

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

ISO New England Inc.

)

Docket No. ER18-1509

PROTEST OF THE ELECTRIC POWER SUPPLY ASSOCIATION

Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the “Commission”)¹, the Electric Power Supply Association (“EPSA”)² hereby protests the petition of ISO New England Inc. (“ISO-NE or “the ISO””) for waiver of certain provisions of the ISO’s Transmission, Markets and Services Tariff (“Tariff”) to hold Mystic Units 8 and 9 for fuel security (“ISO-NE Waiver Request”). As discussed herein, while EPSA does not dispute that the waiver request represents a good faith attempt on ISO-NE’s part to ensure reliable electric service for New England consumers, it is premature and overbroad. Therefore, it should be rejected without prejudice to ISO-NE submitting another short-term proposal if it is unable to develop a market-oriented solution to reliability issues arising out of the deactivation of Units 8 and 9 at the Mystic Generating Station (“Mystic 8 & 9”), or a revised waiver request that resolves the problems present in the instant proposal,

¹ 18 C.F.R. §§ 385.211.

² Launched over 20 years ago, EPSA is the national trade association representing leading independent power producers and marketers. EPSA members provide reliable and competitively priced electricity from environmentally responsible facilities using a diverse mix of fuels and technologies. Power supplied on a competitive basis collectively accounts for 40 percent of the U.S. installed generating capacity. EPSA seeks to bring the benefits of competition to all power customers. This pleading represents the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue. EPSA intervened in this matter on May 4, 2018.

including an overly long duration and unnecessary, extensive, and systemwide price distortions.

The genesis of the requested waivers is the submission by Exelon Generation Company, LLC (“Exelon”) of Retirement De-List Bids for Mystic 8 & 9 on March 23, 2018. Those bids notified the ISO of Exelon’s intention to retire the generators at its Mystic facility when the existing Capacity Supply Obligations (“CSO”) associated with the plant expire on May 31, 2022. After Exelon’s announcement, the ISO studied the retirements of Mystic 8 & 9, and determined that the loss of those units would present unacceptable fuel security risks. Specifically, the ISO’s analyses establish that retirement of Mystic 8 & 9 would cause the ISO to deplete 10-minute operating reserves (a violation of mandatory reliability criteria) on numerous occasions and, further, to instigate load shedding—rolling blackouts—during the New England winters of 2022-2023 and 2023-2024.³

I. OVERVIEW AND SUMMARY

EPSA takes reliability concerns extremely seriously and respects ISO-NE for its vigilance in ensuring the reliable operation the New England electric grid. While EPSA has no reason to dispute the ISO’s analysis or their understanding of what resources they need to operate the electric system, EPSA does not believe that the proposed waiver is justified as proposed or at this time, and that the ISO should first be required to explore other options that would be more consistent with its Tariff and that will cause less distortion to the market or harm to other resources. We appreciate ISO-NE’s commitment to work in the longer term towards a market-based solution for fuel security

³ ISO-NE Waiver Request, p. 3

concerns, which is essential to ensuring that they are addressed in a manner that sustains the health of the region, in the longer term, but is concerned that ISO-NE is being too quick to give up on such a solution for the nearer term and, specifically, for the 2022-2023 and 2023-2024 commitment periods. Additionally, this near-term fix may have the adverse effect of hastily establishing a new reliability criteria to be used to underpin RMR-type arrangements going forward, in the absence of any formal process, stakeholder input, or Tariff revision proceeding.

II. Comments

A. The Waiver is Not a Proper or Legal Solution

In evaluating requests for tariff waivers, the Commission considers whether: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and, (4) the waiver does not have undesirable consequences, such as harming third parties.⁴ In applying these standards to the matter at hand, it is clear that the requested waiver is not of limited scope, either substantively or temporally, and would have undesirable consequences in the form of price suppression that will deprive other suppliers of their right to just and reasonable rates.⁵

As the ISO notes, the Commission has historically allowed for some level of price suppression to occur in approving reliability must run agreements (“RMR”)⁶ in order to

⁴ See, e.g., Midcontinent Indep. Sys. Operator, Inc., 154 FERC ¶ 61,059, at P 14 (2016); Calpine Energy Serv., L.P., 154 FERC ¶ 61,082, at P 12 (2016); New York Power Auth., 152 FERC ¶ 61,058, at P 22 (2015).

⁵ See Bayonne Energy Center, LLC, 163 FERC ¶ 61,095 (2018). The Commission rejected this waiver finding Bayonne did not sufficiently demonstrate that its waiver request was limited in scope and that granting it would not have had undesirable consequences, such as harming third parties.

⁶ ISO-NE Waiver Request at p. 33 citing Milford Power Co., 119 FERC ¶ 61,167, at P 31 (2007); see Devon Power LLC, 103 FERC ¶ 61,082, at P 29.

implement a solution to a pressing, imminent reliability concern. However, the Commission also has long recognized that RMR-type agreements should be used only as a last resort, for a limited amount of time, because they suppress market-clearing prices and deter investment in new generation.⁷ Moreover, the Commission has allowed for such price suppression in the context of RMR agreements that are directed at local, not system-wide, reliability considerations. Under the ISO-NE Tariff, RMR agreements are available when a resource retirement creates a local transmission security issue. After a reliability review, if the ISO determines that the absence of the capacity in question would result in the violation of any NERC or NPCC criteria, or ISO New England System Rules,⁸ it may retain that resource under an RMR agreement. As explained by ISO-NE, the Mystic units present a potential reliability issue that is not contemplated in the ISO-NE Tariff or System Rules, and further is not forecast to occur until 2022 at the earliest.⁹ Under the ISO-NE Tariff, while there are specific definitions of resources held for “reliability,” no process is contemplated for holding resources for fuel security, as ISO-NE itself points out.”¹⁰

While EPSA has no reason to doubt the ISO’s analysis as to the fuel security concerns, the Waiver as proposed is an inappropriate and unjust remedy for that concern at this time. Mystic 8¹¹ has a capacity supply obligation through May 31, 2022, which leaves time for ISO-NE to craft an equitable, market-based solution to its fuel

⁷ Bridgeport Energy, LLC, 118 FERC ¶ 61,243, at P 41 (2007)

⁸ ISO-NE tariff section III.13.2.5.2.5

⁹ *Id.*

¹⁰ ISO-NE Waiver Request, p 4, “While the Tariff permits the ISO to retain retiring resources to resolve local transmission security issues, it does not contemplate retention to address reliability risks related to fuel security.”

¹¹ Mystic 9 was allowed to dynamically delist in FCA 12 and does not have a CSO in that year.

security concerns – a process that is already underway.¹² Additionally, ISO-NE's Pay for Performance program is set to take effect this winter and should assist in addressing concerns of this kind by incenting operator performance. As the ISO's petition concedes, the issue at hand is not an immediate reliability concern, and therefore does not warrant the extreme proposed approach which is not contemplated in the ISO Tariff or System Rules, does not comport with FERC RMR policies or precedent, is and has not been available to any other generation resource in ISO-NE, and, in fact, requires numerous waivers in order to implement. Nor does this situation warrant the abrupt establishment of a new reliability criteria in order to implement a near-term fix, as this new criteria, going forward, would be used support the execution of additional RMR-type arrangements.

ISO-NE should prioritize the development of an in-market approach for valuing fuel security. However, if these expedited efforts are unsuccessful, then ISO-NE can seek an appropriate Tariff waiver or other RMR-type agreement aimed at the actual reliability need. Seeking waiver of its capacity market rules now, as the ISO proposes, however, creates unwarranted, extensive, and avoidable harm to its markets and third parties, and has relatively little to do with meeting the winter firm energy needs that the ISO's analysis focuses on. Waiver of capacity market rules unrelated to the reliability need should be utilized only as an absolute last resort, the case for which has not been made in this instance. Should the processes that ISO-NE has in place be exhausted and no in-market solution be developed by the time the resource is needed for fuel

¹² See Operational Fuel-Security Analysis Key Project, found at: <https://www.iso-ne.com/committees/key-projects/operational-fuel-security-analysis/>

security in 2022, the ISO would still be able seek appropriate waivers or rule changes at that time.

B. The Waiver is Overly Broad and Arbitrarily Structured

In addition to the procedural issues that the instant request presents, the Waiver is not of limited scope and is instead overly broad and arbitrary. The two-year duration of the agreement sought is entirely capricious, unwarranted, unprecedented, and apparently based solely on the demands from Exelon rather than a reasonable and supportable approach to ensuring reliability in 2022/23 and 2023/24.¹³ Should such an agreement be authorized, EPSA contends that it would also be unduly discriminatory. All other RMR agreements are entered into on a yearly basis at most, so there is no justification—beyond the demands of one company—to award a two-year RMR agreement in the instant matter. Exacerbating this problem, should the Waiver allowing a two-year RMR be granted, the Commission opens the door for other market participants to make similar demands in the future as similarly situated resources. Such a situation is completely at odds with RMR policy and precedent precisely because it would be destructive to markets and therefore should be avoided at all costs.

The proposed agreement conflicts with the Commission’s existing policy on RMR agreements on several counts, including the spirit of the policy as well as the legal boundaries. The Commission has stated that it believes that “RMR filings should be made only to temporarily address the need to retain certain generation until more permanent solutions are in place and that all alternatives should be considered to

¹³ ISO-NE Waiver Request, p. 15, “Exelon is willing to continue operation of Mystic 8 & 9—i.e., to delay retirement—only if it receives certainty before the running of FCA 13 in February 2019 that it can recover its full cost of service for Mystic 8 & 9 for the two-year period from June 1, 2022 through May 31, 2024.”

ensure that designating a generator for RMR service is a last resort option for meeting immediate reliability needs.”¹⁴ As outlined above, ISO-NE has not yet allowed time for all other options to be considered. Additionally, while this RMR agreement is characterized as temporary, it is not sufficiently limited and therefore would perpetuate out-of-market solutions that have the potential to undermine price formation in contradiction of existing Commission policy.¹⁵

Further complicating this matter, in its own filing, while discussing the potential for planning (and executing) a transmission solution (the resolution required by the Tariff), the ISO concludes that addressing a local transmission reliability need at this time “would cause the region to incur potentially significant costs without a clear understanding as to whether that need will persist and, if it does, what shape it will take when Mystic 8 & 9 ultimately retire.”¹⁶ Notably, it is the evolving nature of the resource mix and market mechanisms that the ISO points to as justification not to consider transmission solutions. The ISO explains that if transmission solutions exist, the reliability problem is likely to change, and may potentially be resolved entirely in the ensuing years.¹⁷ Applying the ISO’s own logic, this should be true for any fuel security issue as well and argues against the issuance of the Waiver as proposed at this time. In the least, evolving market dynamics further buttress the argument that any RMR agreement issued should be limited to a maximum term of one year, consistent with Commission precedent.

¹⁴ NYISO, 150 FERC ¶ 61,116 at p. 11.

¹⁵ See, e.g., PJM Interconnection, L.L.C., 107 FERC ¶ 61,112, at PP 20-21 (2004); Midwest Indep. Transmission Sys. Operator, Inc., 108 FERC ¶ 61,163, at P 368, reh'g denied, 109 FERC ¶ 61,157 (2004) (RMR program is backstop measure designed to meet short-term reliability need).

¹⁶ ISO-NE Waiver Request at p. 23.

¹⁷ *Id.*

C. Pricing Issues Must Be Addressed Ahead of FCA 13

Should any RMR-type approach or cost-of-service agreement be approved by the Commission, it is imperative that the Commission address the acknowledged price suppression impacts presented by this mechanism. In the instant proceeding, ISO-NE concedes that any cost of service agreement that Exelon receives will have an impact on prices.¹⁸ As noted, the two-year term of the proposed RMR or cost-of-service agreement is both unprecedented and will severely suppress capacity prices over that longer term, displacing otherwise economic or “fuel secure” resources.

Importantly, however, the extent of the negative impact is not limited to the term of the agreement. Artificially low capacity prices create the very dynamics which cause the instant fuel security concerns raised by the ISO. Should the price distortions in the FCAs not be addressed, a type of “fuel security” death spiral may result as more and more resources require out-of-market contracts or support to ensure the fuel security of the system. This harms the New England markets, and third parties that participate in those markets.

As noted above, EPSC has no reason to question the ISO’s findings regarding fuel security concerns, and agrees that a solution must be developed to address those concerns market-wide. If in the short term any RMR or cost-of-service agreement is approved, the Commission should require the ISO to address this pricing issues *in advance* of FCA 13, or any auction in which the supported resource participates, to at least ameliorate the distortions caused by its participation and the harm inflicted on third

¹⁸ ISO-NE Waiver Request, p. 33, fn 65.

parties.¹⁹ Failure to require an equitable pricing solution—even one temporary in nature—would deny other generators the opportunity to earn just and reasonable rates.

III. Conclusion

For the reasons outlined above, EPSA respectfully submits that the waivers requested do not allow for an appropriate solution to fuel security concerns at this time or as proposed. EPSA requests that the Commission encourage ISO-NE to seek equitable, in-market solutions in order to address any fuel security concerns by 2022. Additionally, should any RMR type solution be approved, EPSA urges the Commission to direct that any negative or distorting pricing impacts in the forward capacity market be addressed in advance of all affected auctions, including FCA 13.

Respectfully submitted,

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Dated: May 23, 2018

¹⁹ For example, ERCOT has implemented rules which ensure that units retained to provide emergency reliability services do not disturb the wholesale market price formation process. To counteract the issues of price suppression, ERCOT ensures that the RMR units are priced at the System-Wide Offer Cap so that RMR units are dispatched in a manner that does not distort wholesale market price signals. See, NPRR442, Energy Offer Curve Requirement for Generation Resources Providing Reliability Must-Run Service.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on each person designated on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

Dated at Washington DC, this 23rd day of May, 2018.

/s/ Bill Zuretti
Bill Zuretti