of Filings #2 (May 2, 2018).

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

<sup>3</sup> *Petition of ISO New England Inc. For Waiver of Tariff Provisions*, Docket No. ER18-1509-000 (filed May 1, 2018) (“Waiver Request”).

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

<sup>5</sup> *Id.* at 33-35.

below competitive levels in at least the next two Forward Capacity Auctions (“FCAs”), FCA 13 and FCA 14.

As part of its Waiver Request, ISO-NE proposes to offer the Mystic Units as price-takers in FCA 13 and FCA 14.<sup>6</sup> On the same day it files this Conditional Protest, NEPGA is filing a complaint under Section 206 of the Federal Power Act (“Complaint”),<sup>7</sup> asking the Commission to find that re-pricing the Mystic Units, or any other resources retained for fuel security, as price-takers in the Forward Capacity Auction is unjust and unreasonable. For relief, NEPGA asks the Commission to direct ISO-NE to adopt a just and reasonable approach to clearing and pricing resources retained for fuel security in the Forward Capacity Market. NEPGA proposes a remedy that, much like the Substitution Auction in the Competitive Auctions and Sponsored Policy Resource (“CASPR”) design recently accepted by the Commission,<sup>8</sup> protects against unjust price suppression in the FCA by clearing out-of-market capacity resources in a subsequent but associated auction, in this case the Annual Reconfiguration Auctions.<sup>9</sup>

NEPGA does not challenge ISO-NE’s belief that it must retain the Mystic Units for fuel security, nor that several Tariff provisions must be waived in order for it to do so. NEPGA agrees that the Tariff allows ISO-NE to retain a resource for local transmission reliability but not fuel security. ISO-NE, however, states that it will re-price the Mystic Units at \$0/kW-month in the FCA as if they were resources retained for local transmission reliability.<sup>10</sup> This would cause significant harm to capacity suppliers and displace otherwise economic resources in the Forward

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<sup>6</sup> *Id.* at 26.

<sup>7</sup> *Complaint and Request for Expedited Consideration of the New England Power Generators Association Inc.*, Docket No. EL18-\_\_\_-000 (filed May 23, 2018) (“NEPGA Complaint”).

<sup>8</sup> *ISO New England Inc.*, 162 FERC ¶ 61,205 (2018).

<sup>9</sup> See NEPGA Complaint at 19-23.

<sup>10</sup> Waiver Request at 26.

Capacity Market. NEPGA therefore respectfully requests that if the Commission approves ISO-NE's Waiver Request, it do so with the condition that ISO-NE adopt Tariff revisions consistent with the relief NEPGA seeks in its Complaint or other relief the Commission deems appropriate to ensure that the Waiver Request does not render the Forward Capacity Market unjust and unreasonable.

#### **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. 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 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:

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## II. Conditional Protest

### A. The Waiver Request Will Cause Significant Harm to Capacity Suppliers if Granted According to the Terms Proposed by ISO-NE

The Commission reviews waiver requests according to a four-prong test, the fourth of which requires a showing that the waiver will not have “undesirable consequences, such as harming third parties.”<sup>11</sup> As NEPGA demonstrates in its Complaint, re-pricing the Mystic Units as price-takers in FCA 13 would significantly harm capacity suppliers by suppressing capacity prices by \$214 to \$652 million<sup>12</sup> and displacing 1,050 to 1,285 MW of otherwise economic resources<sup>13</sup> in FCA 13 alone, with the potential for even greater price suppression and displacement in FCA 14.<sup>14</sup> These adverse outcomes will in turn distort the price signals necessary for the efficient exit and entry of capacity in the Forward Capacity Market.<sup>15</sup> It is difficult to conceive of any more “undesirable consequences” or greater harm to third parties and the Forward Capacity Market design than this. The fourth prong of the Commission’s waiver test cannot be met, and therefore the waiver not granted, unless the price suppression and displacement that would occur under the terms of the Waiver Request is avoided, which may be achieved by granting the relief NEPGA requests in its Complaint.

NEPGA does not repeat its Complaint showing here, but instead incorporates by reference the arguments and evidence it presents in the Complaint. NEPGA asks that the Commission act on the Waiver Filing and NEPGA Complaint contemporaneously and condition

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<sup>11</sup> *DTE Electric Co.*, 150 FERC ¶ 61,127 at P 39 (2015).

<sup>12</sup> NEPGA Complaint at 8-9.

<sup>13</sup> *Id.* at 13.

<sup>14</sup> *Id.* at 9 (retaining an additional 1,000 MW of resources for fuel security as price-takers in FCA 14 could result in additional price suppression of \$366 million to \$1.1 billion in FCA 14).

<sup>15</sup> *Id.* at 12-14.

any approval of the Waiver Request on the just and reasonable pricing treatment of resources retained for fuel security in the Forward Capacity Market.

**B. The Tariff Does Not Require or Allow ISO-NE to Re-Price Resources Held for Fuel Security as Price-Takers in the Forward Capacity Auction**

ISO-NE asks for waivers from the Tariff to allow it to retain the Mystic Units for “fuel security,”<sup>16</sup> and to exempt the Mystic Units from certain deadlines pursuant to which they would otherwise be required to decide to participate in FCA 13 or retire unconditionally.<sup>17</sup> ISO-NE does not seek a Tariff waiver for how to price the Mystic Units in the FCA but instead announces that the Mystic Units “will be entered” as price-takers in FCAs 13 and 14, citing to Tariff Section III.13.2.3.2(c),<sup>18</sup> which provides that capacity resources without de-list bids (because they have been rejected) “shall be entered into each round of the [FCA] ... such that the resource’s FCA Qualified Capacity will be included in the aggregate supply curves.”<sup>19</sup> Resources whose Retirement De-List Bids are rejected for local transmission reliability under Tariff Section III.13.1.2.3.1.5.1 are among those whose offers are re-priced as price-takers under this Tariff language.

Though the Tariff clearly provides for the re-pricing of resources held for “reliability,” it does not require or allow ISO-NE to re-price the Mystic Units as price-takers, and indeed is silent on the pricing treatment to be afforded resources held for fuel security. As ISO-NE explains, the Tariff “does not contemplate retention to address reliability risks related to fuel

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<sup>16</sup> Waiver Request at 4.

<sup>17</sup> *Id.* at 20.

<sup>18</sup> *Id.* at 26.

<sup>19</sup> Tariff Section 13.2.3.2(c).

security.”<sup>20</sup> Given that the Tariff does not address the retention of a resource for fuel security, it necessarily follows that it does not address the pricing treatment of such a resource.

The section ISO-NE cites to for the authority or requirement to re-price the Mystic Units as price-takers – Section III.13.1.2.3.1.5.1 – is the same Tariff section from which ISO-NE seeks a waiver in order to retain the Mystic Units for fuel security.<sup>21</sup> It is contradictory to assert that “reliability” does not include “fuel security” for one purpose (retaining a resource) but does so for another (the re-pricing of a Fuel Security Resource in the FCA). If it is necessary to seek a waiver to retain a resource because “reliability” in the Tariff does not include “fuel security,” it is likewise necessary to seek a waiver in order to price the Mystic Units as if they were held for local transmission reliability. With the entire reason for the Waiver Request being the lack of any mention of fuel security in the Tariff, the only reasonable resolution of this contradiction is to find that the Tariff does not require or allow for the re-pricing of a resource retained for fuel security as a price-taker.

ISO-NE is not required or permitted to re-price the Mystic Units as price-takers. If it intends to do so, it must receive approval from the Commission, either through an additional waiver request or a Tariff change filing. ISO-NE has made neither request, and accordingly is not authorized to re-price the Mystic Units as price-takers.

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<sup>20</sup> Waiver Request at 4.

<sup>21</sup> *Id.* at 6 (seeking a waiver from Market Rule 1, Section III.13.1.2.3.1.5.1, “relating to review of Retirement De-List Bids for local reliability needs.”).

### III. CONCLUSION

NEPGA respectfully requests that the Commission grant this Motion to Intervene and approve the Waiver Request, if at all, with the condition that ISO-NE adopt the relief NEPGA asks for in its Complaint or other relief the Commission deems appropriate to ensure that the Waiver Request does not render the Forward Capacity Market unjust and unreasonable.

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, May 23, 2018.

*/s/ Bruce Anderson* \_\_\_\_\_

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