

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

New England Power)
Generators Association, Inc.)
)
v.)
)
ISO New England Inc.)

Docket No. EL14-17-000

**COMMENTS OF THE
NEW ENGLAND POWER POOL PARTICIPANTS COMMITTEE**
(January 21, 2014)

Pursuant to Rule 212 of the Commission’s Rules of Practice and Procedure,¹ the New England Power Pool (“NEPOOL”)² Participants Committee³ hereby submits these Comments to the complaint submitted by the New England Power Generators Association (“NEPGA”) on January 8, 2014 (referred to herein as the “NEPGA Complaint”) in the above-captioned docket.⁴ The NEPGA Complaint was submitted following ISO-NE’s rejection on December 20, 2013 of Non-Price Retirement Requests (“NPRRs”) for specified reliability reasons, for certain units at

¹ 18 C.F.R. §385.212 (2014).

² Capitalized terms not defined herein have the meanings ascribed thereto in the Second Restated NEPOOL Agreement, Participants Agreement, or the ISO New England Inc. (“ISO-NE”) Transmission, Markets and Services Tariff (“ISO-NE Tariff” or the “Tariff”). Section III of the Tariff is referred to as “Market Rule 1”.

³ NEPOOL is a voluntary association organized in 1971 pursuant to the New England Power Pool Agreement, and it has grown to include over 430 members. The Participants include all of the electric utilities rendering or receiving services under the ISO-NE Tariff, as well as independent power generators, marketers, load aggregators, brokers, consumer-owned utility systems, demand response providers, developers, end users and a merchant transmission provider. Pursuant to revised governance provisions accepted by the Commission in *ISO New England Inc. et al.*, 109 FERC ¶ 61,147 (2004), the Participants act through the NEPOOL Participants Committee. The NEPOOL Participants Committee is authorized by Section 6.1 of the Second Restated NEPOOL Agreement and Section 8.1.3(c) of the Participants Agreement to represent NEPOOL in proceedings before the Commission. NEPOOL is the principal stakeholder organization for the New England RTO.

⁴ NEPOOL timely moved to intervene in this docket by doc-less intervention submitted on January 8, 2014.

the Brayton Point Power Station (“Brayton Point”).⁵ The result of that rejection under the Tariff is that, unless Brayton Point provides notice ahead of the eighth Forward Capacity Auction (“FCA 8”) that it intends nonetheless to retire, it will be treated as a resource available to satisfy the Installed Capacity Requirement (“ICR”) as a price-taker in that auction. ISO-NE made this point clear in its November 5, 2013 filing of the results of the Qualification Process for FCA 8.⁶ The NEPGA Complaint seeks, on an expedited basis, involuntary changes to the Market Rules of the ISO-NE Tariff.⁷

NEPOOL submits these Comments for two reasons. First, NEPOOL provides additional information about the stakeholder process that was followed within NEPOOL with respect to the Brayton Point NPRRs. Second, NEPOOL files to make clear its position that per the Commission-approved Participants Agreement, any revisions to the Market Rules in the ISO-NE Tariff should be considered fully within the NEPOOL Participant Processes. Absent exigent

⁵ The Brayton Point NPRRs and related reliability analyses pertained to two main sets of units at Brayton Point: certain diesel units amounting to approximately 10 MW (“Brayton Point Diesels”) and the remainder of Brayton Point amounting to over 1,500 MW (“Brayton Point Units 1-4”).

⁶ See Informational Filing for Qualification in the Forward Capacity Market, Docket No. ER14-329-000 (filed Nov. 5, 2013) (the “November 5 Filing”).

⁷ NEPOOL notes that on January 17, 2014 ISO-NE filed its answer to the NEPGA Complaint (“ISO-NE Answer”). In the ISO-NE Answer, ISO-NE requests that the Commission reject the NEPGA Complaint or if the Commission elects to address the substantive issues ISO-NE requests that the Commission should: “Provide a limited, one-time waiver of the provision of Tariff § III.13.2.5.2.5.3(a)(iii) that permits resource owners with a rejected NPPR to take up to six months to elect whether to retire; and Direct Brayton’s owner to notify the ISO by 5 p.m. ET on Wednesday, January 29, 2014, whether it will elect to retire Brayton or keep it in service for the Capacity Commitment Period for which capacity is being procured in FCA 8.” ISO-NE Answer at p. 4. In response to the ISO-NE Answer, Brayton Point Energy, LLC submitted limited comments in this docket on January 20, 2014 (“Brayton Point Comments”). In those comments, Brayton Point Energy committed to “notify ISO-NE on or before January 29, 2014 of its decision to remain in service or to retire.” Brayton Point Comments at p. 3. In light of the ISO-NE Answer and Brayton Point Comments, it may not be necessary to make any Market Rule changes for FCA 8 at this juncture. If the Commission nonetheless directs changes for FCA 8 in response to the NEPGA Complaint, NEPOOL asks that the Commission limit any relief it may provide in this proceeding solely to FCA 8.

circumstances,⁸ ISO-NE has an obligation to follow the Participant Processes to review Market Rule changes with NEPOOL, and to receive an advisory vote of NEPOOL before any such filing.⁹ In this instance, the NEPGA Complaint requests that the Commission direct ISO-NE to make changes to the Market Rules on an expedited basis to address NEPGA's concern about FCA 8. Since the changes sought by NEPGA to the current Market Rules were not fully considered through, and did not receive the benefit of, the complete NEPOOL Participant Processes, NEPOOL requests that if the Commission concludes that the current Market Rules identified by NEPGA in its complaint will actually produce an unjust and unreasonable result in FCA 8, then relief be limited to temporary changes that would apply for FCA 8 only.¹⁰ If the Commission determines that changes are required for beyond FCA 8, NEPOOL asks that the Commission direct ISO-NE to bring any such changes first through the Participant Processes to ensure that longer-term changes reflect the benefit of full and informed stakeholder input. Such a determination can of course be made without prejudice to NEPGA (or any other entity) re-raising its Market Rule concerns in response to ISO-NE proposed Market Rule changes filed with the Commission. Alternatively, if the Participant Processes do not produce an outcome that

⁸ Section 11.2 of the Participants Agreement provides that: "In Exigent Circumstances, ISO may unilaterally, upon written notice to the Participants Committee and Individual Participants, file with the Commission pursuant to Section 205, if necessary, and implement a new or amended Market Rule, Operating Procedure, Manual, Reliability Standard, provision of the Information Policy (subject to 11.3), General Tariff Provision, or Non-TO OATT Provision."

"Exigent Circumstances" are defined in the Section 1 of the Participants Agreement to be circumstances where ISO-NE determines in good faith "that (i) failure to immediately implement a new Market Rule, Operating Procedure, Reliability Standard, provision of the Information Policy, Non-TO OATT Provision or Manual would substantially and adversely affect (A) System reliability or security, or (B) the competitiveness or efficiency of the New England Markets, and (ii) invoking the procedures set forth in Section 11.1, 11.3 or 11.4 would not allow for timely redress of ISO's concerns."

⁹ Participants Agreement §11.1.

¹⁰ NEPOOL acknowledges that if the Commission grants NEPGA's request and directs ISO-NE to make changes prior to FCA 8, there would not practically be sufficient time for any such changes to be brought through the stakeholder process and receive the benefit of full stakeholder discussion and input.

an entity concludes is just and reasonable under the circumstances, such concerns can be addressed in a separate complaint proceeding properly submitted under Section 206 of the FPA that properly reflects other Tariff changes that have or are being made for the ninth Forward Capacity Auction (“FCA 9”) and beyond.

II. BACKGROUND

Under Section 8.2.3 of the Participants Agreement, the NEPOOL Reliability Committee has the responsibility, among others, to provide input and advice to ISO-NE with respect to Non-Price Retirement Requests submitted by Capacity Resources pursuant to Section 13.1.2.3.1.5 of Section III of the Tariff. Under the process for implementing this provision of the Participants Agreement, ISO-NE provides the Reliability Committee with its recommendation regarding NPRRs together with information supporting that recommendation. The Reliability Committee then conducts an advisory vote on whether to support ISO-NE’s recommendation based on its assessment of whether ISO-NE performed its analyses in accordance with the Tariff and Planning Procedure No. 10 (“PP-10”).¹¹ Under PP-10, ISO-NE must analyze the thermal, voltage and, if appropriate, stability impacts of NPRRs. If the analysis shows that there is a reliability need for the unit or units in making the NPRR, then ISO-NE rejects the NPRR.¹²

At the December 19, 2013 Reliability Committee meeting, ISO-NE presented its analyses and determinations regarding several NPRRs, including those submitted for Brayton Point. ISO-NE’s analyses identified thermal violations that would result from the retirement of Brayton Point Units 1-4, but no reliability need for the Brayton Point Diesels.

¹¹ ISO-NE’s NPRR analysis must be conducted in accordance with Section 13.1.2.3.1.5 of Section III of the Tariff and PP-10 (“Planning Procedure to Support the Forward Capacity Market”). PP-10 can be accessed at: http://www.iso-ne.com/rules_proceeds/isone_plan/pp10/pp10_r13.pdf.

¹² See ISO-NE Tariff, Section III.13.1.2.3.1.5

II. COMMENTS

A. The NEPOOL Reliability Committee did not support ISO-NE's determination regarding Brayton Point Units 1-4.

At its December 19, 2013 meeting, the Reliability Committee first considered the NPRRs for the Brayton Point Diesels and agreed that the analyses that concluded there was no reliability need for the Brayton Point Diesels were performed in accordance with Market Rule 1, Section III.13.2.5.2.5 and PP-10, Section 7.¹³ The Reliability Committee then considered a motion to recommend to ISO-NE that the analyses performed for the NPRRs submitted for Brayton Point Units 1-4 were performed in accordance with Market Rule 1, Section III.13.2.5.2.5 and PP-10, Section 7. That motion failed with a Vote of only 22.9% in favor.¹⁴ Lastly, the Reliability Committee considered an alternative motion that the NPRRs submitted for Brayton Point Units 1-4 be rejected. The motion failed with a Vote of 32.53% in favor.¹⁵ Thus, in effect, the Reliability Committee concluded that the NPRRs for all of Brayton Point should be accepted.

The next day after this vote, ISO-NE issued a letter reflecting the very same conclusion it had presented to the Reliability Committee, notwithstanding the Reliability Committee's input.¹⁶

¹³ The motion passed based on a show of hands with none opposed and 23 abstentions.

¹⁴ The motion failed with 22.889% in favor based on a roll call vote. (Generation Sector 0.0% in favor, 17.17% opposed, 1 abstention; Transmission Sector, 17.17% in favor, 0.0% opposed, 0 abstentions, Supplier Sector 0.0% in favor, 17.17% opposed, 5 abstentions; Alternative Resource Sector 0.0% in favor, 14.17% opposed, 5 abstentions; Publicly Owned Entity Sector 0.0% in favor, 17.17% opposed, 33 abstentions; End User Sector 5.72% in favor, 11.44% opposed, 19 abstentions).

¹⁵ This motion failed with 32.526% in favor based on a roll call vote. (Generation Sector 0.0% in favor, 17.17% opposed, 1 abstention; Transmission Sector, 17.17% in favor, 0.0% opposed, 0 abstentions, Supplier Sector 0.0% in favor, 17.17% opposed, 5 abstentions; Alternative Resource Sector 0.0% in favor, 14.17% opposed, 5 abstentions; Publicly Owned Entity Sector 0.0% in favor, 17.17% opposed, 33 abstentions; End User Sector 15.36% in favor, 1.81% opposed, 4 abstentions).

¹⁶ ISO-NE's determination letter for NPR requests for Brayton Point Units 1 – 4 can be accessed at: http://www.iso-ne.com/genrtion_resrcs/reports/non_prc_retremnt_ltrrs/2013/npr_determination_braytonpt1_4.pdf.

Responding to concerns raised about ISO-NE ignoring stakeholder input, ISO-NE has since explained that the timing of its approval letter was dictated by the Tariff.¹⁷

B. Any Market Rule revisions required as a result of the NEPGA Complaint for application in FCA 8 should go through the Participant Processes required under the Participants Agreement.

The NEPGA Complaint requests that the Commission order certain changes to the ISO-NE Market Rules that would go into effect without going through the Participant Processes called for under the Participants Agreement.¹⁸ The New England governance arrangements contemplate that all market rule changes will be considered first within the stakeholder process unless there are Exigent Circumstances.¹⁹ While those arrangements are directed at the relationship between ISO-NE and NEPOOL, NEPOOL has consistently opposed any change to the Tariff (including the Market Rules) that are sought without first considering those changes in the NEPOOL Participant Processes, except in the case of Exigent Circumstances.²⁰ The Commission has repeatedly directed stakeholders and ISO-NE to the Participant Processes before ordering changes to the markets.²¹

In this instance the NEPGA Complaint requests that the Commission require changes to the Market Rules on an expedited basis to address NEPGA's concern about FCA 8. NEPOOL

¹⁷ See ISO-NE Answer at p. 3.

¹⁸ NEPGA Complaint at pp. 28-29.

¹⁹ Participants Agreement §11.1.

²⁰ See Participants Agreement, Section 11.2.

²¹ See, e.g., *ISO New England Inc.*, 138 FERC ¶ 61,042 (2012) at P 114 (the "stakeholder process is the appropriate venue for Joint Parties to propose and develop appropriate rules"); *Id.* at P 146 ("We encourage all parties to address any such issues initially in the stakeholder process."); *ISO New England Inc. and New England Power Pool*, 133 FERC ¶ 61,239 (2010) at p 26 ("If Pittsfield seeks to propose changes to the language in the tariff, the Commission recommends that Pittsfield address its concerns through the NEPOOL stakeholder process."); *New England Power Pool and ISO New England, Inc.*, 109 FERC ¶ 61,252, at P 40 (2004) (encouraging parties who want to change tariff provisions to work through stakeholder process); *State of R.I. Att'y Gen.'s Office v. ISO New England Inc.*, 107 FERC ¶ 61,242, at P 15 (2004) (Commission dismissing the Rhode Island Attorney General's petition and stating that to grant

acknowledges that there would not be time in these circumstances for NEPGA to have gone through the Participant Processes for FCA 8. To the extent the Commission grants the NEPGA Complaint and directs ISO-NE to make changes to its Tariff, NEPOOL urges that any such relief be limited to FCA 8 only. Any changes to the ISO-NE Tariff that the Commission requires and that would apply beyond FCA 8 should first be considered fully through the NEPOOL stakeholder processes and, absent Exigent Circumstances, filed with the Commission only after such processes are completed.

NEPOOL makes this request in part because the Commission has just received and has pending before it proposals to modify FCM for the FCA 9, with more changes promised.²² FCM and its interaction with other markets are complex and the stakeholder process allows the opportunity for ISO-NE and all interested entities to understand, explore, and refine proposed changes in order to minimize disputes, other problems and/or unintended consequences. By time limiting the applicability of any changes that go into effect without the benefit of the Participants Processes, the Commission can best assure a more complete understanding of the nature of the changes as well as the related operational, market and policy implications. It also allows time for ISO-NE and the stakeholders to address in a deliberate and thorough way the relationship of such changes to the many other revisions being made to New England's markets.

the petition before the stakeholder process had been undertaken would “inappropriately circumvent established procedures in New England”).

²² See *ISO-NE and NEPOOL Filings of Performance Incentives Market Rule Changes*, Docket No. ER14-1450-000 (filed Jan. 17, 2014) (the “Alternative Proposals”).

CERTIFICATE OF SERVICE

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

Dated at Boston, Massachusetts this 21st day of January, 2014.

/s/ _____
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