UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England Inc.	**)**	**Docket No. EL18-182-001**
	)	**Docket No. ER18-2364-001**
	)	

REQUEST FOR REHEARING OF NRG POWER MARKETING LLC

Pursuant to Section 313(a) of the Federal Power Act[1] and Rule 713 of the Rules of Practice and Procedure of the Federal Energy Regulation Commission (the "Commission") NRG Power Marketing LLC ("NRG") respectfully requests rehearing of the Commission's December 3, 2018 order[2] accepting ISO New England's ("ISO-NE") revisions establishing a fuel security methodology, agreeing with ISO-NE that Mystic Units 8 and 9 owned by Exelon Generating Company, LLC ("Mystic units") will be allowed to enter into the Forward Capacity Auction ("FCA") for the next three years as price takers, and agreeing that ISO-NE should be allowed to use out-of-market efforts to retain fuel-secure units through FCA 15. As discussed below, the Commission must grant rehearing of its holding in the December 3 Order.

I. STATEMENT OF ISSUES

In accordance with Rule 713(c)(2) of the Commission's Rules of Practice and Procedure,[3] NRG hereby provides the following identification of errors and statement of issues.

1. The Order is arbitrary, capricious, unsupported by substantial evidence, and not the result of reasoned decision-making because the Commission approved ISO-NE's filing without providing analysis for why the *IPPNY*[4] precedent applies here and

[1] 16 U.S.C. § 825l(a) (2012).

[2] *ISO New England Inc.*, 165 FERC ¶ 61,202 (2018) (the "December 3 Order").

[3] 18 C.F.R. § 385.713(c)(2) (2016).

[4] *Independent Power Producers of N.Y. v. N.Y. Indep. Sys. Operation, Inc.*, 150 FERC ¶ 61,214 (2015) ("IPPNY").

ignoring the substantial evidence offered by parties demonstrating that the facts are materially different. *See EPSA v. FERC*, 753 F.3d, 216, 224 (2014); *PPL Wallingford, LLC and PPL EnergyPlus, LLC v. FERC*, 419 F.3d 1194, 1198 (2005); *American Gas Ass'n v. FERC*, 593 F.3d 14, 21 (D.C. Cir. 2010); *Laclede Gas Co. v. FERC*, 873 F.2d 1494, 1498 (D.C. Cir. 1989).

2. Rehearing of the December 3 Order is required because the Commission's findings were not supported by substantial record evidence and did not reflect a balanced consideration of all of the record evidence. Specifically, the Commission failed to account for how the price-taking proposal compounds the fuel security problem and ultimately resource adequacy – an issue Chairman Chatterjee raised in his dissent. *See, e.g., Baltimore Gas & Elec. Co. v. Natural Res. Def. Council, Inc.*, 462 U.S. 87, 105 (1983) ("*Baltimore Gas*"); *Illinois Commerce Comm'n v. FERC*, 576 F.3d 470, 477 (7th Cir. 2009) ("*ICC*"); *Pacific Gas & Elec. Co. v. FERC*, 373 F.3d 1315, 1319 (D.C. Cir. 2004) ("*PG&E*").

3. The December 3 Order promotes undue discrimination between units providing similar fuel security benefits creating an unacceptable preference for the Mystic units. 16 U.S.C. § 824d(b) (2016).

4. The December 3 Order is arbitrary and capricious because the Commission failed to respond meaningfully to arguments of parties demonstrating that, among other things, ISO-NE's proposal to price fuel secure resources as price-takers would be unjust and unreasonable. *Allentown Mack Sales & Serv., Inc. v. NLRB*, 522 U.S. 359 (1998); *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983); *Public Utils. Comm'n of Cal. v. FERC*, 462 F.3d 1027, 1051 (9th Cir. 2006) ("*CPUC*"); *PPL Wallingford Energy LLC v. FERC*, 419 F.3d 1194, 1198 (D.C. Cir. 2005) ("*PPL Wallingford*"); *Moraine Pipeline Co. v. FERC*, 906 F.2d 5, 9 (D.C. Cir. 1990) ("*Moraine*").

II. RELEVANT BACKGROUND

A. The August 31 Filing

On May 1, 2018, ISO-NE filed a petition for waiver of tariff provisions so that it could retain units for fuel security purposes.[5] ISO-NE asserts that it studied the retirements of each of the Mystic units and determined that the loss of Mystic 8 & 9 would pose fuel security risks to the New England grid, and potentially to the Eastern Interconnection as a whole.[6] Therefore,

[5] *ISO New England Inc.*, Docket No. ER18-1509 (May 1, 2018) ("Waiver Filing").

[6] *ISO New England Inc.*, Docket No. EL18-182 and Docket No. ER18-2364 at pg. 3 (August 31, 2018) ("August 31 Filing").

ISO-NE determined that Mystic 8 & 9 would be needed past their planned retirement dates of May 31, 2022. The Tariff however did not allow ISO-NE to retain units to address reliability risks related to fuel security, so it made its Waiver Filing.

On July 2, 2018, the Commission issued its order denying the ISO-NE's Waiver Filing and instituting a Section 206 proceeding and extending deadlines. The Commission explained that it was instituting a Section 206 because it found that "ISO-NE's Tariff may be unjust and unreasonable, based on ISO-NE's demonstration in this proceeding that its Tariff fails to address specific regional fuel security concerns identified in the record that could result in reliability violations as soon as year 2022."[7] Specifically, the Commission ordered ISO-NE to either:

> (1) to submit within 60 days of the date of this order interim Tariff revisions that provide for the filing of a short-term, cost-of-service agreement to address demonstrated fuel security concerns and to submit by July 1, 2019 permanent Tariff revisions reflecting improvements to its market design to better address regional fuel security concerns; or (2) within 60 days of the date of this order, to show cause as to why the Tariff remains just and reasonable in the short- and long-term such that one or both filings is not necessary.[8]

The Commission also recognized that there may be "material differences between retaining resources through cost-of-service agreements for local transmission needs and retaining resources through cost-of-service agreements for regional fuel security concerns."[9] Therefore, the Commission explained that resources retained for fuel security could be offered in to the capacity market auctions at a price above zero. On August 31, 2018 ISO-NE filed its proposal in response to the Commission's Section 206 Order, and on December 3, 2018, the Commission

---

[7] *Order Denying Waiver Request, Instituting Section 206, and Extending Deadlines, ISO New England Inc.*, 164 FERC ¶ 61,003 (2018) ("July 2 Order").

[8] July 2 Order at P 55.

[9] July 2 Order at P 57.

accepted ISO-NE's proposal.

B. The December 3 Order

On December 3, 2018, the Commission accepted ISO-NE's proposal in all respects despite the Commission's recognition in its 206 Order that there may be material differences between retaining resources for local transmission needs and retaining resources for fuel security and despite the various evidence, protests and alternative proposals that had been filed demonstrating the existence and impact of those differences. Specifically, the Commission found the assumptions for the fuel security reliability review for retention of resources reasonable but required ISO-NE to file an informational filing comparing the study assumptions to the actual conditions experienced in the winter of 2018/2019.[10] The Commission also found that resources needed for fuel security can participate in the Forward Capacity Market as price-takers and found that cost allocation on a regional basis to Real-Time Load Obligation was just and reasonable.[11] In addition, the Commission found it appropriate that the term of the interim fuel security provision include FCAs 13 through 15 but urged ISO-NE to file a long-term solution before July 1, 2019.[12]

III. REQUEST FOR REHEARING

A. The Commission Inappropriately Relies on the *IPPNY* Case.

In its December 3 Order, the Commission accepts ISO-NE's proposal that resources retained for fuel security be entered into the FCA as price-takers.[13] The Commission relied on

[10] *ISO New England Inc.*, 165 FERC ¶ 61,202 at P 39 (December 3, 2018) ("December 3 Order").

[11] December 3 Order PP 53, 88.

[12] December 3 Order at PP 96-97.

[13] December 3 Order at P 88.

the *IPPNY* case to come to its conclusion that fuel security resources can participate as price takers in the FCA. However, as discussed below, the facts in the IPPNY case are inapposite to the facts here, which the Commission recognized in the July 2 Order, but discounted in the December 3 Order, without adequately explaining the departure from precedent. Further, the Commission found that the complainants in *IPPNY* did not bear their burden of proof that

In *IPPNY*, the Commission denied a complaint against the New York Independent System Operator, Inc. seeking a determination that certain resources with RMR agreements either be excluded from the capacity market or be subject to a non-zero offer floor. The purpose of the RMR agreements Multiple parties distinguished the *IPPNY* case from the case here, yet the Commission provides no explanation for why those differences do not matter in its explanation of its reliance on the *IPPNY* case.

First, in *IPPNY*, the Commission's decision was based on the understanding that the agreements were intended to address "short-term reliability" needs that could be solved by transmission upgrades, not the region-wide threat to reliability that ISO-NE has described in this case, and which will require substantial market design revisions to address. Specifically, the IPPNY decision revolved around a very localized RMR agreements that responded to specific and identifiable transmission violations. Here, ISO-NE is addressing a broad-based issue regarding fuel security that will require fundamental re-design of the markets to take the region's fuel security requirements into account.

The Order's failure to distinguish between a discrete local reliability need and a pool-wide fuel security concern is a failure of reasoned decision-making and departure from the *IPPNY* line of cases.[14]

First, there are key factual differences between pool-wide fuel limitations and local transmission constraints that preclude the reasoned reliance on the *IPPNY* precedent. These differences are core to the Commission's policies. For example, in many cases, the only way to resolve a local reliability need is to retain the specific resource seeking to retire. That is not true here, where increased fuel security anywhere in the system could substitute for the Mystic units. Additionally, there is often a reasonable presumption that that existing resource is the lowest-cost means to meet the need. But neither of those factors are present here, where the issue is not constrained to a particular geographic region, but instead represents a region-wide reliability issue. Further, the Order is bare of any support that retaining the Mystic units are the most economical way to address the regional fuel security need.

The Commission merely states that "we find that, with respect to capacity market offers, there is no meaningful distinction between resources retained for reliability and resources retained for fuel security."[15] It does nothing to explain why there "is no meaningful distinction" even though multiple parties provided evidence to the contrary and even though the Commission is required to do so.[16]

---

[14] *See, e.g., Allentown Mack Sales & Serv., Inc. v. NLRB*, 522 U.S. 359, 374 (1998) (the process by which an agency arrives at a particular "result must be logical and rational"); *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 48 (1983) (the Supreme Court has "frequently reiterated that an agency must cogently explain why it has exercised its discretion in a given manner" (citations omitted)).

[15] December 3 Order at P 84.

[16] *See e.g., Public Utils. Comm'n of Cal. v. FERC*, 462 F.3d 1027, 1051 (9th Cir. 2006) ("CPUC Case") (the Commission is obligated to provide a "reasoned response" to arguments raised

Second, the *IPPNY* order, by its plain language addresses "transmission constraints" and that "where it is not feasible or practical to model all constraints, some RMR agreements may be necessary, since market prices in these instances may be insufficient to retain enough capacity in these locations to reliably serve load in these locations."[17] In the case of the Mystic units, there is no transmission constraint and no need to "serve load" in the physical area immediately around the affected powerplants. These key factual differences also warrant a revised approach.

Third, the Commission ignored evidence provided by the New England Power Generators Association ("NEPGA") of the price suppression and market distortions created by allowing fuel security resources to participate as price takers. NEPGA sponsored the testimony of Dr. Paul Sotkiewicz, the former Chief Economist at PJM. He concluded that there would be "$214 million to $642 million in artificial price suppression in FCA 13 alone."[18] In *IPPNY*, the Commission found that there was not sufficient evidence that allowing resources to offer into the capacity markets at *de minimis* levels would distort the market. However, here, parties provided evidence to demonstrate the massive impact on the capacity market if ISO-NE allowed fuel security resources to participate as price-takers. ISO-NE did not rebut this evidence, and the Commission does not fully address NEPGA's contention. The Commission has an obligation to

---

before it); *PPL Wallingford Energy LLC v. FERC*, 419 F.3d 1194, 1198 (D.C. Cir. 2005) ("*PPL Wallingford*") (requiring the Commission to "respond meaningfully" to concerns raised by parties).

[17] *IPPNY* at P 68.

[18] Motion to Intervene and Protest of the New England Power Generators Association, Inc., at pg. 21, Docket No. ER18-2364-000 (filed September 21, 2018).

provide reasoned decision-making,[19] and it failed to consider this evidence in making its determination.

Finally, ISO-NE operates a three year forward capacity market unlike NYISO's prompt year capacity market. This is an important fact because allowing resources retained for fuel security to participate in the FCA as price-takers will have the effect of suppressing prices for multiple years. In *IPPNY*, the Commission was careful to cabin the harm caused by the out-of-market actions; the "Commission has emphasized that RMR agreements should be of a limited duration so as to not perpetuate out-of-market solutions that have the potential, if not undertaken in an open and transparent manner, to undermine price formation."[20] By contrast to the commands of *IPPNY*, here the Commission has paved the way for three years of price suppression, which is equivalent to 36 auction cycles in New York – hardly a length of time that can slipped under the "limited duration" language in the *IPPNY* order.

The Commission states "[w]e accept ISO-NE's proposal to implement the Fuel Security Study process for FCAs 13, 14, and 15. . . we agree that the extension of the ability to retain resources through FCA 15 is a reasonable approach."[21] In its protest, NEPGA also demonstrated that the effects of allowing fuel security resources to participate in the FCA as price takers would affect subsequent FCAs, as the price suppression would cause other resources to retire in subsequent auctions. ISO-NE admitted to the fact that allowing resources retained for fuel

[19] *Missouri Pub. Serv. Comm'n v. FERC*, 337 F.3d 1066, 1072-75 (D.C. Cir. 2003) (vacating and remanding Commission orders because it found, among other things, that the Commission had failed to articulate the actual reasons for its decision, and the reasons it did cite were "speculative," unsupported by record evidence, and did not support its decision); *Moraine*, 906 F.2d at 9 (Commission failed to engage in reasoned decision-making where it failed to "articulate its decision based on evidence in the record").

[20] *IPPNY* at P 68.

[21] December 3 Order at P 96.

security to participate as price takers will lower prices, and the Commission likewise acknowledged that price suppression was an inevitable consequence of allowing the Mystic units to participate as price-takers,[22] yet the Commission failed to explain why allowing the lowering of prices for multiple years would be just and reasonable, nor did it substantially explain the different conclusions laid out in *IPPNY*.[23]

Finally, as noted in the *IPPNY* order, the New York Independent System Operator's capacity market is a short-term market that does not permit new entry between its monthly capacity market auctions. Thus, pricing in a new constraint – particularly one with a super-local nature, would (arguably, anyway) not act to encourage new entry or additional solutions to a hyper-local problem. However, New England's forward market is entirely different, given that it operates three-years ahead of time, and given the fact that the constraint could be solved by increased fuel security anywhere across the New England grid. Thus, in New England, new entrants would potentially be able to resolve the constraint – were the Commission to require the fuel issue to be modeled.

The Commission failed to address the differences in the *IPPNY* case with the facts here and ignored record evidence. Therefore, the December 3 Order is arbitrary and capricious because the Commission failed to respond meaningfully to arguments distinguishing the *IPPNY* case from this instant case.

[22] December 3 Order at P 87.

[23] *Moraine Pipeline Co. v. FERC*, 906 F.2d 5, 9 (D.C. Cir. 1990) (Commission failed to engage in reasoned decision-making where it "fail[ed] to respond to [petitioner's] arguments").

B. The Commission Failed to Meaningfully Address Many of the Arguments Raised.

The December 3 Order repeatedly ignores or glosses over evidence provided by protesters of the flawed aspects of ISO-NE's proposal. Multiple parties to this proceeding provided substantive affidavits presenting record evidence. NRG itself sponsored testimony from Mr. Peter D. Fuller. Mr. Fuller's testimony does not appear to be addressed anywhere in the December 3 Order, nor were many of the arguments he raised in his rebuttal of Dr. Geissler's testimony that the risk of over-procurement is unwarranted.

In addition, Chairman Chatterjee succinctly and correctly raised these issues in his dissent, and the December 3 Order fails to adequately address any of the Chairman's concerns. Specifically, Chairman Chatterjee states in his dissent:

> I believe the majority glosses over these differences, and ISO-NE disregards them, focusing primarily on the risk of over-procurement of capacity. While I recognize ISO-NE's concern that entering retained resources into the market at a non-zero price creates a risk of over-procurement, this case necessarily requires us to choose between, on the one hand, the risk of over-procurement and, on the other hand, the risk of exacerbating the fuel security problem by accelerating resource retirements. On balance, I find it more acceptable to risk over-procurement than to risk intensifying the significant fuel security concerns that these tariff revisions are intended to address.[24]

The December 3 Order failed to demonstrate reasoned decision-making as it failed to grapple with the record evidence put forth by multiple parties.

1. The Commission Ignores the "Vicious Cycle" that ISO-NE has Created by Allowing Fuel Security Resources to Participate as Price-Takers.

In the Commission's Section 206 Order, it specifically requested that ISO-NE develop a plan that would value fuel security. However, what ISO-NE proposed and what the Commission

[24] Chairman Chatterjee's Dissent, December 3 Order, at pg. 3.

accepted will only create a "vicious cycle" of additional out-of-market interventions.[25] The Commission accepted ISO-NE's proposal that resources prevented from retiring for fuel security reasons participate as price-takers. ISO-NE acknowledges that allowing fuel secure resources to participate in the FCA as price-takers will result in lower prices.[26] Lower prices will put additional pressure on the revenues of other fuel-secure resources, which may lead to additional marginal units seeking to retire.

As NRG explained in its protest, NRG has 1,500 MW of legacy oil units that have the ability to store oil sufficient to support operations at maximum output for more than 10 days, as well as the air permits to allow its use for extended periods in response to extreme weather or other reliability events. NRG has retired over 650 MW of oil, dual fuel, and coal fired generation since it entered the New England market in 1999. Many other generators with onsite fuel storage have followed suit, as the market continues to send the price signal for these resources to retire.

The Order rewards a small subset of firm-fuel units for their fuel-security attributes, while denying other similarly situated units comparable treatment, in clear violation of the prohibition against undue discrimination and the provision of preferential treatment to similarly situated units. Moreover, the policies espoused in the Order simply results in resources having to retire and seek cost-based compensation, like that being offered to the Mystic units, increasing costs to consumers and destroying the wholesale market. This is what Chairman Chatterjee

[25] Chairman Chatterjee's Dissent, December 3 Order, at pg. 2.

[26] *ISO New England Inc.*, Compliance Filing to Establish a Fuel Security Reliability Standard, Short-Term Cost-of-Service Mechanism, and Related Cost Allocation for Out-of-Market Compensation Docket Nos. EL18-182 and Docket No. ER18-2364, at pgs. 4, 17. (filed August 31, 2018) ("ISO Filing").

describes as a "vicious cycle." NRG plainly presented this concern to the Commission, but its concerns went wholly unaddressed in the Commission's December 3 Order.

2. The Commission Fails to Address the Arguments by Parties that the Risk of Over-Procurement is Unfounded.

The Commission pointed out that multiple parties commented on ISO-NE's flawed reasoning that fuel security resources must participate as price-takers or risk over-procurement. As stated in NRG's protest, ISO-NE's concerns are unfounded.[27] The Commission blindly accepted ISO-NE's argument that the risk of "over-procurement" – *i.e.*, the 'risk' that the Forward Capacity Market would purchase the most economical set of resources to meet the region's resource adequacy needs and the identified subset of fuel-secure resources (Mystic 8&9) might not be part of that mix - outweighed the certainty of lower capacity prices and their effects on investment decisions and market confidence in allowing fuel secure resources to participate in the FCA as price-takers.

Dr. Geissler expressed his concern that there is a risk of over-procurement of capacity if fuel security units participate in FCA at their competitive prices. In particular, ISO-NE appeared to be concerned about new entry from gas-only generation, which could theoretically exacerbate the region's dependence on natural gas. NRG put forth the affidavit of Peter D. Fuller, who explained that ISO-NE overestimates the risk of over-procurement. Recent experience has shown that new capacity clearing in the FCAs is mostly composed of import capacity and in-region gas-fired resources with onsite backup fuel or other non-gas fired technologies. The last time new "traditional" generation cleared was in FCA 10, and all of those units are dual-fuel

[27] Protest of NRG Power Marketing, Docket Nos. ER18-2365 and EL18-182, at pg. 9 (filed September 21, 2018) ("NRG Protest").

capable.[28] The Commission failed to even acknowledge NRG's explanation, and accepted Dr. Geissler's explanation on its face without any justification that allowing fuel secure resources to participate as price-takers was a just and reasonable option.

Moreover, NRG argued that ISO-NE's concern that if Mystic is priced at its competitive price in the auction, then the auction clearing price will incent new gas-fired generation is speculative. A new resource developer would rely on not just the clearing price but the market dynamics. New resource developers are on notice that the Commission's order directs ISO-New England to develop a market to price fuel-secure resources, and that those fuel-secure resources may get extra compensation for fuel security attributes. The Commission failed to address NRG's arguments on this point as well.

In addition, ISO-NE also fails to note, and the Commission failed to consider, the potential impact on reliability and economic outcomes of the delay or cancellation of new resources that clear in an FCA. NRG argued that it is prudent planning to create a market environment as soon as possible to entice new development to replace the retiring Mystic capacity. The Mystic units are necessarily leaving the market, as required by the Tariff and as ISO-NE has itself stated. The Commission fails to consider any of the evidence that was plainly presented by multiple parties that the ISO-NE's concern about over-procurement is unfounded. There is nothing in the record that rebuts, let alone addresses, this evidence from multiple parties.[29] Indeed, the Commission's December 3 Order is arbitrary and capricious because it

[28] NRG Protest, Fuller Affidavit at P 22.

[29] *See e.g.*, *Public Utils. Comm'n of Cal. v. FERC*, 462 F.3d 1027, 1051 (9th Cir. 2006) ("CPUC Case") (the Commission is obligated to provide a "reasoned response" to arguments raised before it); *PPL Wallingford Energy LLC v. FERC*, 419 F.3d 1194, 1198 (D.C. Cir. 2005) ("*PPL Wallingford*") (requiring the Commission to "respond meaningfully" to concerns raised by parties).

failed to consider the facts and arguments by other parties rebutting ISO-NE's position and in doing so puts fuel secure resources in New England directly at risk as the market absorbs approximately 1,400 MW of unpriced capacity offers in FCA 13 and potentially much more in subsequent auctions.

IV. CONCLUSION

For the aforementioned reasons, NRG respectfully requests that the Commission grant rehearing of the December 3 Order.

January 2, 2019

Respectfully submitted,

/s/ Abraham Silverman
Abraham Silverman
Jennifer Hsia
NRG Energy, Inc.
804 Carnegie Center
Princeton, NJ 08540

Attorneys for the NRG Power Marketing LLC

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 2nd day of January, 2019.

/s/ *Abraham Silverman*