

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

**ISO New England Inc.**

**Docket No. ER14-2440-000**

**MASSACHUSETTS ATTORNEY GENERAL'S  
MOTION TO INTERVENE AND COMMENTS**

Pursuant to Rules 211, 212, and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”), 18 C.F.R. §§ 385.211, 385.212, and 385.214, and the Commission’s Combined Notice of Filings issued on July 16, 2014, the Office of the Attorney General of the Commonwealth of Massachusetts (“Massachusetts Attorney General”) moves to intervene as a full party and submits its comments in the referenced docket.

The Massachusetts Attorney General’s comments concern the filing made on July 16, 2014 by ISO New England Inc. (“ISO-NE”) revising the Forward Capacity Market (“FCM”) rules to allow a new capacity resource to seek from the Commission a one-year deferral of the starting date of its Capacity Supply Obligation (“CSO”). The revisions to the FCM rules filed by ISO-NE are just and reasonable and are necessary to ensure that delays resulting from state siting and permitting processes do not cause otherwise economically viable new resources that are needed for reliability to fail to achieve commercial operation.

**I. PLEADINGS AND OTHER COMMUNICATIONS**

Service of all documents filed in this proceeding should be addressed to the following persons whose names and addresses should be placed on the official service list compiled by the Secretary for this proceeding:

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## **II. MOTION TO INTERVENE**

### **A. Description of Movant**

The Massachusetts Attorney General is the chief legal officer of the Commonwealth of Massachusetts and is authorized by common law and by statute to institute such proceedings before state and federal courts, tribunals and commissions as she may deem to be in the public interest.<sup>1</sup> The Massachusetts Attorney General is further authorized by statute to intervene on behalf of Massachusetts ratepayers in proceedings before the Commission.<sup>2</sup>

### **B. Basis for Intervention**

The Massachusetts Attorney General seeks to intervene in this proceeding to represent the interests of Massachusetts retail customers. Good cause exists for the Commission to grant the Massachusetts Attorney General leave to intervene. The Massachusetts Attorney General is a public officer charged with representing the Commonwealth of Massachusetts, the public interest and the people of the Commonwealth with respect to electric industry matters that affect electric consumers in

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<sup>1</sup> MASS. GEN. LAWS ch. 12, § 10; *Feeney v. Commonwealth*, 366 N.E.2d 1262, 1266 (Mass. 1977); *Sec. of Admin. and Fin. v. Attorney General*, 326 N.E.2d 334, 338 (Mass. 1977).

<sup>2</sup> MASS. GEN. LAWS ch. 12, § 11E.

Massachusetts.<sup>3</sup> Resolution of this matter will directly affect the interests of those customers and the rates they pay. Massachusetts customer interests will not be adequately protected without the Massachusetts Attorney General's intervention, since no other party to this proceeding represents the interests of these retail customers. Thus the interests of the Massachusetts Attorney General in this matter are direct and substantial. For these reasons, granting intervention is in the public interest, and the Commission should grant the Massachusetts Attorney General leave to intervene in this proceeding with full rights as a party.

### III. COMMENTS

The filing in this matter by ISO-NE was prompted by its recent observation that appellate delays in civil or administrative proceedings can “run the clock out” on the 39 months allowed under the FCM rules for a generation project to become commercial, through no fault or delay on the part of the project sponsor. Without the proposed deferral mechanism, the 39-month time limit can derail a fully vetted and permitted project by means of litigation and the delays attendant thereto. The States' regulation of siting and environmental permitting is a legitimate exercise of their traditional police powers to protect their citizens.<sup>4</sup> The time expended to complete those regulatory or appellate processes is necessary for the state permitting agencies and the courts to conduct a comprehensive review of the applicable permits and to afford all affected parties their rights under state law.<sup>5</sup> The delays that result are unpredictable and will vary on a case-by-case basis. Market rules should be designed to provide sufficient flexibility

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<sup>3</sup> *Id.*

<sup>4</sup> *Cf.* MASS. GEN. LAWS ch. 164, § 69J¼ *et seq.* (permitting of construction, siting, and certificates of environmental impact and public interest).

<sup>5</sup> *See, e.g.* MASS. GEN. LAWS ch. 30A (Massachusetts Administrative Procedures Act).

to allow for such delays. To have a resource development project terminate solely because siting, zoning, permitting, and appellate processes could not be completed within the 39-month development period would be an unintended result and a waste of the state regulatory agencies' time and resources.

Two of the Massachusetts capacity zones within the ISO-NE control area suffer from insufficient capacity. It is undisputed that new generation resources are needed for reliability in Massachusetts in particular and in New England in general. Further, as established by the testimony of Robert Ethier, a one-year deferral provides a far more efficient and timely solution to a delayed project needed for reliability than developing an entirely new substitute project.<sup>6</sup>

ISO-NE's proposed rule revisions are narrowly tailored and require the project and its sponsor to meet a substantial burden of proof, thus lessening any potential for abuse. First, ISO-NE must find that the project is needed for reliability in both the year for which it has a CSO and the next capacity commitment period.<sup>7</sup> A project sponsor must then demonstrate to the Commission's satisfaction that "the deferral is critical to the resource's ability to achieve Commercial Operation and that the reasons the deferral is being sought are beyond the control of the Project Sponsor."<sup>8</sup> Further, intervenors to the filing will have the right to object.<sup>9</sup>

Finally, the revised rules actually provide more safeguards than the current ones with respect to ensuring that a delayed project ultimately meets its obligations and does

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<sup>6</sup> *ISO New England Inc.*, Docket No.ER14-2440; ISO-NE filing, *Revisions to Allow a Non-Commercial Capacity Resource to Seek a One-Year Deferral* (July 16, 2014), Testimony of Robert Ethier ("Ethier testimony") at 4, 13-14

<sup>7</sup> *Id.* at 9

<sup>8</sup> *Id.* at 10

<sup>9</sup> *Id.*

not profit from the delay. ISO-NE will retain the right to seek termination of the project if it finds that the project sponsor is not proceeding with due diligence during the deferral period.<sup>10</sup> In addition, financial disincentives for delay have been added. As Mr. Ethier notes, under the current rules, a new resource with a CSO receives payment for its CSO in advance of the capacity period and the aggregate penalties from its failure to perform due to a project delay cannot exceed the CSO payment.<sup>11</sup> Under the proposed changes a new resource that receives a deferral will have its right to receive payment for its CSO shifted forward a year along with its performance obligations.<sup>12</sup> Thus, it will receive no advance payment. In addition, any remaining financial assurance obligations of the project are accelerated and must be posted in full within 30 days of approval of a request for deferral by the Commission.<sup>13</sup> Finally, by eliminating the new resource's obligation to cover, it will not be able to profit from covering its CSO in whole or part at a lesser price than the auction price, as is now possible under the rules.<sup>14</sup>

#### **IV. CONCLUSION**

ISO-NE's proposed FCM rule changes to permit a new capacity resource to seek a one-year deferral of the starting date of its CSO strike a fair balance between the reliability needs of New England and the obligations of a new resource developer. It is in the interest of all load in New England and of the market in general that a project that has been delayed as a result of delays in state regulatory processes be given an opportunity to

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<sup>10</sup> *Id.* at 13

<sup>11</sup> *Id.* at 8-9

<sup>12</sup> *Id.* at 10

<sup>13</sup> *Id.* at 12

<sup>14</sup> *Id.* at 11-12

seek an extension of time in which to become commercial. Any other outcome represents a significant waste of time and resources.

For the foregoing reasons, the Massachusetts Attorney General respectfully requests that the Commission:

1. Grant its Motion to Intervene and establish by order its right to fully participate as a party in these proceedings;
2. Approve the changes to the FCM rules proposed by ISO New England; and
3. Grant all other relief as the Commission deems just and reasonable.

Respectfully submitted,

MARTHA COAKLEY  
ATTORNEY GENERAL

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Dated: August 6, 2014

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**Docket No. ER14-2440**

**CERTIFICATE OF SERVICE**

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

Dated at Boston, Massachusetts this 6th day of August, 2014.

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