

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

ISO New England, Inc.)	
)	ER18-2364-0000
)	EL18-182-000
)	

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 submits this protest in response to ISO New England, Inc.’s (“ISO-NE”) compliance filing (“ISO-NE Compliance Filing”) in response to the Commission’s July 2 Order which directed ISO-NE to file interim Tariff revisions to implement a short-term, cost-of-service agreement to address demonstrated fuel security concerns in the ISO-NE region. EPSA opposes this filing because it is not compliant with the guidance laid out in the Commission’s Order and does not establish just and reasonable rates for resources seeking capacity obligations while under a short-term cost-of-service agreement for fuel security reliability. Accordingly, this filing should be rejected without prejudice to ISO-NE submitting a short-term proposal that does produce just and reasonable rates by mitigating the impacts of the proposed

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

interim out-of-market cost-of-service agreement mechanism on the forward capacity market in New England.

I. OVERVIEW AND SUMMARY

In its July 2, 2018 Order rejecting ISO-NE's waiver request related to the implementation of a one-time cost-of-service agreement based on fuel security concerns, the Commission stated,

In addressing a possible solution, we note that there appear to be material differences between retaining resources through cost-of-service agreements for local transmission needs and retaining resources through cost-of-service agreements for regional fuel security concerns. Therefore, it may be reasonable for resources retained for fuel security purposes to be offered into FCM at an offer price that is above zero, but still subject to mitigation by the IMM.³

Instead of acknowledging and responding to the concern over price offers of zero into the ISO capacity market, ISO-NE has chosen to still treat resources retained with out-of-market compensation as price takers.⁴ For the reasons discussed below, such treatment still does not produce just and reasonable rates because it suppresses prices paid to all other capacity resources, interferes with signals for entry and exit, may cause economic resources to retire – all of which may in fact exacerbate fuel security reliability going forward. Put simply, the proposed treatment of resources retained for fuel security purposes interferes with the fundamental principles and objectives of a centralized forward capacity market construct. Therefore, EPSA requests that FERC reject ISO-NE's filing in the instant case—without prejudice—and require ISO-NE to make a new filing that does not treat resources held for fuel security as price takers. As

³ ISO New England Inc, Docket Nos. ER18-1509-000& EL18-182-000, Order Denying Waiver Request, Instituting Section 206 Proceeding and Extending Deadlines (“Order Denying Waivers”), P 57, July 2, 2018.

⁴ ISO-NE Compliance filing at pp.14-15.

a last resort, the Commission should consider delaying FCA 13 while an appropriate approach is developed in order to protect market fundamentals and establish just and reasonable rates.

II. COMMENTS

A. Pricing Issues Must Be Appropriately Addressed Ahead of FCA 13

The issue of price suppression created by out-of-market contracts and mechanisms is not an incidental concern. While the Commission has accepted that some degree of price suppression may be unavoidable in short-term emergency instances in which Reliability Must Run agreements are required to resolve a pressing, imminent local reliability concern,⁵ these instances are properly approved only as a limited “last resort,”⁶ largely due to the distortive impacts to the market of these arrangements. In the instant proceeding, the Commission clearly offered guidance on the treatment of resources retained for fuel security purposes to be offered into the FCM at prices which reflect that resource’s going-forward costs, the net-present value of its expected cash flows, reasonable expectations of capacity performance payments and opportunity costs, etc.⁷ It is incumbent on ISO-NE to develop a mechanism that does not distort results of the FCM generally or the price signals created by the Pay for Performance construct. Impairing Pay for Performance in particular eviscerates the price signals which support the very attributes addressed by fuel security “emergency” cost-of-service agreements.

⁵ *Milford Power Co.*, 119 FERC ¶ 61,167, at P 31 (2007); see *Devon Power LLC*, 103 FERC ¶ 61,082, at P 29.

⁶ *Devon Power LLC*, 103 FERC ¶ 61,082, at P 31; see *Milford Power Co.*, 119 FERC ¶ 61,167, at P 31.

⁷ Docket No. ER18-1509, ISO-NE Waiver Request, P 57, fn 155.

In its filing, ISO-NE has again opted to seek price taking treatment for resources held for fuel security. In the absence of ISO-NE taking steps to assure the opportunity for all market participants to earn just and reasonable rates, the Commission has a duty to step in and address these issues. 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. While the ISO is working with stakeholders on a long-term market solution, that discussion does not offer a pass to getting the interim short-term solution right, which includes mitigating distortive effects to the full extent possible. Yes, even for one auction.

Importantly, however, the extent of the negative impact of price-taking cost-of-service resources is not limited to the term of these proposed tariff revisions. Artificially low capacity prices create the very dynamics which cause the instant fuel security concerns raised by the ISO. As Dr. Paul M. Sotkiewicz provided in an affidavit for the New England Power Generators Association:

Inserting [units held for fuel security] 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.⁸

In his analysis, Dr. Sotkiewicz also estimated that allowing 1400 MW (Mystic Units 8 and 9, in his analysis) to offer at zero in the capacity auction will displace

⁸ New England Power Generators Association v. ISO New England, Inc. Docket No. EL18-154-000. Affidavit of Dr. Paul M. Sotkiewicz at ¶ 10.

between 1050 to 1285 MW of economic capacity in FCA 13 alone.⁹ Additionally, permitting these 1400 MW to offer capacity at zero will severely suppress capacity prices, potentially in the range of \$214-\$642 million in FCA 13, with similar or greater suppression in FCA 14 and potentially subsequent auctions.¹⁰ Based on Dr. Sotkiewicz's calculations, it is clear that the damage to the market is significant both in terms of artificial price suppression and the inefficient displacement of lower cost resources. Perhaps more importantly, particularly in the wake of ISO-NE's fuel security report, treating these 1400 MWs as price-takers may further displace resources ISO-NE needs to ensure fuel security during the winter season.¹¹

The Commission itself has listed the "first principles of capacity markets," which it set forth in the CASPR Order: A capacity market should facilitate robust competition for capacity supply obligations, provide price signals that guide the orderly entry and exit of capacity resources, result in the selection of the least-cost set of resources that possess the attributes sought by the markets, provide price transparency, shift risk as appropriate from customers to private capital, and mitigate market power.¹² The Commission further provided, "Where participation of resources receiving out-of-market state revenues undermines those principles, it is our duty under the FPA to take actions necessary to assure just and reasonable rates."¹³ With ISO-NE neglecting to take measures to ensure that all generators have the opportunity to earn just and reasonable

⁹ *Id.* at ¶. 15-16

¹⁰ *Id.* at ¶. 15-21

¹¹ *Id.* at ¶ 17

¹² CASPR Order at p. 21.

¹³ *Id.*

rates, it is imperative that FERC carry out its acknowledged duty under the FPA and take steps to mitigate the impacts of ISO-NE's out-of-market approach.

B. Alternatives that Adequately Mitigate Impacts to the FCM Should Be Considered

Like the Commission,¹⁴ EPSA's preferred solution remains a market-based approach.¹⁵ The Commission should require ISO-NE to consider adequate alternative approaches or revisions to how it prices out-of-market resources held for fuel security. One such example is the implementation of a price floor for a short period. EPSA recognizes that the Commission generally disfavors the use of price floors and agrees with the Commission that they are not necessary under normal market dynamics. However, given the unusual nature of ISO-NE's approach in the instant case, such a measure may be a viable way to mitigate the issues created by ISO-NE's proposed cost-of-service agreement mechanism. For instance, the Commission could take a similar approach to that found in its handling of the Alternative Price Rule ("APR") in Docket No. ER10-787-000, et al. In that case, where an extension of the price floor for three further commitment periods was sought, the Commission opted to extend the price floor as a transitional mechanism.¹⁶ In its order the Commission noted:

¹⁴ Order Denying Waivers, P 53, "We reaffirm our support for market solutions as the most efficient means to provide reliable electric service to New England consumers at just and reasonable rates." See *also*, Concurring statement of Commissioner Cheryl LaFleur, Order Denying Waivers, "I continue to strongly believe market-based solutions are the best means to ensuring reliability in the region at the lowest cost for consumers," p. 2. *Also*, Concurring statement of Commissioner Neal Chatterjee, Order Denying Waivers, "Indeed, I share my colleagues' preference for market-based, fuel-neutral approaches to ensuring resilience within FERC-jurisdictional organized markets. But, in supporting today's order, I acknowledge that ISO-NE has not lightly arrived at its conclusion that interim measures to support these particular generation resources are necessary. Further, I emphasize that any interim measures undertaken will occur in parallel with ongoing efforts to develop fuel-neutral, market-based approaches to ensure long-term fuel security within the region," p. 2.

¹⁵ See *generally* EPSA Protest of ISO-NE Mystic Waiver, Docket No. ER18-1509.

¹⁶ 131 FERC ¶ 61,065 at p, 9

The Commission generally does not approve of price floors, but recognizes that as a transitional mechanism to offset the flaws in the existing APR, an extension of the price floor in this case may be appropriate. We are therefore accepting, suspending, and placing into effect this aspect of the Rules Changes Filing. We expect, however, that in the Commission's final order accepting an appropriate APR mechanism, we will terminate the price floor coincident with implementation of the new APR.¹⁷

A similar approach may have merit in the instant case. Where ISO-NE intends its proposed tariff changes to be temporary in nature, a temporary price floor that sunsets with the implementation of its longer-term market solution (which is set to be filed by July 1, 2019) is worthy of Commission consideration.

In addition to the institution of a price floor, there are a number of other proposals being discussed in the stakeholder process which might serve to mitigate some of the negative effects of ISO-NE's proposed tariff changes.¹⁸ The key here is that the Commission direct ISO-NE to revise its proposal to prevent at best, or mitigate at least, any price suppression in FCA 13, FCA 14 and FCA 15. It is simply not acceptable that somehow a purported lack of time to develop an adequate approach supports the implementation of an unjust and unreasonable interim mechanism, even for just one capacity auction.¹⁹ To some extent, the assumption by the ISO that fuel security resources are treated as price takers only in FCA 13 is an admission that this approach is flawed, EPSA would say fatally flawed. If the ISO needs additional time to develop a reasonable treatment for limited fuel security cost-of-service contracts, EPSA would support delaying FCA 13 until an appropriate mechanism or mitigation measures are in place. This is not a request that EPSA makes lightly; however, given the nature of the

¹⁷ *Id.*

¹⁸ See generally proposals associated with ISO-NE's Operational Fuel-Security Analysis Key Project, <https://www.iso-ne.com/committees/key-projects/operational-fuel-security-analysis/>

¹⁹ ISO-NE Compliance Filing, p. 4.

potential damage to New England's markets should the ISO not get this mechanism right the first time, such action would be appropriate.

III. CONCLUSION

For the reasons outlined above, EPSA respectfully submits that ISO-NE's proposed tariff changes are unjust, unreasonable and unduly discriminatory because they severely suppress market prices for all other resources participating in the capacity market and in doing so contravene fundamental capacity market principles. Therefore, EPSA requests that FERC reject ISO-NE's filing in the instant case—without prejudice—and require ISO-NE to make a new filing that does not treat resources held for fuel security as price takers. As a last resort, the Commission should consider delaying FCA 13 in order to protect market fundamentals and establish the opportunity for all market participants to earn just and reasonable rates.

Respectfully submitted,

Nancy Bagot

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

Dated: September 21, 2018

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., September 21, 2018.

Bill Zuretti

Bill Zuretti, Director, Regulatory Affairs, and Counsel