UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

NextEra Energy Resources, LLC,	)	
PSEG Companies,	)	
	)	
Complainants	)	
	)	
v.	)	**Docket No. EL16-93-000**
	)	
ISO New England Inc.	)	
	)	
Respondent	)	

MOTION TO DISMISS COMPLAINT, TO SUSPEND THE DUE DATE FOR ANSWERS TO THE COMPLAINT AND OPPOSITION TO FAST-TRACK PROCESSING

Pursuant to Rule 212[1] of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or "Commission"), ISO New England Inc. (the "ISO")[2] hereby files this motion to dismiss (the "Motion to Dismiss") the complaint filed by NextEra Energy Resources, LLC and PSEG Companies ("NextEra/PSEG") in the above-captioned docket (the "Complaint").

The Complaint claims that the outcome of certain state and FERC matters could eventually result in distorted energy prices in the New England region. However, because the proceedings and actions that NextEra/PSEG assert will produce that result are merely pending at this time, the Commission must apply its longstanding precedent to dismiss the Complaint as unripe. Quite simply, the allegations of potential harm are premature, speculative and unsupported. The Complaint also fails to meet the requirements of Section 206(a) of the Federal Power Act, as it fails to demonstrate that any provisions of the ISO's existing Tariff are unjust and unreasonable at the present time. Instead, the Complaint is based on unsupported allegations that are contingent on a number of future events.

[1] 18 C.F.R. § 385.212 (2015).
[2] Capitalized terms not otherwise defined herein have the meanings ascribed thereto in the ISO New England Inc. Transmission, Markets and Services Tariff (the "Tariff").

To facilitate consideration of the Motion to Dismiss, the ISO moves for the adoption by the Commission of the following procedural measures:

- Suspend the date for answers to the Complaint pending a ruling on this Motion to Dismiss. [3] For the reasons explained below, the ISO requests that the Commission issue an Order suspending the date for answers by no later than **July 1, 2016.**
- Deny the request for Fast-Track Processing.

If the Commission denies the Motion to Dismiss, the ISO requests that the Commission postpone the date upon which an answer to the Complaint would otherwise be due to no less than 20 days after the Commission ruling.

I. BACKGROUND

State regulators in Massachusetts, New Hampshire, Connecticut and Rhode Island are in various stages of considering whether to approve contracts by Electric Distribution Companies ("EDCs") to buy incremental pipeline capacity. As detailed in the Complaint, the Massachusetts Department of Public Utilities ("MADPU") and the New Hampshire Public Utilities Commission ("NHPUC") are in the process of considering contracts filed by EDCs to purchase firm pipeline capacity on Algonquin Gas Transmission, LLC's ("Algonquin") Access Northeast Project (the "ANE Project").[4] In Massachusetts, parties have challenged whether the MADPU has the authority to approve the precedent agreements. That issue is currently pending before the Massachusetts Supreme Judicial Court.[5] According to the Complaint, these capacity purchases by the EDCs would enable the ANE Project to be built.[6]

The ANE Project is in the pre-filing process at the Commission in Docket No. PF16-1-000. Upon completion of the pre-filing review, Algonquin states that it will file a

[3] In this Motion to Dismiss, the ISO does not take a position on the assertions in the Complaint. However, the ISO has repeatedly stated that New England is increasingly reliant on natural gas and that the pipeline delivery system is increasingly constrained and that natural gas infrastructure improvements are needed. See, 2016 Regional Electricity Outlook at 14: http://www.iso-ne.com/static-assets/documents/2016/03/2016_reo.pdf ; 2015 Regional System Plan at 140-141: http://www.iso-ne.com/system-planning/system-plans-studies/rsp

[4] Complaint at 1.

[5] *Engie Gas & LNG LCC v. Dept. of Public Utilities*, Docket No. SJC-12051.

[6] Complaint at 1 and 8.

certificate application with the Commission under Section 7(c) of the Natural Gas Act. In addition to approval from the Commission, the project will need state approvals.

On February 19, 2016, in Docket No. RP16-618-000, Algonquin filed proposed tariff provisions with the Commission that would enable EDCs who purchase firm capacity from Algonquin to release that capacity through state-regulated electric reliability programs for use by gas-fired generators. Because the capacity would be released directly to gas-fired generators, Algonquin sought a waiver of the Commission's bidding requirements for capacity releases. Several parties, including NextEra and PSEG, have protested Algonquin's proposed waiver of the Commission's capacity release provisions. The waiver request is pending before the Commission.[7]

On June 24, 2016, NextEra/PSEG filed the Complaint against the ISO. The Complaint argues that if the pending state and federal matters discussed above are resolved in a certain way, the effect will be to suppress wholesale energy prices in the ISO New England region. Specifically, NextEra/PSEG allege that the combination of several inchoate possibilities could result in depressed wholesale energy prices in New England, including: a future possible approval of the EDC contracts by the states; a future possible Commission approval of Algonquin's capacity release waiver and release of that capacity directly to generators at below market rates; and a future possible approval and construction of the ANE Project. As a remedy for the potential impact of the inchoate possibilities, NextEra/PSEG request that the Commission direct the ISO to develop a "prophylactic" tariff fix.[8] As discussed below, NextEra/PSEG's allegations of potential harm are premature and speculative and should be dismissed by the Commission.

II. MOTION TO DISMISS

The ISO respectfully requests that the Commission dismiss the Complaint because it is not ripe for adjudication and is premature and speculative.

A. THE ALLEGATIONS OF HARM IN THE COMPLAINT ARE PREMATURE AND SPECULATIVE

[7] The Commission issued on an Order accepting and suspending the tariff provisions and establishing a technical conference. *Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,269 (2016).
[8] Complaint at 6 and 12.

The alleged harm in the Complaint is based on the outcome of several contingent future events that may never occur. While the focus of the Complaint is on the potential approval of the EDC contracts by the states, the Complaint acknowledges that a number of other matters would also need to be resolved for the alleged harm in the Complaint to occur. First, the states have not approved the precedent agreements that would allow the EDCs to purchase firm pipeline capacity on the ANE Project. In fact, in Massachusetts, the issue of whether the MADPU even has the authority to approve those contracts is on appeal. Second, the Commission has not ruled on Algonquin's proposed waiver from the Commission's capacity release regulations that would allow the EDCs to directly release capacity to gas-fired generators. Finally, the ANE Project has not received the necessary federal and state permits, including a certificate under Section 7 of the Natural Gas Act from the Commission to move forward. Until all of these conditions occur, the NextEra/PSEGs' price suppression concerns are nothing but pure speculation and there is no issue for the Commission to consider.

The ripeness doctrine is intended to "prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements."[9] The Commission routinely dismisses complaints when they are only based on perceived threats. For example, the Commission dismissed as unripe a complaint filed against the California Independent System Operator Corporation ("CAISO") alleging CAISO's interpretation of its Generator Interconnection Procedures and provisions of its pro forma Large Generator Interconnection Agreement ("LGIA") were unjust and unreasonable.[10] Specifically, the complaint alleged that

[9] *See* Abbott Laboratories v. Gardner, 387 U.S. 136, 148 (1967).

[10] *CSOLAR IV South, LLC v. Cal. Indep. Sys. Operator Corp*., 142 FERC ¶ 61,250 at P 47 (2013) ("CSOLAR IV."); *citing., Louisiana Pub. Serv. Comm'n v. Entergy Corp. et al*., 132 FERC ¶ 61,104 (2010) (dismissing complaint as premature and not ripe for Commission consideration) *Tatanka Wind Power, LLC v Montana-Dakota Utilities Co.,* 132 FERC ¶ 61,103 (2010) (dismissing complaint as premature where Petitioner sought reimbursement for network upgrades not yet built). *See also, Wis. Pub. Serv. Corp. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,277, at P 25, *order on clarifications*,115 FERC ¶ 61,185 (2006) (rejecting as premature complaint seeking to compel Midcontinent Independent System Operator, Inc. and PJM to develop a joint and common market, indicating that the Commission had left the details of how such a market would be developed to the regional transmission organization and its stakeholders); *Hot Spring Power Co. v. Entergy Ark., Inc.*, 119 FERC ¶ 61,277, at P 15 (2007) (dismissing as premature a complaint asking that Entergy be obliged to reclassify certain facilities under an Interconnection Agreement, on the basis that the Entergy Independent Coordinator of Transmission was still in the process of reviewing and reclassifying facilities on the Entergy system); *High Prairie Pipeline, LLC, v. Enbridge Energy, Ltd. P'ship*, 149 FERC ¶ 61,004, at P 22 (2014) (dismissing a complaint regarding the justness and reasonableness of terms of service before terms were known).

CAISO interpreted its interconnection procedures as allowing CAISO to terminate the entirety of an interconnection request where a portion of the project is not constructed, even if another portion of the project is under construction or in operation.[11] The complaint requested that the Commission find that CAISO is not permitted to seek termination of an interconnection request under those circumstances. In response, CAISO argued that the complaint is improperly based on not what the CAISO has done, but what might happen at some point in the future. As such, CAISO requested that the Commission dismiss the complaint for lack of ripeness as the "cause of action is predicated on the outcome of contingent future circumstances."[12]

The Commission dismissed the complaint, finding that it is "not ripe for review, and that a Commission order granting the relief…sought would be injunctive relief or an advisory opinion..."[13] Further, the Commission stated that it would not "impose a broad market-wide solution based on the perceived inchoate 'threat' raised in the Complaint."[14]

Similarly, the NextEra/PSEG Complaint is based on pure speculation. None of the contingent future circumstances cited in the Complaint have occurred. The Complaint is essentially seeking an advisory opinion from the Commission with respect to potential future actions. The Commission should apply its precedent and reject the Complaint as premature rather than speculate about future actions that may or may not occur and potential outcomes based on those actions.

B. NEXTERA/PSEG'S ARGUMENT THAT THE COMMISSION NEEDS TO ACT NOW IS CONTRADICTORY AND UNSUPPORTED

NextEra/PSEG claim that the Commission should act expeditiously "because once the [MADPU] approves the EDC contracts, which is expected by the end of this year, potentially by October, it may be difficult or even impossible to unwind the mess that will result."[15] The ISO takes no position on whether the MADPU should approve the EDC contracts or the timing of that decision. NextEra/PSEG fail to mention, however, that the issue of whether the MADPU has the authority to approve the contracts is currently under review by the Massachusetts Supreme Judicial Court. Further, approval of the EDC contracts is only part of the process that

[11] CSOLAR IV at P 1.
[12] *Id.* at P 24.
[13] *Id.* at P 45.
[14] *Id.* at P 47.
[15] Complaint at 44.

the NextEra/PSEGs claim will lead to suppression of market prices. As acknowledged by the Complaint, the EDCs would only be able to release the ANE capacity directly to gas-fired generators if the Commission approves Algonquin's waiver request in RP16-618-000 and the EDCs release the capacity at below market value.[16] The waiver request is currently pending in that proceeding.

Moreover, in order for the price suppression scenario alleged in the Complaint to be able to occur, the ANE Project would need to be built. The Complaint alleges that "[c]onstruction of additional pipeline capacity on a subsidized basis will…suppress[] markets by manipulating supply and demand mechanics."[17] But as acknowledged in the Complaint, the ANE Project is currently in pre-filing review process at FERC.[18] After completion of the pre-filing review, a certificate application will be filed at FERC. The ANE Project will require FERC and other federal and state regulatory approvals before being placed in service.

There is simply no need for urgent Commission action. All markets are replete with subsidies (federal, state and local) that could impact prices in the wholesale markets. If the Commission wishes to address this matter, it should do so in a comprehensive rulemaking process, not through a complaint. In fact, although the Complaint argues that the future outcomes it divines from the status of the pending proceedings should drive ISO Tariff changes because subsidies will distort New England electricity market outcomes, neither complainant is apparently willing to recognize the possibility of market distortions from the subsidies they currently receive. For example, PSEG received a state-subsidized contract from Connecticut almost ten years ago,[19] but complainants have

[16] Complaint at 1: "the EDCs would release the capacity at below market rates—first to gas-fired generators if the Federal Energy Regulatory Commission…supports this preference in a separate proceeding…"
[17] Complaint at 30.
[18] Complaint at 16.
[19] *DPUC Review of Peaking Generation Projects*, Connecticut Department of Public Utility Control, Docket No. 08-01-01, (June 25, 2008) at 41-45. ("The mandate of Conn. Gen. Stat. § 16-243a is that the peaking units operate at such times and at such capacity so as to reduce overall electricity rates for consumers. If the units follow the guidelines described below, the Department finds that the projects participation in the FCM and LFRM will meet this mandate." "All projects that sign contracts as part of this Decision will be required to bid the full contracted capacity of their units into and clear in the FCM and LFRM no later than the first period for which they are eligible based on the project's commercial operation date as indicated and approved in this proceeding. If there is any locational separation in the FCM, these projects must bid as Connecticut resources, unless otherwise ordered by the Department. The projects should be bid in a manner in which they do not set the clearing price in the FCM for a term of

not sought market rule changes through the New England stakeholder process – or Commission action – to counteract the possible market impact of that subsidy. Likewise, NextEra, by its own admission, is the largest wind generator in the country[20] and receives federal (and often state) subsidies for producing wind energy. To the ISO's knowledge, complainants have never sought tariff changes in any RTO or ISO market to counteract these subsidies. While admittedly these subsidies are different than the ones unreasonably and prematurely predicted in the Complaint, they are nevertheless subsidies which can be argued lead to a distortion of market prices.

Ironically, although the Complaint seeks to characterize the variety of measures now pending in state and federal proceedings as a justification for immediate action by the Commission – which it is not – the underlying issue of subsidies that could impact wholesale market prices has been pending for several years and is by no means "breaking news." NextEra/PSEG fail to explain, however, why they have not pursued the relief through the New England Power Pool ("NEPOOL") stakeholder process. Given their leading roles in the NEPOOL process, and despite the fact that this issue has been developing since at least April 2015 when the Massachusetts Department of Energy Resources petition[21] was filed, NextEra/PSEG never sought to address the future harm the Complaint alleges through the stakeholder process. While such action is not a prerequisite to a Section 206 complaint, it is patently absurd that NextEra/PSEG sat on their hands for over a year and now demand that the ISO address the issue in a ridiculously time constrained process.[22]

Furthermore, even if the Commission does see fit to ever entertain this Complaint (an action which the ISO strongly opposes), the rush to alleged justice that NextEra/PSEG

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only one year. In all subsequent FCM auctions, the units must bid in as price takers and cannot delist unless the Department so instructs the unit to bid in a different manner." *Id.* at 59.)

[20] NextEra Energy, *2015 Annual Report,* p. 6; http://www.nexteraenergy.com/pdf/annual.pdf

[21] *Investigation by the Department of Public Utilities on its own Motion into the means by which new natural gas delivery capacity may be added to the New England market, including actions to be taken by the electric distribution companies*, Massachusetts Department of Public Utilities, Docket No. 15-37, April 2, 2015.

[22] If the Commission were to require the process that NextEra/PSEG seeks (requiring an ISO filing 90 days from the date of Commission action), the ISO would not have any time to engage with stakeholders to design solutions and draft tariff language as the Complaint urges. Furthermore, other critical market design issues that stakeholders and the ISO currently consider high priorities will come to a screeching halt as the personnel who are currently involved in those efforts will of necessity be diverted to work solely on a substantive response to the Complaint's request.

seeks is unwarranted. By the admission in the first sentence of the Complaint, the alleged harm is the "artificially suppress[ion] of prices in wholesale energy markets in New England."[23] At the absolute earliest, the impact in the energy market couldn't occur until the date by which the pipeline and LNG facilities will be completed (projected for is the fourth quarter of 2018).[24]

Finally, the Complaint's assertions on the timing of the next Forward Capacity Auction ("FCA") as a basis for immediate action are fatally flawed. The Complaint argues that, to be effective, the requested relief must be in place before the eleventh FCA ("FCA 11") is held in February 2017. There are two reasons why FCA 11 cannot serve as a driver for Commission action on the Complaint. First, the Complaint asserts that it is price suppression in the energy market that is the harm to be addressed and only in its "proposed solutions" does NextEra/PSEG focus on the capacity market. Indeed, if energy prices are suppressed then capacity prices would actually be higher to offset the reduced energy revenues. Second, the demand curves for FCA11 are already set; actual bids from new entry or already submitted delist bids-not the administratively established Cost Of New Entry as the Complaint alleges-will set the capacity market clearing price.

III. REQUEST FOR SUSPENSION OF THE JULY 14, 2016 ANSWER DATE

In a notice issued on June 27, 2016, the Commission established July 14, 2016 as the date by which answers to the Complaint are due. The ISO respectfully requests that the Commission suspend that date until after the Commission acts on the ISO's Motion to Dismiss. *See* 18 C.F.R. § 385.2008(a) "the time by which any person is required or allowed to act under any statute, rule, or order may be extended by the decisional authority for good cause, upon a motion made before the expiration of the period prescribed…" Good cause for postponing the July 14 answer date is present here. The ISO has moved to dismiss the Complaint as premature, speculative and unsupported. As the need for an answer to the Complaint would be rendered moot if the Commission grants the ISO's motion, there is no reason for the ISO (or other parties) to submit an answer until the Commission rules on the ISO's motion. Additionally, as explained in this pleading, there is no urgent need to act on the Complaint. Given that the Commission has

[23] Complaint at 1.
[24] Complaint at 15-16.

noticed July 14, 2016 as the due date for answers to the Complaint, the ISO requests that the Commission issue an Order no later than **July 1, 2016** suspending the answer date.

IV. OPPOSITION TO NEXTERA/PSEG'S REQUEST FOR FAST-TRACK PROCESSING

NextEra/PSEG request Fast-Track Processing under the Commission's rules.[25] Fast-Track Processing requires an explanation of "why the standard processes will not be adequate for expeditiously resolving the complaint."[26] As support for their request, NextEra/PSEG state that "expedited action is appropriate to ensure that market solutions are in place in time to ensure the justness and reasonableness of the outcome of FCA 11."[27] As explained above, NextEra/PSEG's arguments that the Commission need to act prior to FCA 11 are simply incorrect. De-list bids for FCA 11 have already been submitted and the demand curves for FCA11 are already set; actual bids from new entry or already submitted delist bids, not the administratively established Cost Of New Entry, will set the capacity market clearing price.[28] Moreover, as described above, the multiple state and federal decisions recognized as pending items in the Complaint are by no means imminent. Fast-Track Processing is therefore inappropriate for this reason as well.

NextEra/PSEG have failed to meet their burden to support Fast-Track Processing. The Commission has held that Fast-Track Processing should only be used "sparingly and only in the most unusual cases that demand such accelerated treatment."[29] NextEra/PSEG have not provided a valid reason (because there is none) for why accelerated treatment is appropriate, and therefore, the Commission should deny their request for Fast-Track Processing'.

V. NOTICE AND COMMUNICATIONS

All correspondence and other communications in this proceeding should be directed to:

Raymond W. Hepper, Esq.

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[25] Complaint at 51.
[26] 18 C.F.R. § 385.206(b)(11) (2015).
[27] Complaint at 51.
[28] See, http://www.iso-ne.com/static-assets/documents/markets/othrmkts_data/fcm/auction_cal/2020_2021_master_fwrd_cap_auction_11.pdf
[29] Complaint Procedures, FERC Stats. and Regs. ¶ 31,071, at p. 30,766 (1999).

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VI. CONCLUSION

Based on the foregoing, the ISO respectfully requests that the Commission issue an Order by **July 1, 2016** suspending the answer date to the Complaint until the Commission rules on the Motion to Dismiss and deny NextEra/PSEG's request for Fast-Track Processing. After taking these procedural measures, the Commission should grant the ISO's Motion to Dismiss, for the reasons described herein.

Respectfully submitted,

By: */s/ Raymond W. Hepper*

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Dated: June 28, 2016

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.2010 (2015), upon each person designated on the official service list in this proceeding as compiled by the Secretary of the Federal Energy Regulatory Commission.

Dated at Holyoke, MA this 28th day of June 2016.

/s/ *Linda Morrison*

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