

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

ISO New England Inc.

Docket No. ER18-1639-000

**MOTION TO INTERVENE AND LIMITED PROTEST OF
THE NEW ENGLAND POWER GENERATORS ASSOCIATION, INC.**

Pursuant to Rules 211, 212 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 Limited Protest of the cost-of-service agreement (“COS Agreement”) filed by Constellation Mystic Power, LLC’s (“Mystic”), between Mystic, Exelon Generation Company, LLC, and ISO New England Inc. (“ISO-NE”).³ The COS Agreement includes terms that allow for the undue mitigation of energy market offer prices and may cause below-market fuel sales, each with the potential to suppress energy market prices and dilute energy market price signals. The COS Agreement includes other terms that require the re-pricing of Mystic Units 8 and 9 as price-takers in FCAs 13 and 14, which likewise would cause unjust and unreasonable price suppression in the Forward Capacity Auction.

¹ 18 C.F.R. §§ 385.211, 385.212, 385.214 (2018). NEPGA’s Limited Protest is timely in accordance with the Commission’s Combined Notice of Filings #1, May 16, 2018.

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

³ *Constellation Mystic Power, LLC Filing Re: Annual Fixed Revenue Requirement, Capital Expense Recovery, and Stipulated Variable Cost Recovery for Mystic 8 & 9 Fuel Security Service*, Docket No. ER18-1639-000 (filed May 16, 2018) (“COS Agreement Filing”).

NEPGA therefore requests that the Commission order modifications to the COS Agreement as appropriate to avoid these adverse wholesale market outcomes, as described more fully below.

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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I. COMMENTS

A. THE COS AGREEMENT TERMS MAY CAUSE UNCOMPETITIVE ENERGY MARKET PRICING

The COS Agreement provides that energy market supply offers for the Mystic Units may not exceed Energy Market Reference levels set by the Internal Market Monitor (“IMM”).⁴ This condition is not in the *pro forma* Reliability Must Run agreement found in the ISO-NE Tariff,⁵ and its addition to the COS Agreement raises the very real possibility of undue mitigation of the Mystic Unit supply offers. According to Mystic, “the [IMM] prefers to use fuel index prices for the purposes of establishing Reference Levels rather than setting the reference at the actual contractual price of fuel delivered to a unit,”⁶ presumably referring to the Mystic Units. There is every reason to believe that the IMM will continue this practice and limit Mystic Unit energy market offers according to the IMM’s index-based fuel price rather than Mystic’s actual contracted price for fuel to operate the Mystic Units.

Until now Mystic has maintained the incentive to seek a higher Energy Market Reference Level, but under the COS Agreement it recovers any actual fuel costs that exceed the fuel cost component of the Energy Market Reference Levels⁷ and therefore has no reason to pursue a cost-based offer (reflecting actual fuel costs) with the IMM or before the Commission. It is other Market Participants, however, that are harmed by undue mitigation and energy market offers from the Mystic Units that are not cost-based but instead based on the IMM’s fuel index values.

⁴ COS Agreement § 3.4 (“Supply Offers also shall not exceed Energy Market Reference Levels as determined using the marginal cost formulas specified in Appendix A to Market Rule 1 of the Tariff.”).

⁵ See ISO-NE Tariff, Market Rule 1, Appendix I, Section 3.4.

⁶ COS Agreement Filing, Transmittal Letter at 21, *citing* Internal Market Monitor of ISO New England Inc., Motion to Intervene, Comments, and Limited Protest, Docket No. ER17-933, at 3 (filed February 24, 2017) (“The IMM is obligated under the ISO Tariff to calculate Reference Levels using market-based prices. ExGen provides no justification for its request to use the fuel contract price as a basis for calculating Reference Levels...”).

⁷ *Id.* at 21 (“[T]he Agreement provides a means by which Mystic will recover any actual fuel costs that exceed the fuel cost components of the Stipulated Variable Costs and refund any amounts where the fuel cost in the Stipulated Variable Costs results in Mystic recovering more than its actual fuel costs.”).

Given that the rates, terms and conditions of the COS Agreement must be addressed in this docket, NEPGA asks that the Commission address this issue in this proceeding rather than defer to the practice defined in the COS Agreement. The Commission should direct a change to the COS Agreement to provide that the fuel component of the Mystic Units' reference levels are based upon the actual contracted fuel costs for the Mystic Units, rather than the IMM's fuel indices.

The Fuel Supply Agreement ("FSA") between Mystic and Constellation LNG, filed by Mystic with the COS Agreement,⁸ likewise creates the opportunity for energy market price suppression. The FSA includes a Forward Sales Margin ("FSM") provision that gives Constellation LNG the incentive to buy LNG for sale to third-parties through Constellation LNG's recovery of 50% of the FSM, with the FSM defined as the sum of revenue from the third-party fuel contract, and, at the time that contract is executed, estimated variable LNG cost and tank congestion charges.⁹ Under this structure, Constellation LNG may have the incentive to commit to LNG purchases for subsequent sales that may ultimately cause a loss but for the FSM.¹⁰ Under the FSM, costs above those estimated at the execution of the third-party contract are passed through the COS Agreement. This in turn could cause the energy markets to price energy below the true marginal cost to provide energy. NEPGA urges the Commission to direct that the FSA be modified by eliminating the incentive in certain situations to sell LNG below spot-market, including necessary changes to or replacement of the FSM.

⁸ COS Agreement Filing, Exh. No. MYS-004.

⁹ *Id.*

¹⁰ For example, if Mystic calculates a FSM of \$1/MMBtu, but in the end the transaction yields costs \$2/MMBtu higher, producing a \$1/MMBtu loss (instead of the estimated \$1/MMBtu profit), Mystic will be made whole, with consumers compensating for the difference between the FCM at time of contracting and the loss.

**B. THE COS AGREEMENT WILL CAUSE UNCOMPETITIVE PRICING IN THE
FORWARD CAPACITY MARKET**

The COS Agreement provides that the Mystic Units shall be offered into FCAs 13 and 14 as price takers, with the FCA revenues credited against Mystic's cost of service.¹¹ NEPGA is addressing the proposal to price the Mystic Units as price-takers in two separate proceedings: (1) NEPGA initiated a complaint proceeding on May 23, 2018, asking that the Commission find that pricing the Mystic Units as price-takers is unjust and unreasonable, and order a remedy that eliminates the undue price suppression that would otherwise occur;¹² and (2) NEPGA filed a Conditional Protest in the proceeding in which ISO-NE seeks a waiver from its Tariff to retain the Mystic Units, explaining that pricing the Mystic Units as price-takers would cause "undesirable consequences, such as harm to third parties."¹³ Rather than repeat those arguments here, NEPGA incorporates by reference into this proceeding the evidence and arguments presented in its Complaint and Conditional Protest.

Consistent with the relief NEPGA requests in its Complaint and Conditional Protest, NEPGA here requests that the Commission order changes to the COS Agreement that compel ISO-NE to offer the Mystic Units into the FCA at their competitive offer price.

¹¹ COS Agreement, § 4.4.2.

¹² *Complaint and Request for Expedited Consideration of the New England Power Generators Association Inc.*, Docket No. EL18-154-000 (filed May 23, 2018) ("NEPGA Complaint").

¹³ *Motion to Intervene and Conditional Protest of the New England Power Generators Association, Inc.*, Docket No. ER18-1509-000 (filed May 23, 2018).

II. CONCLUSION

NEPGA respectfully requests that the Commission grant this Motion to Intervene and order the contracting parties to amend the COS Agreement according to the relief NEPGA requests as described above.

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, June 6, 2018.

/s/ Bruce Anderson_____

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