

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

ISO New England Inc.

)

Docket No. ER11-3034-000

**MOTION TO INTERVENE OUT-OF-TIME  
AND COMMENTS OF  
NEW ENGLAND POWER GENERATORS ASSOCIATION, INC.**

**I. Introduction**

Pursuant to Sections 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. §385.212 and §385.214, the New England Power Generators Association, Inc. (“NEPGA”)<sup>1</sup> hereby move to intervene out-of-time in the above-captioned proceeding and comment on the issues raised on ISO New England Inc.’s (the “ISO” or ISO-NE”) March 8, 2011 Informational Filing for Qualification in the Forward Capacity Market (“Informational Filing”) for the 2014-2015 Capacity Commitment Period (“FCA-5”)<sup>2</sup>. In support, NEPGA states as follows:

**II. Communications**

Communications and correspondence related to this filing should be directed to the following representatives of NEPGA:

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<sup>1</sup> NEPGA is a trade association representing competitive electric generating companies in New England. NEPGA’s member companies represent approximately 27,000 megawatts of electrical generating capacity throughout the New England region. The comments contained in this filing represent the position of NEPGA as an organization, but not necessarily the position of any particular member with respect to any statement, concept, issue or position expressed herein.

<sup>2</sup> Pursuant to Section III.13.8.1(b) of Market Rule 1, challenges to the determinations in ISO-NE’s Informational Filing must be filed with the Commission no later than 15 days from the date of the Informational Filing.

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### **III. Background**

Pursuant to Section III.13.8.1 of the FCM Market Rules, on March 8, 2011, ISO-NE submitted its Informational Filing for Qualification in the Forward Capacity Market ("FCM"). The Informational Filing sets forth a number of determinations made by ISO-NE related to the fifth Forward Capacity Auction ("FCA"), which will be conducted in June 2011, and will procure the needed capacity for the New England Control Area for the 2014-2015 Capacity Commitment Period. Among those determinations are a number of De-List Bids rejected by the ISO's Internal Market Monitoring Unit ("IMMU").

On March 23, Dominion Resources Services, Inc. on behalf of Dominion Energy Marketing, Inc., Dominion Energy New England, Inc., and Dominion Energy Salem Harbor, LLC ("Salem Harbor") (collectively "Dominion"), submitted comments relating to ISONE's Internal Market Monitor Unit's ("IMMU") rejection of the Permanent De-List Bids submitted by Salem Harbor as inconsistent with the respective Units' net risk adjusted going forward and opportunity costs ("NRAGFC"). Dominion's comments informed the Commission of the practical impact of the IMMU's decision to supplant Dominion's reasonable business judgment that Salem Harbor would incur significant capital costs associated with environmental compliance if required to take on a capacity obligation or serve a reliability need in FCA-5.

### **IV. Motion to Intervene and Comments**

NEPGA respectfully moves to intervene in this proceeding out-of-time and requests that the Commission grant this motion for good cause. NEPGA did not intervene earlier due to administrative oversight, but now comes seeking intervention only a short time after the date challenges are due to the

ISONE's Informational Filing. NEPGA seeks to intervene and comment on the issues raised by Dominion. Because this proceeding is at an early stage and the Commission has not yet taken any action on the Informational Filing, granting NEPGA's intervention will not disrupt this proceeding. Granting NEPGA's intervention will not prejudice or impose any additional burden on existing parties. NEPGA agrees to accept the record as it stands. NEPGA, and its jurisdictional members operating within the ISO-NE markets, may be affected by any determination in this proceeding. Therefore, NEPGA will be directly affected by the outcome of these proceedings and its interests cannot adequately be represented by any other party. Good cause thus exists for this motion and NEPGA respectfully requests that the Commission grant its motion to intervene.

NEPGA provides comments in support of Dominion's comments and comments disagreeing with NECPUC's comments regarding Out-of-Market ("OOM") determinations. As explained below, the mechanisms to price existing units' participation in FCM are flawed, as are the compensation mechanisms for existing units whose de-list bids or retirement requests are rejected for reliability reasons. Development of de-list bid prices using NRAGFC leaves out real cash costs that are appropriate to use as a basis for pricing the capacity product (e.g, debt, taxes, insurance). Additionally, the timeframes for electing compensation treatment for rejected de-list or Non-Price Retirement Request ("NPRR") are inadequate for the unit owner to achieve the certainty of a FERC order that the cost of service compensation will adequately cover the cost of meeting the reliability obligations of supplying capacity, including appropriate recovery of capital costs associated with environmental controls that are necessary to continue operating the unit.

In the case of a Permanent De-list Bid rejected for reliability, the resource owner must elect to be paid either its de-list bid price or pursuant to a cost of service agreement within six months of the ISO's filing of the results of the relevant FCA. It is highly unlikely that a participant could assemble its cost of service, negotiate the relevant terms of an agreement with ISO, file with the Commission and have the Commission conclude the evidentiary process and the likely settlement proceeding within the six month period. Moreover, once the owner has started the cost of service process, there is no turning back under

the ISO market rules, and the resource owner has no certainty that it will recover its costs at that decision point.

In the case of a NPRR rejected for reliability, the resource owner must elect to be paid either the FCA clearing price or pursuant to a cost of service agreement within six months of the ISO's reliability determination, which ISO determination is no later than 30 days prior to the FCA, or simply elect to retire the unit, notwithstanding the reliability need. It is virtually impossible to envision completing the cost of service studies and filings, negotiating relevant terms with the ISO, completing the Commission's evidentiary and likely settlement proceedings and getting Commission approval of the cost of service within the five months after the FCA. As a result, an NPRR rejected for reliability will almost certainly lead resource owners to choose retirement, notwithstanding the reliability need, since recovery of their costs will be uncertain.

In order for FCM to have any semblance of a market system, the management judgment of resource owners cannot be subject to over-ride by a market monitor. Markets must be governed by the actions of willing buyers and willing sellers. Resource owners that anticipate, with good cause, incremental capital and/or operating costs in order to continue operating their facility, must be able to incorporate such costs into their development of prices at which they would be willing to sell that capacity service. If that ability is foreclosed (as it appears to be in FCM based on the actions of the IMMU to reject Dominion's Permanent De-list Bids), then the 'market' cannot yield either fair compensation or market signals which can succeed in drawing new private investment.

In its comments, the New England Conference of Public Utility Commissioners ("NECPUC") seeks a reversal of the IMMU's OOM determination for several state funded energy efficiency new capacity resources offered into FCA 5. Among its justifications for a second attempt to avoid an OOM determination on these new capacity resources, NECPUC asserts that since states require their energy efficiency programs to be cost effective, new energy efficiency resources should be considered In Merit and IMMU determinations that some of these programs should be considered OOM are mistaken. As support for its request, NECPUC states on the one hand that "the benefits considered by state

commissions that the IMMU does not consider in its cost-effectiveness are small enough that such differences cannot be material”<sup>3</sup>, yet, NECPUC admits that “cost-effectiveness for Massachusetts’ programs, which comprise the vast majority of state-approved energy efficiency resources classified as OOM, the Mass DPU will consider savings from avoided transmission and distribution *as well as demand reduction price effects*”<sup>4</sup> (emphasis added). Competitiveness of capacity market bids cannot be justified by the capacity price reduction savings achieved by clearing new capacity resources below their long run average cost. OOM determinations and Alternative Price Rule (“APR”) price adjustments are expressly intended to discourage all entities, including entities charged with implementing state efficiency programs, from offering new capacity resources into a FCA at prices below their actual long run average costs. Whether the magnitude of demand-reduction-induced price effects used to justify state investments is large or small, it is simply improper to include such market distortion benefits of capacity clearing price suppression to avoid an OOM determination at the wholesale level. Where such benefits are used to justify new capacity resource investments, including energy efficiency resources, an OOM determination is exactly what should happen in the FCM. The economic construct of FCM rests on the presumption that prices should be established by the costs of investment choices as they can be supported by market compensation, without relying on state-subsidy or the capacity cost savings derived from the associated non-competitive price suppression. A competitively minded project sponsor would have no objection to an Alternative Price that approximates the long-run average cost of building, owning and operating real-world generating or demand resources. The FCM monopsony power protections would be rendered useless if the Commission were to permit market participants to use capacity clearing price suppression benefits to offset new capacity costs that could not otherwise be justified at the new resource’s capacity price plus other *competitive* values. NEPGA eagerly awaits a Commission decision in Docket No. ER 10-787, *et al* to close existing loopholes in the FCM monopsony power protection fence and opposes NECPUC’s efforts to cut new holes in the fence through

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<sup>3</sup> NECPUC at page 15.

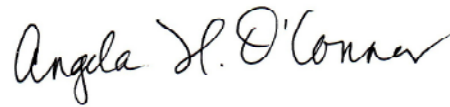
<sup>4</sup> NECPUC at page 14.

efforts to justify avoidance of OOM classifications based on demand-reduction-induced price effect benefits.

#### **V. Conclusion**

WHEREFORE, NEPGA respectfully requests that the Commission grant its motion to intervene and designate it as a party to this proceeding with all the rights appropriate to that status, and consider its comments provided herein.

Respectfully submitted,



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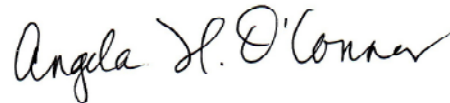
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April 7, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused to be served copies of the foregoing document upon each person designated on the official service list as compiled by the Office of the Secretary in the captioned proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and procedure, 18 C.F.R. § 385.2010.

Dated at Boston, MA, this 7<sup>th</sup> Day of April, 2011.



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