UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

ISO-New England, Inc.	)	**Docket No. ER14-2440-000**

PROTEST OF THE NRG COMPANIES

Pursuant to Rules 211 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. §§ 385.211 and 214, and in accordance with the Commission's Notice issued on July 16, 2014, the NRG Companies ("NRG")[1] hereby file this protest to the ISO New England, Inc.'s ("ISO-NE" or "ISO") July 16, 2014, filing in Docket No. ER14-2440-000 ("Deferral Filing" or the "Proposal"), which would allow certain new generation projects to defer their rights and obligations to deliver capacity in accord with their Capacity Supply Obligation ("CSO") these projects assumed in the relevant Forward Capacity Auction ("FCA").

I. INTRODUCTION

Approving ISO-NE's proposal to give new generation projects a "free pass" to miss their online date would be enormously destructive to the capacity market in New England and should be summarily rejected. A new generation project that voluntarily assumed a capacity position in an FCA must be required to abide by the terms of the rules that existed at the time that it put its bid into the market. Those rules clearly state the consequences in the event of a delay in the in-service date. In the first instance, the project must cover its obligation by purchasing "backfill" capacity from the market. Second, if the Planned Resource voluntarily cancels or is deemed by ISO-NE to be unable to meet its construction and in-service milestones, the project's CSO is

[1] The NRG Companies are NRG Power Marketing LLC ("NRG PML") and GenOn Energy Management, LLC ("GEM").

terminated and the Planned Resource must forfeit the collateral it posted to guarantee its performance. ISO-NE's attempt to change the rules and give unsuccessful developers a "get out jail free" card is bad market design, unjust to competing suppliers (both new and existing), and raises serious retroactive ratemaking issues.

Additionally, it appears that ISO-NE is promulgating this tariff to benefit one specific market participant, a new-build generator named Footprint Power, looking to build in the import-constrained capacity zone around Boston (known as "NEMA/Boston"). Footprint Power apparently is unable to arrange its financing or meet its major development milestones and appears unlikely to meet is scheduled in-service obligations. Under the existing Tariff, Footprint Power's Forward Capacity Market ("FCM") delivery rights and obligations begin on June 1, 2016, and that date should be adhered to, with the attendant "cover" or termination provisions in the existing Tariff. ISO-NE's attempt to change the rules to benefit this sole market participant, years after the initial contractual obligations of both Footprint and every other competitor in the market were finalized, is both ill-conceived and contrary to the Federal Power Act.

II. COMMUNICATIONS

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III. BACKGROUND

A. Current Tariff.

The ISO-NE market rules that are in effect now and that were in effect in 2012 when Footprint Power first assumed its binding CSO, set forth a series of obligations and benefits that occur when the sponsor of a new generation project ("Project Sponsor") assumes a binding CSO in the underlying Forward Capacity Auction ("FCA"). In 2007, with the creation of the FCM, ISO-NE established the requirements that new generation resources must follow, including establishing a series of milestones and specifying the penalties that those resources would face if the Project Sponsor was not ready and available to produce power upon the arrival of the Delivery Year, as specified in the ISO-NE Tariff.[2] Indeed, the existing provisions of Section III.13.3.4 specify a detailed process that new resources must undergo to demonstrate that they are "on track" to meet their in-service date. This includes quarterly "critical path" milestone updates, and regular communications with ISO-NE on topics such as Major Permits, Financial Closing, Major Equipment Orders, Substantial Site Construction, Major Equipment Delivery, Major Equipment Testing, Transmission Upgrade updates, and Commissioning.

The Tariff goes on to specify what happens if the Project Sponsor is unable to meet its critical path milestones. In that case, the ISO-NE has two options. The Tariff requires the Project Sponsor to "cover" its CSO by seeking another resource to take over its obligation for the period in which it will be deficient. The Project Sponsor is given the option of covering its obligation either via the ISO-administered reconfiguration auctions or though one or more bilateral transactions.[3] If the Project Sponsor is unable to fully cover its obligation in advance of

[2] *ISO New England, Inc.*, 119 FERC ¶ 61,239 (2007).

[3] Section III.13.3.4.

the third annual reconfiguration auction, the ISO will submit a bid for the entirety of the uncovered CSO.

Alternatively, the ISO may, at its discretion, request that the Commission terminate a resource's CSO if the resource cannot meet its obligations. *See* Tariff Sections III.13.3.3 and III.13.3.4. If the ISO chooses not to exercise its right to terminate the resource and the resource fails to come online by the start of the relevant commitment period, the resource receives the FCA clearing price for its full CSO and is subject to Shortage Event penalties for any portion of its CSO that it has not covered.[4] Shortage Event penalties are imposed when a resource, unless exempted, fails to perform during a Shortage Event. A Shortage Event is generally a reserve shortage of 30 minutes or more.[5] There has only been one Shortage Event since the Forward Capacity Market ("FCM") began in 2010.[6]

B. The Instant Filing.

In this filing, ISO-NE effectively proposes to unravel all of the protections it enacted in 2007 to ensure that only real projects were able to participate in the FCA, and to police against zombie projects collecting FCM revenues without actually being available. Specifically, ISO-NE now proposes to exempt new resources that are not capable of meeting their in-service date from all financial consequences of their failure, as specified in Section III.13.3 and the Financial Assurances Policy section of the ISO-NE Tariff. Further, ISO-NE proposes to provide its "get out of jail free card" only to resources that are deemed to be needed to preserve system reliability. However, the ISO's existing more stringent rules would continue to apply to resources that are not required to meet generic capacity needs in a particular zone.

[4] *Id*. at p. 9.

[5] Section III.13.7.1.

[6] Testimony of Dr. Ethier, at p. 10.

IV. PROTEST

The premise of the ISO-NE Deferral Filing is breathtaking: ISO-NE is asking the Commission to bless a market design change intended to result in the system operating at a capacity deficit for the 2016/2017 Delivery Year, and with explicit acknowledgement that a significant resource *that is needed in that year to support local reliability* will not be there. Putting into place a market design that is intended to result in the pool operating below its reliability targets in the next several years, and with no financial consequence to the resource or resources that are unable to fulfill their forward capacity obligations, is a startling request, and the Commission should be extremely reluctant to endorse such a design.

As we discuss below, this radical proposal is both bad market design and unnecessary. Thus, we respectfully request that the Commission reject ISO-NE's proposal and instead direct ISO to adopt a market-based solution to meeting its short-term reliability needs.

A. ISO-NE has Reliability Safeguards Built into its Existing Tariff and There is no Need for the Commission to Provide Select Planned Resources a Free Pass.

1. The ISO-NE Tariff Specifies the Steps to Take in the Event of a Reliability Shortfall.

The demand curve recently approved by the Commission expressly contemplates situations in which the region or a zone is short of its full Installed Capacity Reserve/Local Sourcing Requirements. NRG does not suggest that ISO-NE and the Commission are helpless in the face of an imminent reliability shortfall. Indeed, the ISO-NE Tariff already provides the ISO market-friendly means of taking extraordinary action to resolve a reliability shortfall. For example, Section III.13.4.6 of the ISO-NE Tariff allows ISO to call for a special reconfiguration auction "[i]f the difference between the forecasted Installed Capacity Requirement (net of HQICCs) for a Capacity Commitment Period and the amount of capacity obligated for that

Capacity Commitment Period is sufficiently large, then the ISO may . . . conduct an annual reconfiguration auction as much as six months earlier than its normally-scheduled time." The Commission should require the ISO to avail itself of this already-existing and competitively-neutral reliability safeguard *prior* to tinkering with the fundamental obligation that Planned Resources meet their commitment to come online prior to the Delivery Year in which it committed.[7]

ISO-NE's expert, Dr. Ethier, argues in part that it is less disruptive to keep an already-cleared Planned Resource than to avail itself of the existing "Gap Request for Proposals or other similar extraordinary process."[8] Essentially, Dr. Ethier suggests that it would be less disruptive to intervene in the market than to allow ISO-NE's existing market-based tariff provisions to work. We disagree. Moreover, Dr. Ethier provides no basis for his conclusion that an already troubled project, one that is at least one year behind in meeting its projected commercial operation date ("COD"), is a better option than triggering the existing tariff provisions that impose a delay penalty on the delinquent resource and, if needed, additional actions to address a reliability shortfall.

2. Planned Resources Needed for Reliability Should be Held to a Higher Reliability Standard – Not a Lesser Standard.

In a strange bit of market design jiujitsu, the ISO proposes to subject resources determined to be needed for reliability to a *lower* planning standard than generic capacity resources. This twisted logic suggests that phantom new generators in load pockets should be

[7] Indeed, the poster-child for the Deferral Filing, the Footprint Power facility, is already more than a year behind schedule and is in danger of falling even further behind.

[8] Testimony of Dr. Ethier, at p. 4; see also Section III.11, which allows ISO-NE to conduct "Gap Request for Proposals for Reliability Purposes." This provision kicks in if ISO-NE "determine[s] that a region may have potential critical near-term power supply reliability problems for which no Market Participant has proposed or committed to implement a viable solution (from a timeliness or financial standpoint). The Gap RFP will solicit load response and supplemental generating Resources to maintain near-term reliability in the identified region."

allowed to continue clogging the interconnection queue and taking up valuable interconnection headroom, even if they are unable to meet their COD. Allowing those phantom resources to continue on prevents other resources – resources that may have a better chance of actually being developed and putting electrons onto the grid – from entering into the market. This Proposal is no more acceptable than allowing a proposed generator to linger in the interconnection queue clogging up access to transmission capacity, which the ISO-NE Tariff already prohibits. It is entirely unclear why a pivotal new resource in a particular zone should be excused from compliance with the most basic of obligations: to reach commercial operation prior to the delivery year, or face appropriate financial sanctions. Such a scheme is entirely inconsistent with reliability and can actively degrade the reserve margin in the zone below acceptable levels.

Further, the very idea that Planned Resource developers can look to ISO-NE to rescue them in the event of unanticipated delays, sends exactly the wrong message to project developers in New England. Even the ISO's testifying expert concedes that the Deferral Filing could undermine the incentive for a Planned Resource to meet its COD.[9] When a developer bids a project into the FCM, there is a reasonable assumption that the new resource will be the difference between the zone meeting its reliability targets and falling into an unacceptable short position. Such developers must understand that their decision to bid a project into the market before having key milestones "locked down" has financial consequences. Otherwise, the very integrity of the New England electricity market will be in jeopardy.

B. Allowing Certain New Generators a Free Pass Destroys Locational Capacity Market Price Signals.

Another negative impact of the Deferral Filing is that the ISO proposes to settle the FCA and reconfiguration auctions as if the Planned Resource were on track to meet its COD. Under

[9] Testimony of Dr. Ethier, at p. 15.

the Filing, the ISO deems the non-existent resource to be present when determining prices. As a result, prices will not reflect supply/demand fundamentals and are therefore not just and reasonable.[10]

1. The Deferral Filing Would Depress Future Capacity Market Clearing Prices Below Just and Reasonable Levels.

Allowing a Planned Resource to defer its entry into the market suppresses prices under the new demand curve structure, scheduled to go into effect for FCA #9. In effect, the Planned Resource is given full status as an Existing Resource for all future FCM periods, even though it does not actually exist. The result is that the clearing price for the region overall and for the capacity zone in which the deferred resource is located would be suppressed, which only further worsens the prospects that other resources will remain in, or come into, the constrained zone. Allowing a zone to remain deficient for an extended period of time without any increase in price that would signal the need for new capacity or reduction in demand is the exact opposite of an effective market design.

Indeed, the impacts of this price suppression are comparable to the price suppression that occurs when a buyer with monopsony power subsidizes a new resource. In the past, the Commission has recognized the pernicious effects of buyer-side market power, and should not condone a similar financial right here, just because it is the ISO itself that is acting to suppress prices.[11] Moreover, allowing extra un-priced capacity into the market prevents the market from

[10] *PJM Interconnection, LLC*, 147 FERC ¶ 61,108 at P 67 (2014) (finding that "PJM's existing tariff provisions may be unjust and unreasonable in that they fail to promote long-term reliability in its capacity market by possibly permitting speculative sell offers to be submitted into PJM's capacity market auctions.").

[11] *See, e.g., TC Ravenswood, LLC v. FERC*, 705 F.3d 474 at 476 (D.C. Cir. Jan. 22, 2013) (uneconomic entry "occurs when a large net buyer of capacity makes a capacity purchase or investment and then offers the capacity for sale at auction at reduced prices, thus lowering the market-clearing price"); *PJM Interconnection*, 143 FERC P 61,090 at PP 19 – 20.

ever reaching equilibrium conditions, and denying suppliers a reasonable opportunity to earn a return on, and of, their investments.[12]

2. ISO-NE Ignores the Impact its Deferral Filing Would Have on Past and Future Auction Results.

The ISO-NE Deferral Filing entirely glosses over the negative impact that its proposal would have on capacity market price formation. If the ISO's proposal is approved, coming into FCA #9, the ISO may simply deem certain resources that are publicly acknowledged to be delayed and at high risk of ever reaching commercial operation as eligible to participate in the auction. In the case of Footprint Power, this means that at least 647 MW of high-risk, potentially phantom generation will be included in the supply stack for the upcoming FCA #9. ISO-NE is thus asking the Commission to bless a capacity market clearing price that it knows is significantly depressed by a non-existent resource and will not secure the necessary reserve margin.

The presence of the "phantom MWs" are already having a negative effect on the market, as demonstrated in the first reconfiguration auction for FCA #7 (associated with the 2016/2017 Delivery Year). FCA #7 was the first year for which the Footprint Power Planned Resource cleared the Auction, and the first year for which they will presumably not be ready.[13] Because the ISO-NE system considers Footprint Power as having cleared in the auction, NEMA appears to have excess capacity above its minimum required reserve margin for this period. In actuality, NEMA was approximately 150 MW short for FCA #7 without Footprint Power. With the 650 MW from Footprint Power, the NEMA Zone appears to have approximately 500 MW of excess

[12] *ISO New England, Inc.*, 125 FERC ¶ 61,102 at P 44 (2008) ("In any single year, compensation below the cost of new entry would not, by itself, drive away future investment. *As long as the prices in other years are higher and the average price approximates the cost of new entry, New England can still attract investment*.") (Emphasis added.)

[13] We make this presumption on the basis of ISO-NE statements that describe the need for their instant proposal on the basis of this project not being able to meet its obligated in-service date.

capacity on paper for FCA #7. In the First Annual Reconfiguration Auction, one or more market participants were able to "buy back" 301.219 MWs in NEMA (please see Attachment A). Attachment A shows that capacity from outside the NEMA zone was purchased in the first reconfiguration auction. In a constrained zone, capacity external to that zone is not normally allowed to cover the obligation, but because the NEMA Zone has a "paper" excess of capacity, ISO-NE allowed the transactions to take place. Indeed, the ISO-NE Tariff already prohibits bidding behavior in a reconfiguration auction that causes "a violation of any NERC or NPCC (or their successors) criteria, or ISO New England System Rules during the Capacity Commitment Period associated with the reconfiguration auction."[14] If the Deferral Filing is put into place, then transactions such as these, to the extent they involve commercial resources (as opposed to Planned Resources) in NEMA that shed their obligations, would undermine the reliability of the system, and must be revisited.

Further, the rate paid to all capacity resources for FCA #8 is also implicated by the ISO proposal. A resource that assumed an obligation in FCA #7 was included as part of the supply stack that set the price in FCA #8. To the extent such a Planned Resource has no realistic hope of reaching commercial operation on time, this phantom resource had a downward effect on the clearing price. Encouraging more speculative Planned Resources to come into the market encourages this vicious cycle to continue, further damaging the New England capacity market.

C. The Existing Rules Describe the Obligations of, and Consequences for, a Resource that Does Not Meet its Online Date.

It is inappropriate for ISO-NE to renegotiate the terms of the agreement for resources that clear the Forward Capacity Auction and then do not deliver power on time. "Suppliers must

[14] Section III.13.4.2.2(c) of the ISO-NE Tariff. *See also* Section III.13.4.3 ("Where less capacity than needed is obligated, the ISO shall submit demand bids as appropriate to procure the additional needed capacity in each subsequent annual reconfiguration auction until the need is met.")

abide by these tariffs when providing service to electricity purchasers, though they may change their tariffs if they afford FERC advance notice."[15] Allowing ISO-NE to renegotiate the rates, terms and conditions that flow from a Planned Resource assuming a capacity supply obligation would send a chilling message to the market that developers of Planned Resources face few, if any, consequences for being more than a year late in bringing a new project online.

Moreover, there are adequate rules and procedures already in place to address the issue of a generation resource's delinquency. Section III.13.3.4 already governs what happens when a Planned Resource fails to meet its Commercial Operation Date. In such cases, the ISO:

> [S]hall have the right, through a filing with the Commission, to terminate the resource's Capacity Supply Obligation for any future Capacity Commitment Periods and the resource's right to any payments associated with that Capacity Supply Obligation in the Capacity Commitment Period, and to adjust the resource's qualified capacity for participation in the Forward Capacity Market. Upon Commission ruling, the Project Sponsor shall forfeit any financial assurance provided with respect to that Capacity Supply Obligation.
>
> If in these circumstances, however, the ISO does not take steps to terminate the resource's Capacity Supply Obligation and instead permits the Project Sponsor to continue to cover its Capacity Supply Obligation, such continuation shall be subject to the ISO's right to revoke that permission and to file with the Commission to terminate the resource's Capacity Supply Obligation, and subject to continued reporting by the Project Sponsor as described in this Section III.13.3.

These provisions were designed to create a stable and transparent set of rules and attendant consequences for what would happen if a resource was unable to meet the terms and conditions of its CSO. Allowing ISO-NE to renegotiate these terms, apparently for the benefit of a single capacity supplier, would be extremely destructive to investor confidence in these markets.

[15] *New Eng. Power Generators Ass'n v. FERC*, 707 F.3d 364, 366 (D.C. Cir., 2013) (citing *Morgan Stanley Capital Grp., Inc. v. Pub. Util. Dist. No. 1 of Snohomish Cnty*., 554 U.S. 527, 531, 128 S. Ct. 2733, 171 L. Ed. 2d 607 (2008) and 16 U.S.C. § 824d(c) (2012).

D. The ISO-NE Tariff Already Addresses Shortage Conditions in the Delist Bid Process.

An analogous situation has played itself out a number of times, where an existing generator de-lists from the market, but its de-list bid is rejected for reliability.[16] In such situations, the ISO-NE conducts an extensive process to eliminate the reliability need for the de-listing resource. One case in particular may be instructive on the issue of reliability. Salem Harbor was initially needed for reliability, but then was allowed to delist and retire due to transmission upgrades in the area of the Salem Harbor Plant that eliminated reliability need on the north shore of Boston.[17] The Commission should require ISO-NE to adopt a similar approach to address any shortage that exists here.

ISO-NE's concerns over the Footprint Power development appear comparable to the process that applies to de-listing resources. ISO-NE has failed to provide a justification for adopting an entirely different process for Planned Resources that are delayed past their COD than for resources seeking to retire. The Proposal's arbitrary distinction between reliability needs appears to be unduly discriminatory and is not otherwise in accord with the Federal Power Act.

E. If the Commission Allows the Deferral Filing to go into Effect, then it Should, at a Minimum, Require any Deferred Resource to Post the "Higher Of" Financial Assurance.

The ISO-NE Tariff relies on the posting of Financial Assurance ("FA") to ensure that Planned Resources meet their CSO obligations. As noted by Dr. Ethier, ISO-NE and NEPOOL

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[16] *See* Testimony of Dr. Ethier, at p. 9.

[17] As reported by ISO-NE at the December 19, 2013 NEPOOL Reliability Committee meeting, four of the five transmission projects that comprised the complete solution set to address the retirement of the Salem Harbor station had been completed, and the fifth was under construction. http://www.iso-ne.com/committees/comm_wkgrps/relblty_comm/relblty/mtrls/2013/dec192013/a7_status_of_transmission_upgrades_north_shore.pdf

recently increased the FA requirements for FCA #9 and going forward. [citation?][18] This increase was based on the broad recognition that the pre-FCA #9 provisions were inadequate to guarantee performance by Planned Resources.

If the Commission does allow previously-cleared Planned Resources to defer their CSO until the Delivery Year associated with FCA #9, then it should also require that the Resource meet the more stringent FA requirements associated with Planned Resources participating in FCA #9. Because there is no guarantee that a deferral will result in a COD for a particular project, simply accelerating FA requirements for FCA8 is utterly insufficient and could very well only delay the inevitable project cancellation to the detriment of the market and at the expense of reliability. Indeed, it is highly likely that Planned Resources seeking to take advantage of the deferral option are already at a higher risk of default than Planned Resources that remain on track to meet their COD. Because a deferral unit is at heightened risk, and the pool as a whole should have more collateral from them in recognition of this additional risk, not less. With this risk-management framework in mind, NRG proposes the following:

First, the Commission should apply the more stringent FA policies that will apply to planned resources participating in FCA #9 and beyond to resources that voluntarily defer their delivery. This structure would require the Planned Resource to post FA based on the clearing price in the applicable auction, with additional FA due for resources that are late for the beginning of their first Delivery Year. This posting would provide a meaningful incremental increase in FA for a resource that presents a very high risk to the pool of never reaching COD.

Second, the Commission should require posting of additional FA upon filing with the Commission seeking the deferral (up to 5x the clearing price in the applicable auction, *i.e.*, the amount required under Section VII.B.2.b of the Financial Assurance Policy for a resource that is

[18] Ethier Testimony at p. 6

one year late). This additional posting assures that a resource does not take this step lightly, and is ready to put additional FA at risk to compensate the pool if the project ultimately fails.

Finally, in the event the Commission rejects a request for a deferral, it should require that ISO-NE immediately terminate the resource's CSO. As part of the filing requesting the deferral, the resource should be required to demonstrate that the deferral is critical to achieving commercial operations, so if the Commission is not persuaded to grant the deferral, the resource's CSO should be summarily terminated.

F. This Filing is Procedurally Improper and Violates the Federal Power Act.

1. The Commission Should Reject Attempts to Retroactively Change FCM Rules for Resources that Have Already Cleared.

The Commission should not re-write the rights and obligations of Planned Resources that cleared in a prior FCA on the fly, but should instead insist that any change be made on a perspective basis and affect only those resources coming into FCA #9 and subsequent auctions. Otherwise, the Commission risks disturbing the settled expectations of market participants who have entered into a series of financial and physical bilateral and other transactions in good faith reliance on the rules that are in place *today*. To materially change critical auction terms and conditions now would be the very definition of retroactive ratemaking.

2. The Terms and Conditions of the FCA are Protected by the *Mobile-Sierra* Doctrine.

The Commission has stated that it will apply *Mobile-Sierra* protection to capacity auction results. The Commission is "legally authorized to impose a more rigorous application of the statutory just and reasonable standard of review on future changes to agreements that do not present contract rates."[19] In *NEPGA*, the Commission argued that capacity auction results, even

[19] *PJM Interconnection, LLC*, 147 FERC P 61,128 at P 97 (*citing New England Power Generators Ass'n, Inc. v. FERC*, 707 F.3d 364 (D.C. Cir., 2013) ("*NEPGA*").

though they are not contract rates, "warrant the *Mobile-Sierra* presumption anyway"[20] and that "the Forward Capacity Auction rates were not technically contract rates for the purpose of *Mobile-Sierra*, but because they 'possess certain characteristics of contracts,' the agency would, as an exercise of its discretion, enforce the settlement agreement's provision calling for application of the public interest standard when reviewing the rates."[21]

If the *Mobile-Sierra* presumption is to mean anything, then the Commission should apply it here, where ISO-NE is attempting to change material terms and conditions related to the performance of resources that cleared in already-held FCAs. ISO-NE does not even attempt to meet its burden that its proposed tariff amendments meet the "public interest" standard necessary to revisit the rates, terms or conditions of a capacity auction that has already been run.

3. ISO-NE's Proposed Treatment of Footprint Power Raises Serious Discrimination and Other Issues.

The Deferral Filing provides Planned Resources that miss their COD a sweetheart deal that will result in the potential avoidance by the project developer of millions of dollars in collateral that would otherwise be forfeited under existing rules. This practice is an extraordinary concession to a single resource at the expense of the rest of the market. There is no valid reason for giving ISO-NE the right to elect to provide this kind of discriminatory treatment for particular resources. Instead, ISO-NE should be required to treat all similarly-situated resources in a comparable manner. Currently, there are no established criteria by which ISO-NE is required to evaluate a Planned Resource seeking to avoid forfeiture of (or the posting of additional) Financial Assurance.

[20] *NEPGA*, at p. 366.

[21] *Id.* at p. 368 (*citing Devon Power LLC*, 134 FERC ¶ 61,208, 62,044 (2011); *see also Devon Power LLC*, 137 FERC ¶ 61,073 (2011) (Order Denying Rehearing)).

Moreover, the clear subtext of ISO-NE's Deferral Filing is that it wants to provide special and favorable treatment to one specific Planned Resource, Footprint Power, to the detriment of the remainder of the market. The Commission is required to reject a tariff filing that is made to benefit (or punish) one particular market participant in favor of rules of general applicability.

The ISO-NE filing appears to elevate the needs of one specific resource over the integrity of the market. As discussed above, re-working the terms and conditions of the Forward Capacity Market for the benefit of a single market participant sends exactly the wrong message to project developers that there are no consequences for over-estimating the speed at which they will be able to bring a project to market.

Moreover, the Commission has established rules for exempting a single market participant from a particularly onerous or unexpected application of its rules: the waiver process. While NRG has grave misgivings as to whether Footprint Power would meet the four-prong test for a waiver, we suggest that the Commission deny ISO-NE's proposed filing, without prejudice to the aggrieved generator making an appropriate waiver request. However the Commission rules in that response to a waiver request, it is certainly a better alternative than changing the ISO-NE Tariff to provide generators that, by definition, are needed for reliability, a free option to meet or not meet their commercial operation date, and thus supply capacity to the market when needed.

V. Conclusion

The NRG Companies thus respectfully requests that the Commission reject ISO-NE's Deferral Filing

Respectfully submitted,

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Certificate Of Service

I hereby certify that I have served a copy of the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Princeton, New Jersey this 6th day of August, 2014.

/s/ *Kathryn B. Wig*
Kathryn B. Wig

Attachment A

Forward Capacity Market First Annual Reconfiguration Auction for Commitment Period 2016-2017 Results Summary												
Capacity Zone Type	**Capacity Zone ID**	**Capacity Zone Name**	**Total Supply Offers Submitted (MW)**	**Total Demand Bids Submitted (MW)**	**Total Supply Offers Cleared (MW)**	**Total Demand Bids Cleared (MW)**	**Net Capacity Cleared (MW)**	**ISO Supply Offer (MW)**	**ISO Demand Bid (MW)**	**ISO Supply Offer Cleared (MW)**	**ISO Demand Bid Cleared (MW)**	**Clearing Price ($/kW-month)**
ROP	8500	Rest-of-Pool	568.531	892.93	432.976	-443.383	-10.407	0	428.269	0	428.269	3.15
Import	8501	Connecticut	121.558	494.895	121.558	-3.705	117.853					3.15
Import	8502	NEMA-Boston	18.963	910.721	10.147	-301.219	-291.072					12.112
Export	8503	Maine	265.59	329.898	175.859	-1.772	174.087					3.15