

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

New England Power Generators Association,	)	
	)	
	)	
Complainant	)	
	)	Docket No. EL18-154-000
v.	)	
	)	
ISO New England Inc.	)	
	)	
Respondent.	)	

*MOTION FOR LEAVE AND ANSWER OF THE  
NEW ENGLAND POWER GENERATORS ASSOCIATION, INC.*

The New England Power Generators Association, Inc. (“NEPGA”) hereby moves for leave to submit this answer to parties who oppose the steps outlined in our complaint to ensure just and reasonable pricing in the next forward capacity auction (FCA 13). Contrary to the opposition’s claims, neither precedent nor the tariff require, permit or even tolerate the price suppression and displacement anticipated by ISO-NE’s proposed actions here. If ISO-NE’s tariff waiver is granted, Commission action is required to protect FCA 13.

NEPGA offered one solution based on CASPR-like principles. The concerns raised in opposition are easily dismissed, particularly when the possibility of doing *nothing* is rejected. This includes the attention-grabbing but baseless claim that NEPGA’s remedy could result in potential gaming or illegal “arbitrage” notwithstanding numerous surefire deterrents and obstacles, including the fact that the deadline to attempt such schemes *already has passed*. It would be arbitrary and capricious to allow as much as \$642 million in price suppression based upon concerns so tenuous.

Good cause exists to accept this answer as it clarifies the record and will assist the Commission.

ANSWER

I. *THE COMMISSION MUST TAKE ACTION TO PROTECT FCA 13*

A. *FCA 13 Is the Only Auction Still in Dispute*

ISO-NE recognizes that “retaining resources for fuel security ... can have *undesirable economic consequences* for the FCM generally, and ... that it is worth assessing whether and how those impacts could be better addressed.” Answer to Complaint of ISO New England Inc. (“ISO-NE Answer”) at 4 (emphasis added). This certainly is true, but also is an extreme understatement of the problems ISO-NE’s waiver request would create.<sup>1</sup> And as discussed below, ISO-NE does not seriously dispute that the price suppression and displacement would be significant.

Nevertheless, ISO-NE urges the Commission to ignore the impact that Mystic will have on FCM prices and deny the complaint based on its statement that it will “work with stakeholders with the goal of developing a sound proposal to address [price suppression and displacement], and *will target implementation for FCA 14.*” *Id.* at 24. Thus, there appears to be no dispute that a solution should be implemented in advance of FCA 14. NEPGA urges the Commission to direct ISO-NE to implement a solution that achieves this result.

The only remaining question, then, if ISO-NE’s waivers are granted, is whether the Federal Power Act requires action in time for FCA 13.

B. *Inaction in FCA 13 Is Not An Option*

The answer is yes, not even one auction can be exposed to unlawful price suppression and displacement. If the Commission grants ISO-NE’s waivers, the Federal Power Act

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<sup>1</sup> Similarly, being run over by a bus “can have *undesirable physical consequences.*” But such language clearly fails to convey the massive extent of the harm likely to be inflicted.

requires the Commission to protect the integrity of wholesale markets and prevent the participation of resources held for fuel security and receiving out-of-market payments from suppressing prices below just and reasonable levels. *See N.J. Bd. Of Pub. Utils. v. Fed. Energy Reg. Comm'n*, 744 F.3d 74, 101 (3d. Cir. 2014) (accepting the Commission's explanation that it is statutorily mandated to act where resources receiving out-of-market payments have the effect of disrupting competitive price signals); *New Eng. Power Generators Ass'n v. Fed. Energy Reg. Comm'n*, 757 F.3d 283, 295 (D.C. Cir. 2014) (finding that the Commission's decision to prevent participation of resources in the Forward Capacity Market from depressing capacity prices "falls within its duty of ensuring that rates are just and reasonable").

The Commission must reject any notion that it is permitted to disregard this duty simply because the price suppressive effects may be limited to FCA 13. *Fed. Power Comm'n v. Texaco Inc.*, 417 U.S. 380, 399 (1974) ("The Act makes unlawful all rates which are not just and reasonable, and does not say a little unlawfulness is permitted").<sup>2</sup> *Every auction matters* and it would be an abdication of the Commission's statutory obligation to hold otherwise.

Other developments underscore the point. *First*, fuel security is a growing concern in New England (hence ISO-NE's waiver requests), and the last thing anyone would rationally propose to improve fuel security would be to permit significant price suppression in the next capacity auction and thereby push other already-marginal coal, oil and nuclear resources over the economic cliff.

Notably, no one refutes NEPGA's showing that price suppression and displacement in FCA 13 will exacerbate fuel security concerns. To the contrary, even those parties opposing

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<sup>2</sup> This case was decided under NGA, but that courts have found that the NGA and the FPA can be interpreted identically.

the complaint appear to acknowledge the growing risks associated with the premature retirement of fuel secure resources. *See, e.g.*, Motion to Intervene and Comments of National Grid at 5 (stating that steps are necessary to “address the fuel security crisis”); Protest of Eversource Energy Service Company at 9 (acknowledging the “worsening conditions in New England with respect to fuel security”).

*Second*, the CASPR Order and the Commission’s recent focus on the importance of price formation in the wholesale markets demonstrate a growing understanding of the risks of out-of-market payments and artificially deflated prices in the FERC-jurisdictional markets more generally. *See ISO New England Inc.*, 162 FERC ¶ 61,205 (2018) (accepting CASPR proposal); *State Policies and Wholesale Markets Operated by ISO New England Inc., New York Independent System Operator, Inc. and PJM Interconnection, L.L.C.*, Transcript of May 1, 2017 Technical Conference, 10:14-17 (statement by Commissioner LaFleur noting the challenge that out-of-market procurement of resources poses to “the operation of the market for non-subsidized resources” and the “price signals that are needed for entry and exit when needed”). This has never been more important than now in the face of the proliferation of state procurements providing out-of-market compensation for chosen policy resources, as well as the potential actions by the Department of Energy for out-of-market payments for nuclear and coal units.

Accordingly, the Commission must exhibit leadership in this proceeding by directing ISO-NE to implement a solution that allows ISO-NE to retain the Mystic Units in a manner that does not upend FCA 13. The promise of a future stakeholder proceeding cannot, and should not, serve as a justification for failing to take immediate action to prevent the retention of the Mystic Units from imposing unjust and unreasonable rates in FCA 13.

C. *IPPNY Does Not Provide a Basis for Denying the Complaint*

As NEPGA anticipated, opponents of the complaint attempt to characterize *IPPNY* as controlling in this case since *IPPNY* involves “reliability” and a reliability must-run contract. *Indep. Power Producers of N.Y., Inc. v. N.Y. Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,214 (2015). This is a simple, superficial, and inapt comparison to the issues presented here. There are a number of reasons why *IPPNY*—which remains pending before the Commission on rehearing—should not be extended to the circumstances of this case.

*First*, unlike the units in *IPPNY*, the Mystic Units are not being held to address local transmission reliability needs. Mystic Units 8 & 9 are being held for fuel security, and fuel security is *not* reliability. As ISO-NE recognized in its petition for waiver, fuel security “is an energy problem, not a capacity problem.” *See* Petition of ISO New England Inc. for Waiver of Tariff Provisions (“ISO-NE Waiver Petition”), Exh. No. ISO-1, Testimony of Peter T. Brandien on Behalf of ISO-NE Inc., Docket No. ER18-1509-000 at 10:15-16; *see also* ISO New England Inc., Reliability Reviews for Fuel Security: Criteria for Unit Retention in the Forward Capacity Market at 24 (June 12, 2018); Supplemental Affidavit of Paul M. Sotkiewicz (“Sotkiewicz Supp. Aff.”), Exh. 1 hereto, at ¶¶ 6-10. In reality, fuel security is a resilience issue that to date has been entirely unaddressed in the ISO-NE tariff (hence, again, ISO-NE’s waiver requests).

*IPPNY*, on the other hand, involved an RMR contract to resolve a local transmission constraint. No one has offered any compelling rationale for why the capacity market price suppression allowed in *IPPNY* to resolve local transmission reliability issues should be expanded to permit a similar outcome when a resource is paid outside of the market to address fuel security or resilience issues.

*Second*, in contrast to *IPPNY*, the need at issue here—fuel security—was never even intended to be reflected in the capacity market. In *IPPNY*, the Commission reasoned that the out-of-market units held for local transmission reliability would have cleared if the transmission needs at issue had been appropriately modeled in the ICAP market. In particular, the ICAP market is designed to ensure resource adequacy and price capacity at a premium when a transmission constraint signals the need for capacity within a specific location on the system. Thus the Commission found a resource held for local transmission reliability was “economic” because its offer price reflected the economic cost of meeting the capacity need within that locality. In this case, however, the Mystic Units are being retained to address a system-wide, and as yet undefined fuel security need that the Forward Capacity Market never was designed to procure, and very likely never will be designed to procure.<sup>3</sup> The Mystic Units cannot be considered “economic” under *IPPNY* and the Commission’s reasoning in that order does not apply to the facts here.

*Third*, *IPPNY* was decided in the context of NYISO’s short-term market for capacity. Specifically, NYISO conducts capacity auctions 30 days in advance of the beginning of each six-month “Capability Period.” Thus, in contrast to ISO-NE, NYISO operates a monthly capacity market in which capacity is procured, at most, six months in advance of delivery. See Sotkiewicz Supp. Aff. at ¶ 12. As a practical matter, prices in the short-term market for capacity do not drive entry and exit decisions to the same extent as prices in ISO-NE’s Forward Capacity Market and other long-term, forward markets for capacity. *Id.* The

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<sup>3</sup> If a local transmission requirement was reflected through a new import-constrained zone, the capacity demand in that local zone would be a subset of the region-wide demand. Here, however, the region-wide fuel security requirement is not a subset of the capacity demand currently reflected in the Net Installed Capacity Requirement and Marginal Reliability Impact curves.

differences between the NYISO and ISO-NE capacity markets further caution against extending *IPPNY* to resources retained for fuel security.

*Fourth*, NESCOE simply is wrong that *IPPNY* stands for the proposition that the suppression of prices by resources receiving out-of-market payments represents a “competitive market outcome.” Protest of the New England States Committee on Electricity (“NESCOE Protest”) at 15.<sup>4</sup> The Commission has repeatedly recognized that the submission of below-cost offers by resources receiving out-of-market payments pursuant to a reliability-must run contract artificially suppresses market prices and distorts market outcomes. *Bridgeport Energy, LLC*, 118 FERC ¶ 61,243 at P 41 (2007) (“RMR agreements suppress market-clearing prices and deter investment in new generation ... broadly hinder[] market development and performance ... [and] should be used as a last resort.”). The Commission should reject the protesters’ request to hold otherwise here.

*Finally*, *IPPNY* cannot be as broad as the protests imagine. The Department of Energy is contemplating whether nuclear and coal resources are necessary for resilience. The Commission in *IPPNY* or elsewhere has not pre-judged the issue whether resources held for resilience and receiving out-of-market payments must be allowed to suppress prices in the FERC-jurisdictional wholesale markets. That is the issue presented by this case (in ISO-NE, resilience is all about fuel security), and the Commission should protect the wholesale markets.

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<sup>4</sup> New Hampshire did not support the NESCOE Protest. *See id.* at 1.

In sum, the Commission should find that *IPPNY* is inapplicable. To the extent that anyone thinks *IPPNY* might be controlling, it is clearly in error and should be reversed on rehearing.

*D. There Will Be Significant Price Suppression and Displacement*

In support of the Complaint, NEPGA asked Dr. Paul Sotkiewicz, former Chief Economist in the Market Service Division of PJM Interconnection, L.L.C., to evaluate the impact of treating the 1,400 MW associated with the Mystic Units as price takers in the FCA. Dr. Sotkiewicz demonstrated that treating Mystic Units 8 & 9 as price takers would result in \$214 to \$642 million in price suppression and displace 1,050 to 1,285 MW of otherwise economic resources in FCA 13, with even greater suppression of prices and displacement of resources in FCA 14 and subsequent auctions.

ISO-NE does not seriously contest this evidence of price suppression. Instead, ISO-NE merely offers the unsubstantiated claim that “the financial impacts of granting the Waiver Request may be far smaller than NEPGA’s estimates” when compared to alternative solutions to securing fuel security. ISO-NE Answer at 18. While no one knows for certain the precise amount of price suppression to occur in FCA 13, there is no colorable dispute that it will be serious or significant. However you choose to characterize it, the price suppression will be large.

ISO-NE does assert that Dr. Sotkiewicz’s analysis regarding the potential for economic displacement of resources is flawed because it fails to take into account the lower “marginal reliability benefits” of displaced resources when the Mystic Units are retained. *Id.* at 11-12. As detailed further in the attached supplemental affidavit of Dr. Sotkiewicz, supply resources do not possess any inherent “marginal reliability benefit” and ISO-NE’s argument appears to

be based on a fundamental misunderstanding of the difference between supply and demand. More specifically, “marginal reliability benefit” is another way of saying the demand for capacity and that efficient markets will commit capacity up to the point where the marginal cost of supply capacity is equal to the marginal reliability benefit, or simply equating supply and demand. Sotkiewicz Supp. Aff. at ¶¶ 24-25. Moreover, ISO-NE ignores that any decrease in the “marginal reliability benefit” of displaced resources is the result of ISO-NE’s decision to insert higher costs resources—with costs above any marginal reliability benefit—into the auction. *Id.* at ¶ 26. Rather than rebutting NEPGA’s analysis, ISO-NE’s argument effectively acknowledges that the treatment of the Mystic Units as price takers will suppress prices.

Similarly, NESCOE argues that new resources often offer at “low prices,” so it is “quite possible that an equivalent quantity of new generation would clear in place of Mystic 8 & 9” such that the price impact of the displacement of these resources would be “exactly zero.” NESCOE Protest at 26. Again, NESCOE’s unsupported claims regarding what could “possibly” occur cannot overcome the evidence of certain price suppression provided by Dr. Sotkiewicz. Moreover, as shown in the attached affidavit of Dr. Sotkiewicz, treating the Mystic Units as price takers will result in significant suppression of prices even if the possibility of new entry is taken into account. Sotkiewicz Supp. Aff. at ¶¶ 31-33.

Finally, the ENECOS argue that Mystic 8 & 9 “have always been ‘price takers’ in the Forward Capacity Auction” and thus should continue to be treated as such. Joint Motion to Intervene and Protest of Eastern New England Consumer-Owned Systems (“ENECOS Protest”) at 8-9. As an initial matter, market participant offer prices are proprietary information not disclosed publicly by ISO-NE or the Commission. How ENECOS can be so certain about past offers is unclear, especially given the economics reflected in the Mystic

Units Retirement De-List Bids in FCA 13. Regardless, Mystic 8 & 9 are not run-of-the-mill “existing resources,” but resources that are seeking to retire and thus offered at a delist price that reflects the price they would need to remain in service. The FCA is designed to take into account the delist offers of resources seeking to retire. Otherwise, prices will be artificially suppressed and send premature signals to others that they too should retire.

In short, none of the arguments offered by protesters provide a basis for ignoring the ample evidence of price suppression provided by NEPGA. If the Commission elects to grant ISO-NE’s waiver petition, the Commission must act to protect the integrity of its markets and ensure just and reasonable rates in the next auction, FCA 13.

*II. THE COMMISSION SHOULD DIRECT ISO-NE TO ADOPT NEPGA’S PROPOSED SOLUTION FOR FCA 13*

Once it is established that doing nothing is not an option—and it is not—the question becomes how to remedy price suppression in FCA 13. NEPGA has offered a proposal that can be implemented in advance of FCA 13 and is similar in principle to the CASPR proposal recently accepted by the Commission. Under this proposal, the Mystic Units would be offered into the FCA at their actual costs in order to preserve competitive outcomes; to the extent the units failed to clear the Forward Capacity Auction, the units would then be offered into the existing Annual Reconfiguration Auctions (“ARAs”) as price takers and awarded a capacity supply obligation. As NEPGA anticipated in its complaint, ISO-NE and NESCOE present a false choice between securing fuel security or permitting price suppression, but NEPGA’s proposal would allow the Commission to address fuel security concerns while minimizing the potential for market distortions in the Forward Capacity Auction.

Notably, neither ISO-NE nor any other party argues that NEPGA's proposal cannot be implemented in advance of FCA 13. This is crucial as it confirms NEPGA's understanding that there are no barriers to timely implementation of a remedy to protect FCA 13.

Instead, those opposing the complaint assert that NEPGA's proposal could result in unintended consequences. In doing so, these parties focus on far-fetched and likely minimal effects in the Annual Reconfiguration Auctions while minimizing obvious and significant price suppression and displacement in the much more important Forward Capacity Auction. This is called straining at a gnat while swallowing a camel.

ISO-NE, for instance, raises hypothetical concerns that NEPGA's proposed remedy could create opportunities for gaming by giving new entrants the ability to sell capacity in the FCA for the sole purpose of buying out of their obligations in the ARA at a profit. Gaming allegations are serious business, that is, unless the gaming allegations cannot be taken seriously. ISO-NE omits that in order to participate in FCA 13 with a new capacity resource, a market participant was required to submit a "show of interest" form no later than April 27, 2018. In practice, this means that a market participant seeking to bid "fictitious capacity" to take advantage of NEPGA's proposed solution would have had to have accurately predicted that NEPGA would propose its solution approximately a month before the complaint was even filed.<sup>5</sup>

In short, any such game would be a very high risk strategy dependent upon future and in some cases as-yet-undetermined events in the control of others. Not even the

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<sup>5</sup> In addition, those new entrants that submitted a show of interest form must also submit a new capacity qualification package providing detailed information about the design and financing of the project no later than June 22, 2018. Again, a new entrant seeking to take advantage of these alleged gaming opportunities would have to submit this qualification package without any assurance that the Commission would, in fact, accept NEPGA's proposal.

clairvoyant would lightly undertake such a game, and particularly so when the full legal panoply of anti-manipulation laws and comprehensive monitoring and mitigation are taken into account.

NESCOE, in contrast, contends that the Commission should reject NEPGA's proposal because it could distort or undermine the purpose of the ARAs. NESCOE Protest at 27. In other words, NESCOE would have the Commission accept massive distortion of FCA 13 to avoid the potential that market distortions could occur in the ARA. But the FCA plays a much more important role in providing incentives for the development and maintenance of resources necessary to maintain reliability than the ARAs.

NESCOE and other parties also wrongly claim that NEPGA's proposed remedy does not fully address the potential that consumers will be required to pay twice for capacity necessary to maintain reliability. These arguments are based on the unproven and unrealistic assumption that the ARA would clear at \$0 with the addition of the Mystic Units. *See* NESCOE Protest, Attachment A at ¶ 34. There are a number of reasons why this is speculative and unlikely to occur in practice:

- The ARA clearing price is a function of the underlying FCA clearing price and forecast demand changes. As a result, it is not possible to know that an ARA will clear at \$0/kW-month without knowing the starting FCA price or ARA demand.
- Protesters claims' assume that demand will decrease from the FCA to the ARA or that the FCA will clear supply far in excess of the Net ICR. This assumption is unsupported and unwarranted. *See* Sotkiewicz Supp. Aff. at ¶ 18.
- Capacity resource may just as well look to shed their capacity supply obligations in the ARAs, which would have the effect of increasing the ARA clearing price relative to the FCA clearing price. There is no basis for assuming that there will be no counteracting demand bids to offset the approximately 467 MW of Mystic Unit supply in each ARA under the NEPGA proposal.
- Finally, other resources that did not clear the FCA will have an incentive to offer their capacity into the ARA to obtain a capacity supply obligation. As a result,

there is no basis for concluding that the price taker bids associated with the Mystic Units will set clearing prices in the ARA. Sotkiewicz Supp. Aff. at ¶ 19.

NESCOE cannot credibly conclude that the ARAs will clear at \$0/kW-month. In addition, as demonstrated in the affidavit of Dr. Sotkiewicz, even if the ARA did clear at \$0, there is still no basis for concluding that NEPGA's solution would result in load double paying for capacity. *Id.* at ¶ 21.

Protesters also again wrongly conflate resources needed to maintain reliability and fuel security. Under the cost-of-service agreement with the Mystic Units, ISO-NE will be procuring a winter fuel security need that is separate and distinct from the reliability product procured through the FCA. As a result, there cannot be any double payment.

Given the inability of protesters to adduce any actual evidence that NEPGA's proposed solution is unjust and unreasonable, the Commission should direct ISO-NE to implement NEPGA's proposal in advance of FCA 13. NEPGA does not deny that there may be other solutions. As the Commission has recognized, however, there are a "range of just and reasonable rates" and the just and reasonable standard does not require that NEPGA demonstrate that it has proposed the "best" or "most efficient rate." *American Electric Power Service Corp. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,083 at n.129 (2008). The perfect should not be the enemy of the good. And since ISO-NE has proposed to implement a longer term solution for FCA 14—which proposal NEPGA supports and urges the Commission to require—our remedy, however imperfect, will only be in effect for one auction, FCA 13. If the Commission does not take action to protect FCA 13, it must deny ISO-NE's waiver petition.

### *III. THE PROTESTS' PROCEDURAL ARGUMENTS ARE WITHOUT MERIT*

Unable to rebut the evidence of price suppression or demonstrate that NEPGA's proposal is unjust and unreasonable, ISO-NE and other protesters raise a host of alleged procedural issues that they believe warrant dismissal of the complaint. Each of these arguments are without merit and should be rejected.

*First*, there is no basis for finding that NEPGA's complaint represents a collateral attack on prior orders accepting ISO-NE's FCM rules. While a number of parties claim that the "[t]he Complaint appears to challenge the long-standing market rule governing the treatment of resources in the FCA that ISO-NE has retained for reliability," these parties overlook that the ISO-NE Tariff does not address the treatment of resources for fuel security. NESCOE Protest at 7. That is the very reason that ISO-NE sought waiver of its tariff to permit the retention of Mystic Units 8 & 9 in the first place. ISO-NE Waiver Petition at 4 ("While the Tariff permits the ISO to retain retiring resources to resolve local transmission security issues, it does not contemplate retention to address reliability risks related to fuel security.").

*Second*, the Commission should reject claims that the Complaint is speculative because the Commission has not yet approved ISO-NE's waiver petition or the cost-of-serve agreement with Mystic Units 8 and 9. *See* Answer and Protest of the Connecticut Public Utilities Authority, the Connecticut Department of Energy and Environmental Protection, and the Connecticut Office of Consumer Counsel at 4; NESCOE Protest at 10-11. In effect, these parties appear to be arguing that NEPGA should not be permitted to challenge the treatment of the Mystic Units in the FCA until after these units clear the market as price takers. These parties ignore that the Commission routinely considers complaints challenging the rules that will be applied in an upcoming capacity auction, even where

implementation of those rules is contingent on FERC approval or other events. *See IPPNY*, 150 FERC ¶ 61,214 at PP 59, 71 (addressing complaint alleging that planned repowering of Dunkirk facility would suppress capacity prices in New York over arguments that the complaint was speculative and unripe); *Joint Consumer Representatives v. PJM Interconnection, L.L.C.*, 153 FERC ¶ 61,187 (2015) (considering complaint alleging that load forecast to be applied in upcoming capacity auction was unjust and unreasonable).

Moreover, adopting these parties' reasoning could permanently deprive NEPGA and other entities with the ability to seek redress for the harm suffered as a result of ISO-NE's treatment of the Mystic Units. The Commission generally only grants relief prospectively from the date that a complaint is filed and has a general policy against re-running auctions. *See Ameren Servs. Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 127 FERC ¶ 61,121 at P 157 (2009) (stating that the Commission generally refuses to "order refunds when doing so would require re-running a market").

To be clear, NEPGA will withdraw its Complaint if ISO-NE withdraws its request for waiver or the Commission denies it. At present, however, ISO-NE expressly has sought waiver of its Tariff to permit ISO-NE to retain Mystic Units 8 & 9 and indicated its intent to treat these units as price takers in the FCA. There is no real dispute that treating the Mystic Units as price takers will suppress prices and harm third parties, with ISO-NE conceding the potential for "undesirable economic consequences for the FCM generally." *See supra* at 2 & n.1; *see also* ISO-NE Waiver Petition at 33-35 (acknowledging the "potential for market distortions" and "potential negative market consequences for some market participants").

NEPGA's Complaint also is distinct from the complaint at issue in *NextEra Energy Res., LLC v. ISO New England Inc.*, 156 FERC ¶ 61,150 at P 15, *reh'g denied*, 157 FERC ¶ 61,059

(2016). In that case, the Commission dismissed a complaint that alleged that Massachusetts was on the “verge” of implementing a manipulative scheme intended to artificially suppress prices by allowing electric distribution companies to purchase unneeded capacity on a planned natural gas pipeline and resell this capacity at below market rates. *Id.* at PP 2-3. Notably, at the time that the Commission dismissed the complaint, there was no risk of imminent harm as a court had blocked the Massachusetts Department of Public Utilities from approving the distribution companies’ proposal and the distribution companies had withdrawn their petitions seeking approval of the relevant contracts. Here, in contrast, ISO-NE’s proposed treatment of the Mystic Units represents an imminent threat to market participants participating in FCA 13. The harm is not speculative.

*Finally*, there is no merit to claims that NEPGA’s proposed relief cannot be granted because it has not been vetted in the NEPOOL stakeholder process. *See, e.g.*, Limited Protest of the New England Power Pool Participants Committee, *passim*; ENECOS Protest at 2-3, 12. ISO-NE already bypassed the stakeholder process in proposing its tariff waivers. The waivers impose an imminent threat to FCA 13 that must be immediately addressed. It would be unreasonable to now use the already-bypassed stakeholder process as an excuse to fail to take action to protect FCA 13. An alternative would be to deny the waiver and let stakeholders debate fuel security and price suppression together. Regardless, the stakeholder process is not so important that it trumps just and reasonable rates in FCA 13. The Federal Power Act requires just and reasonable and not unduly discriminatory rates, not a stakeholder process.

*CONCLUSION*

For the foregoing reasons, NEPGA requests that the Commission issue an order no later than July 2, 2018 granting the Complaint and directing ISO-NE to implement NEPGA's proposed solution to ensure just and reasonable rates in FCA 13.

Respectfully submitted,

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June 19, 2018

# Exhibit 1

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

New England Power Generators )  
Association, )  
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Complainant )  
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v. )  
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ISO New England Inc. )  
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Respondent. )

Docket No. EL18-154-000

**SUPPLEMENTAL AFFIDAVIT OF PAUL M. SOTKIEWICZ**

**I. INTRODUCTION AND PURPOSE OF AFFIDAVIT**

1. My name is Dr. Paul M. Sotkiewicz. I have been asked by the New England Power Generators Association, Inc. (“NEPGA”) to submit this affidavit in support of the NEPGA’s answer to protests and ISO-NE’s response to the Section 206 complaint filed by NEPGA in Docket No. EL18-154-000 on May 23, 2018. A full description of my credentials and experience is contained in the affidavit that I submitted in support of the complaint.
2. In my previous affidavit supporting the NEPGA Complaint I demonstrated that treating the Mystic Units as price takers would suppress prices below competitive levels and inefficiently displace otherwise economic resources in a manner that is observationally equivalent to the harm done by an exercise of buyer-side market power. As discussed below, nothing in ISO-NE’s answer to the Complaint or the protests to the Complaint provides a basis for ignoring these results.

3. In this supplemental affidavit I address several issues brought up by ISO-NE and protesters.

## **II. IPPNY IS NOT RELEVANT TO THE ISO-NE FCM**

4. ISO-NE and protesters cite to the Commission's decision in *Independent Power Producers of New York, Inc. v. New York Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,214 (2015) ("IPPNY"), where the Commission denied a complaint challenging the submission of *de minimis* offers into the New York Independent System Operator, Inc. ("NYISO") capacity market from resources with a reliability must-run agreement that would have exited the market but for the determination that they were needed for reliability purposes. ISO-NE and protesters assert the same logic employed by the Commission in that case should apply to resources held for fuel security by ISO-NE such as the Mystic Units. They are in error.
5. It is essential to understand that capacity markets, whether it is the capacity market in NYISO, ISO-NE, or another RTO/ISO, are designed with a single objective in mind: to ensure resource adequacy subject to transmission deliverability constraints. But the product itself is the capacity, priced by location to reflect transmission deliverability constraints, that can be called upon during peak periods to ensure a minimum loss of load probability threshold while accounting for transmission deliverability, generator outages, abnormal weather driven loads, and general load forecast error.
6. Capacity markets in general, and ISO-NE's FCM in particular, have never been designed to meet any kind of explicit fuel security criteria. In a June 12, 2018 presentation discussing reviews for fuel security to the ISO-NE Reliability Committee, ISO-NE Vice President for System Operations, Peter Brandien notes there are differences between fuel security and resource adequacy, "This review is not looking for a needed amount of

installed MW of capacity in the region. The Forward Capacity Auction (FCA) will procure the necessary Installed Capacity Requirement (ICR) using the sloped demand curve. A resource is only held outside of this construct when it is needed for local transmission security, or – as set out here – for energy security.”<sup>1</sup>

7. If such fuel security criteria had been contemplated in the FCM design, there would be no need for the tariff waiver sought by ISO-NE. Unfortunately, ISO-NE and other protesters citing the *IPPNY* decision confuse the resource adequacy goal of capacity markets with other services that have yet to be defined, in this case fuel security.
8. The logic behind the *IPPNY* decision is based upon testimony by Dr. David Patton.<sup>2</sup> Summarizing those arguments here, Dr. Patton asserted that the resources at issue in that case would have cleared the market if the transmission constraints were modeled perfectly.<sup>3</sup> Dr. Patton argued this result would have been consistent with the intended design of the NYISO capacity market.<sup>4</sup> Dr. Patton argued the out-of-market contracts at issue in *IPPNY* covered the going forward costs of the resources in the same way a perfectly modeled transmission constraint would have resulted in a higher locational price. Therefore, Dr. Patton concluded that it was appropriate for the transmission constrained resource to offer in the wider NYISO capacity market at a zero price as an

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<sup>1</sup> “Reliability Reviews for Fuel Security: Criteria for Unit Retention in the Forward Capacity Market (FCM)”, Presentation to the Reliability Committee, Norman Sproehnle, Manager Outage Coordination and Peter Brandien, VP, System Operations, June 12, 2018, at 23. Available at [https://www.iso-ne.com/static-assets/documents/2018/06/a7\\_retaining\\_resources\\_for\\_fuel\\_security\\_reliability.zip](https://www.iso-ne.com/static-assets/documents/2018/06/a7_retaining_resources_for_fuel_security_reliability.zip).

<sup>2</sup> Answer of the New York Independent System Operator, Inc., Docket No. EL13-62-000, May 30, 2013, Affidavit of David B. Patton, Ph.D. (“Patton Affidavit”)

<sup>3</sup> *Id.* at P 12, PP 18-20.

<sup>4</sup> *Id.* P 26.

economically rational offer for the wider capacity market given its need to meet a very *localized* capacity need within the wider capacity need.<sup>5</sup>

9. The situation in the ISO-NE FCM is quite different from the situation at issue in *IPPNY*. First, there has never been a contemplated fuel security constraint or requirement in the ISO-NE context (or NYISO or anywhere else, for that matter), and the fuel security constraint ISO-NE defines is region-wide, and not a local subset of the region-wide capacity requirement. This is not an instance of having the explicit intent to model locational differences to account for transmission deliverability as contemplated under *IPPNY* and simply not perfectly modeling those constraints. Fuel security constraints simply are not modeled in the FCM design and are region-wide requirements incremental to the region-wide capacity requirement reflected in the Net ICR and the system MRI curve (demand curve for capacity).
10. In addition, ISO-NE is seeking to retain the Mystic units to provide energy in the winter. This is not a service reflected in the FCM or its resource adequacy requirement but rather something else that is not even defined in the ISO-NE Tariff, let alone in its market design. As a result, it is not merely a matter of effectuating the intent of the tariff, but of changing the very design of the market through a waiver request. It is illogical to say that ISO-NE did not model the constraint perfectly in the FCM. The FCM was never meant to model the constraint. It is not a subset of the FCM requirement.
11. Second, these arguments suffer from a major logical fallacy: that treating the Mystic units as fuel secure resources would not affect pricing for other similarly situated fuel secure resources. Even assuming that ISO-NE could model a “fuel secure resource constraint”

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<sup>5</sup> *Id.* 28-32.

in the FCA, the pricing treatment of the Mystic Units would affect the prices received by other such similarly situated resources. In fact, treating the Mystic units as price takers would affect the market prices received by other similar fuel secure resources, thereby artificially depressing prices for other fuel secure resources in the market. Such a result is inconsistent with the goal of maintaining fuel security.

12. Third, these arguments fail to take into account key differences in the NYISO and ISO-NE markets. The NYISO capacity market is a monthly capacity market, or at most a 6-month market, with commitments one month prior to delivery. ISO-NE's FCM is a yearly commitment made three years in advance of delivery. Given that prices for the FCA are only posted once per year, the pricing and commitment outcomes have a much greater effect on entry and exit decisions of resources. Inserting a large amount of above market cost capacity into the FCA as price takers will have a much larger effect on prices and commitments that drive entry and exit decisions relative to the resources at issue in *IPPNY*.
13. In short, holding resources for fuel security services and requiring them to provide resource adequacy as price takers, has an outsized impact in the FCA outcomes relative to NYISO. In the case of ISO-NE, the Mystic Units are not being held to provide resource adequacy. Recent market outcomes are showing ISO-NE committing capacity at levels that exceed their Net ICR reliability target yet procuring that level of capacity still does not assure the desired level of fuel security in the winter. This is unsurprising since the regional fuel security constraint ISO-NE seeks to enforce is defined differently than the capacity requirement.
14. For all of these reasons, *IPPNY* is irrelevant to this situation.

### **III. ISO-NE LOAD DOES NOT PAY TWICE FOR CAPACITY UNDER NEPGA’S PROPOSED SOLUTION**

15. A number of parties claim that NEPGA’s proposed solution does not eliminate the potential that ISO-NE load will be required to pay twice for capacity. These arguments wrongly assume that the Mystic Units are being held to provide resource adequacy. As ISO-NE has noted in the aforementioned June 12, 2018 Reliability Committee presentation, however, the Mystic Units are not being held for resource adequacy. Rather the Mystic Units are being held for a yet to be defined service referred to as “fuel security” for use in the winter period where ISO-NE has stated for the 2018/19 Commitment Period there is 32,456 MW of committed capacity with a forecast winter peak need of 22,657 MW resulting in a robust surplus of capacity is 9,799 MW.<sup>6</sup> Given that the Mystic Units are not being held for resource adequacy as currently defined by ISO-NE, it is illogical to conclude that ISO-NE load will be paying twice for capacity under NEPGA’s proposed solution. Load will pay for capacity to ensure resource adequacy, and then it will pay for this additional system-wide service being provided by the Mystic Units.
16. Furthermore, even if the Mystic Units were assumed to be providing the same resource adequacy as other capacity resources, protesters’ arguments imply that the Mystic Units are being held outside of the FCM framework without participation in the FCA or the ARAs. Importantly, any participation of the Mystic Units within the FCM framework,

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<sup>6</sup> “Reliability Reviews for Fuel Security: Criteria for Unit Retention in the Forward Capacity Market (FCM)”, Presentation to the Reliability Committee, Norman Sproehnle, Manager Outage Coordination and Peter Brandien, VP, System Operations, June 12, 2018, at 23. Available at [https://www.iso-ne.com/static-assets/documents/2018/06/a7\\_retaining\\_resources\\_for\\_fuel\\_security\\_reliability.zip](https://www.iso-ne.com/static-assets/documents/2018/06/a7_retaining_resources_for_fuel_security_reliability.zip)

including the participation in the ARAs, helps offset the costs of the cost-of-service contracts for the Mystic Units explicitly or implicitly.

17. Protesters arguing that NEPGA's solution will result in double payment also appear to assume that the treatment of the Mystic Units in the ARA as price takers will result in a market clearing price of \$0 in the ARA. There are a number of reasons why this would not occur in practice.
18. First, the claim that the ARA will clear at \$0 necessarily assumes that demand will decrease from the FCA to the ARA or that the FCA will clear supply far in excess of the Net ICR. A recent investigation by ISO-NE has determined there is no bias in the load forecast methodology, but rather accounting for recent trends such as behind-the-meter generation and large shocks such as the recession from 2007-2009 the changes in forecast demand and ICR could go up or down.<sup>7</sup> Notably, however, if demand increases between the FCA and ARAs, the insertion of the Mystic Units as price takers would likely not result in a zero price. Instead, the ARA would result in positive prices, with any revenues received by the Mystic Units offsetting the cost of the cost-of-service contract.
19. Second, protesters wrongly assume that ISO-NE would not or does not procure any additional capacity in the ARAs under any circumstance. In reality, however, resources that did not clear the FCA will have an incentive to offer their capacity into the ARAs in a manner consistent with their updated costs in order to receive a capacity commitment

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<sup>7</sup> "Investigation of Bias in the Installed Capacity Requirement (ICR): FCA1 through FCA 10", Presentation at the Power Supply Planning Committee, Maria Scibelli, May 29, 2018, available at [https://www.iso-ne.com/static-assets/documents/2018/05/a6\\_pspc\\_rev\\_icr\\_bias\\_invtgn\\_05292018.pdf](https://www.iso-ne.com/static-assets/documents/2018/05/a6_pspc_rev_icr_bias_invtgn_05292018.pdf). P. 14 shows that when accounting for behind-the-meter generation, the net change in demand between the FCA and ARA3 is net positive on average for the Capacity Commitment Periods 7-11.

and generate some additional cash flow to offset their going forward costs. Previous ARA results show that ISO-NE has procured net additional capacity through the ARAs.<sup>8</sup>

20. Regardless of whether the Mystic Units are held completely out of the FCM or included in the FCM through the ARA, ISO-NE load will pay for the cost-of-service contract. The question becomes one of how much of the cost of service contract for the Mystic Units will be offset by participation in the ARA.
21. With the Mystic Units offering into the ARA as price takers, even if the ARA clearing price was \$0/kW-month, load is still better off as the Mystic Units offering as price takers avoid some capacity expenditures that would be paid by load absent the Mystic Units' participation in the FCM overall. In this sense the avoided costs implicitly offset the cost of the cost-of-service contracts. For example, if the Mystic Units were completely held outside of the FCM, ISO-NE may procure an additional 1000 MW of capacity at \$2/kW-month. Yet, including the Mystic Units in the ARA as price takers, ISO-NE load would get 1400 MW at a price of \$0/kW-month. Effectively, the Mystic Units would avoid \$2 million per month in capacity costs in this example.
22. In summary, the NEPGA solution offers a means by which the costs of the Mystic Units RMR contracts can offset some capacity costs for load, while not distorting the prices signals in the FCA that are crucial for obtaining and retaining other resources critical to fuel security, including entry and exit decisions.

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<sup>8</sup> See <https://www.iso-ne.com/markets-operations/markets/forward-capacity-market/fcm-auction-bilateral-results-cp?cp=7>.

#### **IV. ISO-NE INCORRECTLY ASSERTS OTHERWISE ECONOMIC RESOURCES ARE NOT DISPLACED**

23. ISO-NE contests the claim that treating the Mystic Units as price takers will result in displacement of economic resources.<sup>9</sup> In particular, ISO-NE argues that my analysis incorrectly assumed that the “marginal reliability benefit” of these displaced resources remains unchanged following the retention of the Mystic Units.<sup>10</sup>
24. ISO-NE’s response appears to confuse the difference between supply and demand in markets. Demand represents the marginal benefit to procurement by load for capacity. Supply represents the marginal or incremental cost of providing one more MW of capacity to the market in the case of the FCA. Supply resources in and of themselves do not possess an inherent “marginal benefit.” Capacity will continue to be procured so long as the marginal benefit of capacity exceeds the marginal cost of the next MW of capacity. Market efficiency in the capacity market is achieved when the marginal cost of adding one more MW of capacity is equal to the marginal benefit to reliability of adding one more MW of capacity.
25. ISO-NE’s use of the term “marginal reliability benefit” is simply a fancy way of saying the demand curve for capacity, in this case, the system-wide demand curve. If in my analysis, I had “assumed” the marginal reliability benefit of all the displaced resources was the same, I would have had to hold the price of capacity constant at the competitive level, and then replace economic, lower cost resources with the higher cost Mystic Units on a one-for-one basis. My previous analysis shows, however, that displacement of

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<sup>9</sup> ISO-NE Response at 11-12.

<sup>10</sup> *Id.*

economic resources is not one-for-one when the Mystic Units are inserted into the FCA as price takers.

26. In addition, it is important to recognize that any reduction in the “marginal reliability benefit” of displaced resources is not a result of more efficient lower cost resources entering the market, which would increase market surplus and enhance efficiency. It is the insertion of higher cost resources, *with costs above* the marginal reliability benefit at competitive levels of procurement that has caused the drop in the market price/marginal reliability benefit of capacity. In other words, any decrease in the marginal reliability benefit (or stated another way a lower market clearing price and higher committed values of capacity) of these resources reflects ISO-NE decision to treat the Mystic Units as price takers.
27. In short, ISO-NE assertion that otherwise economic resources are not displaced is fundamentally wrong.

**V. THE PRESENCE OF EFFICIENT, LOW COST NEW ENTRY DOES NOT CHANGE THE FACT THAT INSERTING THE HIGH COST MYSTIC UNITS INTO THE FCA AS PRICE TAKERS WILL RESULT IN PRICES BELOW COMPETITIVE LEVELS AND THE DISPLACEMENT OF OTHERWISE UNECONOMIC RESOURCES**

28. NESCOE offers the affidavit of Mr. James F. Wilson in an attempt to convince the Commission that my prior analysis of the price suppression likely to result from the treatment of the Mystic Units as price takers is flawed. Among other things, Mr. Wilson asserts that the amount of price suppression would be zero if there had been new replacement capacity to make up for the loss of the Mystic Units, and that the analysis in my previous affidavit did not account for potential entry and exit.<sup>11</sup>

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<sup>11</sup> NESCOE Protest at 25. Wilson Affidavit at P12, PP36-37.

29. These arguments are a “red herring” designed to distract the Commission with a discussion of actual or estimated price levels rather than concentrating on the effect of inserting high cost resources such as the Mystic Units into the FCA as price takers and the resulting artificial decline in prices below competitive levels and the inefficient displacement of otherwise economic resources.
30. Mr. Wilson argues that my analysis should have focused on the difference in prices between a situation where the Mystic Units are treated as price takers and where new entrants offer into the market at *de minimis* prices. Contrary to what Mr. Wilson suggests, this comparison would have been akin to comparing apples with mangoes. In particular, Mr. Wilson overlooks that ISO-NE *has* concluded that it needs to retain the Mystic Units to maintain fuel security. As a result, any new entry by resources offering at *de minimis* prices would necessarily be in addition to the 1,400 MW of capacity associated with the Mystic Units. Any competitive new entry, as asserted by Mr. Wilson, simply becomes part of the competitive baseline by which to evaluate the impact of the Mystic Units on the FCA.
31. Whether or not I include new entry or exit of resources in the calculation of the competitive baseline, the fact is that inserting the above market Mystic Units into the FCA as price takers will artificially reduce prices below competitive levels and result in the inefficient displacement of otherwise economic resources.
32. A simple example drives this point home.<sup>12</sup> Suppose the competitive outcome absent any new entry or exit results in a FCA clearing price of \$4.63/kW-month and clears 34,828

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<sup>12</sup> This example follows the analysis I provided in my original affidavit with the flatter supply curve but recasts the numerical analysis in a way to show the logical fallacy of the comparison provided by Mr. Wilson. This also includes some analysis not shown in the original affidavit.

MW of capacity just as I showed in my original affidavit. To include the possibility of new entry, assume that there is exactly 1400 MW of competitive, low cost new entry as hypothesized by Mr. Wilson in his affidavit. The new competitive outcome in the FCA is a clearing price of \$4.12/kW-month and the market clears 34,943 MW of capacity. Let this new entry scenario be the new competitive baseline.

33. Now consider the 1400 MW associated with the Mystic Units of above market cost capacity that ISO-NE wishes to retain for fuel security. Inserting the 1400 MW of above market capacity at zero results in a market clearing price of \$3.61/kW-month and a clearing quantity of 35,061 MW. The inclusion of the Mystic Units as price takers reduces the market price from the new entry competitive baseline by \$0.51/kW-month and inefficiently displaces 1,282 MW of otherwise economic capacity in the new entry competitive baseline. The financial harm across the entire market is nearly \$215 million per year. This number could be even higher with the steeper supply curve.
34. The bottom line is that even if there were substantial new entry as hypothesized by Mr. Wilson, that only changes the competitive baseline values, and does not change the inefficient and distorting effects of the inserting above market cost resources into the FCA as price takers.

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35. This concludes my affidavit.

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

New England Power Generators )  
Association, )  
 )  
Complainant )  
 )  
v. )  
 )  
ISO New England Inc. )  
 )  
Respondent. )

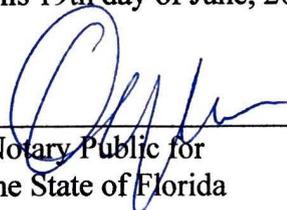
Docket No. EL18-154-000

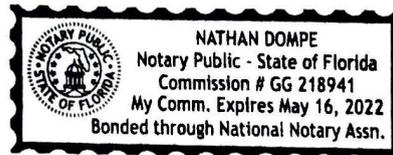
**AFFIDAVIT**

Paul M. Sotkiewicz, Ph.D., being duly sworn, deposes and states that the statements contained in the foregoing Affidavit of Paul M. Sotkiewicz, Ph.D. are true and correct to the best of his knowledge and belief.

  
\_\_\_\_\_  
Paul M. Sotkiewicz, Ph.D.

Subscribed and sworn to before me  
this 19th day of June, 2018

  
\_\_\_\_\_  
Notary Public for  
the State of Florida



My Commission expires: May 16 2022

