

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

**ISO New England, Inc.**

**Docket No. ER14-1409-000**

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**COMMENTS 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”),<sup>1</sup> and the Commission’s July 18, 2014, Combined Notice of Filings #1, the New England Power Generators Association, Inc. (“NEPGA”)<sup>2</sup> files these Comments on the public version of ISO-New England, Inc.’s (“ISO-NE”) July 16, 2014, response (“ISO Response”) to the Commission’s Office of Energy Market Regulation (“OEMR”) June 27, 2014, letter to ISO-NE in the above-captioned docket (“June 27 Letter”).

The ISO has sufficiently demonstrated that it complied with the ISO-NE Tariff in administering FCA 8, the only question before the Commission when the ISO made its FCA 8 Results Filing. To the extent, however, that the Commission finds that the ISO failed to comply with its Tariff in some respect, to reject the FCA 8 Results Filing would be unjust and unreasonable, given, in part, that Market Participants have been compelled to rely on those results due to the June 2014 deadline to submit de-list bids for FCA 9. While NEPGA takes no position on whether or not the exact End-of-Round Price selected by ISO-NE was appropriately set to, in the words of ISO-

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<sup>1</sup> 18 C.F.R. §§ 385.213 (2013).

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

NE, limit the ability of suppliers to exercise market power, as it is not privy to confidential bidding information, NEPGA agrees with ISO-NE that there was a significant change in supply/demand dynamics for FCA 8 as compared to prior auctions. The ISO-NE Tariff does not dictate what the End-of-Round Price for the first round of the FCA should be, and the Auctioneer's choice in FCA 8 did not violate the Tariff. The Commission should not upset the auction results even if other End-of-Round Price(s) could also lead to just and reasonable results, as such action would have an adverse effect on investment certainty in ISO-NE's resource adequacy need. NEPGA respectfully requests that the Commission therefore expeditiously certify the ISO's filing of the results of FCA 8.<sup>3</sup>

## **I. COMMENTS**

The ISO filed both a public version and confidential version of its response to the June 27 Letter, the confidential version of which includes information about the price/quantity points at which capacity was withdrawn, de-list bids, qualified MWs, and offer floor prices for new resources offering into FCA 8, among other information. NEPGA is not privy to the information for which the ISO seeks confidential treatment, and therefore cannot comment on those ISO responses. With respect to the information the ISO filed publicly, and the ISO's FCA 8 Results Filing, the ISO has demonstrated that it complied with its Tariff in conducting FCA 8. In the event the Commission finds that the ISO did not comply with its Tariff in any respect, NEPGA respectfully requests that the Commission find that it would be unjust and unreasonable to remedy such non-compliance by rejecting the FCA 8 results and, accordingly, certify the results of FCA 8 as just and reasonable.

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<sup>3</sup> *ISO-New England, Inc., Forward Capacity Auction Results Filing*, Docket No. ER14-1409 (February 28, 2014) ("FCA 8 Results Filing").

### **A. The FCA 8 Auctioneer Complied With the ISO Tariff**

ISO-New England's Tariff requires it to file certain information after each FCA in order for the Commission to determine whether the ISO followed its Tariff in administering the FCA. The ISO is "obligated solely to demonstrate that it conducted the FCA pursuant to its own market rules."<sup>4</sup> The extent of the Commission's review, therefore, is to "evaluate the filing to determine whether ISO-NE conducted the FCA in accordance with its FCM rules."<sup>5</sup> The ISO held FCA 8 on February 3, 2014, and, as confirmed by ISO-NE in its FCA 8 Results Filing, the clearing prices were determined by the FCM rules the Commission found to be just and reasonable. More specifically, the Insufficient Competition Rule, the Capacity Carry Forward Rule and the Capacity Clearing Price Floor Rule determined the prices paid to resources in FCA 8.<sup>6</sup>

In its June 27 Letter, the OEMR notes that FCA 8 concluded after one round, cites to the section of the ISO Tariff that provides that the FCA shall be conducted in a series of rounds "absent extraordinary circumstances," and asks the ISO to explain whether any "extraordinary circumstances" affected the conduct of the eighth FCA.<sup>7</sup> The ISO states that no "extraordinary circumstances" affected the conduct of FCA 8, opining that "extraordinary circumstances" include "circumstances under which the auction cannot continue to be run on consecutive Business Days due to unforeseen events."<sup>8</sup> The ISO further states, however, that the Auctioneer, in consultation with the Internal Market Monitor ("IMM"), set the End-of-Round Price for the

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<sup>4</sup> *ISO-New England Inc.*, 127 FERC ¶ 61,040 at P 28 (2009).

<sup>5</sup> *ISO-New England, Inc.*, 140 FERC ¶ 61,143 at P 23 (2012).

<sup>6</sup> FCA 8 Results Filing, at 4.

<sup>7</sup> June 27 Letter at p. 2, *citing* ISO-NE Tariff Section III.13.2.3.

<sup>8</sup> ISO Response at p. 2. As an initial matter, the ISO provides no basis for its conclusion that "extraordinary circumstances" include only those that interfere with the ability to run the FCA on consecutive business days due to unforeseen events. A more reasonable interpretation of "extraordinary circumstances" in the context of running the FCA are those circumstances that interfere with the ability to conduct the FCA "as a series of rounds," which the ISO explains in this instance.

first and only round in FCA 8 pursuant to Section III.13.2.3.1 of the ISO-NE Tariff, which provides that the Auctioneer shall announce a Start-of-Round Price and an End-of-Round Price.<sup>9</sup> That section of the Tariff requires the Auctioneer to set the Start-of-Round price for the first round at the FCA Starting Price for all modeled Capacity Zones, and that for each subsequent round the Start-of-Round Price shall equal the End-of-Round Price from the previous round.<sup>10</sup> The ISO Tariff does not otherwise direct the Auctioneer to set the End-of-Round Price at any particular level. The ISO states that the Auctioneer set the End-of-Round Price for the first round of FCA 8 at \$3.00/kw-month due to the Auctioneer's belief that a higher End-of-Round price would cause the first round to end with a relatively small amount of excess supply, allowing "potential pivotal suppliers ... [to] know exactly how much new capacity they would have to remove from the auction to end it and set the price."<sup>11</sup>

Though NEPGA does not concede that it was necessary for the Auctioneer to set the End-of-Round Price for the first round in FCA 8 to avoid concerns over "potential pivotal suppliers," in part due to its lack of access to the FCA 8 information confidentially filed by the ISO, the Auctioneer conducted FCA 8 consistent with the ISO Tariff.<sup>12</sup> Based on ISO-NE's explanation, the Auctioneer did not set the End-of-Round Price to necessarily conclude FCA 8 in one round, but instead did so to avoid what the Auctioneer and IMM believed to be concerns over "potential pivotal suppliers." The Auctioneer enjoys some measure of discretion in setting the End-of-Round Price in the first round, and exercised that discretion in FCAs prior to FCA 8, with the End-of-Round Price for the first round in FCAs 1-7 ranging from \$9.00/kw-month to \$5.902/kw-

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<sup>9</sup> ISO-NE Tariff Section III.13.2.3.1.

<sup>10</sup> *Id.*

<sup>11</sup> ISO Response at p. 5.

<sup>12</sup> ISO-NE Tariff Section 13.2.3 ("Each Forward Capacity Auction shall be conducted as a series of rounds, which shall continue (for up to five consecutive Business Days, with up to eight round per day, absent extraordinary circumstances) until the Forward Capacity Auction is concluded for all modeled Capacity Zones in accordance with the provisions of Section III.13.2.3.3.").

month.<sup>13</sup> NEPGA notes only that the ISO-NE Tariff does not dictate the End-of-Round Price for the first round of the FCA, and the Auctioneer's choice of an End-of-Round price for the first round in FCA 8 did not violate the Tariff.

The Commission has certified each of the FCA results to date (FCA 1 – FCA 7) finding that the ISO complied with its Tariff in administering the auction. In the one case where the Commission found that the ISO did not fully comply with its Tariff (in FCA 4) the Commission ordered ISO to make a compliance filing consistent with its Tariff, rather than negate the FCA results.<sup>14</sup> In the event the Commission finds that the Auctioneer did not comply with the ISO Tariff in its choice of End-of-Round Price for FCA 8, the remedy, if any, should not include the rejection of the FCA 8 Results Filing. As explained by the ISO, the Auctioneer chose the End-of-Round Price in an effort to avoid signaling the amount of excess supply at the end of any round of the FCA based on concerns that a “pivotal supplier” could use that information to withdraw new capacity and end the FCA. The intent of the Auctioneer's choice of End-of-Round Price, therefore, was to eliminate the ability of a single Market Participant to cause the FCA to clear at a higher price than it would have otherwise absent the transparency of excess supply at the end of an FCA round.

Negating the FCA 8 results based on the Auctioneer's efforts to limit the ability to set a higher FCA clearing price would be unjust and unreasonable when the resources that cleared in FCA 8 were the target of the Auctioneer's actions. Such a remedy would likewise be unjust and unreasonable because it is unlikely that FCA 8 would have cleared any differently had the Auctioneer conducted FCA 8 over more than one round, given that administrative pricing under

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<sup>13</sup> ISO Response at p. 5. The discretion afforded the Auctioneer under the Tariff is not limitless or without reasonable bounds. NEPGA takes no position on the precise limits of the Auctioneer's discretion in this pleading for purposes of future FCAs.

<sup>14</sup> *ISO New England Inc.*, 133 FERC ¶ 61,230 at PP 28-30 (2010) (ordering compliance filing to comply with market rule that requires the ISO to identify alternatives to resolve a reliability need).

the Insufficient Competition Rule, the Capacity Carry Forward Rule and the Capacity Clearing Price Floor Rule determined the prices paid to resources in FCA 8. Negating the FCA 8 results would have a significantly adverse affect not only on the resources that cleared, but on the FCM generally as a market construct that investors can rely on to invest in resources necessary to meet ISO-NE's resource adequacy needs. The Auctioneer's administration of FCA 8 was compliant with the ISO-NE Tariff, and to the extent it did not comply with the Tariff, the effect of the Auctioneer's choice of End-of-Round Price does not compel a remedy with such wide-ranging and adverse effects as negating the FCA 8 results.

Over five months have now passed since FCA 8 concluded. Resources that cleared in FCA 8, however, cannot rely on the FCA 8 results until the Commission certifies the ISO's FCA 8 Results Filing. Market Participant business decisions, both with respect to the FCA 8 Capacity Commitment Period and future offers into the FCA and reconfiguration auctions, are effectively held in abeyance until the FCA 8 results are final. The ISO has demonstrated in its FCA 8 Results Filing and in its response to the June 27 Letter that it administered FCA 8 in compliance with the ISO Tariff. NEPGA respectfully requests that the Commission certify the ISO's FCA 8 Results Filing to allow Market Participants to proceed with their investment decisions without the uncertainty now clouding the investment climate in ISO-NE.

## **II. Conclusion**

NEPGA respectfully requests that the Commission find that the ISO complied with its Tariff in administering FCA 8, or, in the alternative find that it would be unjust and unreasonable to reject the results of FCA 8, and therefore certify the FCA 8 Results Filing.

Respectfully Submitted,

/s/ Bruce Anderson

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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, July 31, 2014.

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

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