

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

New England Power)	
Generators Association)	
)	
v.)	Docket No. EL18-154-000
)	
ISO New England Inc.)	

**COMMENTS OF THE ELECTRIC POWER SUPPLY ASSOCIATION
IN SUPPORT OF COMPLAINT**

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or the “Commission”)¹, the Electric Power Supply Association (“EPSA”)² hereby comments on the May 23, 2018 complaint (“Complaint”) submitted by the New England Power Generators Association (“NEPGA” or “Complainant”) against ISO New England Inc. (“ISO-NE” or “the ISO”) in the above-captioned proceeding. Complainant requests that FERC address the unjust, unreasonable, and unduly discriminatory pricing impacts of the ISO’s petition to waive (“the Waiver”) portions of its Transmission, Markets and Services Tariff (“ISO-NE Tariff” or “Tariff”) to hold Mystic Units 8 & 9 for fuel security. While EPSA has protested the ISO’s waiver request,³ EPSA supports Complainant’s request, should FERC approve ISO-NE’s waiver petition, and therefore urges the Commission act expeditiously to issue

¹ 18 C.F.R. § 385.212.

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 filed a doc-less intervention in this proceeding on May 4, 2018.

³ EPSA filed a protest in Docket No. ER18-1509 on May 23, 2018.

an order granting the relief requested in order to mitigate any pricing impacts ahead of FCA 13.

I. OVERVIEW AND SUMMARY

EPSA takes reliability concerns extremely seriously and respects ISO-NE for its vigilance in ensuring the reliable operation of 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, as stated in its protest filed against the ISO-NE waiver petition, EPSA does not believe that the proposed waiver is justified as proposed at this time. Instead, the ISO should first be required to explore in-market options that would be consistent with its Tariff and that will cause less distortion to the market or harm to other resources. With that said, should the Commission choose to grant the waiver and authorize Reliability Must Run or cost-of-service compensation for Mystic 8 & 9, it is imperative that the Commission address the acknowledged price suppression impacts inherent in the mechanism as proposed by ISO-NE. EPSA believes that the relief sought in NEPGA's complaint would minimize the harm to other generators and help to preserve their opportunity to earn just and reasonable rates.

II. COMMENTS

As EPSA outlined in its protest of the Waiver, as proposed, the Waiver is an inappropriate and unjust remedy at this time. Mystic 8⁴ 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 security concerns – a process that is already underway.⁵ As

⁴ Mystic 9 was allowed to dynamically delist in FCA 12 and does not have a CSO in that year.

⁵ See Operational Fuel-Security Analysis Key Project, found at: <https://www.isone.com/committees/key-projects/operational-fuel-security-analysis/>.

the ISO's Waiver petition concedes, the issue at hand is not an immediate reliability concern, and therefore does not warrant the extreme proposed approach – one 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. EPSA reiterates that ISO-NE should prioritize the development of an in-market approach for valuing fuel security. Seeking waiver of its capacity market rules now, as the ISO proposes, 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 on which the ISO's analysis focuses. Waiver of capacity market rules to facilitate an RMR agreement that is neither allowed nor contemplated in the ISO Tariff and rules should be utilized only as an absolute last resort, the case for which has not been made in this instance.

Should the Waiver which facilitates an 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 its Waiver petition, ISO-NE concedes that any cost of service agreement that Exelon receives will have an impact on prices.⁶ The record before the Commission and Commission precedent recognizing the detrimental effects of artificial price suppression, and the need to protect markets from such suppressive mechanisms, is vast and compelling.⁷

⁶ ISO-NE Waiver Request, p. 33, fn 65.

⁷ See, e.g. ISO New England Inc., 138 FERC ¶ 61,027 at p. 20 (2012), “because other resources in the FCA will be affected by such price suppression, the Commission has a duty to ensure just and

In this case, artificially low capacity prices create the very dynamics which contribute to, if not exacerbate, the immediate fuel security concerns raised by the ISO. Should the price distortions in the FCAs not be addressed, a type of death spiral may result as more and more resources require out-of-market contracts or support to keep needed resources online, a result that may in fact further heighten fuel security concerns rather than mitigate them. This harms the New England markets and third parties that participate in those markets in numerous ways, worsening the situation that the ISO is attempting to resolve through the proposed RMR mechanism. Dr. Paul Sotkiewicz outlines such a scenario in his affidavit prepared for NEPGA,⁸ as did the Maine Governor's Energy Officer in its protest of the ISO-NE Waiver request.⁹

reasonable rates by requiring that bids in the FCA represent a resource's true cost of entry, regardless of agreements".

PJM Interconnection, L.L.C., 117 FERC ¶ 61,331 at P 103 (2006), on reh'g, 119 FERC ¶ 61,318, reh'g denied, 121 FERC ¶ 61,173 (2007);

Bridgeport Energy, LLC, 113 FERC ¶ 61,311 at P 29 (2005), reh'g denied, 114 FERC ¶ 61,265 (2006);

FPC v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944) [statutory and constitutional rights to an "opportunity to recover [their] costs.];

California Indep. Sys. Operator Corp., 142 FERC ¶ 61,191 at P 28 (2013) (submitting offers below the seller's costs can "have the unintended effect of depressing the market clearing prices in [RTO] markets, thus adversely affecting other market participants");

ISO New England Inc., 135 FERC ¶ 61,029 at P 170 (2011) ("[T]he Commission has previously found that uneconomic entry can produce unjust and unreasonable prices by artificially depressing capacity prices, and therefore, the deterrence of uneconomic entry falls within the Commission's jurisdiction."), on reh'g, 138 FERC ¶ 61,027 (2012);

Midwest Indep. Transmission Sys. Operator, 139 FERC ¶ 61,199 at P 69 (2012) ("an artificially low offer price can unreasonably suppress market prices regardless of the seller's intent" (citation omitted)), on reh'g, 153 FERC ¶ 61,229 (2015).

⁸ NEPGA Complaint at p. 17 citing Dr. Sotkiewicz Affidavit at pp. 22-28, "Inserting Mystic Units 8 and 9 into the FCM as price takers will result in (1) prices below competitive levels; (2) the inefficient displacement of lower cost resources by higher cost resources; (3) potential increases in costs to consumers above what would be observed under a competitive outcome; and (4) a cascading "death spiral" of further requests for cost-of-service contracts and price suppression."

⁹ Docket. ER18-1509, *Protest of the Maine Governor's Energy Office*, p. 2. "Artificially supporting the Mystic Units could tend to suppress market capacity prices, lessening the incentives for new entry and adding incentives for other units on the edge of being economic, to retire. This could result in a vicious cycle of additional RMR contracts in order to address resulting capacity shortfalls".

As NEPGA notes, the Commission has also recognized this fact.¹⁰ ISO-NE itself acknowledges that price suppression not only will lead to premature retirements, but also could deter the entry of the new resources ISO-NE needs to replace retiring resources that currently provide fuel security.¹¹ As currently structured, the two-year “RMR” agreement with the Mystic units requires that the 1,400 megawatts of capacity bid into two forward capacity auctions (FCA 13 and FCA 14) as price-takers, bidding zero, and potentially displacing 1,285 megawatts of otherwise economic resources and depressing capacity prices by 11% from competitive levels (on the low end) in the first auction, FCA 13, alone.¹² This distorts the ISO-NE markets, deprives third parties from the opportunity to receive just and reasonable rates, and upends the first principles of forward capacity markets.¹³ As pointed out by NEPGA in its complaint, this proposed arrangement between Mystic, Exelon (Mystic’s owner) and the ISO is yet another suppressive straw lobbed on to the capacity market’s back, further dampening prices which are already being impacted by FCA design issues.¹⁴

To ameliorate the concerns presented by the Mystic cost-of-service arrangement, NEPGA has proposed a CASPR-like approach that requires the Mystic units to bid in to the FCA auctions at their retirement de-list bid price. Notably, if the units do not clear the FCA at that price level, the ISO will nevertheless hold those units for fuel security under the proposal submitted to FERC. Therefore, that capacity is eligible to offer its

¹⁰ *Id.* Citing *Devon Power, LLC*, 103 FERC ¶ 61,082 at P 29 (2003): “[S]uppressed market clearing prices further erode the ability of other generators to earn competitive revenues in the market and increase the likelihood that additional units will also require RMR agreements to remain profitable.”

¹¹ ISO-NE Fuel-Security Analysis at p. 35 (assuming 4,400 MW of new renewable resources by 2024 as a base case for maintaining fuel security).

¹² NEPGA complaint at p. 13 citing Affidavit of Paul M. Sotkiewicz, PH. D. at pp. 15-16.

¹³ *ISO New England, Inc.*, 162 FERC ¶ 61,205, at P 21 (2018) (“CASPR Order”) pp. 21 and 22.

¹⁴ NEPGA complaint at pp. 14-18.

capacity in to the Annual Reconfiguration Auctions (“ARA”) as price-takers, ensuring it obtains a capacity obligation. (See NEPGA complaint at pp. 19-23 for full proposal.) This fix is essential if any RMR or cost-of-service agreement is approved in the name of fuel security. While the ISO’s proposed approach is of broad concern based on the negative impacts on the markets and other market participants, minimizing those impacts to any extent possible is FERC’s duty and obligation. Therefore, EPSA urges the Commission to abide by its precedent and address the negative pricing impacts caused by the Waiver and any subsequent RMR in a manner consistent with NEPGA’s proposal. As NEPGA correctly notes:

[G]iven mounting evidence of the dangers of price suppression, there is no justification for the Commission to allow a generator with an out-of-market contract for fuel security to suppress capacity prices. As the courts have recognized, the Commission has a statutory obligation to prevent resources from depressing capacity prices below a just and reasonable level. That duty applies regardless whether the price suppression at issue is the result of uneconomic entry or cost-of-service agreements for fuel security.¹⁵

While EPSA continues to believe that granting the Waiver would be improper and set a dangerous precedent, should it be approved by the Commission, it is imperative that any pricing impacts that stem from such action are mitigated. This is required to preserve the integrity of the market, resulting price signals, and the opportunity for other generators to earn just and reasonable rates.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, EPSA respectfully requests that the Commission grant NEPGA’s complaint and order ISO-NE to modify its Tariff to address

¹⁵ NEPGA complaint at p. 35, citing *New England Power Generators Ass’n v. FERC*, 757 F.3d 283 at 295; see also, CASPR Order at P 21.

unreasonable pricing impacts in advance of the upcoming FCA 13. EPSA concurs with NEPGA's request that the instant Complaint warrants fast track processing under Rule 206(b)(1) of the Commission's Rules of Practice and Procedure and respectfully requests that the Commission rule on this complaint by July 2, 2018.

Respectfully submitted,

/s/

Nancy Bagot, Senior Vice President
Bill Zuretti, Director of Regulatory Affairs and Counsel
Electric Power Supply Association
1401 New York Avenue, NW, Suite 950
Washington, DC 20005

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 Washington, D.C., June 6, 2018.

/s/

Bill Zuretti, Director, Regulatory Affairs, and Counsel