

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

ISO-New England Inc.

Docket No. ER19-1428-000

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

Pursuant to Rules 211 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),¹ the New England Power Generators Association, Inc. (“NEPGA”)² files this Motion to Intervene and Protest of ISO New England Inc.’s (“ISO-NE”) Inventoried Energy Program (“IE Program”) proposal.³ The IE Program represents ISO-NE’s “commitment” to provide an “alternative” in FCAs 14 and 15 to the “price-taker approach” applied in FCA 13.⁴ The IE Program “represents the fulfillment of that commitment,”⁵ and is intended to provide “incremental compensation” to resources that maintain energy inventory during cold winter periods.⁶

NEPGA does not protest the IE Program but respectfully requests that the Commission find that re-pricing resources that operate under a cost-of-service agreement for fuel security is

¹ 18 C.F.R. §§ 385.211, 385.214 (2018). This Motion to Intervene and Protest is timely in accordance with the Commission’s Combined Notice of Filings #1 (March 25, 2019).

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

³ ISO New England, Inc., Inventoried Energy Program Filing, Docket No. ER19-1428-000 (filed March 25, 2019) (“Inventoried Energy Program”).

⁴ *Id.*, Transmittal Letter at 4 (“IE Program Filing Transmittal Letter”).

⁵ *Id.*

⁶ *Id.*

unjust and unreasonable under the IE Program (or otherwise). These administrative re-pricing acts will only exacerbate the problem of the wholesale markets not valuing winter energy security, and resources thus having insufficient revenue opportunities to meet New England's resource adequacy and winter energy security needs. The Commission can grant NEPGA's request here either through this proceeding or by granting NEPGA's pending Request for Rehearing⁷ of the Commission's order accepting ISO-NE's proposal to make certain resources eligible for a cost-of-service agreement to meet a demonstrated fuel security need and to re-price their competitive offers into the FCA to \$0/kW-month ("Compliance Filing Order").⁸

In the alternative, the Commission should find that eligibility to enter into a fuel security cost-of-service agreement (the "COS Program"), while respecting Mystic Unit 8 and 9's existing right to a cost-of-service agreement for FCA 14,⁹ will become unjust and unreasonable under the IE Program. The COS Program and IE Program are intended to serve the same purposes, though only one of them, the COS Program, is to be used solely as a "last resort."¹⁰ ISO-NE committed to develop an "alternative" to the COS Program and "price-taker approach" for effect in FCAs 14 and 15, and the IE Program proposal represents ISO-NE's "fulfillment of that commitment."¹¹ Maintaining the COS Program or that part of the COS Program that requires the re-pricing of FCA offers would only exacerbate the "missing money" problem the IE Program is intended to mitigate in FCAs 14 and 15. The COS Program together with the IE Program would also render

⁷ 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).

⁸ *ISO New England Inc.*, 165 FERC ¶ 61,202 (2018).

⁹ See, e.g., *Order Accepting Agreement, Subject to Condition, and Directing Briefs*, 165 FERC ¶ 61,267 (2018) (accepting cost-of-service agreement subject to condition).

¹⁰ *Devon Power LLC*, 103 FERC ¶ 61,082, at P 31 (2003) (cost-based, reliability must-run contracts are appropriate in a region with competitive wholesale markets only as a last resort); see also *Milford Power Co.*, 119 FERC ¶ 61,167, at P 31 (2007).

¹¹ IE Program Filing Transmittal Letter at 4.

the Tariff unduly discriminatory, in that resources under one program or the other would receive different rates for fuel security service. Together, maintaining either the COS Program itself, or the re-pricing provisions of the COS Program, is unjust and unreasonable upon acceptance, if any, of the IE Program.

It would also be unjust and unreasonable to require a Market Participant to reduce its Retirement, Static, or Permanent De-List Bid in an amount equal to the marginal revenue it expects to earn in the IE Program, if accepted. The IMM asserts that a Market Participant must reduce its de-list bid accordingly but fails to provide any persuasive support for its position in the Tariff. Contrary to the IMM's claims of consistency with the IE Program, the requirement it asserts is entirely inconsistent with the purpose of the IE Program. The Commission and ISO-NE have found that the wholesale markets fail to provide necessary revenue opportunities, yet the IMM seeks a requirement that would reduce revenue opportunities and exacerbate the issues facing New England. In decreasing wholesale revenues for all resources through the mandatory mitigation of expected IE Program marginal revenues, the IMM would put more resources in the position of contemplating retirement rather than fewer. And again, this is only exacerbated by the reduction in FCA revenues due to the re-pricing of offers from resources operating under a fuel security cost-of-service agreement. ISO-NE is attempting to provide resources with incremental overall revenues, yet the IMM asserts that Market Participants must reduce their competitive offers into the FCA in an equal amount. The IE Program does not fully compensate for the reduction in FCA revenues caused by the COS Program re-pricing provisions, and the IMM asserts that more still must be required that will have the effect of reducing the FCA clearing price. This cannot be just and reasonable.

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:

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II. PROTEST

A. IF THE COST OF SERVICE PROGRAM REMAINS IN EFFECT CONCURRENT WITH THE INVENTORIED ENERGY PROGRAM, RESOURCES HELD FOR FUEL SECURITY MUST NOT BE RE-PRICED IN THE FORWARD CAPACITY AUCTION

If the Commission finds that it is just and reasonable to maintain the COS Program through FCA 15 with (or without) the IE Program concurrently in effect, it would be entirely inefficient to continue re-pricing resources held for fuel security as price-takers in the FCA. The

IE Program is intended to provide revenues incremental to those earned in the capacity market and other wholesale markets. The re-pricing of resources held for fuel security reduces the clearing price of a market that, even without that reduction in capacity clearing price, does not value or price the services the IE Program seeks to secure.

NEPGA introduced unchallenged evidence in the Compliance Filing Order proceeding showing a reduction in FCA clearing price as a result of the COS Program re-pricing provision in the range of \$0.51 - \$1.52/kw-month.¹² Under the IE Program, a participant may realize gross revenues of between \$0.04/kw-month and \$0.49/kw-month,¹³ with net revenues after accounting for the cost to participate in the IE Program obviously less still. Based on this evidence, the IE Program will not fully compensate for the reduction in capacity price caused by the COS Program re-pricing provision, and thus in terms of total revenues capacity resources will remain in a net negative position. Drawing further revenue out of the FCA, while putting in place an out-of-market program intended to supplement the lack of value placed on winter energy security in the wholesale markets, would seem to be the definition of inefficiency. It would be like having two workers on a road crew, one to fill in a pothole and the other to then come in and remove the fill. At the end of the day you still have a pothole. Further yet, the second worker could remove even more fill causing the pothole to be deeper than when the work began. The Tariff would be unjust and unreasonable if it were to address the potential for the uneconomic retirements of resources that contribute to winter energy security the same way.

¹² *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 clearing price reduction and a high-end estimate based on a steeper curve of \$1.52/kW-month).

¹³ An IE Program participant may receive compensation based on at most 3 days equivalent of inventoried energy. The IE Program requires a minimum 2 hour run time per day. Thus, a participant taking a forward position may at minimum receive \$0.04/kw-month (*i.e.*, (2 hours x 3 days x \$82.49/MWh)/(12 months x 1000kW/MW)) and at maximum \$0.49/kw-month (*i.e.*, (24 hours x 3 days x \$82.49/MWh)/(12 months x 1000kW/MW)).

The Commission, ISO-NE and NEPOOL stakeholders have for several years sought to address the issue of winter energy and fuel security in New England. The Commission's leadership has now compelled ISO-NE and stakeholders to develop durable market design changes to value and properly price the services ISO-NE needs to maintain a reliable system in the winter months. With those market design changes several years off, the Commission and ISO-NE have recognized the need for a "bridge" to those design changes in order to avoid the retirement of resources that can provide those valuable services because it would be inefficient when, if their value to the system was properly valued in the markets, the resource would have remained in operation. These uneconomic retirements could also have an adverse impact on system reliability.¹⁴ ISO-NE believes that the IE Program will help avoid these inefficient outcomes,¹⁵ but the IE Program will be burdened in attempting to achieve this if the wholesale markets not only fail to value and price the necessary services and attributes to maintain fuel security, but provide even less in revenue opportunity as a result of the COS Program re-pricing provisions. It bears repeating that even without the reduction in capacity clearing price due to these administrative actions, the wholesale markets do not provide the necessary revenue opportunities. While the focus has been on a hole in the wholesale market design that does not value winter energy security, the hole caused by administrative actions that reduce the FCA clearing price is far deeper.

A retirement decision is based on much more than a three-month revenue opportunity, including most importantly whether the markets procure the services or attributes at the marginal

¹⁴ *ISO New England Inc.*, 164 FERC ¶ 61,003, at P 55 (finding that the Tariff may not address fuel security issues which may result in the violation of reliability standards).

¹⁵ Inventoried Energy Program Filing, Testimony of Christopher Geissler on Behalf of ISO New England Inc., at 5 (“[P]roviding compensation through an interim program might forestall the retirement (or out-of-market retention) of a resource that would be economic but for the absence of such compensation, a desirable outcome for the ISO and the region.”) (“Geissler Testimony”).

cost. Incremental revenues, though helpful in maintaining an economic resource, by themselves may not have a material impact on retirement decisions if the FCA delivers less than it would otherwise but for the COS Program's re-pricing provision. This is true from a purely revenue settlement sense, and in a Market Participant's anticipation of whether the FCA will produce competitive outcomes. Even with IE Program compensation, resources contributing to fuel security need the capacity revenues consistent with a competitive FCA. Stated differently, IE Program compensation plus a suppressed FCM revenue stream will not achieve the stated objective of the IE Program. As discussed above, record evidence shows that even the highest potential net IE Program revenues do not compensate for the reduction in FCA clearing price caused by the COS Program re-pricing provision. Incremental revenues, those above and beyond what the wholesale markets provide, is the lever ISO-NE designed in the IE Program to forestall uneconomic retirements. But the combination of the IE Program and the re-pricing of fuel security cost-of-service agreement resources simply will not achieve that objective, and in fact can make it worse.

A high-level analysis helps to demonstrate. As noted above, at most an IE Program participant can realize approximately \$0.49/kW-month in gross revenues.¹⁶ The net, after accounting for the costs to procure the fuel commitments, will of course be lower. For some resources, given that the program payment rate is designed as the cost to enter into an LNG contract to participate in the program, the cost of the fuel procurement will be equal to the payment rate for the "marginal" provider of the service. Thus, the marginal provider would be expected to earn no net margin from program participation. With an assumed margin as high as 50%, a resource may net as much as \$0.25/kW-month. At this point the IE Program has

¹⁶ See Note 13, *supra*.

provided incremental revenues to the resource, above those that the wholesale markets provide. But consider that the re-pricing of competitive offers to \$0/kW-month does in fact reduce the FCA clearing price versus the price if the de-list bids from the resources held for fuel security had been permitted to clear economically. NEPGA introduced unchallenged evidence in the Fuel Security Compliance Order proceeding showing a low-end estimate of a \$0.51/kW-month reduction in the clearing price due to the re-pricing to \$0/kW-month of 1,400 MW of capacity.¹⁷ Based on this example, a resource contemplating retirement would be worse off with the COS Program re-pricing proposal combined with the IE Program, but better off with the IE Program and the COS Program amended to remove its re-pricing provision.

The Commission reasoned in the Compliance Filing Order 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. We find reasonable ISO-NE's choice to protect against inefficiently over-procuring capacity resources by reflecting a fuel security resource's contribution to resource adequacy in the FCA...¹⁸

In reaching this conclusion, the Commission does not address the fact that the re-pricing of resources held for fuel security reduces the clearing price of a market that, even before the reduction in capacity clearing price, does not compensate resources for the service the IE Program seeks to secure. This is "dynamically inefficient." The Commission is essentially choosing one inefficiency (over-procuring capacity resources)¹⁹ over another (uncompetitive FCA prices for all capacity resource in the market, including the approximately 26,000 MW of

¹⁷ See, e.g., *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).

¹⁸ Compliance Filing Order at P 87.

¹⁹ NEPGA does not agree that pricing resources retained out-of-market for winter energy security results in the over-procurement of capacity resources. Its comments throughout the relevant proceedings emphasize this point and we will not repeat those arguments hear. NEPGA adopts the Commission's language regarding over-procurement of capacity resources *arguendo* to highlight the inconsistency in the Commission's determination.

“fuel security” resources in the market). This, while the comparative harm to capacity suppliers (on the low end of the unchallenged evidence, approximately \$200 million market-wide) far outweighed the approximate \$89 million in avoided costs to consumers in FCA 13.²⁰ Neither the Commission in its Compliance Filing Order, nor ISO-NE in its proposal here, address or seek to provide a remedy for this dynamic inefficiency and failure to balance the interests among buyers and sellers, or explain why it is less of a threat to ISO-NE’s market than “over-procuring” capacity resources. NEPGA explained this in its Request for Rehearing of the Compliance Filing Order, and the Commission could remedy this dynamic inefficiency by granting that request.

B. IN THE ALTERNATIVE, THE FUEL SECURITY COST OF SERVICE PROGRAM SHOULD BE ELIMINATED IF THE COMMISSION ACCEPTS THE INVENTORIED ENERGY PROGRAM

If the Commission accepts the IE Program, it will render the COS Program redundant and unnecessary, hardly justifying the harm the COS Program would continue to cause to the Forward Capacity Market and to the IE Program itself if left intact. The IE Program is a viable alternative to the “last resort” of using cost-of-service agreements to meet reliability needs, and provides an opportunity for ISO-NE to meet its reliability needs through a different temporary out of market program that avoids the reduction in capacity market revenues that only exacerbates the “missing money” problem the IE Program is intended to remedy.

²⁰ The estimated cost to capacity sellers is the product of the decrease in FCA clearing price and the difference between total capacity procured and the qualified capacity of resources re-priced under the COS Program. On the low end of the record evidence this would be equal to $\$0.51/\text{kW-month} \times (34,839 \text{ MW} - 1,413 \text{ MW}) \times (12 \text{ months} \times 1,000 \text{ kW/MW})$, or approximately \$200 million, and on the high end equal to $\$1.52/\text{kW-month} \times (34,839 \text{ MW} - 1,413 \text{ MW}) \times (12 \text{ months} \times 1,000 \text{ kW/MW})$. The estimated avoided cost to capacity buyers is estimated at the high end of the competitive FCA clearing price of $\$5.32/\text{kW-month}$ (*i.e.*, the FCA 13 clearing price of $\$3.80/\text{kW-month} + \$1.52/\text{kW-month}$ estimate reduction in capacity clearing price) times the 1,413 MW of year round qualified capacity in Mystic 8 & 9.

In 2018, ISO-NE sought waivers from its Tariff to allow two resources that submitted Retirement De-List Bids in FCA 13 – Mystic Units 8 and 9 – to enter into cost-of-service agreements in the event they were uneconomic in the FCA and thus and did not obtain Capacity Supply Obligations in FCA 13 based on their competitive offer prices. The Commission rejected the waiver request but found that the Tariff may be unjust and unreasonable, agreeing with ISO-NE’s representation that the Tariff “fails to address specific regional fuel security concerns identified in the record that could result in reliability violations.” Pursuant to its authority under section 206 of the Federal Power Act, the Commission directed ISO-NE to file: (1) Tariff revisions that provide for the filing of a “short-term, cost-of-service agreement to address demonstrated fuel security concerns”; and (2) Tariff revisions “reflecting improvements to its market design to better address regional fuel security concerns.”²¹ The Commission based its order on ISO-NE’s demonstration that the Tariff “fails to address specific regional fuel security concerns identified in the record that could result in reliability violations.”²²

The Commission has accepted the first of those filings,²³ the COS Program, and has ordered ISO-NE to make the second filing by October 15, 2019. The Commission, however, did not contemplate that ISO-NE would make this third filing, the IE Program proposal, a second out-of-market “temporary” measure for effect during the two FCAs in which the COS Program will also be in effect, FCAs 14 and 15. The Commission naturally then did not consider whether the COS Program should remain in effect should it accept another out-of-market bridge to the market design changes. The Commission accepted the COS Program for effect through FCA 15 due to its uncertainty that the long-term market design change can be in effect prior to FCA 16.

²¹ *ISO New England Inc.*, 164 FERC ¶ 61,003, at P 2 (2018).

²² *Id.*

²³ *ISO New England Inc.*, 165 FERC ¶ 61,202 (2018).

As the Commission explained, “the limited amount of time” for ISO-NE to propose a design change, and the close of the FCA 15 Retirement De-List Bid submission window in March 2020 led the Commission to find it reasonable to accept the COS Program for effect through FCA 15.²⁴ Thus, the Commission believed that the COS Program would be the “bridge” until the market design change takes effect. The IE Program presents a different “bridge” that would allow ISO-NE to avoid the “last resort” of cost-of-service agreements.

Comparing the COS Program to the IE Program shows that they are the same in several material respects. They each require out-of-market actions and are intended to provide revenue opportunities incremental those available in the wholesale markets.²⁵ In both cases, the incremental revenues are intended to incent resources to take actions that they otherwise would not take that improve the region’s winter energy security and otherwise provide value for fuel inventory security.²⁶ They are each temporary and meant to be an administrative bridge to the market design changes ordered by the Commission.²⁷ And in each case they seek to value a fuel security reliability service the Commission finds the wholesale markets fail to value, and assign a rate to each service indexed to a specific cost (in the case of the IE Program, the cost to enter into a firm LNG contract with 10 calls, and for the COS Program the cost to operate the resource and provide fuel security-related obligations beyond that of a capacity resource).

Perhaps most material is that they are each designed to avoid the retirement of a resource that improves ISO-NE’s winter energy security that would otherwise occur if the resource were

²⁴ Compliance Filing Order at P 96.

²⁵ Geissler Testimony at 4 (“[T]he interim program filed here will serve as a bridge to the long-term solution by providing incremental compensation to resources providing winter energy security starting in December 2023.”).

²⁶ *Id.* at 7.

²⁷ ISO New England Inc., Petition for Waiver at 31-32, Docket No. ER18-1509 (filed May 1, 2018) (proposing a “limited” duration waiver request until ISO-NE develops a market-based proposal); Geissler Testimony at p. 4 (“[T]he interim program filed here will serve as a bridge to the long-term solution by providing incremental compensation to resources providing winter energy security starting in December 2023.”).

to rely only on the revenue opportunities the wholesale markets currently provide. This is self-evident under the COS Program, where a resource may become eligible for the incremental revenue only if it has first submitted a Retirement De-List Bid. Similarly, the promise of incremental IE Program revenues “takes on increased importance in the case of any resources that might be considering retirement before the benefits of the full, market-based approach can be realized.”²⁸ It is the revenues that may be earned in the IE Program, together with the potential afforded by future market design changes, that ISO-NE finds “might forestall the retirement (or out-of-market retention) of a resource that would be economic but for the absence of such compensation.”²⁹

There are, naturally, differences between the two programs. In the COS Program, a resource must first signal its intent to retire before it is eligible to receive out-of-market revenues, while under the IE Program ISO-NE cautions that certain resource types that contribute to winter energy reliability may retire but for the incremental revenues provided by the IE Program. In the COS Program, eligibility is determined on a case by case basis, while the IE Program recognizes that many resource types may be capable of meeting the service it seeks. These differences, however, are immaterial. What matters is that ISO-NE intends that each program provide the revenue opportunities necessary to change behavior to enhance fuel security, to place some value on fuel security, and ultimately to forestall the retirement of resources that are economic but for the wholesale markets not valuing winter energy security.

²⁸ Geissler Testimony at 4.

²⁹ *Id.* at 5.

The COS Program would be unjust and unreasonable while the IE Program is in effect for several reasons. First, a cost-of-service agreement is to be used only as a “last resort.”³⁰ As explained above, ISO-NE may instead resort to the IE Program as an alternative out-of-market temporary program designed to achieve the same goal. Second, by reducing the FCA clearing price, the COS Program increases the difference between what the Forward Capacity Auction bears and the revenues necessary to procure ISO-NE’s resource adequacy and winter energy security needs. In other words, it exacerbates the “missing money” problem ISO-NE believes the IE Program will help address, an unjust and unreasonable inefficiency. Third, the COS Program together with the IE Program would render the Tariff unduly discriminatory. The IE Program compensates all resources contributing to fuel security at a single, transparent rate, currently indexed at \$82.49/MWh of inventoried energy. Another resource, that may differ only in that it has submitted a Retirement De-List Bid (or seeks to retire through the Substitution Auction), will receive a different and potentially higher rate for its fuel security service. Without a material and persuasive reason for the different rates, this is unduly discriminatory.³¹ Fourth, maintaining two out-of-market programs to address the same problem, but with different revenue opportunities, may give resources the incentive to pursue the program that as a condition of participation *requires a resource to agree to retire*. If a Market Participant expects to receive a higher rate from the COS Program than the IE Program, its incentive may be to submit the Retirement De-List Bid (and/or Substitution Auction demand bid) that may qualify it for a cost-

³⁰ *Devon Power LLC*, 103 FERC ¶ 61,082, at P 31 (2003) (cost-based, reliability must-run contracts are appropriate in a region with competitive wholesale markets only as a last resort); *see also Milford Power Co.*, 119 FERC ¶ 61,167, at P 31 (2007).

³¹ NEPGA recognizes that resources retained under the COS program may be required to take actions beyond holding three days of inventoried energy. However, we note that many of the resources that participate in the IE Program will hold more than three days of inventoried energy (e.g., nuclear units, oil-fired resources and dual-fuel units with large fuel tanks, natural-gas fired resources with firm gas) but will only be compensated for three days of inventoried energy.

of-service agreement. All of these harms can be remedied by eliminating the COS Program concurrent with any acceptance of the IE Program.

C. MARKET PARTICIPANTS CANNOT BE REQUIRED TO REDUCE THEIR CAPACITY MARKET OFFERS BY AN AMOUNT APPROXIMATING THEIR IE PROGRAM REVENUES

The IMM asserts that a Market Participant must reduce its Retirement, Static, or Permanent De-List Bid in an amount equal to the marginal revenues it expects to earn in the IE Program (both from the IE Program rate compensation itself and from expected increases in energy market locational marginal prices due to opportunity cost bidding).³² It finds support for this belief in its “role in reviewing and mitigating bids”³³ and in what it sees as a consistency with the IE Program objectives. Neither of these bases, however, are persuasive. Its general role, though helpful background information, does not compel any result, and its belief that mandatory mitigation is consistent with the purpose of the IE Program misses the import of the Commission’s finding that the wholesale markets fail to compensate resources for fuel security. The IMM does not cite to specific Tariff provisions that obligate Market Participants to reduce their FCA offers in an amount equal to their expected IE Program revenues, remarking instead that the IE program “should be treated like revenue from any ancillary service.”³⁴ Together, the IMM has failed to provide any persuasive support for its position.

³² *Comments of the Internal Market Monitor of ISO New England Inc. on the Inventoried Energy Program*, at 5, Docket No. ER19-1428-000 (filed Apr. 8, 2019) (“IMM Comments”).

³³ *Id.* at 5.

³⁴ *Id.* at 7.

i. Mandatory Reduction of FCA Offers Ignores the Commission’s Findings on the Wholesale Markets and the Intent of the IE Program

The IMM believes that if a Market Participant does not reduce its FCA offer to reflect expected IE Program revenues it could “undermine” the IE Program.³⁵ The IMM reasons that if a Market Participant chooses not to reduce its FCA offer price due to IE Program revenues it may run the risk of not clearing when the “economic outcome” would be for it to clear.³⁶ This in turn “would be contrary” to avoiding “uneconomic retirements” of resources.³⁷ What the IMM fails to recognize is that the proper “economic outcome” in the FCA is that which is dictated by what is economic to provide capacity (at competitive offer prices, as discussed *supra*), not capacity and inventoried energy. This is the very point of the Commission’s FPA Section 206 directives, namely, that the wholesale markets, including the FCA, do not value “fuel security.” The IMM asserts that only one side of the equation – supply offers – but not the other – demand – must reflect the value of fuel security. To do so would drain from the wholesale markets revenue opportunities the IE Program is intended to supplement.

A Market Participant that participates in the IE Program is the only party in a position to determine to what extent the IE Program makes it competitive to provide capacity. If the IE Program revenues are in fact to be incremental to those earned in the wholesale markets, the Market Participant cannot be required to reduce its competitive offer in an equal amount. If, as ISO-NE intends, the IE Program is material to the economic viability of a resource, it is only the Market Participant that can reflect that through its wholesale market offers. Particularly in the case where ISO-NE has offered an interim, out-of-market compensation mechanism with no

³⁵ *Id.*

³⁶ *Id.* at 8.

³⁷ *Id.*

history as the “missing money” to stave off a retirement, the Market Participant should be permitted to decide what effect the IE Program has on its competitiveness in the FCA.

ii. Mandatory Reduction of De-List Bids to Account for Marginal IE Program Revenues Would Reduce or Eliminate Incremental Revenues

In seeking acceptance of its proposal to create new criteria under which a resource may become eligible for a cost-of-service agreement, and in lieu of a market design change, ISO-NE committed to provide “incremental payment[s] for resource[s] that can help the region meet its fuel security objectives.” The IE Program “represents the fulfillment of that commitment.”³⁸ ISO-NE explains that the FCM design, together with the “price-taker approach” (i.e., re-pricing a resource held for fuel security as a price-taker in the FCM), causes the FCM to “not properly compensate resources that provide both resource adequacy and fuel security.”³⁹ Stated otherwise, the wholesale markets at present do not value or compensate for “the winter energy security attributes,” and the IE Program is to compensate, at least in part, for that void.⁴⁰ The IE Program thus is intended to provide “incremental compensation” – that which goes beyond revenue opportunities in the wholesale markets – in recognition of the lack of revenue opportunity in the existing FCM design.⁴¹

That these out-of-market revenues are truly incremental to the revenue opportunities in the wholesale markets is necessary to achieve the IE Program objectives. A reduction in capacity market revenues in an amount reflecting incremental revenues from the IE Program will maintain the status quo rather than improve upon it, undermining one of the primary purposes of the IE Program (to avoid uneconomic retirements). ISO-NE is seeking to provide supplemental

³⁸ IE Program Filing Transmittal Letter at 4.

³⁹ *Id.*

⁴⁰ *Id.* at 7.

⁴¹ Geissler Testimony at 4.

revenues to resources that contribute to winter energy security, while the IMM asserts that capacity market offers must be reduced in an equal amount. If the marginal resource is required to reduce its de-list bid in an amount equal to its expected marginal IE Program revenues it will earn \$0 in incremental revenues. For a resource with lower expected net IE Program revenues than those for the marginal resource the outcome is worse. It will be in a net negative position as a result of the IE Program, because the decrease in capacity revenues it will incur due to the mitigation of the marginal resource (in an amount reflecting the marginal resource's relatively higher expected net IE Program revenues) will exceed the revenues it expects to receive from the IE Program. At best, for a resource that expects higher net IE Program revenues than the marginal resource, the reduction in FCA clearing price will cause a net reduction in the incremental revenues the IE Program is intended to provide. This on top of the reduction in FCA clearing price caused by the COS Program re-pricing provision.

For example, for an oil-fired steam unit which has low incremental costs to be a fuel secure resource, the IMM would require it to reduce its delist bid price by the maximum amount that it may realize under the IE Program, \$0.49/kW-month, less incremental costs. If that unit is the marginal unit in the FCA, the price impact in the FCA would be a reduction in the clearing price by that amount. However, not all resources have low incremental costs to participate – the benchmark gas unit procuring an LNG package would be expected to have near zero net revenue from the IE Program. Thus, all capacity resources would incur a reduction in capacity revenues, with many (including resources not eligible for the IE Program such as wind and solar) realizing net negative revenues as a result of the IE Program.

It is of course difficult to predict the marginal resources in FCAs 14 and 15 (notably, however, the marginal resource in FCA 13 was in fact an oil-fired resource).⁴² It is likewise difficult to predict which resources may realize high, medium or low IE Program marginal revenues, but these generalizations illustrate the impact the diluted or lack of price signals may have. With the IE Program rate indexed to ISO-NE's projections of the cost for a specific LNG contract, low marginal revenue resources may be those that operate on gas and whose heat rate is relatively less efficient. It would be this type of resource, one that contributes to winter firm energy but may be economically stressed due to a high heat rate, the IE Program is designed to compensate to help it remain in operation. But under the mitigation requirement the IMM posits, this resource type would net little to no revenues and indeed might be in a net negative position. For that resource, and others similarly situated, the IMM's reading of the Tariff would hardly create "incremental revenues."

The Tariff cannot be read to require this, nor would it be just and reasonable if the Tariff does in fact compel this finding. If the Commission accepts the IE Program as an interim measure to provide "incremental" revenues for service provided, NEPGA asks the Commission to also find that the Tariff does not require a Market Participant to reduce a capacity market offer in an amount approximating expected IE Program revenues, or that the Tariff is unjust and unreasonable if it does so require. If the latter, NEPGA asks that the Commission act pursuant to its FPA Section 206 authority and direct ISO-NE to amend the Tariff to eliminate any such requirement.

⁴² See ISO New England Inc NEPOOL Reliability Committee Presentation, *Summary of Results of the Thirteenth Capacity Auction (FCA 13) for Capacity Commitment Period 2022-2023*, at 17, available at: https://www.iso-ne.com/static-assets/documents/2019/03/a7_fca13_auction_results.pdf. (showing that in an auction that cleared in the Dynamic De-List bid range, 78% of Dynamic De-List Bids were from oil-fired resources; during the open NEPOOL Reliability Committee meeting to discuss the same, ISO-NE confirmed that an oil-fired resource offer stopped the auction).

III. CONCLUSION

WHEREFORE, for the reasons stated herein NEPGA respectfully requests that the Commission find that the COS Program re-pricing provision is unjust and unreasonable should the Commission accept the IE Program, or in the alternative find that the COS Program itself is unjust and unreasonable upon acceptance of the IE Program, if any. NEPGA also asks that the Commission find that a Market Participant is not required to reduce a capacity market offer by an amount equal to its expected IE Program revenues.

Respectfully Submitted,

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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, April 15, 2019.

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