

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

ISO New England Inc.

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Docket No. ER22-355-001

ANSWER OF THE NEW ENGLAND POWER GENERATORS ASSOCIATION, INC.

Pursuant to Rule 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 files this Answer to NTE Connecticut, LLC’s (“NTE”) Emergency Motion to Stay (“Motion to Stay”).³ NTE claims that granting its Motion to Stay would not harm third parties.⁴ That is simply not the case. NEPGA offers this limited Answer to rebut this NTE claim and to explain how the stay (on the terms NTE requests) would cause substantial harm to both Existing and New Capacity Resources. Further, granting the stay would not serve the public interest, and denying the Motion would be consistent with the Commission’s general policy to not stay its orders. For these reasons, NEPGA respectfully requests that the Commission deny NTE’s Motion to Stay.

¹ 18 C.F.R. § 385.213(a)(2)-(3) (2022). The New England Power Generators Association, Inc. filed a timely Doc-Less Motion to Intervene in this proceeding on November 17, 2021.

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

³ *Emergency Motion to Stay, Request for Rehearing, and Request for Shortened Answer Period of NTE Connecticut, LLC*, Docket No. ER22-355-000 (filed Jan. 10, 2022) (“Motion to Stay”).

⁴ *Id.* at 9 (“[I]ssuance of a stay will not substantially harm other parties.”).

I. ANSWER

Though NTE correctly recounts part (but not all) of the standard under which the Commission considers a motion to stay, it fails to satisfy even that part of the standard. The Commission may grant a motion to stay when “justice so requires.”⁵ In deciding whether a movant has met this standard, the Commission considers several factors, including: (1) whether the movant will suffer irreparable injury without the stay; (2) whether the stay may substantially harm other parties; and (3) whether a stay is in the public interest.⁶ NTE fails to recognize the significant harm other parties will suffer if the Commission grants the stay on NTE’s terms (*i.e.*, offer the Killingly Energy Center (“Killingly”) capacity as supply in FCA 16), and, “for these same reasons,”⁷ has not shown that a stay is in the public interest. Given NTE’s failure to satisfy its burden, the Commission should deny NTE’s Motion. Further, NTE fails to recognize the Commission’s “general policy”⁸ to not stay orders in the interest of the definiteness and finality of its proceedings and has not given the Commission cause to depart from that policy.

Granting NTE’s stay, and therefore continuing to allow Killingly to offer as a price-taker in FCA 16, would cause significant harm to the thousands of MWs of other capacity resources participating in the Forward Capacity Auction (“FCA”), including any New Capacity Resource that does not clear the auction because Killingly occupies over 600 MW of capacity at the bottom of the supply stack (*i.e.*, because Killingly would be offered as a price-taker⁹), and to any Existing

⁵ *Am. Wind Energy Ass’n v. Sw. Power Pool, Inc.*, 168 FERC ¶ 61,006, at P 20 (2019).

⁶ *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985).

⁷ NTE Motion at 9 (asserting that the stay is in the public interest “for the[] same reasons” NTE gives for irreparable harm and a lack of harm to third parties).

⁸ *Enable Gas Transmission, LLC*, 153 FERC ¶ 61,055, at P 118 (2015); *see also Millennium Pipeline Company, LLC*, 141 FERC ¶ 61,022, at P 13 (2012).

⁹ *See, e.g., ISO New England Inc., Order on Paper Hearing*, 173 FERC ¶ 61,198, at P 3 (2020) (observing that “[d]uring the lock-in period, a price-locked generator is required to offer its capacity into those subsequent auctions at a zero-price offer to ensure that it clears each FCA.”) (citations omitted).

Capacity Resource displaced by the same forced clearing of Killingly (*i.e.*, an Existing Capacity Resource that, but for Killingly’s zero-priced offer, would clear the auction). NTE entirely glosses over this consideration, arguing *non sequitur* that granting the stay will not substantially harm other parties because Killingly “already has secured a capacity commitment in connection with FCA-13,” and that “[o]ther market participants have no legitimate interest in keeping this competitive resource out of the market.”¹⁰ The former claim has nothing to do with harm to third parties. The latter claim is a red herring, in that the question before the Commission is whether granting a stay will harm third parties, not to entertain a baseless claim that it is within third party control to “keep[] Killingly out of the market.” NTE also erroneously claims (again creating a *non sequitur*) that Killingly “is cleared as a qualifying resource” for FCA 16, when in its FCA 16 Informational Filing ISO-NE explained that “[i]f Killingly’s CSO is terminated as requested, then Killingly’s Qualified Capacity will be removed such that Killingly will not be able to participate in [FCA 16].”¹¹ With the Commission having issued its Order on January 4, 2022,¹² ISO-NE has now taken these steps and Killingly is thus *not* “cleared as a qualifying resource” but instead disqualified for one of the many reasons for disqualification.

The harm to third parties if the Commission were to grant the Motion to Stay is significant and obvious. First, offering non-commercial capacity into the FCA as a price-taker, specifically that which “will not achieve commercial operation by the time specified in the Tariff,”¹³ interferes with the orderly competition between new and existing capacity. The ISO-NE Interconnection Queue is full of resources of all types, including emerging technologies,¹⁴ that are blocked from

¹⁰ NTE Motion to Stay at 9.

¹¹ *ISO New England Inc., Informational Filing for Qualification in the Forward Capacity Market*, Docket No. ER22-391-000 (filed Nov. 9, 2021).

¹² *ISO New England Inc.*, 178 FERC ¶ 61,001 (2022) (“Killingly Order”).

¹³ *Id.* at P 26.

¹⁴ See *ISO New England Inc. Interconnection Request Tracking Tool*, available at: <https://irtt.iso-ne.com/reports/external>.

entry when non-commercial capacity, especially in a quantity like the 631 MW of capacity offered by NTE, continues to clear in the FCA “while making ‘virtually no progress’” towards commercial operation.¹⁵ Granting NTE’s Motion would thus cause harm to third parties seeking to provide new capacity to ISO-NE. It likewise would cause harm to any Existing Capacity Resource offering to provide capacity that, but for the forced clearing of Killingly, would clear the auction in FCA 16 and acquire a Capacity Supply Obligation. Lastly, continuing to clear Killingly, despite its lack of meaningful progress towards commercial operation, would continue to cause the FCA to clear at a price reflecting not only those resources that can actually deliver on a Capacity Supply Obligation (Existing and New Capacity Resources alike), but a zero-priced offer from a phantom capacity resource.¹⁶

Two other factors weigh against granting NTE’s motion to stay. First, Killingly has not served the public interest. Consumers have paid for Killingly to provide capacity in the FCA 13, FCA 14, and FCA 15 Capacity Commitment Periods, none of which NTE will deliver. Granting NTE’s motion to stay, to allow it to once again clear its non-commercial capacity in FCA 16, would only saddle consumers with paying more for undelivered capacity. NTE claims that the public interest would be served by granting its Motion to Stay, in that Killingly “will enhance reliability in the New England region, and help to lower capacity prices.”¹⁷ With respect to the former, a non-commercial project like Killingly serves no reliability purpose – quite the opposite, in that ISO-NE relies on a resource that clears the FCA to actually deliver on that capacity. Thus,

¹⁵ Killingly Order at P 25, *citing* Motion for Leave to File Answer and Answer of ISO New England Inc., at 4-5, Docket No. ER22-355-000 (filed Dec. 20, 2021).

¹⁶ *See, e.g., Non-Commercial Financial Assurance Improvements II*, Competitive Power Ventures Presentation to the NEPOOL Markets Committee, November 9-10, 2021, at 5, *available at*: https://www.iso-ne.com/static-assets/documents/2021/11/a06_mc_2021_11_09_10_cpv_non_commercial_financial_assurance_improvements_presentation.pdf, (showing the cumulative market impact of offering Killingly’s 631 MW of capacity in FCAs 13-15 to be \$381 million, *i.e.*, offering KEC into the FCA has caused \$381 million of harm to other capacity suppliers over the three auctions KEC’s non-commercial capacity has cleared, equivalent to an average of \$0.31/kW-month).

¹⁷ NTE Motion at 9.

when a resource does not deliver, especially a large quantity like the 631 MW of Killingly capacity that has now cleared three and is looking to clear a fourth FCA, it interferes with the balance between peak load and resources procured to provide capacity.

Second, as noted above, the Commission's general policy is to not grant a motion to stay an order, which policy serves the common interest in the finality and decisiveness of Commission orders.¹⁸ As noted above, Killingly is disqualified from participation in FCA 16 by virtue of the Killingly Order and the administrative steps ISO-NE took in accordance with that order. To grant the Motion to Stay would newly qualify Killingly to participate in FCA 16 and upend the finality and decisiveness of the Commission's decision, issued just two weeks ago. NTE is, in sum, asking for "more time," but in truth is seeking to relitigate an issue just decided by the Commission, in a unanimous five Commissioner vote. This when "[t]he Commission's position on relitigation of issues is one where in the absence of new or changed circumstances requiring a different result, 'it is contrary to sound administrative practice and a waste of resources to relitigate issues in succeeding cases once those issues have been finally determined.'" ¹⁹ Granting NTE's Motion to Stay would thus run entirely contrary to these well-established Commission policies.

¹⁸ Note 8, *supra*.

¹⁹ *PJM Interconnection LLC*, 172 FERC ¶ 61,231 at P 22 (2020), *citing Alamito Co.* 41 FERC ¶ 61,312, at 61,829 (1987) (citations omitted).

II. CONCLUSION

NEPGA respectfully requests that the Commission deny NTE Connecticut, LLC's Motion to Stay.

Respectfully Submitted,

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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 Westborough, Massachusetts, January 18, 2022.

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