

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

**New England Power Generators
Association, Inc.**

v.

)
)
)
)
)
)

Docket No. EL13-66-000

ISO New England Inc.

***THE NEW ENGLAND POWER GENERATORS ASSOCIATION’S PROTEST
OF ISO-NEW ENGLAND’S INFORMATIONAL FILING***

The New England Power Generators Association, Inc. (“NEPGA”) hereby protests ISO-New England’s (“ISO-NE”) September 26, 2013, filing of factors the ISO’s Internal Market Monitor (“IMM”) intends to consider when evaluating whether, in its opinion, a capacity resource has complied with its obligations under the ISO-NE Tariff. ISO-NE claims that its filing complies with the Commission’s directive to provide a “written explanation regarding factors the IMM typically expects to examine to determine whether there is reason to believe that a [Tariff] violation has occurred.”¹ As presupposed in NEPGA’s Request for Rehearing and Clarification (“NEPGA Request”),² however, the Informational Filing goes against the substance of the Commission’s Order in this proceeding and further underscores the need for a Tariff standard to be established on generator performance obligations. Several of the factors proffered by the Internal Market Monitor (“IMM”) are inconsistent with the Commission’s Order and appear to imply requirements beyond those associated with capacity resource obligations under

¹ *New England Power Generators Association, Inc. v. ISO New England Inc.*, 144 FERC ¶ 61,157 (2013) (“Order”).

² *The New England Power Generators Association’s Request for Clarification and Rehearing*, Docket No. EL13-66-001 (September 26, 2013).

the Tariff. In addition, the IMM fails to provide any “written explanation” of how it intends to apply the factors or weigh one factor against another in deciding whether to refer a claimed capacity resource to the Commission’s Office of Enforcement (“OE”). Unfortunately, and whether or not by design, rather than providing additional certainty and clarification, as was clearly the Commission’s intent, the ISO’s filing extends and exacerbates the overall level of uncertainty regarding the requirements of its tariff and the conditions under which the IMM will refer generators to the OE for potential enforcement actions. This is particularly troublesome for generators in New England who are now entering a second critical winter reliability season without the benefit of a clear and unilaterally accepted understanding of the relevant ISO-NE tariff requirements.

NEPGA respectfully requests that the Commission grant its Request, in part, by ordering ISO-NE to file the IMM’s written explanation of material factors under Section 205 of the Federal Power Act, subject to parties’ rights to notice and comment, and Commission approval.

I. PROTEST

On September 26, 2013, NEPGA filed its Request asking the Commission to, *inter alia*: (1) clarify that when ISO-NE dispatches a capacity resource in real-time beyond its day-ahead schedule (or if ISO-NE dispatches a resource without a day-ahead schedule) that the resource does not violate the ISO-NE Tariff when the capacity resource cannot procure *in real-time* the fuel or transportation necessary to meet any such real-time dispatch; and (2) grant rehearing on the Commission’s directive to ISO-NE to make an informational filing explaining the factors the IMM will consider when opining on whether a capacity resource has met its obligations under the ISO-NE Tariff. On the same day, ISO-NE made its informational filing with the Commission, listing several factors the IMM intends to consider. The IMM’s list of factors is

unhelpfully ambiguous in their application, and inconsistent with the ISO-NE Tariff and the Commission's Order.³ The IMM ignores the Commission's clear interpretation of the Tariff, and announces its intent to indirectly impose obligations on capacity resources that go beyond capacity resources' Tariff obligations.

A. *ISO-NE's INFORMATIONAL FILING IS INCONSISTENT WITH THE COMMISSION'S ORDER AND CAPACITY RESOURCE OBLIGATIONS UNDER THE TARIFF*

ISO-NE's Informational Filing includes several factors that are vague and ambiguous, or, to the extent a CSO generating resource can derive a meaning from the IMM factors, inconsistent with CSO resource obligations under the Tariff. For example, the IMM intends to consider whether a CSO resource has "[f]uel arrangements in place to support Real-Time commitment and dispatch," including "[o]ptions or other arrangements to purchase and have fuel delivered on short notice."⁴ This factor implies, if not explicitly demands, that a CSO generating resource must have *advance* "short-notice" or no-notice fuel and transportation contracts to meet any Real-Time dispatch instruction beyond its day-ahead schedule up to the a resource's CSO, or at least that the failure to have such arrangements in place would be seen as a contributing factor underlying a potential referral to the OE. In so doing, ISO-NE ignores the "important distinction between being *unable* to procure fuel or transportation and *making an economic determination* not to procure fuel or transportation."⁵

According to the Commission, a capacity resource is excused from its performance obligation if it cannot procure fuel or transportation *in real time* in order to run at a dispatch level

³ *Information Filing of Factors the Internal Market Monitor will Consider Regarding Physical Availability of Fuel for Resource Operation*, Docket No. EL13-66-000 (September 26, 2013) ("ISO-NE Filing").

⁴ ISO-NE Filing at p. 5.

⁵ Order at P 56.

beyond its day-ahead commitment (or when not scheduled in the day-ahead market).⁶ The Commission, therefore, contemplates that capacity resources may seek fuel and transportation in real-time upon receipt of a dispatch beyond its day-ahead schedule and that, under certain circumstances, a resource may not be able to procure fuel and transportation under such circumstances. The Commission considers this to be an example of a capacity resource being *unable* to procure fuel, rather than *an economic decision* to not procure fuel (including in advance of an unknown, at the time, real-time dispatch). That the IMM considers relevant whether a capacity resource has advance arrangement for a no-notice fuel or transportation contract up to its CSO ignores this distinction and reads into the Tariff an obligation that the ISO-NE previously argued exists and the Commission rejected in its Order. Several of the other IMM factors similarly contradict the Tariff and the Commission's Order.⁷ The IMM's list of factors is also impermissibly ambiguous with respect to how the IMM intends to apply each factor individually or weigh one factor against the others, insufficiently meeting the Commission's directive that ISO-NE "provide a written explanation" regarding factors the IMM will consider.⁸ On balance, the IMM's list of factors contradicts the Commission's Order or does little more than establish a "we'll know it when we see it" standard for generator compliance.

⁶ *Id.*

⁷ *E.g.*, "[t]he time the dispatch instruction was issued by the ISO" (implying that relatively long advance notice of a real-time dispatch instruction beyond a day-ahead schedule increases capacity resource obligations); "[t]he amount of fuel needed to fulfill the dispatch instruction" (implying that capacity resource obligations increase as the amount of fuel necessary to meet an extra-day-ahead schedule dispatch decreases).

⁸ Order at P 62.

II. THE IMM'S PROPOSED FACTORS SERVE AS DE FACTO TARIFF REQUIREMENTS ESTABLISHED UNILATERALLY WITHOUT NOTICE, COMMENT AND COMMISSION APPROVAL

Because NEPGA's Request and ISO-NE's informational filing were filed on the same day, NEPGA did not have the benefit of reviewing the IMM's proposed factors prior to filing its Request. NEPGA, however, correctly presupposed that the IMM would continue to assert, through its informational filing, that a capacity resource must have advanced arrangements for no-notice or other fuel and transportation arrangements necessary to meet any dispatch instruction in real-time up to the capacity resource's CSO.⁹ That the IMM's list of factors is ambiguous and, where specific, contradicts the Commission's Order emphasizes the need to subject these factors to comment, Commission approval and the amendment of the Tariff that would occur through a filing pursuant to Section 205 of the Federal Power Act.

The IMM has announced its intent to consider factors that are immaterial to a capacity resource's ability to procure fuel in real-time when ISO-NE dispatches a capacity resource beyond the resource's day-ahead schedule (if any), and provides no clarity on how it will apply or weigh factors relevant to satisfying the tariff obligations identified in the Commission order. Absent Commission review and approval of relevant factors, capacity resources are left to wonder whether the IMM will continue to report capacity resources to the Commission's Office of Enforcement ("OE") based on persistence of the IMM's apparent inaccurate interpretation of the tariff, and now, the Commission's Order. The IMM has historically shown its willingness to report capacity resources to the OE based on an interpretation of the Tariff that "impermissibly narrowed the circumstances under which a capacity resource may be excused from its

⁹ See, e.g., Request at p. 13.

performance obligation.”¹⁰ Capacity resources are justifiably concerned that the IMM will do so again.

Capacity resources, as well as all market participants, seek a clear definition of capacity resource performance obligations. While the Commission’s Order in NEPGA’s view clearly showed that a firm-fuel obligation does not exist, it created ambiguity with respect to the Tariff standard on fuel procurement by vacating the Good Utility Practice standard. A plain reading of the Order shows that a capacity resource is obligated to secure fuel and transportation to satisfy its day-ahead schedule and to seek fuel and transportation *in real-time* to meet a real-time dispatch instruction beyond the day-ahead schedule, up to the resource’s CSO. A capacity resource which cannot meet its real-time dispatch instruction (beyond the day-ahead schedule) when it is unable to procure fuel and transportation *in real-time* is not considered a tariff violation. Notwithstanding the Commission’s order, the ISO-NE has and continues to take a contrary view, one that can only be remedied by the Commission granting NEPGA’s Request, including ordering ISO-NE to file its list of factors under Section 205 of the Federal Power Act.

¹⁰ Order at PP 47, 60 (rejecting, in part, ISO-NE’s Tariff interpretation as reflected in the November 5 Memo, and declining to pursue enforcement actions referred by the ISO based on an inability to procure gas).

III. CONCLUSION

NEPGA respectfully requests that the Commission adopt NEPGA's requests herein.

Respectfully Submitted,

/s/ *Bruce Anderson*

Dan Dolan, President
Bruce Anderson, Director of Market and Regulatory Affairs
New England Power Generators Association, Inc.
141 Tremont Street, Floor 5
Boston, MA 02111
Tel: 617-902-2347
Fax: 617-902-2349
Email: banderson@nepga.org

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, October 4, 2013.

/s/ Bruce Anderson

Bruce Anderson
Director of Market and Regulatory Affairs
New England Power Generators Association, Inc.
141 Tremont Street, Floor 5
Boston, MA 02111
Tel: 617-902-2347
Fax: 617-902-2349
Email: banderson@nepga.org