

MEMORANDUM

TO: NEPOOL Principal Committee Members and Alternates

FROM: NEPOOL Counsel

DATE: June 9, 2018

RE: Summary of Recent Pleadings in the Mystic Retention-Related FERC Proceedings -- Exelon COS Agreement (ER18-1639); NEPGA Complaint (EL18-154); and ISO-NE Waiver Request (ER18-1509).¹

We briefly summarize below pleadings filed over the last few days (June 6-8) in the various proceedings relating to the out-of-market continued operation of Mystic 8 & 9 for the commitment periods covered by the 13th and 14th capacity auctions. For your convenience, you can click on the names of each of the filing parties as shown in blue below to be linked directly to the pleading being summarized, as posted in FERC's eLibrary.

I. Exelon Cost-of-Service Agreement (ER18-1639)

NEPOOL. Because the proposed details and terms of the COS Agreement have not been reviewed within the NEPOOL Participant Processes, NEPOOL, organizationally, neither supports nor opposes Exelon's proposed COS Agreement at this time. NEPOOL emphasizes though that the circumstances presented by the ISO's Waiver Request and Exelon's proposal for a COS Agreement raise a multitude of critically significant issues for the region and that such broader issues are best addressed through the NEPOOL stakeholder process. NEPOOL therefore urges the FERC to allow the full stakeholder processes for Chapters 2 and 3 to proceed as planned, and to limit this proceeding to the narrow and specific cost-of-service issues presented. NEPOOL's keen interest is to ensure that any future changes to the Tariff or Market Rules to address fuel security issues be explored first through the complete NEPOOL process.

ISO New England. The ISO's comments explain the objectives the ISO attempted to achieve in negotiating the COS Agreement and provide relevant background related to its Waiver Request. The ISO explains that it sought in its agreement with Exelon to balance three primary objectives:

¹ In the ***ISO-NE Waiver Request*** proceeding (***ER18-1509***), ISO-NE requested waiver of its Tariff to the extent necessary (i) to retain Mystic 8 & 9 for fuel security and (ii) to extend certain FCM deadlines for that retention. In the ***Exelon COS Agreement*** proceeding (***ER18-1639***), Exelon seeks FERC approval of an agreement to provide cost-of-service compensation for the continued operation of the Mystic 8 & 9 for the 2022-23 and 2023-24 Capacity Commitment Periods ("CCPs 13 and 14") (the "COS Agreement"); the ***NEPGA Complaint*** (***EL18-154***) asks the FERC, should it grant ISO-NE's Waiver Request, to require market changes in time for FCA13 that "accounts for the capacity of fuel security resources in a way that prevents price suppression," suggesting Mystic 8 & 9 capacity be treated in the auctions like a Sponsored Resource under New England's Competitive Auctions with Sponsored Policy Resources ("CASPR") design.

(1) providing Exelon the necessary incentives to procure and maintain sufficient fuel to be available to run Mystic 8 & 9 during the winter periods when fuel supplies to other resources in the region are severely restricted; (2) minimizing the influence of Mystic’s operation and fuel management strategies on the energy markets and consumer costs relating to Exelon’s fuel procurement; and (3) providing Exelon incentives to continue Distrigas’ use as a source of liquefied natural gas (“LNG”) for the local gas distribution companies (“LDCs”) and other generators in the region.²

The ISO’s Comments opine on how the proposed COS Agreement accomplishes those three objectives. First, the COS Agreement, “subjects Exelon to enhanced Forward Capacity Market (“FCM”) performance penalties in the winter, as well as a second fuel security penalty that applies when a capacity scarcity condition exists, there is fuel scarcity, and the Mystic units are unavailable due to a lack of fuel.”³ The heightened penalties, the ISO asserts, incent Exelon to ensure that the Mystic units have sufficient fuel to operate when needed. Second, the ISO explains that the COS Agreement obligates Exelon to offer the Mystic units into the energy market at a price that reflects its variable costs, as approved by the Internal Market Monitor (“IMM”) using its market power mitigation reference level formulas.⁴ Finally, the ISO asserts that the COS Agreement achieves the third objective of incentivizing sales of LNG to third parties through a provision in Exelon’s affiliate supply agreement,⁵ which “permits Exelon to keep a portion of the profit from any third party sale of LNG; the remaining net revenues from such sales will go to offset the operating costs of the Distrigas facility (“Distrigas Facility”) and reduce the [Annual Fixed Revenue Requirement] paid to Exelon under the [COS] Agreement.”⁶

The ISO’s comments seek to clarify the scope of the COS proceeding. Specifically, the ISO argues that the COS proceeding should not cover the following issues: (i) whether Mystic should be permitted to recover its cost-of-service and whether the two-year term is supported by a reliability need (those issues are before the FERC and should be addressed in the ISO-NE Waiver Request proceeding); (ii) conditions limiting the recovery for future capital expenditures on whether Mystic has met the applicable Tariff standard for the requested capital expenditure; (iii) the impact of Mystic’s 8 & 9 COS retention on Forward Capacity Auction outcomes; and (iv) cost allocation.⁷

Algonquin. Algonquin Gas Transmission (“Algonquin”) does not take a position on whether the FERC should approve the COS Agreement. Algonquin notes that “it can provide a more appropriate and long-term solution to New England’s fuel security risks and argues for a natural gas pipeline infrastructure development solution.”⁸ Of note, Algonquin’s comments state,

² ISO-NE Comments at 4.

³ *Id.* at 5.

⁴ *Id.*

⁵ *Id.* at 5-6.

⁶ *Id.* at 6.

⁷ *Id.* at 6-9.

⁸ Algonquin Comments at 4.

“[r]egardless of the Commission’s ultimate rulings regarding the Tariff Waiver Petition and the RMR Agreement, the Commission should direct ISO-NE and regional stakeholders to develop a funding mechanism that will allow the long-term commitments necessary to expand natural gas transportation capacity into New England.”⁹

EDF. The Environmental Defense Fund (“EDF”) emphasizes the significance of the proceeding and the role of the FERC to both “ensure that New England’s fuel security challenges are ultimately addressed with long-term market-based solutions” and, to the extent the FERC grants ISO-NE’s Waiver Request, “ensure implementation of sufficient safeguards and mitigating conditions.”¹⁰ EDF urges the FERC: (i) to consider the net effect of all filings related to the Mystic and Distrigas Facilities and (ii) to vet and review Mystic’s proposed deviations from the *pro forma* cost-of-service agreement. EDF argues that the proposed operating permit adder in Section 3.4 of the COS Agreement would violate the public interest by contravening Clean Air Act requirements. EDF suggests that the FERC manage the risks in the proceeding by implementing rules to ensure transparency and third party “open access” to the Distrigas Facility.¹¹ EDF also urges the FERC to set this proceeding for hearing and settlement procedures.¹²

ENE COS. The Eastern New England Consumer-Owned Systems¹³ oppose the COS Agreement and request the FERC to reject it. The ENE COS do not comment on whether the charges in the COS Agreement are justified, but assert that “the proposed [COS] Agreement and claimed [Annual Fixed Revenue Requirements] … pose a substantial and incompletely justified economic burden on each of [the ENE COS] as involuntary ‘customers’ subject to being charged those costs under the ISO Tariff.”¹⁴

EPSA. The Electric Power Supply Association (“EPSA”) argues that the COS Agreement is inconsistent with FERC precedent and does not produce just and reasonable rates for consumers. Specifically, EPSA asserts that the costs associated with Distrigas should not be included in the cost-of-service rates and that the term of the COS Agreement should be approved on a one-year (rather than two-year) basis, subject to extension and approval annually if and as necessary.¹⁵ EPSA urged the FERC, should it not reject COS Agreement outright, to mandate, at a minimum,

⁹ *Id.* at 7-8.

¹⁰ EDF Comments at 5-7.

¹¹ *Id.* at 15.

¹² *Id.* at 18.

¹³ The Eastern New England Consumer-Owned Systems (“ENE COS”) are Braintree Elec. Light Dept., Concord Mun. Light Plant, Georgetown Mun. Light Dept., Hingham Mun. Lighting Plant, Littleton Elec. Light & Water Dept., Middleborough Gas & Elec. Dept., Middleton Elec. Light Dept., Norwood Light & Broadband Dept., Pascoag Utility District, Reading Mun. Light Dept., Taunton Mun. Lighting Plant, Wellesley Mun. Light Plant and Westfield Gas & Elec. Dept.

¹⁴ ENE COS Comments at 6.

¹⁵ EPSA Comments at 2-7.

that appropriate capital expenditure costs be clawed back from Exelon upon its reentry into the market.

Eversource. Eversource protests the COS Agreement, asserting that the COS Agreement “comes with an extremely high price tag to provide only a short-term solution to the region’s fuel security dangers.”¹⁶ Eversource argues that the short-term COS Agreement will increase costs to electricity customers relative to the cost of a longer-term expansion of natural gas pipeline infrastructure.¹⁷

Eversource agrees that there is “ample evidence of a significant fuel security risk that would be caused by the retirement of the Mystic Units [] during the period 2022-2024 and beyond.”¹⁸ Accordingly, Eversource “reluctantly withhold[s] opposition” to the COS Agreement.¹⁹ Eversource asks the FERC to condition any acceptance of the COS Agreement upon the FERC convening a technical conference to identify long-term solutions to New England’s fuel security problem,²⁰ with such solutions to be consistent with the region’s environmental goals and the most cost effective in the long-run.²¹

Eversource also recommends the following additional actions to ensure that the COS Agreement is just and reasonable and non-discriminatory: (1) suspend the filing for the maximum 5-month period to allow time for an adequate review of the substantial costs Exelon seeks to recover and the non-standard provisions being proposed for the COS Agreement; (2) require a “clawback” mechanism to refund capital investment recovery payments in the event Mystic Units 8 & 9 return to the New England Markets after the COS Agreement expires; and (3) direct more public transparency in reporting capital expenditures at both the Mystic station and the Distrigas Facility given the affiliate relationships involved with the fuel supply arrangements.²² Separately, Eversource argues that the correct margin sharing mechanism for forward, third-party sales of LNG from the Distrigas Facility should be explored in an evidentiary proceeding.²³ In addition, Eversource recommends that the FERC “incent New England stakeholders to develop more long-term, sustainable fuel security measures and discourage copycats to the Exelon Cost-of-Service filing.”²⁴

FirstLight. FirstLight Power Resources (“FirstLight”) requests that the FERC reject the Forward Sale Margin (“FSM”) formula rate in the Fuel Supply Agreement (“FSA”), limit third-

¹⁶ Eversource Comments at 5.

¹⁷ *Id.* at 5, 7-9.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 5-6.

²¹ *Id.*

²² *Id.* at 6.

²³ *Id.* at 6-7, 10-14.

²⁴ *Id.* at 7.

party sales under the FSA to sales from excess inventory purchased to meet the needs of Mystic 8 & 9 (without prejudice to potential consideration of additional third party sales authority in a subsequent proceeding where the complexities, costs and risks could be properly considered), and direct the ISO to define the minimum extent of on-hand inventory required to support reliable operation of Mystic 8 & 9.²⁵ FirstLight distinguishes this proceeding from past Reliability Must-Run Agreement (“RMR”) cases where on-site fuel oil tanks were exclusively used to supply fuel to the generating facility under the RMR,²⁶ noting that the Distrigas Facility also includes interconnections to two interstate pipelines and a local gas distribution company.²⁷ FirstLight asserts that, “the proposed FSA . . . seeks much broader authority for the forward procurement of LNG for the sale to third parties, which adds complexity, risk of higher [COS Agreement] costs, dueling storage priorities, and a very flawed formula rate, the [FSM], which can act as a subsidy for purchase of LNG for sale to third parties.”²⁸

FirstLight argues that the ISO must define the fuel security level of storage at the Distrigas Facility needed to fulfill the fuel security-based service by Mystic 8 & 9.²⁹ Continuing, “[a]ny transaction flexibility for sale to third parties must be subject to preserving a minimum storage to support Mystic 8 & 9 operation and that limit should be specified in the FSA and any third party sales should be subject to curtailment as necessary to maintain that inventory level.”³⁰ FirstLight also argues that the FSA improperly seeks authorization beyond the scope of the ISO-NE Tariff and Section 205 of the Federal Power Act (“FPA”).³¹ Finally, FirstLight asserts that the FSM formula rate and its administration is significantly flawed.³²

IECG. The Industrial Energy Consumer Group (“IECG”) argues that the COS Agreement cannot be found to be just and reasonable and not unduly discriminatory and preferential.³³ IECG asserts that this matter represents “another instance of New England’s syndrome of failing to support necessary natural gas infrastructure development while seeking to apply yet another quick fix or “patch” to the markets.” IECG argues that the FERC should use the proceeding to develop a permanent solution to “New England’s lack of adequate infrastructure” or “direct ISO-NE to undertake an actual long-term feasibility study to identify solutions to the transmission constraints in the region.”³⁴

²⁵ *Id.* at 15.

²⁶ FirstLight Comments at 2.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 11.

³⁰ *Id.*

³¹ *Id.* at 11-12.

³² *Id.* at 12.

³³ IECG Comments at 2.

³⁴ *Id.* at 2-4.

IECG's Comments also criticize the proposed COS Agreement for socializing Mystic 8 & 9 operating costs across the ratepayers of the entire New England region.³⁵ IECG asserts that cheaper and longer-term solutions exist, such as a regional gas pipeline or the reinstitution of ISO-NE's winter reliability and fuel security planning process.³⁶

IECG argues that the COS Agreement "undermines the competitive marketplace by establishing a must-run lack of cost incentive for Exelon based on the possibility that the market will not fill the void that Exelon's departure could create."³⁷ Further, IECG's Comments suggest that the approach taken by the ISO will set a precedent for aging generation assets in the future.³⁸ IECG urges the FERC to pursue alternative, longer-term solutions to address fuel security issues.³⁹

MA AG. The Massachusetts Attorney General ("MA AG") argues that the COS Agreement would result in unjust and unreasonable rates. First, the MA AG argues that the COS Agreement proceeding should be considered jointly with the ISO-NE Waiver Request proceeding and the Exelon waiver request in RP18-806.⁴⁰ Second, the MA AG argues that Mystic's requested rate of return ("ROE"), based on a return on equity of 10.26%, is too high and inconsistent with FERC precedent.⁴¹ Third, the MA AG argues that Mystic fails to justify its proposed \$181.6 million in capital expenditures, comprised of \$99.4 million in capital expenses included in gross plant and \$82.8 million to be incurred during the term of the COS Agreement.⁴² Finally the MA AG argues that Mystic has not provided sufficient information to determine whether the cost-of-service rate is properly calculated.⁴³ The MA AG suggests that "[t]hese concerns and the 'unique' nature of this proceeding coupled with the issues and concerns raised in the associated waiver petitions in Dockets ER18-1509 and RP18-806, warrant setting this proceeding for settlement judge procedures to allow parties to conduct the discovery and negotiations necessary to better understand and resolve concerns raised by the proposed [COS] Agreement."⁴⁴

³⁵ *Id.* at 4.

³⁶ *Id.* at 4-5.

³⁷ *Id.* at 5.

³⁸ *Id.*

³⁹ *Id.* at 6-8.

⁴⁰ MA AG Comments at 2-3. In Docket No. RM18-806, ENGIE Gas & LNG LLC and Exelon jointly request a temporary and limited waiver of FERC's capacity release regulations and related natural gas pipeline transportation policies to facilitate the assignment and permanent release of several long-term firm natural gas transportation agreements at existing rates to Exelon, or an affiliate to be designated by Exelon, as part of the sale of the Distrigas Facility to Exelon.

⁴¹ *Id.* at 3, 7-11.

⁴² *Id.*

⁴³ *Id.* at 3, 13-21.

⁴⁴ *Id.* at 3.

MPUC. The Maine Public Utilities Commission (“MPUC”) comments adopt the positions articulated by the New England States Committee on Electricity (“NESCOE”) (*see below*).⁴⁵ The MPUC requests that the FERC (i) find that the COS Agreement has not been shown to be just and reasonable and (ii) set the COS Agreement for hearing and settlement judge procedures.⁴⁶

National Grid. National Grid USA (“National Grid”) on behalf of its subsidiaries,⁴⁷ states that New England is facing a “fuel security crisis which exposes the region’s customers to reliability risks and unacceptably high wholesale energy prices due to the lack of adequate natural gas infrastructure to supply the gas-fired electric resources which are a large percentage of the region’s generation fleet and generate a significant portion of the region’s electricity.”⁴⁸ National Grid states that it supports market mechanisms and infrastructure development over out-of-market solutions, such as COS agreements, which should only be used as a stop-gap measure.⁴⁹ National Grid supports ISO-NE’s conclusion that there is a short-term need for this COS Agreement but urges the Commission to closely review the terms of the proposed agreement.⁵⁰ The National Grid identifies specific components of the filing that must be scrutinized, including: provisions related to capital expenditures, incentives for third-party sales of LNG, costs related to the Distrigas Facility, the proposed ROE, and the proposed settlement timeline.⁵¹ National Grid notes that the filing did not address cost allocation and urges the FERC to condition approval of the COS Agreement on a cost allocation method that is just and reasonable and consistent with FERC precedent.⁵²

NEPGA. In its limited protest, the New England Power Generators Association (“NEPGA”) argues that certain proposed variations from the *pro forma* cost-of-service agreement and certain terms of the FSA may cause uncompetitive Energy Market pricing. NEPGA further argues, consistent with the NEPGA Complaint, that treating Mystic 8 & 9 as price takers in FCAs 13 and 14 would cause unjust and unreasonable price suppression in the capacity auction. NEPGA therefore requests that the FERC order modifications to the COS Agreement to prevent “these adverse wholesale market outcomes.”

NESCOE argues, at highest level, that the proposed COS Agreement has not been shown to be just and reasonable, and requests that the FERC set this matter for hearing and settlement judge procedures. More specifically, NESCOE contends that the following aspects of the proposed COS Agreement have not shown to be just and reasonable: (1) Exelon’s proposed costs for the

⁴⁵ MPUC Comments at 1.

⁴⁶ *Id.* at 2.

⁴⁷ The National Grid subsidiaries are Massachusetts Elec. Co., Nantucket Elec. Co., Narragansett Elec. Co., New England Power Co., and National Grid Algonquin LLC.

⁴⁸ National Grid Comments at 1, 6.

⁴⁹ *Id.* at 1-2, 10.

⁵⁰ *Id.* at 1-2, 6-10.

⁵¹ *Id.* at 8-10.

⁵² *Id.* at 10.

contract effective period, including proposed AFRR for Mystic 8 & 9, the monthly fuel costs for the Distrigas Facility, and the proposed stipulated variable costs; and (2) the modified *pro forma* cost-of-service agreement. NESCOE also questions whether the FSA as structured is just and reasonable, and request careful examination of the proposed capacity performance payments/penalties and the proposed winter fuel security penalty included in the Exelon filing. Finally, NESCOE urges the FERC ensure that the scope of the proceeding be broad enough to permit in this docket close scrutiny of the proposed two-year contract term, Exelon's future capital expenditures, and the whole COS Agreement, not just the modified terms of ISO-NE's *pro forma* cost-of-service agreement.

New England LDCs emphasize the importance of the Mystic units to the region, but also address the Distrigas Facility and its importance to the New England region. The New England LDC argue that, “[t]he absence of any meaningful discussion of the future of the [Distrigas Facility] in either of the proceedings creates a misimpression that continued operation and availability of the [Distrigas Facility] is not relevant in these proceedings regarding continued operation of the Mystic units.”⁵³ The New England LDCs assert that the FERC’s decisions in these proceedings could have impacts beyond the Mystic units. Accordingly, they request that the FERC condition its acceptance of the COS Agreement on Mystic providing assurance that in the event Exelon or any of its affiliated entities acquires the Distrigas Facility: (1) existing agreements to, from and related to the Distrigas Facility will continue to be honored; (2) the Distrigas Facility will not diminish its important historical role as part of the gas industry; (3) clarification that any informational filing regarding revisions to the FSA for the Distrigas Facility as contemplated by the COS Agreement must be served upon all parties to this proceeding; and (4) within a reasonable time period prior to any future retirement of the Mystic units, Mystic will work with ISO-NE and stakeholders, including the New England LDCs, in a good faith attempt to develop a longer-term plan for continued availability of the Distrigas Facility.⁵⁴ Further, the New England LDCs request that “if the Commission establishes further procedures such as hearing and/or settlement judge procedures, … that the Commission direct that issues regarding the continued availability of the [Distrigas Facility], at least during the term of the [COS] Agreement and optimally beyond that term, are within the scope of this proceeding.”⁵⁵

NextEra. NextEra Energy Resources (“NextEra”) argues that several aspects of the proposed COS Agreement are not just and reasonable, or are unduly discriminatory or preferential. Accordingly, NextEra requests that the FERC direct Exelon and ISO-NE to revise the proposed Agreement to: (i) require that Mystic 8 & 9 capacity be bid into the FCA based on the cost of those units, to avoid price suppressive effects in the FCM; (ii) provide that all margin from third-party gas sales be credited against fuel supply costs recovered under the COS Agreement; (iii) ensure that Energy and Ancillary Service bids by Mystic 8 & 9 are not mitigated below cost-based levels; (iv) include only the one-year standard term provision found in the ISO-NE *pro forma* cost-of-service agreement; and (v) allow ISO-NE discretion to terminate the COS Agreement for a single Mystic generating unit after the initial term.

⁵³ New England LDCs Comments at 2-3.

⁵⁴ *Id.* at 3-4, 9-10.

⁵⁵ *Id.* at 4.

NHPUC. The New Hampshire Public Utilities Commission (“NHPUC”) supports NESCOE’s Comments in this proceeding (should the FERC grant the Tariff waivers requested in the ISO-NE Wavier Request proceeding)⁵⁶ and addresses two issues: (1) whether the full costs of an LNG import terminal with multiple customers can be legally recovered through a wholesale electricity tariff or rate schedule under the FPA, and (2) whether the costs of the COS Agreement should be allocated to customers throughout the region or on a more limited basis.⁵⁷ The NHPUC “believes there is a significant question whether the full costs of an LNG import terminal with multiple customers can be legally recovered through a wholesale electricity tariff or rate schedule under the FPA.”⁵⁸ The NHPUC opines that the FPA “does not give the Commission authority to regulate the rates of LNG terminals or other natural gas supply or storage facilities, nor to have the costs of such terminals or facilities included in rates charged to wholesale or retail electricity customers.”⁵⁹ Addressing cost allocation, the NHPUC suggests that, to the extent that issue is determined in this proceeding, costs of the COS Agreement should be allocated to the one or more New England states whose strict environmental mandates are found to prevent ISO-NE’s Pay-for-Performance mechanism from mitigating regional fuel security risks, rather than having those costs regionally “socialized.”⁶⁰

NRG. The NRG Companies (“NRG”) argue that Exelon has not demonstrated that the requested rate in the COS Agreement is just and reasonable.⁶¹ NRG requests the FERC suspend the filing, subject to the outcome of a settlement process or evidentiary hearing.⁶² NRG urges the FERC to scrutinize the data and assumptions reflected in the filing “to ensure that no greater than the necessary costs are given to [Exelon] to procure fuel security and that the costs being presented are strictly to support the rate years.”⁶³ Further, NRG argues that the FERC should require that Exelon and the Distrigas Facility pay back any funds received under the COS Agreement if Mystic 8 or 9 or Distrigas continue in operation past the end of the cost-of-service period.⁶⁴

Repsol. Repsol Energy North America Corporation (“Repsol”) argues that, should the COS Agreement be approved, it may result in “the subsidization of third-party sales by the [Distrigas Facility], … and as a result, competitively disadvantage other LNG suppliers in the region, including [Repsol].”⁶⁵ While Repsol does not object to Exelon exercising its right to seek cost-of-service recovery, it argues that the COS Agreement should be found unjust and unreasonable

⁵⁶ NHPUC Comments at 1.

⁵⁷ *Id.* at 1-2. (Footnote omitted.)

⁵⁸ *Id.* at

⁵⁹ *Id.* at 3.

⁶⁰ *Id.* at 4.

⁶¹ NRG Comments at 2, 6-8.

⁶² *Id.* at 2-3, 8-13.

⁶³ *Id.* at 3.

⁶⁴ *Id.*

⁶⁵ Repsol Comments at 2.

to the extent it would subsidize the Distrigas Facility gas sales to third parties, and adjusted to avoid such subsidization.⁶⁶

Verso. Verso Corporation (“Verso”) opposes the COS Agreement and argues that the FERC should reject the filing. Further, Verso argues that, to the extent that the FERC allows Mystic 8 & 9 to continue operating, the FERC should at least reject Exelon’s request to recover from ratepayers the full costs that its affiliate, Constellation LNG, incurs to operate the Distrigas LNG Facility.⁶⁷ Verso argues that the FERC should let both Mystic and Distrigas retire, but if continued operation is permitted, to direct the parties in settlement to develop a less expensive solution to meeting Mystic’s natural gas needs.⁶⁸

II. NEPGA Complaint (EL18-154)

NEPOOL. While NEPOOL takes no position on the merits of the market reforms advocated by NEPGA, NEPOOL opposes the NEPGA Complaint at this time solely on procedural grounds. Because NEPGA did not present its proposed Market Rule remedy to NEPOOL for consideration prior to filing its Complaint, NEPOOL has not yet had the opportunity to fully consider, or take any position on, the substance, or the potential market implications of, that proposal. Accordingly, until the proper NEPOOL stakeholder process is completed, NEPOOL urges the FERC to dismiss the NEPGA Complaint without prejudice to it being re-submitted following consideration of NEPGA’s requested relief in the NEPOOL process.

ISO-NE requests that the FERC dismiss the NEPGA Complaint as procedurally improper because (1) the FERC does not consider complaints that are contingent on the outcome of other proceedings; and (2) the NEPGA Complaint does not meet the requirements of Section 206 of the FPA because it does not take issue with any existing Tariff provision.⁶⁹ If the NEPGA Complaint is not dismissed on procedural grounds, ISO-NE argues that it should be rejected because NEPGA did not show that the resulting rates in FCAs 13 and 14 would be unjust and unreasonable.⁷⁰ Finally, ISO-NE argues that, if the NEPGA Complaint is not dismissed or rejected, the FERC must reject the proposed remedy. “Contrary to NEPGA’s claims, its proposal is not at all similar to the ‘CASPR’ mechanism approved by the Commission earlier this year . . . In fact, NEPGA’s instant proposal would differ in several critical ways from the CASPR mechanism, and these differences would lead NEPGA’s proposal to be ineffective at best. At worst, it will also introduce new problems that would undermine the FCM more broadly.”⁷¹

⁶⁶ *Id.* at 3-7.

⁶⁷ Verso Comments at 1.

⁶⁸ *Id.* at 4-5.

⁶⁹ ISO Answer at 2-3, 5-9.

⁷⁰ *Id.* at 3, 5-9.

⁷¹ *Id.* at 3-4, 9-24.

The ISO Answer urges the FERC not to direct any specific solution by a near-term compliance deadline, but rather allow the ISO to address the issue in a way that avoids unintended consequences, permits assessment of the market impacts of retaining such resources, and permits careful analysis and balancing of auction mechanics, economic incentives, and software development requirements associated with any possible solution.⁷² The ISO specifically requests that the FERC allow “the full New England Power Pool stakeholder process so that the potential solution can be properly vetted by all interested participants.”⁷³

CT Parties. CT Parties⁷⁴ protest the NEPGA Complaint, stating that the NEPGA Complaint is not well-founded and that the FERC should reject the NEPGA request for immediate action to remedy potential price suppression.⁷⁵ CT Parties state that the ISO-NE Tariff provides for units retained for reliability to be price takers in the FCM and that the NEPGA requested remedy if granted would harm consumers.⁷⁶ The CT Parties argue that the NEPGA Complaint is based on speculation about what might happen in the market and therefore is not ripe for adjudication.⁷⁷ They contend that NEPGA has failed to show that the rate or practice in question is unjust, unreasonable, unduly discriminatory, or preferential.⁷⁸ They further argue that the FERC has already ruled on the participation of RMR resources in the FCM and that the participation of the Mystic units as price takers is consistent with FERC-approved rules.⁷⁹ Additionally, they argue that a lower rate in the FCM does not equate to unlawful price suppression.⁸⁰ The CT Parties view the remedy sought by NEPGA as one that would lead to duplicative charges to consumers and unjust and unreasonable rates.⁸¹

ENE COS. ENE COS urge the FERC to deny the NEPGA Complaint.⁸² They argue that NEPGA failed to carry its Section 206 burden to show that any existing rules or practices are unjust, unreasonable, unduly discriminatory, or preferential.⁸³ ENE COS argue further that the NEPGA Complaint is an improper collateral attack on prior FERC orders accepting ISO-NE’s

⁷² *Id.* at 4, 9-24.

⁷³ *Id.*

⁷⁴ “CT Parties” are, collectively, the Connecticut Public Utilities Regulatory Authority, the Connecticut Department of Energy and Environmental Protection, and the Connecticut Office of Consumer Counsel.

⁷⁵ CT Parties Protest at 1-2.

⁷⁶ *Id.* at 2-3.

⁷⁷ *Id.* at 4-5.

⁷⁸ *Id.* at 5.

⁷⁹ *Id.* at 6-7.

⁸⁰ *Id.* at 8-10.

⁸¹ *Id.* at 10-13.

⁸² ENE COS Protest at 2,12.

⁸³ *Id.* at 2, 7-10.

rules on de-list bids in the FCM.⁸⁴ ENECOS also contend that the NEPGA Complaint is an improper attempt to circumvent the FERC-approved NEPOOL stakeholder process.⁸⁵ Finally, ENECOS state that the “most salutary function served by the NEPGA Complaint, viewed in its proper context, is to remind the FERC that bad ideas, such as ISO-NE’s ‘waiver’ request in Docket No. ER18-1509-000, tend to beget other bad ideas, such as NEPGA’s Complaint.”⁸⁶

EPSA. EPSA argues that the proposed waiver is not justified at this time, but if the FERC grants ISO-NE’s requested waivers, the relief sought in NEPGA’s complaint would “minimize the harm to other generators and help to preserve their opportunity to earn just and reasonable rates.”⁸⁷ EPSA emphasizes its concerns related to price suppression impacts of a cost-of-service agreement stating, “[t]he record before the Commission and Commission precedent recognizing the detrimental effects of artificial price suppression, and the need to protect markets from such suppressive mechanisms, is vast and compelling.”⁸⁸ EPSA’s Comments suggest that artificially low capacity prices may exacerbate fuel security concerns raised by the ISO and may lead to premature retirements.⁸⁹ EPSA supports NEPGA’s “CASPR-like approach” and requested the FERC grant NEPGA’s Complaint.⁹⁰

Eversource. Eversource argues that the NEPGA Complaint should be dismissed because “NEPGA fails to meet its burden of proof under Section 206 of the FPA by failing to show that any existing tariff provision under the ISO-NE Tariff is unjust and unreasonable and that its proposed alternative provision is just and reasonable.”⁹¹ Eversource argues further that the ISO Tariff already allows the ISO to retain units for reliability and that it should not matter whether the reliability need for retention stems from transmission security or fuel security reasons.⁹² Eversource opines that the ISO had justified in the Waiver Request proceeding that the FERC grant the waivers,⁹³ and FERC precedent allows for approval of RMR agreements even in the face of market suppression concerns raised in the NEPGA Complaint.⁹⁴ Eversource contends that NEPGA’s proposed changes to the ISO-NE Tariff are unjust and unreasonable, because: (1) they would adversely impact customers by causing ISO-NE to procure more capacity than is needed; and (2) additional capacity procurement would unnecessarily raise capacity prices to the detriment of customers.⁹⁵ Eversource reiterates its concerns expressed in related proceedings

⁸⁴ *Id.* at 11.

⁸⁵ *Id.* at 12.

⁸⁶ *Id.* at 3.

⁸⁷ EPSA Protest at 2.

⁸⁸ *Id.* at 3.

⁸⁹ *Id.* at 4-5.

⁹⁰ *Id.* at 5-6.

⁹¹ Eversource Comments at 2.

⁹² *Id.* at 9.

⁹³ *Id.* at 10.

⁹⁴ *Id.* at 11.

⁹⁵ *Id.* at 14.

that there is an urgent fuel security/reliability issue facing New England that should be addressed on a long-term basis rather than through more RMR or COS agreements.⁹⁶ Eversource argues again that “fuel security RMRs are best addressed and replaced by providing fuel security via incremental natural gas infrastructure.”⁹⁷

National Grid. National Grid opposes the NEPGA Complaint. “[B]y eliminating the ability of the Mystic units to participate in the FCA as price takers during the period when New England customers pay the costs of those units, capacity prices will be raised to levels that are likely to be unjust and unreasonable.”⁹⁸ National Grid repeats its comments made in the other, related proceedings that electric reliability issues are best addressed through efficient wholesale markets supported by a robust delivery infrastructure rather than relying on out-of-market mechanisms such as COS agreements.⁹⁹

NESCOE. NESCOE asks the FERC to reject the NEPGA Complaint on both procedural and substantive grounds.¹⁰⁰ NESCOE argues that the Complaint does not meet the FERC’s procedural requirements for a Section 206 complaint¹⁰¹ because it does not specify which market rule it is challenging.¹⁰² Separately, NESCOE asserts that NEPGA failed to substantively carry its Section 206 burden because its claims are speculative and its argument rests on a flawed premise that is divorced from FERC precedent and FCM design.¹⁰³ Citing a series of recent cases concerning the New York ISO, NESCOE argues that, “[c]ontrary to artificially lowering capacity market prices, the treatment of resources retained for fuel security as price takers is an economic, competitive outcome and entirely consistent with Commission precedent.”¹⁰⁴ NESCOE goes on to caution the FERC against the assertion that lower prices in recent competitive forward capacity auctions are a result of buyer market power or blanket claims of price suppression. NESCOE instead argues that, “[t]he auctions ...have achieved the objective of attracting investment, as evidenced by the participation of new resources and clearing of excess capacity in the recent auctions.”¹⁰⁵ NESCOE goes on to criticize the NEPGA analysis as “fundamentally flawed”.¹⁰⁶ NESCOE concludes, urging the FERC to reject NEPGA’s Complaint or to decline to adopt NEPGA’s proposed remedy.¹⁰⁷ and also to deny NEPGA’s

⁹⁶ *Id.* at 17-18.

⁹⁷ *Id.* at 19.

⁹⁸ National Grid Comments at 4.

⁹⁹ *Id.*

¹⁰⁰ NESCOE Protest at 2.

¹⁰¹ *Id.* at 2, 8-9.

¹⁰² *Id.*

¹⁰³ *Id.* at 2, 9-25.

¹⁰⁴ *Id.* at 2, 18-25.

¹⁰⁵ *Id.* at 3.

¹⁰⁶ *Id.* at 3, 25-29.

¹⁰⁷ *Id.* at 3-4.

request for fast-tracking processing¹⁰⁸ given the magnitude of the requested relief and its resulting wide-ranging and substantial consumer and market consequences.¹⁰⁹

III. ISO-NE Waiver Request Proceeding (ER18-1509) Answers & Supplemental Comments

Comments on ISO-NE's Waiver Request were filed by nearly 40 parties and were separately summarized in a [May 30 memo](#), included with the materials that were circulated and posted for the June 1 meeting. Responsive pleadings have since been filed by NEPOOL, ISO-NE, Exelon, NEPGA and Algonquin.

NEPOOL. NEPOOL submitted a limited answer urging the FERC to reject any requested relief that may either (i) short circuit the proposed stakeholder processes (which are now underway) for exploration of potential longer-term market-based solutions to address fuel security challenges in New England or (ii) bypass the FERC-approved NEPOOL stakeholder process for changes to the ISO-NE Tariff.

ISO-NE first responded to those pleadings that suggested the ISO's analysis of the need to retain the Mystic units was flawed, asserting that it had carefully evaluated the impacts of the retirement of the Mystic Units under a broad range of circumstances and assumptions. Even under optimistic assumptions, the ISO argued, the results are unacceptable.

Second, the ISO responded to comments suggesting that the Waiver Request was premature and/or that the region has time to develop an alternative approach and can wait to retain the Mystic Units. The ISO argues that there are no viable alternatives to the COS Agreement and the Mystic Units may become unavailable absent the COS Agreement.

Third, the ISO responds to comments raising concerns rooted in market design principles. The ISO argues that such issues are not directly implicated by the Waiver Request and are better suited for evaluation through the ongoing stakeholder processes.

Fourth, the ISO responds to procedural arguments, including those suggesting that the Waiver Request was inappropriate (MA AG, NextEra), components of the waiver were missing (FirstLight, NEPGA, NH PUC, MA AG), that the term of the COS Agreement was too long (Dynegy/Vistra, EPSA, NextEra), and that the scope of the Waiver Request was too broad (MA AG).

Algonquin. Algonquin responds to the motion to intervene out-of-time and comments of Potomac Economics (the "EMM"). Algonquin supports the EMM's request to have the FERC direct the ISO to change its Tariff to develop and implement measures that incentivize fuel supply procurement, but disagrees with the assertion that a prompt seasonal product alone will fully address the critical fuel supply issues facing New England.¹¹⁰

¹⁰⁸ *Id.* at 4, 29-31.

¹⁰⁹ *Id.*

¹¹⁰ Algonquin Supplemental Comments at 3-4.

Algonquin also compares the proposed COS Agreement with the proposal to prevent the retirement of coal and nuclear plants discussed in “recently leaked Department of Energy memorandum.”¹¹¹ Algonquin argues that “[e]ach may provide short-term relief to address a specific concern, but none address the real problems with grid resiliency that are specific to New England. The Commission, the ISO-NE, and regional stakeholders need to remain vigilant in their efforts to address New England’s imminent fuel security challenges on a long-term basis and implement responsive measures accordingly.”¹¹² Algonquin requests that the FERC direct the ISO and regional stakeholders to develop a funding mechanism that will allow the long-term commitments to expand natural gas transportation capacity into New England.¹¹³

Exelon. Exelon responds to arguments that fuel security problems can be addressed after Mystic’s retirement deadline passes. Exelon asserts that those claims are unrealistically speculative. Exelon avers that, rather than speculative market outcomes, the COS Agreement would be able to meet the region’ reliability need. Exelon also argues that the Waiver Request satisfies the FERC’s standard for waiver. Finally, Exelon asserts that, while not a market solution, the Waiver Request is the best available solution to an existing and serious problem.

NEPGA responds to those parties asking the FERC to condition any approval of the Waiver Request on Mystic 8 & 9 being entered into the relevant FCAs as price takers. NEPGA references the arguments in its Complaint in Docket No. EL18-154, arguing that treating Mystic 8 & 9 as price-takers in FCA 13 and FCA 14 would unjustly and unreasonably suppress capacity market clearing prices.

¹¹¹ *Id.* at 7.

¹¹² *Id.*

¹¹³ *Id.* at 8.