

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

ISO New England Inc.

)

Docket No. ER14-1409-000

**MOTION FOR LEAVE TO ANSWER
AND ANSWER OF ISO NEW ENGLAND INC.**

Pursuant to Rules 101(e), 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”),¹ ISO New England Inc. (the “ISO”) hereby submits its *Motion for Leave to Answer and Answer* (“Answer”) to the pleadings filed by: (i) the Attorney General for the State of Connecticut (“CTAG”); (ii) New Hampshire Office of Consumer Advocate, Maine Office of the Public Advocate, and the Connecticut Office of Consumer Counsel (collectively, the “Consumer Advocates”); (iii) the Connecticut Municipal Electrical Energy Cooperative and New Hampshire Electric Cooperative (collectively, the “Cooperatives”); (iv) the Utility Workers Union of America, Local 464 and Robert Clark (collectively, the “Utility Workers Union”); (v) the Eastern Massachusetts Consumer-Owned Systems (“EMCOS”); (vi) Public Citizen, Inc. (“Public Citizen”); and (vii) National Grid, the Massachusetts Attorney General, the Massachusetts Department of Public Utilities, the Northeast Utilities Companies, and the United Illuminating Company (collectively, the “Joint Parties”). These pleadings (referred to collectively herein as the “Protests”) were filed in response to the Forward Capacity Auction Results Filing submitted by the ISO in the referenced docket on February 28, 2014 (“FCA 8 Results Filing”).²

¹ See 18 C.F.R. §§ 385.101(e), 385.212 and 385.213 (2013).

² Capitalized terms not otherwise defined herein have the meanings ascribed thereto in the ISO New England Inc. Transmission, Markets and Services Tariff (the “ISO Tariff”). Market Rule 1 is Section III of the ISO Tariff.

I. MOTION FOR LEAVE TO ANSWER

In this *Answer*, the ISO briefly responds to the Protests filed in response to the FCA 8 Results Filing. While the Commission’s Rules of Practice and Procedure allow parties to respond to comments,³ as a general matter, the Commission’s rules prohibit responses to protests.⁴ The Commission has the authority, however, to waive this prohibition for good cause.⁵ The Commission has found good cause to permit replies where they are otherwise prohibited in various circumstances, including where the answer would assure a complete record in the proceeding,⁶ provide information helpful to the disposition of an issue,⁷ permit the issues to be narrowed or clarified,⁸ or aid the Commission in understanding and resolving issues.⁹ The ISO believes that this *Answer* will clarify the issues, assure a more complete record in this proceeding, and otherwise assist the Commission in understanding and resolving the issues raised concerning the results of the Forward Capacity Auction (“FCA”). For these reasons, the ISO respectfully requests that the Commission grant the ISO’s motion to provide the following *Answer*.

II. BACKGROUND

On February 3, 2014, the ISO held the New England region’s eighth FCA for the June 1, 2017 through May 31, 2018 Capacity Commitment Period. As explained in the FCA 8 Results Filing, the Capacity Clearing Price in the eighth FCA for the Maine, Connecticut, and Rest-of-

³ See 18 C.F.R. § 385.213(a)(3) (2013).

⁴ See 18 C.F.R. § 385.213(a)(2) (2013).

⁵ See 18 C.F.R. § 385.101(e) (2013).

⁶ See, e.g., *Pacific Interstate Transmission Co.*, 85 FERC ¶ 61,378 at p. 62,444 (1998), *reh’g denied*, 89 FERC ¶ 61,246 (1999).

⁷ See, e.g., *CNG Transmission Corp.*, 89 FERC ¶ 61,100 at p. 61,287 n.11 (1999).

⁸ See, e.g., *PJM Interconnection, L.L.C.*, 84 FERC ¶ 61,224 at p. 62,078 (1998); *New Energy Ventures, Inc. v. Southern California Edison Co.*, 82 FERC ¶ 61,335 at p. 62,323 n.1 (1998).

⁹ See, e.g., *Tennessee Gas Pipeline Co.*, 92 FERC ¶ 61,009 at p. 61,016 (2000).

Pool Capacity Zones was \$15.00/kW-month, which will be paid to new resources, and the administrative price of \$7.025/kW-month will be paid to existing resources in those zones.¹⁰

New and existing resources in the NEMA/Boston Capacity Zone will be paid the Capacity Clearing Price of \$15.00/kW-month.¹¹

The provisions in the Tariff related to Insufficient Competition (the “IC Rule”),¹² the Capacity Carry Forward Rule (the “Carry Forward Rule”)¹³ and the Import-Constrained Capacity Zone Capacity Clearing Price Floor rule¹⁴ determined the prices to be paid in the eighth FCA.¹⁵ The IC Rule addresses situations where there are less existing resources than the Net Installed Capacity Requirement (“NICR”) and not enough qualified new resources to assure adequate competition in the FCA (although when combined, the existing and new resources exceed the NICR). Under Section III.13.2.8.2 of the Tariff, the IC Rule is triggered in the FCA if the following two conditions are satisfied: (i) at the start of the auction, the amount of capacity offered from all existing resources is less than the NICR (the difference being defined as “New Capacity Required”), and (ii) the amount of capacity offered from New Generating Capacity Resources and New Demand Resources is less than twice the amount of New Capacity Required. For the eighth FCA, there was Insufficient Competition system-wide because both of these conditions were in effect. Specifically, 32,732 MW of capacity from existing resources and 424 MW of capacity from New Generating Capacity Resources and New Demand Resources were offered to meet the NICR of 33,855 MW.

¹⁰ See FCA 8 Results Filing at 4.

¹¹ *Id.* at 5.

¹² ISO Tariff § III.13.2.8.2.

¹³ ISO Tariff § III.13.2.7.9.

¹⁴ ISO Tariff § III.13.2.7.1.

¹⁵ See FCA 8 Results Filing at 4.

Under Section III.13.2.8.2 of the Tariff, if the IC Rule is triggered, existing resources receive the lower of: (1) the Capacity Clearing Price, or (2) the administrative price in the Tariff, which for the eighth FCA is \$7.025/kW-month. Therefore, because the Capacity Clearing Price was determined to be \$15.00/kW-month for new resources in the Maine, Connecticut and Rest-of-Pool Capacity Zones; existing resources in those zones will be paid the administrative price of \$7.025/kW-month.

With respect to the NEMA/Boston Capacity Zone, the Carry Forward Rule was triggered due to the results of the seventh FCA, in which a new resource whose capacity was needed to meet that zone's Local Sourcing Requirement had excess capacity carried forward to the eighth FCA. That rule would have resulted in a Capacity Clearing Price of \$10.00/kW-month for new and existing resources in the NEMA/Boston Capacity Zone, but for the operation of the Import-Constrained Capacity Zone Capacity Clearing Price Floor rule (ISO Tariff § III.13.2.7.1), which specifies that if the Capacity Clearing Price in an import-constrained Capacity Zone is lower than the Capacity Clearing Price in Rest-of-Pool, then all resources are paid the Capacity Clearing Price in Rest-of-Pool for the relevant Capacity Commitment Period. Accordingly, new and existing resources will be paid \$15.00/kW-month for the June 1, 2017 through May 31, 2018 Capacity Commitment Period.

III. ANSWER

The Protests raise two main issues related to the FCA 8 Results Filing: (i) the circumstances surrounding the Non-Price Retirement Request (“NPRR”)¹⁶ submitted on October 7, 2013 by the owner of Brayton Point Station Units 1-4 (collectively, “Brayton Point”);¹⁷ and (ii)

¹⁶ See ISO Tariff §§ III.13.1.2.3.1.5.1, III.13.1.2.3.1.5.2.

¹⁷ CTAG, Cooperatives, EMCOS, Utility Workers Union, Consumer Advocates and Public Citizen protest the circumstances surrounding Brayton Point's NPRR.

the Capacity Clearing Price for the NEMA/Boston Capacity Zone.¹⁸ The ISO addresses both issues below.

A. Brayton Point Energy’s NPRR-Related Actions Conformed with the Procedural Provisions of the ISO Tariff

The pleadings of CTAG, Consumer Advocates, Cooperatives, Utility Workers Union, EMCOS and Public Citizen assert that the Commission should investigate whether the rates resulting from the eighth FCA are the result of market power. In particular, these protestors request that the Commission investigate whether the owner of Brayton Point – Brayton Point Energy, LLC, (“Brayton Point Energy”) – exercised market power or committed market manipulation by submitting a NPRR for Brayton Point and electing to retire the units notwithstanding the ISO’s determination that the continued operation of Brayton Point was needed to ensure reliability.

The ISO does not take a position on whether the Commission should investigate the retirement actions of Brayton Point Energy. The ISO notes, however, that these actions conformed to the governing procedural provisions of the ISO Tariff. In order to clarify the record and put the NPRR-related events in context, the ISO provides the sequence of events leading up to Brayton Point Energy’s retirement election.

On June 3, 2013, Brayton Point Energy submitted Static De-List Bids¹⁹ for Brayton Point for the June 1, 2017 to May 31, 2018 Capacity Commitment Period. Both Static and Permanent De-List Bids are reviewed by the ISO’s Internal Market Monitor (“IMM”) to determine whether the bids are consistent with the resource’s net risk-adjusted going forward costs and opportunity

¹⁸ The Joint Parties and EMCOS protest the Capacity Clearing Price for the NEMA/Boston Capacity Zone.

¹⁹ A Static De-List Bid is a request to leave the Forward Capacity Market for a single year. See ISO Tariff § II.13.1.2.3.1.1.

costs.²⁰ On September 27, 2013, the IMM notified Brayton Point Energy that it did not accept the Static De-List Bids submitted for Brayton Point. Rather than challenge the IMM's rejection of the Static De-List Bids at FERC,²¹ Brayton Point Energy elected to convert the Static De-List Bids into NPRRs.²² An NPRR supersedes any prior de-list bid submitted for the same Capacity Commitment Period.²³ As defined in the ISO Tariff, an NPRR is "a binding request to retire all or part of a Generating Capacity Resource," and must be submitted between the Existing Capacity Qualification Deadline and 120 days prior to the date of the relevant FCA.²⁴ Submission of an NPRR, if approved by the ISO, means that the resource gives up its interconnection rights and therefore can no longer deliver energy as of the date of retirement.²⁵ Pursuant to the ISO Tariff,²⁶ the submission of the Brayton Point NPRR triggered a reliability review by the ISO. On December 20, 2013, the ISO determined that the continued operation of Brayton Point was needed for reliability, resulting in a rejection by the ISO of the NPRR. The ISO presented this determination to the Reliability Committee.²⁷ A sensitivity to the NPRR analysis determined that the addition of the Interstate Reliability Project ("IRP"), tentatively scheduled to be in service prior to the Capacity Commitment Period for the eighth FCA, but still awaiting final state approval, would reduce the reliability need for Brayton Point. The IRP is a major transmission project in New England that will address weaknesses in the east/west and

²⁰ See ISO Tariff § III.13.1.2.3.2.1.

²¹ ISO Tariff § III.13.8.1 (b).

²² See FCA 8 Results Filing, Attachment B, Testimony of Stephen J. Rourke ("Rourke Testimony") at 5.

²³ ISO Tariff § III.13.1.2.3.1.5.1.

²⁴ ISO Tariff §§ III.13.1.2.3.1.5.1 and III.13.1.2.3.1.5.2.

²⁵ ISO Tariff § III.13.2.5.2.5.3.

²⁶ ISO Tariff §§ III.13.1.2.3.1.5.3 and III.13.2.5.2.5.

²⁷ See NEPOOL Reliability Committee presentation dated December 16, 2013 and listed as "A3 Non-Price Retirement Summary Presentation," available at: http://www.iso-ne.com/committees/comm_wkgrps/relbly_comm/relbly/mtrls/2013/dec192013/index.html ("Reliability Committee Presentation").

west/east transmission of power across Connecticut, Rhode Island and Massachusetts, while also resolving Connecticut and Rhode Island import issues. With the entire IRP modeled in-service, the ISO determined that only one of the Brayton Point units might be needed for reliability.²⁸ Even though the ISO determined that Brayton Point was needed for reliability, under Section III.13.2.5.2.5.3(a)(iii) of the Tariff, Brayton Point Energy could still elect to retire Brayton Point by notifying the ISO within six months of receiving the notice of rejection of the NPRR from the ISO (*i.e.*, by June 20, 2014).

On January 8, 2014, approximately three weeks prior to the start of the eighth FCA, the New England Power Generators Association, Inc. (“NEPGA”) filed a complaint alleging that the application of the ISO Tariff to the eighth FCA would result in “massive artificial price suppression” and “stifl[e] the capacity market’s ability to send correct price signals to new and existing resources.”²⁹ NEPGA stated that these results could occur because a resource owner that submits an NPRR, and whose resource is determined by the ISO to be needed for reliability, may still retire the resource after that auction, but, in the interim, the resource’s capacity is counted towards the region’s Installed Capacity Requirement (“ICR”). According to NEPGA, this reduces auction prices for existing and new resources even if the resource chooses to retire.

In its answer to the NEPGA Complaint, filed on January 17, 2014, the ISO requested that the Commission direct Brayton Point Energy to notify the ISO by January 29, 2014 whether it would elect to retire Brayton Point or keep it in service for the June 1, 2017-May 31, 2018 Capacity Commitment Period. By letter dated January 27, 2014 (filed in Docket No. EL14-17),

²⁸ See Reliability Committee Presentation at 17-18. In other words, with the entire IRP approved, most likely only one of the Brayton Point units would be retained for reliability rather than the entire station.

²⁹ See *Complaint Requesting Fast Track Processing and Shortened Comment Period and Request for Tariff Waiver of the New England Power Generators Association, Inc.*, Docket No. EL14-17-000 at 1-2 (the “NEPGA Complaint”).

Brayton Point Energy provided notice to the ISO that it would retire Brayton Point coincident with the start of the eighth FCA Capacity Commitment Period. As noted in the FCA 8 Results Filing, because the ISO requested and received notification from Brayton Point Energy that the facility would retire prior to the start of the eighth FCA, the capacity from Brayton Point was not counted towards meeting the ICR. As explained in the FCA 8 Results Filing, the retirement of Brayton Point, along with the retirements of the Vermont Yankee nuclear power plant (604 MW), Norwalk Harbor Station (342 MW) and 554 MW of demand response resources changed the supply-demand balance from a surplus of existing resources of over 2,000 MWs to a deficiency of over 1,000 MWs compared to the ICR.³⁰

B. The ISO Properly Applied the ISO Tariff in Determining the Capacity Clearing Price for the NEMA/Boston Capacity Zone

The pleadings of the Joint Parties and EMCOS (the “Joint Parties Protest” and “EMCOS Protest,” respectively) object to the application, and seek a one-time waiver, of the ISO Tariff provision establishing the Capacity Clearing Price for the eighth FCA in the import-constrained NEMA/Boston Capacity Zone. The Joint Parties seek a result in which payments of \$10.00/kW-month are made to existing resources in the NEMA/Boston zone for the eighth FCA Capacity Commitment Period,³¹ whereas EMCOS apparently seek payments of \$10.00/kW-month for new resources,³² as well.

The focus of these protests is Section III.13.2.7.1 of the ISO Tariff. As explained in Section II above, Section III.13.2.7.1 of the ISO Tariff states that the “[t]he Capacity Clearing Price in an import-constrained zone shall not be lower than the Capacity Clearing Price in the Rest-of-Pool Capacity Zone.” Indeed, the possibility of the type of result that actually occurred

³⁰ Rourke Testimony at 7-8.

³¹ See Joint Parties Protest at 3, fn. 5.

³² See EMCOS Protest at 31, item 4.

in the eighth FCA for the NEMA/Boston Capacity Zone was explained to New England stakeholders in a presentation to the NEPOOL Markets Committee on November 18, 2013.³³ As explained in Section II above, the ISO confirms that it properly applied the ISO Tariff in determining the Capacity Clearing Price for the NEMA/Boston Capacity Zones, and offers the following additional observations in response to the Joint Protestors and EMCOS.

Both Protests assert that Commission precedent governing tariff waivers supports grant of a waiver of ISO Tariff § III.13.2.7.1 in the circumstances presented here. The ISO observes, as noted in the EMCOS Protest (at 30), that the cited precedent is designed to address “the effects of errors by ISOs or other entities” and that part one of the required four-part showing is that the “underlying error was made in good faith.”³⁴ However, no ISO error was made here.³⁵

The Joint Parties assert (at 2) that Section III.2.7.1 is “flawed.” However, the Joint Parties do not, through their pleading, “seek to change the existing market rule structure.”³⁶ Moreover, a change to an existing market rule can only be sought prospectively, and through a Section 206 complaint. The Joint Parties also assert that the NEMA/Boston pricing result was

³³ See, “A3 ISO Presentation 11-18-13” at slide 10 located at: http://www.iso-ne.com/committees/comm_wkgrps/mrks_comm/mrks/mtrls/2013/nov182013/index.html. Given this presentation, it is incorrect to state that the NEMA/Boston Capacity Zone pricing was an “unforeseen interaction” of the market rules. See Joint Parties Protest at 2.

³⁴ *Waterbury Generation LLC*, 120 FERC ¶ 61,007 at P 31 (2007), cited in EMCOS Protest at 29-30. Joint Parties Protest (at 11) cites *Central Vermont Public Service Corp.*, 121 FERC ¶ 61,225 at P 28 (2007) as setting forth the same requirement for a four-part showing.

³⁵ The EMCOS Protest (at 27) alleges an apparent “misapplication” of Section III.13.2.7.1 on the basis that “there really is no Capacity Clearing Price in a Forward Capacity Auction such as FCA 8, in which price is set entirely by default rules.” However, that allegation is incorrect, as the ISO Tariff is clear in identifying the pricing result in NEMA/Boston Capacity Zone as the “Capacity Clearing Price.” The same is true for the pricing result identified in the Carry Forward Rule.

By contrast, the Joint Parties Protest acknowledges (at 11) that the ISO’s “hands may have been tied in administering FCA-8” and (at 21) that the ISO “was forced by the tariff language...to set the NEMA/Boston Capacity Clearing Price for all resources at \$15.00/kW-month.”

³⁶ Joint Parties Protest at 10, fn. 16.

“unintended,”³⁷ but do not explain whose intent has been thwarted, and in particular fail to explain the specific result as being “at least \$5.00/kW-month more than could have reasonably been intended.”³⁸ In a similar vein, the Joint Parties assert (at 21) that “ISO-NE’s tariff has already determined that the \$15.00/kW-month price is uncompetitive and excessive as applied to existing resources,” but do not point to language in which the ISO Tariff makes such determinations. As explained in the FCA 8 Results Filing, the Commission has consistently held that matters properly in dispute in the annual FCA results filing are the results of the FCA and not the underlying market design or rules.³⁹

Additionally, the ISO notes that pending changes in the rules for the conduct of future FCAs could obviate (on a going-forward basis) issues raised by EMCOS and the Joint Parties. In a January 24, 2014 Order that addressed the administrative pricing rules governing Inadequate Supply and Insufficient Competition,⁴⁰ the Commission acknowledged the ISO’s view that a sloped demand curve could be a long-term solution to the problems associated with the administrative pricing rules. As directed by the Commission in the January 24 Order, the ISO, joined by NEPOOL, on April 1, 2014, filed in Docket No. ER14-1639-000 a sloped demand curve with a requested effective date to be in place for the ninth FCA. As detailed in the April 1, 2014 filing, the sloped demand curve would eliminate the use of administrative pricing at the system-wide level for the ninth FCA.⁴¹ While the ISO will not be able to develop and implement sloped demand curves at the zonal level for the ninth FCA, the ISO intends to work with

³⁷ Joint Parties Protest at 13. The Joint Parties (at 15-18) also make a variety of assertions about the intent of the Carry Forward Rule and Section III.13.2.7.1, but fail to offer any supporting evidence.

³⁸ Joint Parties Protest at 17.

³⁹ See FCA 8 Results Filing at fn. 4, citing to *ISO New England Inc.*, 130 FERC ¶ 61,145 at P 33 (2010) (finding that challenges to the FCM market design are outside the scope of the proceeding evaluating the FCA results filing).

⁴⁰ *ISO New England Inc.*, 146 FERC ¶ 61,038 (2014) (“January 24 Order”)

⁴¹ See filing of ISO New England Inc., and New England Power Pool, *Demand Curve Changes*, Docket No. ER14-1639-000 at 13.

stakeholders to develop the necessary rules and implement sloped demand curves at the zonal level for the tenth FCA.

IV. CONCLUSION

The ISO requests that the Commission find that the ISO properly followed its Commission-approved Tariff and accept the FCA 8 Results Filing.

Respectfully submitted,

/s/ Kevin W. Flynn

Kevin W. Flynn

ISO New England Inc.

One Sullivan Road

Holyoke, MA 01040-2841

Tel: (413) 535-4177

Fax: (413) 535-4379

Email: kflynn@iso-ne.com

CERTIFICATE OF SERVICE

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

Dated at Holyoke, Massachusetts this 29th day of April 2014.

/s/

Linda Morrison