UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England Inc.	**)))))))**	**Docket No. ER20-394-000**

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

Pursuant to Rule 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 Comments on ISO New England Inc.'s ("ISO-NE") and the New England Power Pool's ("NEPOOL") proposed change to the financial assurance requirements for non-commercial capacity resources that trade out of a Capacity Supply Obligation[3] at a profit ("Trading Financial Assurance").[4] This is a just, reasonable, and necessary change that better balances the risk incurred by a Project Sponsor offering non-commercial capacity into the FCA with the risk it imposes on capacity suppliers and load by continuing to clear the resource in the FCA prior to it demonstrating commercial capability. NEPGA therefore asks that the Commission accept the Trading Financial Assurance proposal without modification.

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

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

3 Terms capitalized but not defined in this pleading are as defined by the ISO-NE ISO's Transmission, Markets and Services Tariff ("ISO-NE Tariff").

4 *ISO New England Inc. and New England Power Pool Filing Re: Changes to ISO New England Financial Assurance Policy: Trading Financial Assurance*, Docket No. ER20-394-000 (filed Nov. 15, 2019) ("Trading FA Filing").

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. THE TRADING FINANCIAL ASSURANCE PROPOSAL CREATES A JUST AND REASONABLE BALANCE BETWEEN PROJECT SPONSOR, LOAD AND CAPACITY SUPPLIER RISK

The existing financial assurance requirements fail to apply adequate risk (in the form of financial assurance obligations) on a Project Sponsor relative to the risks the Project Sponsor's decisions may impose on load and capacity suppliers. Consequently, projects that have not reached a reasonable state of development, and thus run a higher risk of never becoming commercial, may be offered into the FCA at little relative risk to the developer. NEPGA agrees with ISO-NE and NEPOOL that this disconnect is caused in part by the "countervailing dynamic" that at present a Project Sponsor can trade out of its Capacity Supply Obligation, rather than delivering on its obligation, while making a profit on the trade that exceeds the amount of financial assurance forfeited.[5] The Trading Financial Assurance will close this gap, causing the financial assurance posted to remain at risk when a Project Sponsor fails to deliver on a Capacity Supply Obligation, rather than for the financial assurance to simply represent a net amount deducted from an overall profit opportunity.

Looking at this over a three-year development timeline highlights the ease at which a Project Sponsor can sell its Capacity Supply Obligation to a third party instead of delivering on its obligation, while readily making a significant profit even after forfeiting its financial assistance. Once a New Capacity resource clears the FCA, the Project Sponsor must provide financial assurance equivalent to one month of FCA revenue at the FCA Clearing Price.[6] For example, FCA 13 cleared at $3.80/kW-month system-wide. A 200 MW non-commercial resource that cleared as New Capacity in FCA 13 would be required to post as financial assurance: $3.80/kW-month x

[5] Trading FA Filing, Transmittal Letter at 5.

[6] ISO-NE Tariff, Exhibit I.D., ISO-NE Financial Assurance Policy FAP, Section VII.B.2.b.

1000 kW/MW x 200 MW x 1 month = $760,000. This amount is only a fraction of the revenues that resource would receive if it delivers on that Capacity Supply Obligation, equal to twelve times the financial assurance amount, or $9,120,000.[7] Upon clearing the FCA a second time, this time as non-commercial Existing Capacity (in this example, FCA 14), the Project Sponsor would be required to post an additional $760,000, and would again be entitled to $9,120,000 should it deliver on that capacity.[8] Once again, upon clearing the FCA a third time (in FCA 15), the Project Sponsor would be required to post an additional $760,000 and would again be entitled to $9,120,000 upon delivery. In sum, a non-commercial capacity resource would be required to post $2,280,000 in financial assurance prior to its first Capacity Commitment Period for the chance to receive $27,360,000 in revenues over the course of the three delivery periods for which it cleared a Capacity Supply Obligation. If the Project Sponsor were to elect the seven-year price lock upon clearing as New Capacity (as is almost always the case), the revenues due the resource would equal approximately $63.8 million (seven years at $9.12 million). Under a Net CONE-based financial assurance requirement, as proposed by ISO-NE in its filing made contemporaneous with the filing at issue in this proceeding,[9] the total financial assurance requirement would increase to approximately $4,893,600.[10] This is in effect the price of an option on over $27 million in revenues (or if thought of as the option on seven years, $63.8 million in revenues).

[7] Equal to $3.80/kW-month x 12 months x 1,000 kW/MW x 200 MW. This amount is subject to performance payments or charges under the second settlement of the Forward Capacity Auction, which occurs in the case a Capacity Scarcity Condition.

[8] Both values are approximations, as both the financial assurance and revenues due are adjusted by an index from one FCA to the next.

[9] *ISO New England Inc. Filing Re: Changes to ISO New England Financial Assurance Policy: Net CONE*, Docket No. ER20-395-000 (filed Nov. 15, 2019) ("Base Rate FA Filing").

[10] Equal to $8.156/kW-month x 1,000 kW/MW x 200 MW x 1 month x 3 (FCAs).

At present, this option provides an opportunity for the Project Sponsor to trade out of the Capacity Supply Obligation at a profit in an amount that exceeds the financial assurance at risk. As explained by ISO-NE and NEPOOL, if a Project Sponsor assumes a Capacity Supply Obligation at a price higher than the price at which it sheds the Capacity Supply Obligation, it realizes a profit.[11] Continuing with the example above, a 200 MW resource acquiring a Capacity Supply Obligation for $3.80/kW that sheds it at, for example, $1.80/kW-month (by purchasing replacement capacity), will realize a profit of $2.00/kW-month, less its forfeited financial assurance. This $2.00/kW-month profit, applied to all 12 months of an annual Capacity Supply Obligation for the 200 MW resource, less the forfeited financial assurance, results in a $4.24 million net profit for the Project Sponsor.[12] The profit opportunity undermines the incentives to deliver the capacity by allowing a Project Sponsor to use a Capacity Supply Obligation as a low risk financial position rather than a physical obligation. These profit opportunities have been available in recent Forward Capacity Auction cycles, in that Forward Capacity Auction Clearing Prices for a given Capacity Commitment Period have largely been higher than the annual reconfiguration auction clearing prices.[13] As this profit opportunity becomes more certain a Project Sponsor faces less risk of taking a loss on the Capacity Supply Obligation due to forfeiting the financial assurance at risk, and may be more likely to take on a Capacity Supply Obligation for a project that is less likely to deliver actual capacity.

Importantly, ISO-NE's proposal does not change the price at which a Project Sponsor may shed a Capacity Supply Obligation or the circumstances under which it may do so. The Trading

[11] Trading FA Filing, Transmittal Letter at 5.
[12] The profit equals: $2.00/kW-month x 1,000 kW/MW x 200 MW x 12 months - $760,000 in financial assurance forfeited.
[13] Trading FA Filing, Transmittal Letter at 6-7.

Financial Assurance rules will only require a Project Sponsor to post additional financial assurance, in monthly installments during the Capacity Commitment Period, for a Capacity Supply Obligation shed at a profit. The profit, or lack thereof, on the purchase of replacement capacity to cover a Capacity Supply Obligation will come as a result of the actual market prices and conditions in the reconfiguration auctions (dictated by the auction demand curves) or bilaterally. A Project Sponsor still may realize a profit on shedding a Capacity Supply Obligation if it eventually delivers the capacity, or recover sunk costs (*e.g.*, financial assurance) through (non-profit) revenues realized from shedding. The Trading Financial Assurance rules only prohibit realizing a profit on shedding an obligation to deliver capacity when the Project Sponsor *fails to deliver the capacity*. To the extent this creates additional risk to the Project Sponsor, it does so only after it has cleared a Capacity Supply Obligation. The Commission recently rejected as an "attenuated theory" that imposing additional risk on a Project Sponsor due to its failure to deliver on a Capacity Supply Obligation acquired prior to the effective date of the Failure to Cover Charge Rate mechanism is unlawful under the filed-rate doctrine.[14] The same reasoning, that additional risk incurred due to a failure to deliver on capacity in ISO-NE is not unjust and unreasonable, should likewise apply to the Trading Financial Assurance proposal.

As ISO-NE and NEPOOL summarize, "it is critical for the proper functioning of the Forward Capacity Market that a resource that has cleared in a Forward Capacity Auction, but for any reason will not actually become commercial, that the resource be removed from the market."[15] The Trading Financial Assurance proposal eliminates the incentive for a Project Sponsor to take a

[14] *ISO New England Inc. and New England Power Pool Participants Committee*, 165 FERC P 61,266, at 26 (2018) (finding that the Failure to Cover Charge Rate mechanism, as applied to resources with Capacity Supply Obligations previously acquired, does not violate the filed rate doctrine because "the only circumstance in which the proposed revisions would subject a resource owner to additional risk is when the resource has not covered its [Capacity Supply Obligation] and cannot fulfill its [Capacity Supply Obligation].").

[15] Trading FA Filing, Transmittal Letter at 7.

purely financial position, offer a speculative project, or to continue offering a project that is unlikely or certain not to become commercial, based on the potential to profit from shedding the Capacity Supply Obligation in an amount that exceeds the financial assurance at risk. The Trading Financial Assurance proposal is a just and reasonable proposal unanimously supported by NEPOOL stakeholders, and should be accepted by the Commission.

III. CONCLUSION

For the reasons given above, NEPGA respectfully requests that the Commission grant this Motion to Intervene and accept the Trading Financial Assurance changes proposed by ISO-NE and NEPOOL.

Respectfully Submitted,

*/s/ Bruce Anderson*___________

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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, December 6, 2019.

*/s/ Bruce Anderson*_______________

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