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SIERRA CLUB, <i>et al.</i>	)	
	)	
	)	
Petitioners,	)	
	)	
v.	)	No. 20-1333
	)	
FEDERAL ENERGY	)	
REGULATORY COMMISSION,	)	
	)	
Respondent.	)	
	)	
	)	
	)	

Pursuant to Rule 15(d) of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 15(b), the New England Power Generators Association, Inc. (“NEPGA”)<sup>1</sup> respectively moves to intervene in the above-captioned petition for review. NEPGA moves to intervene in support of the respondent the Federal Energy Regulatory Commission (“Commission”).

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In Case No. 20-1333, the Sierra Club, *et al.*, seek review of the following order issued by the Commission:

*ISO New England Inc.*, Order on Tariff Filing, Docket No. ER18-619-000, 162 FERC ¶ 61,205 (March 9, 2018).

NEPGA is the trade association representing competitive power generators in New England. NEPGA's member companies represent approximately 26,000 megawatts, or roughly 90% of the installed generation 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, and are active participants in ISO New England Inc.'s ("ISO-NE") wholesale electricity markets, including the Forward Capacity Market.

The order at issue in this petition for review concerns the Commission's acceptance of changes to ISO-NE's Forward Capacity Auction design, changes together referred to as the Competitive Auctions with Sponsored Policy Resources

design. In February of each year, ISO-NE conducts a Forward Capacity Auction to procure enough generation and demand resources to meet New England's energy resource adequacy needs for a one-year delivery period beginning approximately three years forward. Resources that clear in the Forward Capacity Auction can assume these annual capacity delivery obligations largely because of the revenue certainty created by the Forward Capacity Auction clearing prices. The establishment of Forward Capacity Auction rates over three years in advance of the obligation delivery year gives generation and other resources the price signals and revenue certainty necessary to support the costs of a resource delivering on its capacity commitment. The Competitive Auctions with Sponsored Policy Resources design is intended to accommodate the entry of subsidized resources into the competitive Forward Capacity Market such that the Forward Capacity Auction clearing price in the year of entry is not suppressed below a competitive level.

NEPGA was an Intervenor and active party in the Commission proceeding pursuant to which the Commission accepted the Competitive Auctions with Sponsored Policy Resources design proposal, having filed comments in support of the Commission accepting the proposal. If the Commission's acceptance of the Competitive Auctions with Sponsored Policy Resources design is reversed or otherwise modified, NEPGA and its members will face certain and substantial

harms. NEPGA's members have participated in and cleared generation resources in several Forward Capacity Auctions since the Commission accepted the Competitive Auctions with Sponsored Policy Resources design. NEPGA's members have accounted for the revenue opportunities afforded by the Forward Capacity Auction, as modified by the Competitive Auctions with Sponsored Policy Resources design, in those Forward Capacity Auctions and will continue to do so in future Forward Capacity Auctions, including the fifteenth Forward Capacity Auction to be held in February 2021. Should this Court or the Commission order a remedy voiding or modifying the Competitive Auctions with Sponsored Policy Resources design, NEPGA's participating members will face certain and substantial harm due to their reasonable reliance on the existing Forward Capacity Auction rules. Further, if any remedy prospectively voids or modifies the Competitive Auctions with Sponsored Policy Resource design to allow for subsidized entry to suppress capacity clearing prices below competitive levels, NEPGA Members will likewise face certain and substantial harm.

NEPGA's member companies thus 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. *See Diamond v. District of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986) (intervention is appropriate if "representation" by other parties "'may be' inadequate"). NEPGA is seeking leave

to intervene in this case to ensure that it is in a position to provide its unique perspective on the issues to be heard by this Court. Because this motion is timely under the rules of this Court, granting NEPGA's motion will not inconvenience any other party to this proceeding.

For these reasons, NEPGA respectfully requests that the Court grant its Motion to Intervene in this case with full rights attendant thereto. As is required under F.R.A.P. Rule 26.1 and D.C. Cir. Rule 26.1, NEPGA has enclosed a Corporate Disclosure Statement with this pleading.

Respectfully Submitted,

/s/ Bruce Anderson\_\_\_\_\_

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September 30, 2020

**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

<b>Sierra Club, et al.,</b>	)	
	)	
	)	
<i>Petitioners</i>	)	
	)	
<b>v.</b>	)	<b>Case No. 20-1333</b>
	)	
<b>Federal Energy Regulatory Commission,</b>	)	
	)	
<i>Respondent</i>	)	
	)	
	)	
	)	

**CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rule 26.1 of both the Federal Rules of Appellate Procedure and the local Rules of this Court, the undersigned, counsel of record for the New England Power Generators Association, Inc. (“NEPGA”), hereby states as follows:

NEPGA, a not-for-profit entity duly organized under the laws of the Commonwealth of Massachusetts, is a trade association that advocates for the business interests of non-utility competitive electric power generators in New England. NEPGA respectfully submits that it is a trade association as so defined pursuant to D.C. Cir. Rule 26.1(b). NEPGA’s member companies represent approximately 26,000 megawatts of installed capacity throughout the New

England region. NEPGA's member companies are responsible for generating and supplying electric power for sale within the New England bulk power system and are active participants in the ISO-NE capacity and wholesale electricity markets. NEPGA has no corporate parents and does not issue stock. NEPGA therefore does not have a corporate parent that owns 10% or more of its stock.

Respectfully Submitted,

/s/ Bruce Anderson\_\_\_\_\_

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September 30, 2020

## **CERTIFICATE OF SERVICE**

Pursuant to Federal Rules of Appellate Procedure 25(c) and 25(d), and the court's Administrative Order Regarding Electronic Case Filing, I hereby certify that on September 30, 2020, I have served the foregoing document upon all parties or their counsel of record through the CM/ECF system. All parties or their counsel are registered users.

Respectfully Submitted,

/s/ Bruce Anderson

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