

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

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| ISO-New England Inc. |) | Docket Nos. ER14-2440-000 |
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**MOTION TO INTERVENE AND PROTEST OF THE
NEW ENGLAND POWER GENERATORS ASSOCIATION, INC.**

Pursuant to Rules 211 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. §§ 385.211 and 214, and in accordance with the Commission’s Combined Notice of Filings #1, dated July 11, 2014, and July 14, 2014, the New England Power Generators Association, Inc. (“NEPGA”)¹ hereby files this Motion to Intervene and Protest in response to ISO New England, Inc.’s (“ISO-NE”) July 11, 2014, filing of Tariff revisions intended to allow a new resource that cleared in the Forward Capacity Auction (“FCA”) to defer its Capacity Supply Obligation by one year, should it satisfy certain conditions. ISO-NE’s proposed Tariff revisions are intended to address the asserted urgent need for relief for a single Market Participant from the Tariff provisions governing new entry in the Forward Capacity Market, and will almost certainly be removed from the Tariff once ISO-NE and NEPOOL stakeholders consider future Tariff changes.

NEPGA strongly believes in the need to ensure that new entry that clears on a market basis through the FCA can reach commercial operation. At the same time, NEPGA also recognizes the need to ensure that the market must be reflective of the realistic timeline of

¹ The comments expressed herein represent those of NEPGA as an organization, but not necessarily those of any particular member.

developing, financing and constructing a new generation resource in New England.

Notwithstanding the single Market Participant (Footprint Power)² driving ISO-NE's proposal, it is not clear that the current lead time between the primary FCA and the Capacity Commitment Period is inadequate. In any event, ISO-NE's proposed Tariff changes are not the proper vehicle to address these critical issues at this time should some incongruity exist. Given their narrow applicability and likely limited duration, the relief ISO-NE seeks from the existing Tariff revisions should come from the beneficiary of the proposed Tariff changes, Footprint Power, in the form of a request for a waiver from the ISO-NE Tariff. NEPGA therefore respectfully requests that the Commission deny the ISO-NE's proposed Tariff revisions because ISO-NE is improperly seeking through a Tariff change what Footprint Power should seek through a request for waiver.

I. Motion to Intervene and Communications

NEPGA is a private, non-profit trade association advocating for the business interests of competitive electric power generators in New England. NEPGA's member companies represent approximately 26,000 megawatts of installed capacity throughout the New England region. NEPGA's mission is to promote sound energy policies which will further economic development, jobs, and balanced environmental policy. NEPGA's member companies are responsible for generating and supplying electric power for sale within the New England bulk power system. As active participants in the ISO-NE capacity and wholesale electricity markets, NEPGA's member companies have substantial and direct interests in the outcome of these

² The NEPOOL Reliability Committee will hold a meeting on August 15, 2014, for stakeholders to consider and vote on whether Footprint Power is needed for reliability in the FCA 7 and FCA 8 Capacity Commitment Periods, a necessary determination for a resource to seek a deferral with the Commission under ISO-NE's proposal.

proceedings, and those interests cannot be adequately represented by any other party in the proceeding.

All correspondence and communications related to this proceeding should be addressed to the following individuals:

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II. Protest

ISO-NE asks the Commission to approve Tariff changes that will allow a resource that has already cleared in the FCA but will not become commercial by the first day of its Capacity Commitment Period to defer its obligation to cover its Capacity Supply Obligation for one year. Though generic in name, ISO-NE's proposed Tariff changes are timed to meet the needs of a single resource that cleared in FCA 7, Footprint Power, but is at risk of not becoming commercial by the FCA 7 Capacity Commitment Period. If approved, the Tariff changes will also likely remain in effect for only a limited period of time, given that they mute the incentives for a resource to become commercial in time to satisfy their Capacity Supply Obligation in their first Capacity Commitment Period. Should the issue that ISO-NE is attempting to address with this Tariff change be more widespread and/or represent a fundamental change in the time new resources need to reach commercial operation in New England, a broader-based FCM reform may be necessary. ISO-NE, in fact, has recognized that this basic question requires further consideration and proposes to engage in broader NEPOOL stakeholder discussions to consider

future Tariff changes to the Tariff changes ISO-NE filed in this proceeding.³ ISO-NE's proposed Tariff changes, therefore, are an interim measure intended to benefit a single resource and its unique circumstances. ISO-NE is improperly seeking through changes to the Tariff what Footprint Power should instead be seeking through a waiver request. ISO-NE's proposed Tariff changes should therefore be denied.⁴

A. The Commission Should Deny ISO-NE's Proposed Tariff Changes Because It is the Improper Form to Request What Should Instead be Requested Through a Waiver Request by the Participant Beneficiary

The ISO maintains that "at least one project" that cleared in a prior FCA and thus acquired a CSO may not be able to become commercial by its first Capacity Commitment Period, and without the Tariff changes may not be able to become commercial in the following Capacity Commitment Period.⁵ Though not identified by name in ISO-NE's filing, Footprint Power's 674 MW generating facility at the Salem Harbor site in Salem, Massachusetts, which cleared in FCA 7 is widely understood to be the intended beneficiary of ISO-NE's proposed Tariff changes.⁶ Because it cleared in FCA 7, Footprint Power and holds a Capacity Supply Obligation for the Capacity Commitment Period beginning June 1, 2016. During the NEPOOL stakeholder consideration of ISO-NE's proposal, neither ISO-NE nor any stakeholder identified any other project that is at risk of not becoming commercial for the FCA 7 (or FCA 8) Capacity Commitment Period.⁷

³ Ethier Testimony at p. 16.

⁴ *See, e.g., Central Vermont Public Service Corp.*, 121 FERC ¶ 61,225, at P 28 (2007) (a waiver may be granted based upon a showing that: (1) an underlying error was made in good faith; (2) the waiver was of limited scope; (3) a concrete problem required a remedy; and (4) the waiver did not have undesirable consequences, such as harming third parties).

⁵ Ethier Testimony at p. 4.

⁶ *See* Note 2, *supra*.

⁷ *Id.* (Footprint Power was the only resource noticed for the August 15, 2014, Reliability Committee meeting).

The Commission has historically denied a requested tariff change when the proposed tariff change was effectively intended to benefit an individual market participant, apply for a limited period of time, or both. For example, in *Transco*⁸, the Commission denied tariff revisions that would have allowed an interstate pipeline company to reserve capacity for up to two years prior to submitting a certificate application for a pipeline expansion project, in light of the Commission's precedent allowing for capacity to be reserved for only up to one year prior to the certificate application.⁹ The Commission directed the pipeline company to instead file a waiver request in the event it believed that it needed "an extension of time to file the certificate application for a particular project."¹⁰ The Commission has similarly found that "a waiver process is more appropriate to address the issues raised" by a request for a tariff change, when the intent of the tariff change was to address the "unique status" of a single entity.¹¹ The Commission reasoned that it was unnecessary to subject a tariff to "further review on a generic basis" when seeking relief for a discrete and limited issue that can be remedied through a waiver request.¹²

ISO-NE asserts that the Tariff, generically, may not provide sufficient time between an FCA and its associated Capacity Commitment Period to permit, finance, and construct a new generating unit that has cleared in the FCA. But the impetus for ISO-NE's proposed Tariff changes, and the only intended beneficiary is Footprint Power, a single Market Participant. In addition, the proposed Tariff changes will most likely be effective for only a limited period of time. As ISO-NE has explained, it will begin working with NEPOOL stakeholders to consider whether the time between the FCA and Capacity Commitment Period should be extended to

⁸ *Transcontinental Gas Pipe Line Corporation*, 118 FERC ¶ 61,234 (2007).

⁹ *Id.* at P 10.

¹⁰ *Id.*

¹¹ *Southwest Power Pool*, 114 FERC 61,273 at P 17 (2006).

¹² *Id.*

afford more time to bring a resource on line. At present, therefore, the proposed Tariff changes seek to address the unique circumstances of a single entity, and would likely be in effect only until ISO-NE and NEPOOL stakeholders consider and propose further Tariff changes. Under similar circumstances, the Commission has denied tariff changes without prejudice to the beneficiary party seeking a waiver request in a separate filing, and the Commission should do so here.¹³

ISO-NE's proposal to revise the Tariff to address the particular circumstances of a single resource is particularly inappropriate, given that the Tariff already defines the rights and obligations of resources that are not commercial by their first Capacity Commitment Period. Indeed, according to the ISO, the current Tariff provisions applicable to resources that are not commercial by their first Capacity Commitment Period provide a "no-lose" situation for the resources.¹⁴ According to the existing Tariff provisions, a new resource receives its full capacity payment during its first Capacity Commitment Period, whether it is commercial or not, subject only to the risk of penalties during a Shortage Event, which has occurred only once since the beginning of the Forward Capacity Market, and to an "obligation to cover" or "buy back" its Capacity Supply Obligation. The obligation to cover does not actually require the resource to "buy back" any of its Capacity Supply Obligation, but only dictates that for any capacity the resource has not "covered" by the final reconfiguration auction prior to the Capacity Commitment Period, ISO-NE will offer that capacity into that final reconfiguration auction. In

¹³ *Southwest Power Pool*, 114 FERC 61,273 at P 18 (2006) (denial of rehearing request without prejudice to party filing a request for waiver).

¹⁴ Ethier Testimony at p. 8.

the unlikely event a resource were to purchase any of Footprint Power's Capacity Supply Obligation in a reconfiguration auction, it is guaranteed to not take a loss.¹⁵

It is unwise to make changes to the Tariff for the benefit of a single Market Participant, especially when the Tariff changes may have significant consequences on FCM efficiency and unjustly and unreasonably displace potential new entry or existing resources with MWs that may not become commercial at all. According to ISO-NE, its proposed Tariff changes are necessary to allow a resource that cleared in FCA 7 to "permit, finance, and construct" its generating unit by the beginning of the FCA 7 Capacity Commitment Period.¹⁶ ISO-NE's proposed Tariff changes, however, do nothing to guarantee that a one-year deferral of the Capacity Supply Obligation will lead to the permitting, financing and construction of the unit. Under ISO-NE's proposal, a resource must show, in part, that the deferral is necessary for the resource to become commercial, but need not demonstrate that it is likely to become commercial should it receive the deferral. For example, ISO-NE's proposal does not require a Market Participant to show that it has secured financing, made arrangements for fuel supply, or secured a purchase order for its turbines. With respect to financial assurance, ISO-NE proposes only to "accelerate" the resource's financial assurance obligation to require it to post its remaining financial assurance within 30 days of an order approving the Capacity Supply Obligation deferral. This provides little additional incentive or assurance that the resource will become commercial.¹⁷ The Commission should not grant the relief ISO-NE requests through Tariff changes that provide no

¹⁵ The starting price in the reconfiguration auction is equal to the starting price for the primary auction. Footprint Power cleared in FCA 7 at the auction starting price, meaning that any "buy back" price would be equal to or less than the price Footprint Power received.

¹⁶ Ethier Testimony at p. 3.

¹⁷ For example, in the case of Footprint Power, the only remaining financial assurance is due in the days before FCA 9, which will run in February 2015. If granted the deferral, therefore, Footprint would likely only need to post financial assurance a few months sooner than it would otherwise if it did not seek a Capacity Supply Obligation deferral – with no additional financial assurance required.

additional assurance that Footprint Power can become commercial, when that new resource could seek the same relief through a waiver request.

III. Conclusion

Wherefore, NEPGA respectfully requests that the Commission grant NEPGA's Motion to Intervene and deny ISO-NE's proposed Tariff changes.

Respectfully Submitted,

/s/ Bruce Anderson_____

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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, August 6, 2014.

/s/ Bruce Anderson _____

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Document Content(s)

NEPGA Mot to Interv and Protest_ER14-2440.PDF.....1-9