

certainty as to the rules that apply for FCA 15, a Capacity Supplier could be forced to make an uneconomic retirement decision it otherwise would not have made but for the wholesale market rules applicable in the FCA 15 Capacity Commitment Period having not been known in advance.⁵ ISO-NE, in seeking a compliance filing extension earlier in this proceeding, recognized the importance of market rule notice and certainty in this regard, when it represented to the Commission that if granted its extension request “would still leave the Commission with more than sixty days to evaluate and issue an order ahead of the retirement submission window for FCA 15.”⁶

NESCOE acknowledges that its request, if granted, will cause a compliance filing after the FCA 15 Retirement De-List Bid deadline, but asserts that the extension will put Capacity Suppliers in a “better position to apply their business judgement on the merits of the [Energy Security Improvements] design.”⁷ However, that a Capacity Supplier may be in a “better position” at some point in the future does little to avoid the risk of additional cost-of-service agreements when it comes only after the date the Tariff mandates a Capacity Supplier to make a retirement decision. As the Commission is well aware, every retirement offer brings with it the risk of an additional resource operating under fuel security or transmission-related reliability cost-of-service agreement, which in turn brings with it the risk of inefficient and uneconomic Forward Capacity Auction clearing prices. Any Commission action taken on NESCOE’s Motion must therefore avoid creating the risk of uneconomic retirement offers and, in turn, the execution

⁵ While aspects of the market design, such as the Seasonal Forward Market and the Multi-Day Ahead Market (MDAM), will not be known by the FCA 15 retirement election deadline, it is important to NEPGA members to get the remainder of the Energy Security Improvements design proposal filed by this date.

⁶ *Motion for Extension of Time of ISO New England Inc.*, Docket No. EL18-182-000 (filed Jan. 18, 2019). The Commission subsequently granted ISO-NE’s motion, in part, granting an extension until October 15, 2019, rather than November 15, 2019, as ISO-NE requested. See *Notice of Extension of Time*, Docket No. EL18-182-000 (March 18, 2019).

⁷ NESCOE Motion at 2-3.

of cost-of-service agreements to meet reliability needs. By limiting the extension, if granted, to no later than December 20, 2019, the compliance filing deadline would be far enough in advance of the retirement offer deadline for FCA 15 such that it would provide the Commission with the opportunity to make a timely decision on the compliance filing, and thus allow Capacity Suppliers to account for any FCA 15 rule changes in advance of the FCA 15 retirement deadline.

I. ANSWER

If granted in its entirety, NESCOE's Motion would allow ISO-NE to make its compliance filing well after the date by which Capacity Suppliers must signal their intent or willingness to retire from the Forward Capacity Market. For FCA 15, the first auction in which ISO-NE's proposed changes would be in effect, a Capacity Supplier must submit a Retirement De-List Bid and/or Substitution Auction Demand Bid Test Price by March 13, 2020,⁸ the former a binding priced offer and intent to retire the resource and the latter a priced offer to retire should the Substitution Auction clearing price make it economic for the resource to do so. In either case, a Capacity Supplier would be compelled to make a retirement decision without the benefit of knowing whether the Commission will approve the compliance filing, and thus without the benefit of knowing whether the wholesale markets are likely to create the revenue opportunities necessary to remain in-service. The risk of assuming a Capacity Supply Obligation under wholesale markets that do not provide for these revenue opportunities may compel a Capacity Supplier to retire a resource when, with the benefit of Commission approval of wholesale market design changes, it may have decided to keep the resource in-service. Such circumstances could

⁸ ISO-NE Markets, Transmission and Services Tariff, Market Rule 1, § III.13.1.10(b) ("Tariff"); Tariff § III.13.2.8.3.1A.

risk ISO-NE seeking to retain additional resources out-of-market to meet the system reliability needs.

An uneconomic retirement decision creates the added risk that a resource will unnecessarily become eligible for a cost-of-service agreement to meet a fuel security or transmission-related need, in that ISO-NE evaluates every offer to retire to determine whether it will impermissibly risk system reliability.⁹ At present, any resource that operates under a cost-of-service agreement to meet a fuel security or transmission-related reliability need is re-priced as a price-taker in the Forward Capacity Auction. Chairman Chatterjee aptly described the harm caused by this re-pricing, in part, as “likely to compound the very fuel security problem” ISO-NE and the Commission seek to address, potentially causing a “vicious cycle of additional out-of-market interventions for these retiring resources, further price suppression, and even more retirements, which, in turn, will only further diminish the region’s fuel security.”¹⁰ Any Commission action taken on NESCOE’s Motion ought not further increase the risk of compromising the ability of FCA 15 to produce competitive outcomes and the resource adequacy necessary to reliably operate the system.

These risks remain in FCA 15 notwithstanding the recent Commission notice announcing that the Inventoried Energy Program (“IEP”) is in effect for the FCA 14 and 15 Capacity Commitment Periods.¹¹ As NEPGA explained in that docket,¹² if the ISO-NE Internal Market Monitor follows through on its intent to mitigate FCA offers in an amount equal to any net

⁹ Tariff §§ III.13.2.5.2.5A (fuel security), III.13.2.5.2.5 (transmission security).

¹⁰ *ISO New England Inc.*, 165 FERC ¶ 61,202 (2018) (“Order”) (Chairman Chatterjee, dissenting) (citations omitted, emphasis added).

¹¹ *Notice of Filing Taking Effect by Operation of Law*, Docket No. ER19-1428-001, August 6, 2019.

¹² *Motion to Intervene and Protest of the New England Power Generators Association, Inc.*, Docket No. ER19-1428-000 (filed April 15, 2019) (“NEPGA IEP Protest”).

revenues earned from the IEP, Capacity Suppliers are in no better position than if the IEP was not in effect.¹³ As a result, the IEP does not materially reduce the risk of uneconomic retirements if Capacity Suppliers are compelled to make retirement decisions without certainty as to the rules that will apply in FCA 15. In addition, the notice accepting the IEP remains subject to rehearing and appeal.¹⁴

ISO-NE has now spent nearly a year presenting its compliance filing proposal to NEPOOL stakeholders, and though some details of the day-ahead reserve (“DAR”) design remain outstanding it is apparent that ISO-NE could provide the Commission with sufficient information to make a reasoned decision on the DAR proposal well prior to the March 13, 2020, deadline for FCA 15 retirement offers. A compliance filing extension to December 20, 2019 would provide ISO with nearly five more months to address the design and information gap described by NESCOE. Considered in total, with an extension to no later than December 20, 2019, the Commission will have granted ISO-NE *seventeen months* from the date of the Commission’s Section 206 order initiating this proceeding in order to make a compliance filing.¹⁵ Particularly when balanced against the incremental risk of further cost-of-service agreements to meet the very reliability need the Commission ordered ISO-NE to meet through market design, an extension (if any) to no later than December 20, 2019 is entirely sufficient and reasonable.

¹³ See NEPGA IEP Protest at 14-18.

¹⁴ See 16 U.S.C. § 824d(g).

¹⁵ *ISO New England Inc.*, 165 FERC ¶ 61,202 (2018) (July 2, 2018).

II. CONCLUSION

WHEREFORE, NEPGA respectfully requests that the Commission limit any extension of the compliance filing deadline, if any, to December 20, 2019, for the reasons explained above.

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, August 8, 2019.

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