

present uncertain to the Commission, Market Participants, the New England States and other stakeholders, but the unchallenged evidence filed by NEPGA in the recent Fuel Security Compliance Order⁴ proceeding, in which the Commission accepted ISO-NE's administrative re-pricing actions in FCA 13 (and FCAs 14 and 15, if applicable), suggests it may have been significant.⁵ The IMM's failure to file testimony explaining the impact these administrative actions may have had on the competitiveness of the FCA 13 results renders the FCA 13 Results Filing incomplete and deficient.

To be clear, NEPGA does not challenge the FCA 13 results but instead asks that the Commission find that the FCA 13 Results Filing is deficient in that it does not include testimony from the IMM explaining the impact, if any, ISO-NE's administrative actions had on the competitiveness of the FCA 13 result. In order to fully understand that impact, NEPGA respectfully asks the Commission to direct its Office of Energy Market Regulation to issue a deficiency letter requiring the IMM to file testimony that explains how and to what extent the re-pricing of the Mystic Units in FCA 13 caused the clearing price to be lower than it would have been had the Mystic Units been offered into the auction at their Commission-accepted competitive Retirement De-List Bid offer prices, how many otherwise economic capacity resources did not clear FCA 13 as a result of ISO-NE's administrative re-pricing actions, and whether in the IMM's opinion these actions impacted the competitiveness of FCA 13.

⁴ *ISO New England Inc.*, 165 FERC ¶ 61,202 (2018) (accepting ISO-NE compliance filing establishing eligibility criteria for a cost-of-service agreement to meet a "demonstrated fuel security need.").

⁵ See *Motion to Intervene and Protest of the New England Power Generators Ass'n, Inc.*, Exh. 1, Testimony of Paul M. Sotkiewicz, Ph.D. on Behalf of the New England Power Generators Ass'n Inc., at pp. 31-32, Docket No. ER18-2364 (filed Sept. 21, 2018) (showing a low-end estimate, based on a relatively flat supply curve, of a \$0.51/kW-month reduction in capacity clearing price and 1,285 MW of displaced capacity in FCA 13).

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 nearly 90% 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:

Bruce Anderson
Vice President, Market and Regulatory Affairs
New England Power Generators Association, Inc.
33 Broad Street, 7th Floor
Boston, MA 02109
banderson@nepga.org

II. Protest

Following each FCA, ISO-NE must file the auction results pursuant to Section 205 of the Federal Power Act,⁶ including “documentation regarding the competitiveness of the Forward Capacity Auction.”⁷ And following every FCA to date, except for FCA 13, ISO-NE has filed testimony from the IMM attesting to the competitiveness of the auction results.⁸ The Commission has relied on the IMM’s certification in deciding on the justness and reasonableness of the FCA results under its FPA Section 205 review. For example, in rejecting a protest claiming market manipulation in FCA 10, the Commission found conclusive the IMM’s certification that “the outcome of the auction was competitive, a finding based on rigorous qualification requirements including the application of mitigation rules and the competitive bidding and offering of resources.”⁹ Similarly, the Commission found that the FCA 9 results were just and reasonable based on the “persuasive evidence” provided in the IMM’s certification of the auction results, including its representation that the outcome of FCA 9 system-wide was the result of a competitive

⁶ ISO-NE Transmission, Markets and Services Tariff, Market Rule 1 (“Tariff”), Section III.13.8.2(a).

⁷ *Id.* at § 13.8.2(b).

⁸ *ISO New England Inc., Forward Capacity Auction Results Filing*, Attachment D, Testimony of Jeffrey McDonald, Docket No. ER18-940-000 (filed Feb. 28, 2018) (FCA 12 results filing); *ISO New England Inc., Forward Capacity Auction Results Filing*, Attachment D, Testimony of Jeffrey McDonald, Docket No. ER17-1073-000 (filed Feb. 28, 2017) (FCA 11 results filing); *ISO New England Inc., Forward Capacity Auction Results Filing*, Attachment D, Testimony of Jeffrey McDonald, Docket No. ER16-1041-000 (filed Feb. 29, 2016) (FCA 10 results filing); *ISO New England Inc., Forward Capacity Auction Results Filing*, Attachment D, Testimony of Jeffrey McDonald, Docket No. ER15-1137-000 (filed Feb. 27, 2015) (FCA 9 results filing); *ISO New England Inc., Forward Capacity Auction Results Filing*, Attachment C, Testimony of David LaPlante, Docket No. ER14-1409-000 (filed Feb. 28, 2014) (FCA 8 results filing); *ISO New England Inc., Forward Capacity Auction Results Filing*, Attachment C, Testimony of David LaPlante, Docket No. ER13-992-000 (filed Feb. 26, 2013) (FCA 7 results filing); *ISO New England Inc., Forward Capacity Auction Results Filing*, Attachment C, Testimony of David LaPlante, Docket No. ER12-1678-000 (filed April 30, 2012) (FCA 6 results filing); *ISO New England Inc., Forward Capacity Auction Results Filing*, Attachment C, Testimony of David LaPlante, Docket No. ER11-3891-000 (filed June 27, 2011) (FCA 5 results filing); *ISO New England Inc., Forward Capacity Auction Results Filing*, Attachment C, Testimony of David LaPlante, Docket No. ER10-2477-000 (filed Aug. 30, 2010) (FCA 4 results filing); *ISO New England Inc., Forward Capacity Auction Results Filing*, Attachment C, Testimony of David LaPlante, Docket No. ER10-186-000 (filed Oct. 30, 2009) (FCA 3 results filing); *ISO New England Inc., Forward Capacity Auction Results Filing*, Attachment C, Testimony of David LaPlante, Docket No. ER09-467-000 (filed Dec. 23, 2008) (FCA 2 results filing); *ISO New England Inc., Forward Capacity Auction Results Filing*, Attachment D, Testimony of Hung-Po Chao, Docket No. ER08-633-000 (filed March 3, 2008) (FCA 1 results filing).

⁹ *ISO New England Inc.*, 155 FERC ¶ 61,273, at P 27 (2016).

auction.¹⁰ The IMM's testimony is therefore not *pro forma* but critical evidence the Commission must consider in discharging its duty under the Federal Power Act.

The IMM customarily certifies that all offers into the auction were competitive and that the auction showed no signs of anti-competitive behavior.¹¹ The IMM, however, has also used its testimony to explain outcomes or auction conditions specific to an FCA to the extent they potentially may have impacted the competitiveness of the FCA results. For example, following FCA 12, the IMM explained that even though the auction cleared below the Dynamic De-List Bid Threshold, sufficient surplus remained at the start of the dynamic range to produce a competitive clearing price.¹² Following FCAs 10 and 11, the IMM found the auction results competitive based in part on its evaluation of supply compared to demand.¹³ Following FCA 9, the IMM explained that the Southeastern Massachusetts/Rhode Island Capacity Zone clearing price was not considered competitive because the then-effective Tariff rules governing "inadequate supply" in the capacity zone were triggered.¹⁴ The IMM also explained that it "evaluated" each round of the auction and that no evidence of manipulative behavior was noted.¹⁵ Following FCA 8, the IMM opined on the auctioneer's decision on an end of round price, on whether the auction results were competitive given the triggering of administrative pricing rules, and on its concerns about the application of those administrative pricing rules in an Import-Constrained Capacity Zone.¹⁶

¹⁰ *ISO New England Inc., Order on Rehearing*, 153 FERC ¶ 61,378, at P 16 (2015).

¹¹ *See, e.g., ISO New England Inc., Forward Capacity Auction Results Filing*, Attachment D, Testimony of Jeffrey McDonald, Docket No. ER17-1073-000 (filed Feb. 28, 2017) (FCA 11 results filing);

¹² *ISO New England Inc., Forward Capacity Auction Results Filing*, Attachment D, Testimony of Jeffrey McDonald at 3-4, Docket No. ER18-940-000 (filed Feb. 28, 2018).

¹³ *See, e.g., ISO New England Inc., Forward Capacity Auction Results Filing*, Attachment D, Testimony of Jeffrey McDonald at 3, Docket No. ER17-1073-000 (filed Feb. 28, 2017) ("There were sufficient existing and new resources in the eleventh FCA that the outcome of the auction was competitive.").

¹⁴ *ISO New England Inc., Forward Capacity Auction Results Filing*, Attachment D, Testimony of Jeffrey McDonald at 6, Docket No. ER15-1137-000 (filed Feb. 27, 2015).

¹⁵ *Id.* at 5.

¹⁶ *ISO New England Inc., Forward Capacity Auction Results Filing*, Attachment C, Testimony of David LaPlante at 3-7, Docket No. ER14-1409-000 (filed Feb. 28, 2014) (opining that a \$3.00/kW-month end of round price is

Following FCAs 3, 4 and 5, the IMM reported on “noteworthy auction outcomes,” finding noteworthy the rejection of de-list bids for reliability reasons in each of those auctions.¹⁷

The IMM has filed testimony following every auction attesting to the competitiveness of the FCA results given the particular circumstances and rules governing that auction. The IMM should likewise be required to do so for FCA 13. In the Fuel Security Compliance Order proceeding,¹⁸ NEPGA submitted unchallenged evidence that re-pricing Mystic Units 8 and 9 as price-takers in FCA 13 would significantly reduce the clearing price and displace capacity resources otherwise economic in the auction.¹⁹ The Commission did not decide on this evidence in its Fuel Security Compliance Order, instead simply recognizing that “it is not possible to avoid an impact on either the pricing in the FCA or the quantity of resources procured to satisfy resource adequacy when finding that a resource must be retained for fuel security.”²⁰ The precise impact thus remains an open question.

An accounting of the impact the administrative re-pricing of the Mystic Units had on the clearing price and clearing of capacity in FCA 13 is not only necessary to complete the FCA 13 Results Filing, it is within the IMM’s duties under the ISO-NE Tariff. The IMM is required to “[r]eview and report on the performance of the New England Markets to the ISO, the Commission,

appropriate for the first round of the auction and explaining the application of administrative pricing rules then in effect).

¹⁷ *ISO New England Inc., Forward Capacity Auction Results Filing*, Attachment C, Testimony of David LaPlante, at 5, Docket No. ER11-992-000 (filed June 27, 2011) (explaining that the Vermont Yankee Nuclear Station Dynamic De-List Bid was rejected for reliability reasons, and that the unit’s compensation would be determined by FERC order); *ISO New England Inc., Forward Capacity Auction Results Filing*, Attachment C, Testimony of David LaPlante, at 4-5 Docket No. ER10-2477-000 (filed Aug. 30, 2010) (explaining the rejection of de-list bids for Salem Harbor 3, Salem Harbor 4, and the Vermont Yankee Nuclear Station); *ISO New England Inc., Forward Capacity Auction Results Filing*, Attachment C, Testimony of David LaPlante, at 4-5, Docket No. ER10-186-000 (filed Oct. 30, 2009) (explaining the rejection of de-list bids for reliability).

¹⁸ *ISO New England Inc.*, 165 FERC ¶ 61,202 (2018).

¹⁹ Motion to Intervene and Protest of the New England Power Generators Ass’n, Inc., Exh. 1, Testimony of Paul M. Sotkiewicz, Ph.D. on Behalf of the New England Power Generators Ass’n Inc., at pp. 31-32 (showing a low-end estimate based on a flat supply curve of a \$0.51/kW-month reduction in capacity clearing price and 1,285 MW of displaced capacity in FCA 13).

²⁰ *ISO New England Inc.*, 165 FERC ¶ 61,202, at P 87 (2018).

Market Participants, the public utility commissioners of the six New England states, and to other interested entities.”²¹ This includes a review of “the competitiveness of the New England Markets ... and the impact that ISO’s actions have had on the New England Markets.”²² There is nothing in the Tariff to suggest that the IMM satisfies this obligation through its customary quarterly and annual reports. Indeed, the IMM’s obligation to produce the annual and quarterly reports is set out separately in the Tariff from the IMM’s prevailing obligation to report on the competitiveness of the FCA results and on the impact of ISO-NE actions on those results.²³

A significant administrative re-pricing action taken by ISO-NE is highly relevant to the competitiveness of the FCA not only in FCA 13 but in future auctions as well. The possibility exists that additional resources beyond Mystic Units 8 and 9 may be uneconomic in the FCA and satisfy the criteria necessary to qualify for a cost-of-service agreement in FCAs 14 and 15.²⁴ An accounting of the impact 1,415 MW of such resources had on the clearing price and clearing of capacity in FCA 13 is important to understand whether the re-pricing of these resources would be just and reasonable under the Fuel Security Compliance Order²⁵ if more than 1,415 MW of uneconomic resources are held for reliability in a single FCA (including those held to meet a transmission security need, which also are re-priced as price-takers under the Tariff). There is no more timely and important issue concerning the competitiveness of FCAs 14 and 15 than the

²¹ ISO-NE Tariff, Section III, Market Rule 1, Appendix A, Market Monitoring, Reporting and Market Power Mitigation, § III.A.2.1 (b) (one of the “core functions” of the Internal Market Monitor).

²² *Id.*, § III.A.2.3(e).

²³ Compare ISO-NE Tariff, Section III, Market Rule 1, Appendix A, Market Monitoring and Market Power Mitigation, § III.A.17.2 (requiring monthly and quarterly reports); *id.* at § III.A.2.1(b) (defining other IMM functions).

²⁴ Cost-of-service eligibility based on “fuel security” will remain in effect through FCA 15. See *ISO New England Inc.*, 165 FERC ¶ 61,202, at P 96 (2018).

²⁵ NEPGA asks for rehearing of the Fuel Security Compliance Order on the issue of re-pricing in the FCA resources operating under a fuel security cost-service agreement, which request is pending before FERC. See *Request for Rehearing of the New England Power Generators Ass’n, Inc.*, Docket Nos. ER18-2364-001, EL18-182-002 (filed Jan. 2, 2019); see also *Order Granting Rehearings for Further Consideration*, Docket Nos. ER18-2364-001, EL18-182-002 (Feb. 1, 2019) (tolling order).

administrative pricing treatment of uneconomic resources deemed necessary to meet fuel security and transmission security needs. The IMM's and ISO-NE's Tariff obligations should extend to this critical matter, with the FCA 13 Results Filing the appropriate vehicle through which the IMM should explain and opine on the impact ISO-NE's administrative re-pricing actions had on the competitiveness of the FCA 13 results.

III. CONCLUSION

NEPGA respectfully requests that the Commission grant this Motion to Intervene, find that the FCA 13 Results Filing is incomplete, and direct ISO-NE and the IMM to supplement the filing with IMM testimony explaining the impact the re-pricing of the Mystic Units had on the FCA 13 clearing price, whether and what quantity of capacity resources would have cleared the auction but for the re-pricing of the Mystic Units, and to what extent if any these outcomes impacted the competitiveness of the FCA 13 results.

Respectfully Submitted,

/s/ Bruce Anderson

Bruce Anderson
Vice President, Market and Regulatory Affairs
New England Power Generators Association, Inc.
33 Broad Street, 7th Floor
Boston, MA 02109
Tel: 617-902-2347
Email: banderson@nepga.org

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, April 12, 2019.

/s/ Bruce Anderson

Bruce Anderson
Vice President, Market and Regulatory Affairs
New England Power Generators Association, Inc.
33 Broad Street, 7th Floor
Boston, MA 02109
Tel: 617-902-2347
Fax: 617-902-2349
Email: banderson@nepga.org