UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Northeast Utilities Service Company	**)**	**Docket No. EL09-20-000**
NSTAR Electric Company	**)**	

MOTION TO INTERVENE AND PROTEST OF THE NRG COMPANIES

Pursuant to Rule 212 and 214 of the Federal Energy Regulatory Commission's ("Commission') Rules of Practice and Procedure[1], and the Commission's December 17, 2008, "Notice of Filing,"[2] the NRG Companies[3] hereby protest the petition for a declaratory order filed by Northeast Utilities Service Company and NSTAR Electric Company (jointly, "Petitioners"). The NRG Companies move to intervene, jointly and severally, in the above-captioned proceeding and provide the following comments raising concerns over the market distorting effects of the proposed project.

Petitioner seek conceptual approval to construct a new transmission line and sell 1,200 MW of new generation into the New England energy markets via

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1 18 C.F.R. §§ 385.212, 214

2 On December 19, 2008, New England ITC filed a motion for an extension of time to file comments in response to the Petition, and the Commission granted an extension of time for filing comments to and including January 26, 2009.

3 For purposes of this filing, the NRG Companies are NRG Power Marketing LLC, Connecticut Jet Power LLC, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, and Somerset Power LLC.

out-of-market bilateral transactions with NSTAR and Northeast Utilities Services Company. The structure of the proposed transaction threatens the competitive wholesale capacity market in New England by artificially adding 1,200 MW of additional capacity, via out-of-market contracts, to a Forward Capacity Market ("FCM") that is already substantially long (*i.e.*, already has surplus generation).

As the Commission has recognized, Load Serving Entities, such as Petitioners, have substantial economic incentive to suppress capacity clearing prices via out-of-market contracts of the type under consideration here. The Commission should clarify that appropriate FCM market mitigation measures will be addressed in future proceedings and that the proposed project remains subject to all present or future FCM bid mitigation rules.

I. COMMUNCIATIONS

Communications in connection with this filing should be addressed to:

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II. BACKGROUND

On December 17, 2008, Northeast Utilities Service Company and NSTAR filed a Petition for Declaratory Order pursuant to Rule 217 that the Petitioners

may enter into a bilateral transmission services agreement with H.Q. Energy Services, Inc. ("HQ") for 1,200 MW of firm and exclusive transmission service over a new direct current transmission tie line connecting New England with the Hydro-Quebec system. Petitioners state that the exclusive firm service over this new tie would allow HQ to sell and deliver firm "system power" from the Hydro-Quebec system to the Petitioners and other unnamed wholesale purchasers in New England. The Petitioners are thus seeking a waiver of the Order 890 requirement that all new transmission services be provided on an open access, competitive and non-discriminatory basis.

III. MOTION TO INTERVENE

NRG PML is a power marketer that participates in the ISO-NE markets and engages in bilateral transactions in the New England region. Connecticut Jet Power LLC, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, and Somerset Power LLC own and operate power generation facilities in the State of Connecticut and the Commonwealth of Massachusetts. All of the NRG Companies participate in the ISO New England capacity market. As participants in the markets operated by ISO-NE, the NRG Companies have a direct and substantial interest in this proceeding that cannot be adequately represented by any other party and their intervention would be in the public interest.

IV. PROTEST

A. The Petition Threatens the Proper Functioning of the New England Capacity Market.

Petitioners request that the Commission approve the proposed transmission project, while ignoring the serious threat to the proper functioning of the FCM that this deal poses. Petitioners are effectively proposing to bring an additional 1,200 MW of out-of-market power into an FCM that is already long by over 4,700 MW,[4] without engaging in any type of competitive bidding process.

The Commission should recognize that existing FCM rules are not sufficient to protect the market against the anti-competitive affects of new resources entering the market as price-takers under a long-term bundled power, capacity and transmission services agreement and either deny Petitioners' request or, at a minimum:

1. Direct ISO New England and the region's stakeholders to examine its existing FCM market rules and propose any changes necessary to avoid a prolonged price collapse brought about by out-of-market resources; and

2. Clarify that any order will not provide Petitioners any expectation that resources delivered by the new proposed project will be allowed to participate unmitigated in the FCM until there is a

[4] ISO New England reported that excess capacity in the first Forward Capacity Auction was 2,047 MW. *See* Letter from ISO New England filed in Docket No. ER08-633-000, dated March 3, 2008, at p. 1. ISO-NE reported that excess capacity in the second Forward Capacity Auction was 4,755 MW. *See* Letter from ISO New England filed in Docket No. ER09-467-000, dated December 23, 2008, at p. 2.

thorough review of the competitive effects of the proposed agreement.

Further, the Commission is being asked to rule in this proceeding without any evidence that the imported power is necessary to economically serve New England, or any assurance that the proposed out-of-market arrangement will not undermine the market design of the FCM and artificially suppress market clearing prices and disrupting supply/demand balances.

In its *Devon Power LLC*[5] order, the Commission recognized that a competitive capacity market is critical to supporting the long-term reliability needs of the New England region. The Commission found that a key measure to accomplishing this goal is that the FCM must "appropriately compensate generators needed for reliability and attract and retain necessary infrastructure to assure long-term reliability."[6] It is critical that the Commission not inadvertently, through approval of Petitioner's proposal, undermine FCM by not allowing existing as well as new generator resources to receive adequate compensation.

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5 *See Devon Power LLC*, Docket No. ER03-563 (filed Feb. 26, 2003).

6 *Devon Power LLC,* 107 FERC ¶61,240 at P 1 (2004); *see also, e.g.*, *Devon Power LLC*, 111 FERC ¶ 63,063 at P 150 (2005); *New York Indep. System Operator, Inc.*, 118 FERC ¶ 61,182 at P 17 (2007) (instituting proceedings to investigate "the justness and reasonableness of the [market], and whether and how market rules need to be revised to provide a level of compensation that will attract and retain needed infrastructure and thus promote long-term reliability while neither over-compensating nor under-compensating generators").

The Alternative Capacity Price Rule is one example of a market rule that should be revised in light of Petitioners' proposal. The Alternative Capacity Price Rule is designed to ensure the FCM clearing prices is reflective of the cost of new entry, even when out-of-market bilateral contracts displace market-based entrants. Currently, the Alternative Capacity Price Rule is not functioning as intended due to the substantial surpluses in the New England market. The novel bundled transmission, power and capacity contract that Petitioners are proposing to enter into (and pass on to its captive ratepayers) would exacerbate this problem.

B. The Commission Must Review the Out-of-Market Contract Proposed by Petitioners, Who Have Economic Incentives to Depress Capacity Prices.

The Commission previously has recognized that large net buyers have both the incentive and ability to depress prices by entering into out-of-market power purchase agreements, and then bidding those resources into a capacity market at less than the legitimate cost of the capacity. Petitioners should be required to clarify how their proposal will avoid anti-competitive impacts on the FCM market prior to the Commission approving the conceptual proposal.

The Commission has imposed strong market mitigation measures in various capacity markets in response to Load Serving Entities seeking to enter into out-of-market power purchase agreements with a capacity component and

should impose the same conditions here. For example, the Commission has recognized the need for such mechanisms to protect capacity markets in New England,[7] New York and PJM from out-of-market contracts, and should either do so in the instant proceeding, or expressly reserve the capacity market issues for a future proceeding.[8]

Without a thorough review of the FCM market rules, there is substantial danger that the 20-year agreement proposed by Petitioners would artificially compress FCM prices through intended or unintended monopsony power. There is no question that Petitioners, as Load Serving Entities, have the same direct financial interest in suppressing market-wide capacity prices, and that bundled transmission, power purchase and capacity contract proposed by Petitioners presents market power concerns to which the FCM market must be allowed to adapt.

Moreover, the evidence in this proceeding is clear that the price of the capacity HQ proposes to import is far above the prices currently paid by Petitioners' retail rate payers. For example, as noted in the filing by Indicated

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[7] As discussed above, the Alternative Capacity Price Rule in New England does not take into account the substantial surplus conditions New England is currently experiencing and is thus not sufficient to protect the FCM from the potential of a prolonged price collapse.

[8] *See, e.g., New York Independent System Operator, Inc.*, 122 FERC ¶ 61,211 at P 101 (2008); *PJM Interconnection, LLC*, 117 FERC ¶ 61,331 at PP 103-04 (2006), *order on reh'g and clarification*, 119 FERC ¶ 61,318, *order on reh'g*, 121 FERC ¶ 61,173 (2007); *Devon Power, LLC*, 115 FERC ¶ 61,340 at PP 109-15, *order on reh'g*, 117 FERC ¶ 61,133 (2006).

New England Generators,[9] the capacity cost of the new generation facilities developed by Hydro Quebec cost are approximately $4,000 per kW, not including the cost of the transmission lines. This is substantially more than the $560 to $620 per kW cost of new entry used in the FCM.[10] New generation projects in New England, facing an unsubsidized cost of new entry, will be substantially less likely to clear in the FCM and these units on the margin are less likely to be built. Further, the already low clearing prices currently received by existing generation will be artificially depressed to an even greater extent than currently exists.

V. CONCLUSION

Wherefore, the NRG Companies respectfully request that the Commission deny the Petition or, in the alternative, clarify that the Commission is expressly reserving consideration of whether additional revisions to the FCM market rules may be necessary to mitigate the adverse competitive affects on the market of the proposed transaction.

Respectfully submitted,

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[9] *See* Filing of Indicated New England Generators, at p. 25-26 citing evidence that HQ is building 2,967 MW of new generation at a cost of $11.86 billion. Dividing $11.86 billion by the number of additional MW reveals a true capacity cost of approximately $4,000 per kW.

[10] The source of the cost of new entry initially used in the Forward Capacity Market is the Prepared Testimony of John J. Reed, submitted on behalf of ISO-NE, in Docket No. ER03-563-030, on March 3, 2005 at p. 20.

/s/

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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, NJ this 26th day of January, 2009.

/s/

Abraham Silverman