

**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 FOR LEAVE TO FILE COMMENTS OUT-OF-TIME  
AND COMMENTS OF  
THE NEW ENGLAND STATES COMMITTEE ON ELECTRICITY**

The New England States Committee on Electricity (“NESCOE”) hereby submits this motion to file out-of-time comments and offers comments in the above-captioned proceeding. On May 17, 2013, the New England Power Generators Association (“NEPGA”) filed a Section 206 Complaint against ISO New England Inc. (“ISO-NE”) and a request for expedited treatment.<sup>1</sup> On June 6, 2013, ISO-NE filed an Answer to the Complaint.<sup>2</sup> NESCOE filed a timely Motion to Intervene on the same day and seeks leave to file comments here that may assist the Commission in its deliberations.

**I. MOTION TO FILE COMMENTS OUT-OF-TIME**

Pursuant to Rule 212 of the Commission’s Rules of Practice and Procedure,<sup>3</sup> NESCOE respectfully requests that the Commission grant this motion to file comments out-of-time. Good cause exists for the Commission to accept these comments out-of-time. NESCOE is the

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<sup>1</sup> *New England Power Generators Assoc. v. ISO New England Inc.*, Docket No. EL13-66-000 (filed May 17, 2013) (“Complaint”).

<sup>2</sup> *Answer of ISO New England Inc.*, Docket No. EL13-66-000 (filed May 17, 2013) (“Answer”).

<sup>3</sup> 18 C.F.R. § 385.212 (2013).

Regional State Committee for New England and serves as the representative of the New England Governors. As detailed in NESCOE’s Motion to Intervene, the issues raised in the Complaint directly affect the interests of New England’s citizens, and NESCOE has a significant interest in this proceeding. NESCOE’s comments at this early stage of the proceeding may be useful to the Commission as it engages in the decision-making process. Additionally, the Commission has not yet acted on the Complaint, and accepting these comments at this early juncture of the proceeding will not cause undue prejudice or delay. The Commission has in past proceedings accepted out-of-time comments where good cause exists, and NESCOE respectfully requests that the Commission accept and consider these comments.<sup>4</sup>

## **II. COMMENTS**

In its Answer, ISO-NE raises the reasonable question of what level of performance New England’s electricity consumers have been paying for in exchange for annual capacity payments.<sup>5</sup> NEPGA’s Complaint implicitly raises the same question in asserting that the standard of performance under the tariff is Good Utility Practice (“GUP”) and commercially reasonable efforts to secure fuel.<sup>6</sup> Accordingly, the Commission is asked in this proceeding to

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<sup>4</sup> See, e.g., *ISO New England Inc.*, 143 FERC ¶ 61,198 at P 17 (2013) (granting the New England Power Pool (“NEPOOL”) Participant Committee’s motion for leave to file out-of-time supplemental comments “given its interest in this proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay”); *Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc.*, 133 FERC ¶ 61,058 at P 17 (2010) (citing to filing parties’ interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay as cause for accepting out-of-time comments); *ISO New England Inc.*, 123 FERC ¶ 61,266 at P 22 (2008) (granting NEPOOL’s motion to file comments out-of-time in light of “the early stage of the proceeding”); *PJM Interconnection, L.L.C.*, 125 FERC ¶ 61,231 at P 13 (2008) (accepting out-of-time comments for “good cause shown”).

<sup>5</sup> See, e.g., Answer at 1, 25-26, 31-32.

<sup>6</sup> See Complaint at 3, 6, 22.

resolve this fundamental question regarding a capacity resource's baseline performance obligations under the tariff.

NESCOE respectfully requests that the Commission answer this question promptly and completely. Electricity consumers that have borne the cost of billions of dollars in capacity payments, and will continue to incur such costs through forward procurements already transacted, deserve clarity regarding the level of performance they have purchased.

In addition, the Commission's determination in this proceeding has a direct nexus to market rule changes that ISO-NE has proposed to address reliability risks identified for this year and beyond. In the near future, NESCOE expects ISO-NE to file a proposal with the Commission that is intended to address operational issues that ISO-NE has identified for winter 2013/2014 (the "2013/2014 Winter Program"), in which ISO-NE would issue an out-of-market procurement for incremental energy at a cost estimated at between \$16 million to \$43 million.<sup>7</sup> ISO-NE has stated that these operational issues are partly caused by "the unavailability of generating resources due to fuel procurement and fuel supply issues."<sup>8</sup>

ISO-NE has also indicated that it will make further filings with the Commission to effect short- and long-term market design modifications directed at enhancing system reliability.<sup>9</sup>

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<sup>7</sup> See ISO New England Memorandum to NEPOOL Markets Committee, ISO-Proposed Tariff Changes for Winter 2013-14 (June 10, 2013), at 1-2, available at [http://www.iso-ne.com/committees/comm\\_wkgrps/mrks\\_comm/mrks/mtrls/2013/jun132013/a2\\_iso\\_mo\\_06\\_10\\_13.pdf](http://www.iso-ne.com/committees/comm_wkgrps/mrks_comm/mrks/mtrls/2013/jun132013/a2_iso_mo_06_10_13.pdf). On June 13, 2013, with the inclusion of an amendment to the proposal, the NEPOOL Markets Committee voted to recommend that the NEPOOL Participants Committee support the Winter Program. The NEPOOL Participants Committee is scheduled to take action on the Winter Program at the end of June, and ISO-NE is expected to file with the Commission thereafter.

<sup>8</sup> *Id.* at 1.

<sup>9</sup> For information on one of ISO-NE's major long-term market redesign proposals, see generally ISO-NE, Key Project: FCM Performance Incentives, available at [http://www.iso-ne.com/key\\_projects/fcm\\_perf\\_incentives/index.html](http://www.iso-ne.com/key_projects/fcm_perf_incentives/index.html).

While detailed at a high level, if implemented, these proposed modifications would represent a material change from the current market structure.

Indeed, ISO-NE appears to reference these various immediate (Winter 2013/2014), short-term (subsequent several winters), and long-term proposals in its Answer:

Some generators are not meeting their existing tariff obligations for “lack of fuel” – whether based on a purported GUP Excuse or otherwise – and therefore (at least pending resolution of the referrals) *more measures are needed to produce reliable operation*.<sup>10</sup>

In short, NESCOE cannot be expected to make an unconditioned judgment regarding whether and what *incremental* reliability measures are needed when there is an open threshold question before the Commission about *baseline* performance obligations. The Commission’s answer to this question has a direct bearing on the appropriate level of any incremental investment that may be needed.

This proceeding is thus inextricably linked with timely efforts in the region to address reliability challenges, whether it is the short-term measures reflected in the 2013/2014 Winter Program, proposals for subsequent winters, or proposals to address long-term reliability issues through a fundamental redesign of the forward capacity market. By expeditiously and definitively resolving the issues raised in this proceeding, the Commission will provide closure on the scope of existing performance obligations that customers have purchased and, just as critically, inform regional discussions about potential market rule changes and their associated costs.<sup>11</sup>

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<sup>10</sup> Answer at 41 (emphasis added).

<sup>11</sup> NESCOE understands that NEPGA and ISO-NE worked in good faith to resolve the issues that are the subject of this proceeding but were unable to reach agreement. *See* Complaint at 7, 59. While further stakeholder engagement is often helpful in resolving issues, it appears unlikely to resolve this dispute over competing tariff interpretations and,

### III. CONCLUSION

For the reasons stated herein, NESCOE respectfully requests that the Commission act expeditiously on the Complaint and consider the comments herein.

Respectfully submitted,

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Date: June 21, 2013

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instead, would result in delay that could significantly complicate the region's ability to effectively analyze proposed market rule changes and other measures intended to provide additional reliability.

## 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 21st day of June, 2013.

Respectfully submitted,

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