

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

ISO New England Inc.

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Docket No. ER22-1053-000

**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 in support of ISO New England Inc.’s filing under Section 205 of the Federal Power Act asking the Commission to accept Tariff changes specifying that the Forward Capacity Market dates and deadlines enumerated in the Tariff do not apply to the seventeenth Forward Capacity Auction (“FCA 17”) schedule and granting ISO-NE the discretion to establish the FCA 17 schedule (“ISO-NE Filing”).³ NEPGA asks the Commission to expeditiously accept ISO-NE’s Filing based on the unprecedented circumstances of this case.

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

¹ 18 C.F.R. § 385.214 (2022). This Motion to Intervene and Comments is timely filed. *See* Combined Notice of Filings #1, Docket No. ER22-1053-000 (Feb. 15, 2022) (announcing March 8, 2022, Comment Date).

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

³ ISO New England Inc. Exigent Circumstances Filing of Revisions to Section III.13 of Tariff, Docket No. ER22-1053-000 (filed Feb. 15, 2022).

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. Each NEPGA member participates in the Forward Capacity Auction and holds Capacity Supply Obligations for their existing capacity resources. NEPGA thus has a material interest in the outcome of each Forward Capacity Auction and in the resolution of the Tariff changes ISO-NE proposes here allowing it to modify the FCA 17 schedule.

All correspondence and communications related to this proceeding should be addressed to the following individual:

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I. COMMENTS

The course of litigation before the U.S. Court of the Appeals for the District of Columbia Circuit (the "Court") concerning the disqualification of the Killingly Energy Center ("Killingly") from participating in FCA 16, and the delay that litigation has introduced into the annual FCA cycles, renders the Tariff changes ISO-NE asks the Commission to accept just and reasonable and not unduly discriminatory. Nevertheless, the Commission should limit its holding to the specific facts of this case, given the discretion the Tariff changes give ISO-NE to establish the FCA 17 schedule (rightfully, due to these unique facts) and that ISO-NE made this filing under the Exigent Circumstances provision of the NEPOOL Participants Agreement. The Commission has explicitly limited the precedential value of its decision-making historically when the application of unique

facts and circumstances compels reasoning inapplicable in the absence of those facts and circumstances.

The series of deadlines and dates that make the FCA schedule are set by the Tariff. The first deadline, the date by which ISO-NE must notify Market Participants of their Qualified Capacity Value, comes just weeks after the running of the prior FCA. For example, FCA 16 was conducted on February 7, 2022, and the Tariff requires ISO-NE to provide Qualified Capacity Values for FCA 17 by February 21. The subsequent FCA deadlines then follow in quick order. Important information bearing on Market Participant participation in the FCA includes the results of the prior FCA – in this case the quantities and clearing price(s) in FCA 16 (as well as whether a particular resource cleared in FCA 16) are important values to consider in weighing participation in FCA 17. Thus, Market Participants cannot be called upon to participate in the FCA 17 process until the FCA 16 results are settled. As ISO-NE explains in its filing, it had declined to finalize the FCA 16 results until the litigation at the Court – critically bearing on whether Killingly could participate in FCA 16 – came to a resolution. With the litigation at the Court not yet resolved as of the beginning of the FCA 17 schedule, ISO-NE thus sought these Tariff changes to allow ISO-NE to delay the commencement of the FCA 17 schedule and to prudently set the FCA 17 schedule based on the now truncated period between the beginning of the FCA 17 schedule and the running of FCA 17.

On March 2, 2022, the Court granted ISO-NE's motion to dissolve the stay of the Commission order accepting ISO-NE's disqualification of Killingly from FCA 16 participation.⁴ Though the Court's order confirms that Killingly is not qualified to participate in FCA 16, the Tariff changes ISO-NE seeks remain necessary to orderly proceed into the FCA 17 calendar. As

⁴ *In re: NTE Connecticut, LLC*, Case No. 22-1011 (D.C. Cir. March 2, 2022) (*Per Curiam Order*).

noted, some FCA 17 schedule dates have already passed, and with the uncertainty (only recently resolved) in the final FCA 16 results, Market Participants have not been able to prepare for other important deadlines approaching in the FCA 17 calendar, most notably and immediately the deadline for a Market Participant to submit a Retirement De-List Bid (March 11, 2022). ISO-NE is now moving expeditiously to gather NEPOOL stakeholder input in developing a schedule for FCA 17, with it announcing a draft proposed FCA 17 schedule at the March 3, 2022, NEPOOL Participants Committee meeting, and further discussing the proposed schedule at the March 8, 2022, NEPOOL Markets Committee meeting.⁵ In accepting the Tariff changes ISO-NE proposes here, the Commission would allow ISO-NE and Market Participants to establish an FCA 17 schedule that meets the needs of the Market Participants through an orderly process leading up to FCA 17 and the interests of ISO-NE to orderly conduct that process. NEPGA thus asks the Commission to accept the Tariff changes proposed by ISO-NE.

As evident by this timeline, urgent action by the Commission is also called for here to ensure that the disruption caused with the results of FCA 16 and the beginning of FCA 17 not cascade for years to come. NEPGA asks the Commission to act expeditiously in accepting these Tariff changes as soon as possible. ISO-NE explains in its filing the necessity for prompt application of these Tariff changes, and NEPGA strongly supports that request.⁶

NEPGA further asks the Commission to find that its acceptance here has limited precedential value for any future ISO-NE request for discretion written into the Tariff. The Commission has explicitly limited the precedential value of its findings and acceptance of Tariff changes when the circumstance and facts of a particular case render the reasoning applicable only

⁵ See March 8, 2022, NEPOOL Markets Committee Meeting Agenda Item 7, FCA Schedule Modifications, available at: https://www.iso-ne.com/static-assets/documents/2022/03/a07_mc_2022_03_08_fca17_schedule_presentation.pptx.

⁶ ISO-NE Filing, Transmittal Letter at 4-7.

to those facts and circumstances.⁷ NEPGA submits that the acceptance of the Tariff changes here should likewise be limited in its precedential value, in that the Tariff changes are reasonable under these unique circumstances, but should not bear on whether such Tariff changes would be just and reasonable under a different set of circumstances.

II. CONCLUSION

NEPGA respectfully requests that the Commission grant NEPGA's Motion to Intervene, and expeditiously accept ISO-NE's proposed Tariff change with the explicit limitation that acceptance is unique to the specific facts and circumstances of this case.

Respectfully Submitted,

/s/Bruce Anderson

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⁷ See, e.g., *Algonquin Gas Transmission Co.*, 107 FERC ¶ 61,173, P 16 (2004) (accepting tariff filing and finding that “[d]ue to the unique circumstances of this case, this order will not constitute precedent for any principles of law or findings of fact.”)

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, March 8, 2022.

/s/ Bruce Anderson

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