UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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ISO-New England Inc.	)	**Docket Nos. ER19-1428-000**
	)	**ER19-1428-001**
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MOTION FOR LEAVE TO ANSWER AND ANSWER OF THE NEW ENGLAND POWER GENERATORS ASSOCIATION, INC.

Pursuant to Rules 101(e), 212, and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"),[1] the New England Power Generators Association, Inc. ("NEPGA")[2] hereby submits this Motion for Leave to Answer and Answer to the answer filed by ISO New England Inc.'s Internal Market Monitor ("IMM Answer")[3] in this Inventoried Energy Program ("IE Program") filing proceeding.[4]

The IMM asks the Commission to read the Tariff[5] to require a Market Participant to reduce its Forward Capacity Auction offer price by an amount equal to any net revenues the Market Participant expects its resource will earn from the IE Program. In its Answer, the IMM argues that the Tariff terms "infra-marginal revenues," "cash flows," and "non-capacity revenue

[1] 18 C.F.R. §§ 385.101(e), 385.212, and 385.213 (2018).
[2] The comments expressed herein represent those of NEPGA as an organization, but not necessarily those of any particular member. This Answer is timely pursuant to the Commission's Combined Notice of Filings #1 (June 6, 2019).
[3] *Motion for Leave to File Answer and Answer of the Internal Market Monitor of ISO New England Inc.*, Docket No. ER19-1428-000) (filed April 30, 2019).
[4] *ISO New England, Inc., Inventoried Energy Program Filing*, Docket No. ER19-1428-000 (filed March 25, 2019) ("IE Program Filing").
[5] All references to the "Tariff" are to ISO New England Inc., Transmission, Markets and Services Tariff, Market Rule 1.

data," revenues a Market Participant must account for in its offer price, necessarily include out-of-market IE Program revenues under the Tariff. The IMM finds this to be self-evident, in that it does no more than state that IE Program revenues "must" be included in these terms.[6]

A closer look shows that the IMM's reading of the Tariff is incorrect. The IE Program revenues fit the Tariff definition of out-of-market revenues, which the Tariff neither permits nor requires a Market Participant to include in its Forward Capacity Auction offer, with the one exception an explicitly defined accounting for renewable energy credit revenues. The Tariff and Forward Capacity Market design is consistent in this regard in that it does not require an accounting of out-of-market revenues in calculating the Net Cost of New Entry and the Offer Review Trigger Prices, values material to the pricing of capacity and the conduct of the FCA. Commission precedent is likewise consistent with the Tariff in these respects, as discussed further below. The IMM asks the Commission to accept an unsupported reading of the Tariff that would entirely frustrate the purpose of the IE Program by netting out from the wholesale markets out-of-market revenues intended to compensate for fuel inventory not valued in the wholesale markets. A reasonable reading of the Tariff does not dictate this outcome. NEPGA respectfully requests that the Commission reject the IMM's reading of the Tariff and confirm that Market Participants are not required to reduce their de-list bids by an amount reflecting projected IE Program revenues.

Good cause exists to permit this answer because it clarifies the record and law in this proceeding and responds to new arguments raised by the IMM in its Answer. Neither ISO-New England nor the IMM explained its Tariff-based argument for mitigating Forward Capacity

[6] IMM Answer at 3.

Auction offers, and the IMM newly cited to certain Tariff sections as support for its position. NEPGA seeks to narrowly respond to the new evidence and arguments raised by the IMM.

I. ANSWER

If accepted by the Commission, the IE Program will provide "incremental compensation" available to certain types of resources for a total of six months (December – February, twice) from 2023-2025.[7] It compensates any eligible resource that wishes to participate at a forward rate settled against a spot rate, each administratively set by ISO-New England (subject to Commission acceptance).[8] As ISO-NE explained in filing the IE Program proposal, timeliness and simplicity won out over a market design,[9] and no party takes the position that the IE Program is a wholesale market.

IE Program revenues fit the Tariff definition of out-of-market revenues, which are revenues "not tradable throughout the New England Control Area or that are restricted to resources within a particular [area]" or those "not available to all resources of the same physical type within the New England Control Area."[10] IE Program revenues are not tradable and not available to all resources of the same physical type. This is so because the IE Program does not compensate for energy, capacity, or some other wholesale market service, but instead compensates a participant for an amount of fuel it may access on-call. To be eligible, a resource must be able to convert inventoried energy to electric energy at ISO-NE's direction, the conversion must reduce the amount of electric energy the resource can produce in the future, and

[7] IE Program Filing, Transmittal Letter at 4.
[8] *Id.* at 11-12.
[9] *Id.* at 5-6 (ISO-NE claims only that the IE Program is "much more consistent than the previous programs with the Commission's (and ISO's) preference for market-based solutions.").
[10] ISO New England Inc. Transmission, Markets and Services Tariff, Market Rule 1, § III.A.21.2(b).

the inventoried energy must be capable of being measured in a MWh-equivalent value.[11] Thus, according to ISO-NE, only "[s]ome hydro and pumped-storage generators meet the three conditions [for participation], and others do not."[12] Similarly, only some gas-fired generators may have access to the necessary firm fuel commitments. To be sure, nothing in the definition of out-of-market revenues requires that the revenues come from a state program,[13] and the Commission has found elsewhere that revenues provided through an RTO/ISO-administered compensation program to be a "separate, out-of-market payment."[14]

The IMM nonetheless believes that various Tariff terms necessarily include out-of-market revenues. For example, the Tariff requires a Market Participant to account for "annual infra-marginal rents" in a Static or Export De-List Bid.[15] The IMM finds it self-evident that IE Program revenues "must be treated as 'inframarginal rent'."[16] A review of the Tariff and Commission precedent, however, shows that infra-marginal rents must include only wholesale market revenues. As the Commission has observed, infra-marginal rent "is defined" as "'calculated by subtracting all submitted cost data representing the cumulative actual cost of production from the Existing Generating Capacity Resource's ***total ISO market revenues***.'"[17] The Commission similarly has interpreted infra-marginal rents under the ISO-NE Tariff as "what a unit can expect to earn in the ***ISO-NE markets, e.g., energy and ancillary services markets***."[18]

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[11] IE Program Filing, Transmittal Letter at 14-15.
[12] *Id.* at 16.
[13] *Contrast* with the Renewable Resource Technology resource definition that explicitly requires that the revenues come from state contracts, rates or changes. *See* Market Rule 1, § III.13.1.1.1.7 (among other requirements, the resources must "receive an out-of-market revenue source supported by a state- or federally-regulated rate, charge or other regulated cost recovery mechanism.").
[14] *PJM Interconnection, LLC; Essential Power Rock Springs, LCC, et al. v. PJM Interconnection, LLC*, 151 FERC 61,208, at P 501 (2015) (rejecting a compensation program for rescinded maintenance outage approvals because it would create "an out-of-market revenue stream that could skew market clearing prices.").
[15] IMM Answer at 2-3.
[16] *Id.* at 3.
[17] *ISO New England Inc.*, 128 FERC 61,266, at P 17, note 26 (2009) (emphasis added)
[18] *Id*.

The Tariff likewise requires a Market Participant to account for "total ISO market revenues" in its infra-marginal rents or set its inframarginal rents to $0.00 if the resource "will not be participating in the energy and ancillary services markets during the Capacity Commitment Period."[19] This latter provision shows that absent any wholesale market revenues, regardless of any out-of-market revenues,[20] a Market Participant must set its infra-marginal rents to $0.00. Thus, both in Commission precedent and in the Tariff itself the term infra-marginal rents refers to profits from the wholesale markets, not out-of-market revenues.

ISO-NE's calculation of the net cost of new entry value ("Net CONE"), one of two values (the other being the Net Installed Capacity Requirement) that dictates the positioning of the Forward Capacity Auction's demand curve, further supports this reading. According to ISO-NE, "[t]he estimate of CONE/Net CONE is based on the revenue required, net of ***cash flows from market revenues***, by a new entrant to recover its capital and operating costs over a 20-year period."[21] Thus the "non-capacity market net revenues" it used in its most recent re-calculation of Net CONE were those from the wholesale energy markets, the Locational Forward Reserve Market, the Real-Time Reserve Market (Thirty-Minute Operating Reserves and Ten-Minute Non-Spinning Reserves only), renewable energy credits, and the Forward Capacity Market's second-settlement (as part of the Pay for Performance design).[22] The other revenues ISO-NE considered but did not include for other reasons were Regulation Market and energy market Net Commitment Period Compensation, the former market revenues and the latter revenues based on any difference between the marginal clearing price and the resource's costs to produce energy

[19] Market Rule 1, § III.13.1.2.3.2.1.2.A. (Static De-List Bid and Export Bid Net Going Forward Costs).
[20] Except in the case of where the revenues are through a regulated rate, in which case the IMM will substitute an energy market revenue stream for the regulated rate in calculating a competitive offer price.
[21] *ISO New England Inc., Filing of Net CONE and ORTP Updates*, Attachment 1, *ISO-NE CONE and ORTP Analysis, Concentric Energy Advisors,* at 38, Docket No. ER17-795-000 (filed Jan. 13, 2017).
[22] *Id.* at 8-9.

(and/or opportunity costs of not producing energy) in that interval.[23] Thus the netting of infra-marginal revenues against the gross CONE value includes only market revenues and renewable energy credit revenues.

As with infra-marginal revenues, the IMM asserts that the "non-capacity revenue data" a Project Sponsor must submit if it wishes to offer a new capacity resource at a price below its Offer Review Trigger Price ("ORTP") necessarily must include out-of-market revenue under the Tariff.[24] As an initial matter, the IMM calculates the ORTPs based on the same general methodology ISO-NE uses for Net CONE, including the netting of market revenues only (aside from renewable energy credits). Thus, the default offer floor price for new capacity resources – a price at which some if not many new resources offer – is not reduced based on potential out-of-market revenues. The Tariff provides more context for the meaning of "non-capacity revenue data" in describing the information a New Demand Capacity Resource must provide the IMM in seeking to offer below the ORTP, explaining that "[r]evenues shall include all non-capacity payments expected from the ***ISO-administered markets*** made for services delivered form the associated Demand Response Resource."[25] Further, though the ORTPs must be re-calculated no less than once every three years,[26] discrete values within the capital budgeting model (and thus the ORTPs themselves) must be updated annually based on changes in defined indices.[27] Only one out-of-market revenue stream value – that for renewable energy credit revenues earned through New England State programs – requires an annual update.[28] The annual update of

[23] *See* Note 19, at 60-61.
[24] IMM Answer at 3.
[25] Market Rule 1, § III.A.21.2(a)(ii) (emphasis added).
[26] Market Rule 1, § III.A.21.2 (a). This is so except for the existing Net CONE and ORTP values, which took effect in FCA 13 and will remain in effect (pending any unexpected request to do so) through FCA 16.
[27] Market Rule 1, § III.A.21.2 (e).
[28] Market Rule 1, § III.A.21.2(e)(5) (dictating that renewable energy credit values in the capital budgeting model shall be updated based on the most recent Massachusetts Class 1 Renewable Energy Credit price).

"expected revenues" for purposes of the ORTPs thus includes only energy revenues, ancillary services revenues, renewable energy credit revenues, and pay for performance revenues.[29]

In response to NEPGA's explanation that the IMM's reading of the Tariff would net out any benefit to be conveyed through the IE Program, the IMM blithely responds that this "is to be expected given the interrelationship among the capacity, energy, and ancillary serves markets."[30] NEPGA would agree that what is expected is that the capacity market provides for the necessary revenue opportunities after accounting for other market revenues. What the Tariff does not support, however, is a belief that out of market revenues made necessary because the wholesale markets do not value fuel security is part of the "interrelationship" among the wholesale markets. The IE Program revenues, like any other out-of-market revenue stream, are by definition not part of the relationship among the wholesale markets and therefore need not and should be reflected in a competitive offer into one of those wholesale markets. A contrary finding would entirely frustrate the purpose of the IE Program and contradict the Tariff and Commission precedent.

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[29] *See* Note 19, at 10.
[30] IMM Answer at 3-4.

II. CONCLUSION

WHEREFORE, for the reasons stated herein, NEPGA respectfully requests that the Commission find or confirm that a Market Participant is not required to reduce a capacity market offer by an amount equal to its expected net IE Program revenues.

Respectfully Submitted,

/s/ Bruce Anderson

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<u>CERTIFICATE OF SERVICE</u>

I hereby certify that I have served a copy of the comments by via email upon each person designated on the official service list compiled by the Secretary in this proceeding. Dated at Boston, Massachusetts, June 27, 2019.

<u>/s/ Bruce Anderson</u>

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