

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

ISO New England Inc.)	
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)	Docket Nos. ER18-1509-000
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**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 seeks leave to answer and answers the answer filed by ISO New England Inc. (“ISO-NE”)³ in support of its request for waivers of its Tariff⁴ in this proceeding.⁵ ISO-NE asks for the waivers in order to allow the Mystic Units 8 and 9 (“Mystic Units”) to enter into a cost of service agreement for the Capacity Commitment Periods associated with the thirteenth and fourteenth Forward Capacity Auctions (“FCAs 13 and 14”).

ISO-NE asserts that the Tariff will require it to offer the Mystic Units as price-takers in FCAs 13 and 14 if the Commission approves the Waiver Request. ISO-NE comes to this reading of the Tariff by assuming that waivers of certain sections of the Tariff making a “fuel security” resource eligible for a cost-of-service agreement will have the effect of broadening the definition

¹ 18 C.F.R. §§ 385.212 and 385.213 (2017).

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

³ *Answer of ISO New England Inc.*, Docket No. ER18-1509-000 (filed June 7, 2018) (“ISO-NE Answer”).

⁴ ISO New England Inc. Transmission, Markets and Services Tariff.

⁵ *Petition of ISO New England Inc. For Waiver of Tariff Provisions*, Docket No. ER18-1509-000 (filed May 1, 2018) (“Waiver Request”).

of “reliability” in other sections of the Tariff—where ISO-NE has not sought any waiver—to include “fuel security.” According to ISO-NE, this newly broadened definition of reliability would include its use in the Tariff sections dictating that local transmission reliability resources are re-priced to zero in the FCA.

There is no support in law or precedent for ISO-NE to expand its Tariff in this manner. Fuel security is not the same thing as local transmission reliability and there is no basis for assuming so. ISO-NE has not sought a waiver of the Tariff sections dictating that resources needed for local transmission reliability are re-priced in the FCA. Whether the Commission approves the Waiver Request or not, the Tariff simply does not dictate re-pricing the Mystic Units to zero as ISO-NE assumes.

If the Commission finds that approval of the Waiver Requests has the effect of amending the Tariff and requiring the re-pricing of the Mystic Units, the re-pricing would have undesirable consequences, such as harm to capacity suppliers and the inefficient exit and entry of capacity resources in the FCM. Though the Commission requires a showing that a waiver will not have “undesirable consequences, such as harming third parties,”⁶ ISO-NE and most other parties give little notice to this criterion, both here and in NEPGA’s Complaint proceeding.⁷ In its Complaint⁸ filed on the same day as its Conditional Protest in this proceeding, NEPGA provides

⁶ *DTE Electric Co.*, 150 FERC ¶ 61,127, at P 39 (2015).

⁷ Only the New England States Committee on Electricity (“NESCOE”) offers testimony seeking to contradict the evidence presented by NEPGA in its Complaint. NEPGA will address the testimony filed by NESCOE in its answer filed on the same date as this Answer in the Complaint proceeding. *See Motion for Leave to Answer and Answer of the New England Power Generators Association, Inc.*, Docket No. EL18-154-000 (filed June 19, 2018).

⁸ *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”).

evidence of harm to third parties that cannot be ignored and must be addressed in any approval of the Waiver Requests.

NEPGA respectfully asks that if the Commission approves the Waiver Request, it do so with a condition that ISO-NE not re-price the Mystic Units as price-takers in FCA 13 or FCA 14, and order just and reasonable pricing treatment, which NEPGA submits may be accomplished by granting the relief NEPGA requests in its Complaint.

I. ANSWER

A. THE WAIVER, IF APPROVED, DOES NOT ACT TO AMEND SECTIONS OF THE TARIFF FOR WHICH ISO-NE HAS NOT SOUGHT A WAIVER

As is obvious by the need for ISO-NE’s Waiver Request filing, the Tariff does not presently dictate that a resource held for system-wide fuel security shall be re-priced as a price-taker in the FCA. According to ISO-NE, however, once the “waiver is achieved, and the resource is retained, many of the other provisions of the Tariff apply without the need for waiver.”⁹ What sounds perfunctory – “provisions of the Tariff apply” – glosses over what would be a significant and unprecedented waiver from the Tariff, that a resource given a two-year cost-of-service agreement to provide a yet-to-be defined system-wide “fuel security” service shall be re-priced as a price-taker in the FCA.

ISO-NE does not cite to any authority for this proposition, which if proper would apparently have no bounds, as it could be used to assert that any mention of reliability in the Tariff takes on the meaning of system-wide “fuel security” by virtue of a waiver to retain a resource for that reason. This reading of the Tariff would also lead to absurd results. As one might expect, the term reliability appears repeatedly throughout the Tariff including, for

⁹ ISO-NE Answer at 25.

example, with respect to Static De-List Bids which are “subject to a reliability review as described in Section III.13.2.5.2.5.”¹⁰ It is a waiver of that very section of the Tariff, Section III.13.2.5.2.5, that ISO-NE asserts gives rise to the broadened definition of “reliability” to include “fuel security” in other sections of the Tariff, including those dictating the re-pricing of certain resources.¹¹ But this reading of the Tariff would likewise give rise to a requirement that ISO-NE review Static De-List Bids for “fuel security,” contrary to ISO-NE’s request to waive Section III.13.2.5.2.5 not for Static De-List Bids but only for the Mystic Unit Retirement De-List Bids. There is therefore an inherent conflict between the waivers ISO-NE requests and the consequence of the waivers it claims.

Consider further the potential consequences of for example, a Department of Energy mandate that all nuclear and coal units are necessary for “resilience” and should receive cost-of-service payments. Under ISO-NE’s Tariff interpretation, its definition of reliability would broaden even further to include those “resilience” resources which in turn would be re-priced at zero in the FCM. But of course the Tariff mandates no such thing. “Fuel security” and “resilience” are not the same thing as “reliability.” The Tariff currently does not address the FCA pricing treatment of resources held for “fuel security” or “resilience.”

If ISO-NE had sought to re-price the Mystic Units in FCAs 13 and 14, that issue would properly be within the scope of this proceeding as a request for a waiver of specific provisions of its Tariff. By asserting that it does not require a waiver to re-price the Mystic Units, ISO-NE appears to confuse the scope of its waiver request with its consequences. “The scope of a waiver involves the extent of the provisions waived, not the consequences that would ensue if they are

¹⁰ Tariff Section III.13.1.2.3.1.1.

¹¹ ISO-NE Answer at 25, note 92.

waived.”¹² ISO-NE believes that the broadening of the definition of reliability is simply a consequence of a waiver of other sections of the Tariff. Yet the Commission has found in similar circumstances that a request to change the pricing treatment of a resource type that is the subject matter of a waiver request is “in essence, a separate request for waiver of an additional provision of the Tariff” and “beyond the scope of ISO-NE’s instant proposal.”¹³ Likewise here, ISO-NE is in essence asking for a waiver of an additional provision of the Tariff but has not made the requisite request or showing with respect to that waiver.

NEPGA therefore respectfully requests that the Commission find that ISO-NE does not presently have the authority to re-price the Mystic Units as price-takers in FCAs 13 and 14, and that approval of the Waiver Request, if at all, does not convey that requirement or authority to ISO-NE.

B. RE-PRICING THE MYSTIC UNITS AS PRICE-TAKERS WILL HAVE UNDESIRABLE CONSEQUENCES

In its Complaint filed on the same day as its Conditional Protest in this proceeding, NEPGA provided evidence of the price-suppression caused by re-pricing the Mystic Units as price-takers in FCA 13, estimating \$214 to \$652 million in price suppression¹⁴ and the displacement of 1,050 to 1,285 MW of otherwise economic resources.¹⁵ This magnitude of harm, to capacity suppliers and to the efficiency of the FCM, cannot be ignored or justified under

¹² *Southwest Power Pool, Inc.*, 161 FERC ¶ 61,144, at P 14 (2017) (citations omitted).

¹³ *ISO New England Inc.*, 156 F.E.R.C. P61,096, at P 19 (2016). ISO-NE sought waivers to allow Real-Time Emergency Generators to change their resource definition to Real-Time Demand Resource Resources. CPower, an Intervenor, asked the Commission to modify the waiver to include a waiver from a specific Tariff section, III.13.4.2.1.3(b), dictating that Real-Time Emergency Generators are offered into the third Annual Reconfiguration Auction at the Forward Capacity Auction starting price. The Commission found this to be a request for waiver of “an additional provision” and thus beyond the scope of the waiver proceeding.

¹⁴ NEPGA Complaint at 8-9.

¹⁵ *Id.* at 13.

the Commission’s standard for waiver approval. 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.”¹⁶ The Commission has found harm to third parties upon much less of a showing of financial harm than shown by NEPGA in its Complaint, including in the case of RTO/ISO waiver request filings.¹⁷ Indeed, it is difficult to conceive of greater harm a waiver request could cause to third parties than that which would result from re-pricing the Mystic Units as price-takers in FCAs 13 and 14.

ISO-NE essentially concedes that its Waiver Request will cause price suppression beginning in FCA 13 but maintains that a solution cannot be developed by FCA 13 and that the harm to capacity suppliers is otherwise justified by an overriding “fuel security” need. ISO-NE thus believes that the Commission has no choice but to either maintain “fuel security” or maintain competitive price formation in the FCA. But this is not the case. The Commission may grant ISO-NE’s request to make the Mystic Units eligible for a cost of service agreement and either grant the relief NEPGA requests in its Complaint currently pending before the Commission or find, as NEPGA asks above, that ISO-NE has neither the authority nor obligation to re-price the Mystic Units as price-takers in FCAs 13 and 14. Given the magnitude of potential harm beginning in FCA 13, NEPGA submits that the Commission indeed must condition approval of the Waiver Request, if at all, on the relief NEPGA requests in its Complaint (or some other just and reasonable remedy) if unjust and unreasonable rates in FCA 13 are to be avoided.

¹⁶ *DTE Electric Co.*, 150 FERC ¶ 61,127 at P 39 (2015).

¹⁷ *See, e.g., Cal. Indep. Sys. Operator Corp.*, 137 FERC ¶ 61,180, at P 21 (2011) (finding CAISO did not explain “how electing not to resettle approximately \$17 - \$23 million in bid cost recovery overpayments could avoid undesirable consequences.”).

II. MOTION FOR LEAVE TO ANSWER

Although the Commission's rules generally do not permit answers to answers, the Commission permits such answers for good cause shown, such as when the response aids in the explanation of issues or facilitates the development of the record.¹⁸ ISO-NE asserts a belief that directly contradicts the relief NEPGA seeks in its Complaint and raises new arguments in its answer. NEPGA has a unique role and interest in the outcome of this proceeding, and its Answer provides important information that will assist the Commission in its decision-making process, due both to its unique role and interest in these related proceedings and in responding to arguments newly raised before the Commission in ISO-NE's answer. For these reasons, NEPGA respectfully requests that the Commission grant NEPGA's Motion for Leave to Answer.

III. CONCLUSION

NEPGA respectfully requests that the Commission grant NEPGA's Motion for Leave to Answer and order relief as requested by NEPGA above.

Respectfully Submitted,

/s/ Bruce Anderson

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¹⁸ See, e.g., *Morgan Stanley Capital Grp., Inc. v. New York Indep. Sys. Operator, Inc.*, 93 FERC ¶ 61,017, at 61,036 (2000), see also *EDF Renewable Energy, Inc. v. Midcontinent Indep. Sys. Operators, Inc.*, 163 FERC ¶ 61,003 at P 45 (2018) (granting a motion for leave to file an answer "because they have provided information that assisted us in our decision-making process.").

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, June 19, 2018.

/s/ Bruce Anderson

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