

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

New England Power Generators Association)	Docket No. EL13-66-000
)	
)	
v.)	
)	
ISO New England Inc.)	
)	

**MOTION TO INTERVENE OF
THE NEW ENGLAND STATES COMMITTEE ON ELECTRICITY**

Pursuant to Rules 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”) and the Commission’s May 21, 2103 Notice of Complaint, the New England States Committee on Electricity (“NESCOE”) hereby files this Motion to Intervene in the above-captioned proceeding.¹

On May 17, 2013, the New England Power Generators Association (“NEPGA”) filed a complaint under section 206 of the Federal Power Act (“FPA”) and a request for expedited treatment (“Complaint”) against ISO New England Inc. (“ISO-NE”) alleging that ISO-NE’s use of a November 5, 2012 memorandum (“Performance Memo”) to impose new requirements on resources with a capacity supply obligation violates Commission policy and Section 205 of the Federal Power Act and is therefore unenforceable.² NEPGA requests a return to the

¹ 18 C.F.R. §§ 385.212 and 385.214 (2012).

² *New England Power Generators Association v. ISO New England Inc.*, Complaint, Docket No. EL13-66-000 (filed May 17, 2013) (“Complaint”), at 22, 38-40.

“*status quo* to interpret the tariff as written” and states that ISO-NE should continue to explore solutions and prospective tariff changes in the stakeholder process to address issues relating to gas availability that NEPGA contends are the motivating factor for ISO-NE’s policy change.³

I. Communications

Pursuant to Rule 203,⁴ the persons to whom correspondence, pleadings, and other papers in regard to this proceeding should be addressed and whose names are to be placed on the Commission’s official service list are designated as follows:

Jason R. Marshall*
Senior Counsel
New England States Committee
on Electricity
655 Longmeadow Street
Longmeadow, MA 01106
Tel: (617) 913-0342
Email: JasonMarshall@nescoe.com

Heather Hunt
Executive Director
New England States Committee
on Electricity
655 Longmeadow Street
Longmeadow, MA 01106
Tel: (413) 754-3749
Email: HeatherHunt@nescoe.com

* Person designated for service.

II. Motion to Intervene

NESCOE is the Regional State Committee for the New England region. NESCOE is governed by a board of managers appointed by the Governors of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont and is funded through a regional tariff administered by the ISO New England.⁵ NESCOE’s mission is to represent the interests of the citizens of the New England region by advancing policies that will provide electricity at the

³ *Id.* at 1-2, 6-7 (emphasis in original).

⁴ 18 C.F.R. § 385.203 (2012).

⁵ ISO New England Inc., 121 FERC ¶ 61,105 (2007).

lowest reasonable cost over the long term, consistent with maintaining reliable service and environmental quality.⁶

The Performance Memo summarized ISO-NE's views on electricity market participants' *existing* performance obligations, the options available to resources under the ISO-NE tariff to adjust offer prices, and the actions that market participants are required to take in offering and managing the operation of their resources.⁷ More specifically, the Performance Memo sets forth ISO-NE's expectations regarding the performance obligations of participants with generation resources and clarified that unit outages resulting from a failure to procure fuel "do not relieve a Participant of the ISO Tariff obligations."⁸

The NEPGA Complaint alleges that the obligations articulated in the Performance Memo amount to a unilateral re-interpretation of the tariff.⁹ According to NEPGA, ISO-NE's use of a memorandum to reinterpret the tariff in a way that effectively imposes a firm fuel obligation violates Section 205's requirement to demonstrate that any change to the terms, rates, and conditions of the tariff are just and reasonable.¹⁰ In addition to this contention that ISO-NE has unlawfully altered existing performance requirements, NEPGA argues, *inter alia*, that it would be impossible, inefficient, and inconsistent with good utility practice to require generators to have "the capability to run around the clock, whether called in the day-ahead market, real time or out-of-merit."¹¹

⁶ See *Joint Petition for Declaratory Order to Form a New England Regional State Committee*, The Governors of: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, Docket No. EL04-112-000 (Jun. 25, 2004).

⁷ See generally Complaint, Exhibit 1.

⁸ *Id.*, Exhibit 1, at 5.

⁹ *Id.* at 22.

¹⁰ *Id.* at 38.

¹¹ *Id.* at 22, 40-45.

The interests of the citizens of New England are directly affected by the subject matter of this proceeding. To the extent that the obligations summarized in the Performance Memo constitute a fundamental departure from current practice, as NEPGA alleges, there may be significant impacts on the New England wholesale electricity markets and, thus, on New England consumers. The *de facto* firm fuel requirement that NEPGA contends would result from ISO-NE's interpretation of the market rules would likely have material impacts on the costs borne by New England electricity customers. Furthermore, this proceeding involves questions around system reliability, resource adequacy, natural gas dependency, and the measures to address such dependency. New England's growing dependence on natural gas-fired electric generation resources is well known and ISO-NE has identified such dependence as a reliability risk due to natural gas availability. In addition to studying natural gas pipeline infrastructure adequacy and enhancing communication protocols with pipelines, ISO-NE has proposed a host of wholesale electricity market reforms to mitigate risks related to resource performance arising from a reliance on natural gas for electricity generation.¹² NESCOE continues to actively participate in ongoing discussions among ISO-NE, market participants, and stakeholders on both short and long-term market changes to address gas dependency challenges.

Based on the foregoing, NESCOE has a direct and substantial interest in this proceeding, which will not be adequately represented by any other party. In addition, NESCOE's participation in this proceeding as the representative of the New England Governors will serve the public interest. NESCOE respectfully requests leave to intervene in this matter.

¹² See ISO-NE, Interdependencies of Market and Operational Changes to Address Resource Performance and Gas Dependency, Apr. 16, 2013, available at http://www.iso-ne.com/committees/comm_wkgrps/strategic_planning_discussion/materials/.

III. Conclusion

For the reasons stated herein, NESCOE respectfully requests that the Commission grant its Motion to Intervene in this proceeding.

Respectfully submitted,

/s/ Jason R. Marshall

Jason R. Marshall
Senior Counsel
New England States Committee
on Electricity
655 Longmeadow Street
Longmeadow, MA 01106
Tel: (617) 913-0342
JasonMarshall@nescoe.com

Date: June 6, 2013

CERTIFICATE OF SERVICE

In accordance with Rule 2010 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day served by electronic mail a copy of the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Boston, Massachusetts this 6th day of June, 2013.

Respectfully submitted,

/s/ Jason R. Marshall
Jason R. Marshall
Senior Counsel
New England States Committee
on Electricity
655 Longmeadow Street
Longmeadow, MA 01106
Tel: (617) 913-0342
Email: JasonMarshall@nescoe.com