

170 FERC ¶ 61,183
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

ISO New England Inc. Docket Nos. ER20-89-000
New England Power Pool Participants Committee ER20-89-001

ORDER REJECTING TARIFF REVISIONS

(Issued March 6, 2020)

1. On October 11, 2019, pursuant to Section 205 of the Federal Power Act (FPA),¹ ISO New England Inc. (ISO-NE) and the New England Power Pool Participants Committee (NEPOOL) (together, Filing Parties) jointly filed revisions to the ISO-NE Transmission, Markets and Services Tariff (Tariff) to clarify that resources retained for fuel security reasons will not be retained for other reasons once the fuel security retention period ends. For the reasons discussed below, we reject the filing.

I. Background

2. On May 1, 2018, ISO-NE filed a petition for waiver of certain Tariff provisions to allow ISO-NE to retain two retiring generating units owned by Exelon Generation Company, LLC, Mystic Units 8 and 9 (Mystic 8 and 9), for the 2022-2023 and 2023-2024 Capacity Commitment Periods² to maintain fuel security.³ In support of its waiver request, ISO-NE pointed to a series of studies that showed a high level of operational risk, under a variety of scenarios, associated with the retirement of Mystic 8 and 9 and the Everett Marine Terminal (Everett).⁴ These studies indicated that the loss of

¹ 16 U.S.C. § 824d (2018).

² Capitalized terms not defined herein are used as they are defined in the Tariff. Tariff, § I.2 Rules of Construction; Definitions.

³ ISO-NE, Petition for Waiver, Docket No. ER18-1509-000, at P 3 (filed May 2, 2018) (Petition for Waiver).

⁴ *Id.* at 3 n.6. Everett is also known as the Distrigas Liquefied Natural Gas (LNG) terminal.

both Mystic 8 and 9 and Everett⁵ would lead to the depletion of operating reserves and load shedding.

3. On July 2, 2018, the Commission rejected ISO-NE's petition for waiver and preliminarily found that the Tariff may be unjust and unreasonable because it fails to address specific regional fuel security concerns identified in the studies presented by ISO-NE.⁶ Pursuant to its authority under FPA Section 206, the Commission directed ISO-NE to either: (1) submit by August 31, 2018 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 (long-term fuel security solution); or (2) by August 31, 2018 show cause as to why the Tariff remains just and reasonable absent those filings.⁷

4. On December 3, 2018, the Commission accepted ISO-NE's interim mechanism to retain resources for fuel security that seek to retire in the thirteenth, fourteenth, or fifteenth Forward Capacity Auctions (FCAs 13, 14, or 15), corresponding to the Capacity Commitment Periods of 2022-2023, 2023-2024, and 2024-2025, respectively.⁸ On March 18, 2019, the Commission granted an extension of the July 1, 2019 deadline for ISO-NE to submit its proposed long-term fuel security solution to October 15, 2019.⁹ On August 30, 2019, the Commission granted a second extension of time, extending the filing deadline to April 15, 2020.¹⁰

II. Filing

5. Filing Parties state that, under the existing Tariff, capacity resources that might otherwise retire may be retained for fuel security reliability reasons for a limited period of time. Filing Parties explain that the Tariff limits the maximum term of a fuel security cost-of-service agreement to two years and specifies that no resource will be retained for fuel security beyond June 1, 2025. However, Filing Parties note that the Tariff allows

⁵ The only fuel source for Mystic 8 and 9 is natural gas purchased from Everett, which is located adjacent to the Mystic Generation Station.

⁶ *ISO New England Inc.*, 164 FERC ¶ 61,003, at P 49 (2018) (July 2 Order).

⁷ *Id.* P 55.

⁸ *ISO New England Inc.*, 165 FERC ¶ 61,202 (2018) (December 3 Order).

⁹ Notice of Extension of Time, Docket No. EL18-182-000 (Mar. 18, 2019).

¹⁰ Notice of Extension of Time, Docket No. EL18-182-000 (Aug. 30, 2019).

ISO-NE to retain a resource previously retained for fuel security if it is needed for “another reliability reason.”¹¹ Specifically, Filing Parties explain that the Tariff allows a resource previously retained for fuel security to be subsequently retained pursuant to Tariff Section III.13.2.5.2.5, which allows ISO-NE to retain resources to meet local transmission reliability needs.¹²

6. Filing Parties state that the proposed revisions will eliminate ISO-NE’s ability to retain a resource previously retained for fuel security for local transmission reliability needs. Filing Parties state that the instant filing is consistent with the Commission’s objective of limiting the scope and length of out-of-market retention of resources, as noted in the December 3 Order.¹³ Filing Parties also assert that the proposed revisions are consistent with ISO-NE’s plans to address reliability issues in the Boston area through its planned market-based fuel security solution and an Order No. 1000¹⁴ competitive transmission solutions process. Filing Parties explain that, simultaneously with ISO-NE’s market-based fuel security efforts, ISO-NE initiated a Boston Area Needs Assessment to identify local transmission reliability needs following the expected retirement of resources in the Boston area and expects to issue a Request for Proposal (RFP) for a competitively-developed transmission solution in December 2019.¹⁵ Due to these efforts, Filing Parties contend that it is reasonable to eliminate the provision that contemplates the potential retention of a resource after it has been retained for fuel security purposes.¹⁶

¹¹ Transmittal at 4 (quoting ISO-NE Tariff § III.13.2.5.2.5A(j)).

¹² *Id.* at 5.

¹³ *Id.* (citing December 3 Order, 165 FERC ¶ 61,202 at P 96).

¹⁴ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff’d sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

¹⁵ Transmittal at 5-6. ISO-NE issued the RFP on December 20, 2019. *See* ISO-NE, *Issuance of the Boston 2028 Request for Proposal* (2019), https://www.iso-ne.com/static-assets/documents/2019/12/boston_2028_rfp_announcement.pdf.

¹⁶ Transmittal at 6.

III. Notice of Filing and Responsive Pleadings

7. Notice of the filing was published in the *Federal Register*, 84 Fed. Reg. 55,948 (Oct. 19, 2019), with interventions and protests due on or before November 1, 2019. Brookfield Renewable Trading and Marketing LP; Calpine Corporation; Dominion Energy Services, Inc.; Eversource Energy Service Company; Exelon Corporation (Exelon); LS Power Entities;¹⁷ National Grid; New England Power Generators Association Inc. (NEPGA); New England States Committee on Electricity; NRG Power Marketing LLC; Public Systems;¹⁸ Verso Corporation; and Vistra Energy Corp. filed timely motions to intervene. Exelon filed a protest, and NEPGA filed comments. ISO-NE and NEPOOL filed separate answers to Exelon's protest. Exelon filed an answer to ISO-NE's and NEPOOL's answers.

8. On December 6, 2019, Commission staff issued a deficiency letter requesting additional information regarding ISO-NE's filing. On January 6, 2020, ISO-NE filed its response (Deficiency Letter Response). Notice of the Deficiency Letter Response was published in the *Federal Register*, 85 Fed. Reg. 2,126 (Jan. 14, 2020), with interventions and protests due on or before January 27, 2020. Exelon filed a protest.

A. Pleadings

1. NEPGA Comments

9. NEPGA supports Filing Parties' proposal, arguing that it will have two primary benefits: (1) eliminating the potential for further Forward Capacity Market price suppression; and (2) substituting last resort, cost-of-service treatment with the Commission's, ISO-NE's, and NEPGA's preferred, market-based reliability solutions.¹⁹ NEPGA states that it has long advocated against the unjust and unreasonable market outcomes caused by administratively offering cost-of-service agreement resources as price-takers in the Forward Capacity Auction, including seeking rehearing of the Commission's decision to accept price-taker treatment for retained fuel security resources.²⁰ NEPGA supports Filing Parties' proposal to effectively eliminate

¹⁷ LS Power Entities consist of Helix Maine Wind Development, LLC; Ocean State Power LLC; and Wallingford Energy LLC.

¹⁸ Public Systems consists of Massachusetts Municipal Wholesale Electric Company and New Hampshire Electric Cooperative, Inc.

¹⁹ NEPGA Comments at 1-2.

²⁰ *Id.* at 3-4 (citing NEPGA, Request for Rehearing, Docket Nos. ER18-2364-001 and EL18-182-002 (filed Jan. 2, 2019)).

cost-of-service eligibility in the FCA 15 capacity commitment period for any resource previously retained for fuel security, arguing that such eligibility is unnecessary.²¹ Specifically, NEPGA contends that the recently-accepted Inventoried Energy Program and pending long-term market solution will obviate the need for fuel security cost-of-service agreements. NEPGA adds that ISO-NE's competitive procurement of transmission solutions to address local reliability needs in the Boston area will remove any need to retain fuel security resources for local reliability because the only retained fuel security resource is located in the Boston area.²²

2. Exelon Protest

10. Exelon explains that, to date, ISO-NE has only retained a single resource for fuel security, Mystic 8 and 9, which is owned by Exelon's subsidiary Constellation Mystic Power, LLC. Exelon explains that Mystic 8 and 9's planned retirement prompted ISO-NE to seek to retain resources for regional fuel security in the first place and that ISO-NE's efforts culminated in the fuel security Tariff provisions that Filing Parties now seek to revise. Exelon argues that those Tariff provisions provide an important safeguard: the ability to retain a fuel security unit if it is "needed for another reliability reason pursuant to Section III.13.2.5.2.5." Exelon asserts that Filing Parties' request to remove this safeguard is unjust, unreasonable, and unduly discriminatory and should be rejected.²³

11. First, Exelon argues that Filing Parties' proposal unduly discriminates against fuel security resources in general and Mystic 8 and 9 specifically.²⁴ Exelon states that the proposal results in different treatment for transmission security resources based on whether the resource has previously provided fuel security service, despite the fact that transmission security and fuel security resources are similarly situated for purposes of retirement.²⁵ Exelon argues that, if ISO-NE had requested to retain Mystic 8 and 9 for transmission security rather than for fuel security, the Tariff would allow for possible cost-of-service compensation until the reliability need was addressed. However, because Mystic 8 and 9 entered into a fuel security cost of service agreement, its options are restricted in a way that no other resources are or will be, effectively penalizing Mystic 8 and 9 after the fact for agreeing to provide fuel security rather than transmission

²¹ NEPGA Comments at 4-5.

²² *Id.* at 5.

²³ Exelon Protest at 1-4.

²⁴ *Id.* at 4-8.

²⁵ *Id.* at 5-6.

security.²⁶ Exelon argues that the practical impact of Filing Parties' proposal is to single out one generating facility.

12. Second, Exelon argues that Filing Parties' proposal is premature and unreasonably ignores the likelihood that neither the Boston-area transmission upgrades nor the long-term fuel security market mechanism will be completed or implemented by the time Mystic 8 and 9's fuel security cost-of-service agreement expires.²⁷ Exelon states that ISO-NE fails to recognize that continued reliance on a resource previously retained for fuel security may be the least-cost and most economic option for the region for a particular reliability need or even the *only* immediately available option. Exelon contends that there is little likelihood that sufficient transmission upgrades to eliminate the need for Mystic will be in place by June 2024 and that multiple extensions of the filing deadline make it unlikely that ISO-NE's long-term fuel security market reforms will be in place by June 2024 or even June 2025. Exelon argues that eliminating an option to address two reliability needs that could persist is not just and reasonable and is unduly discriminatory.

13. Finally, Exelon contends that ISO-NE has failed to meet its burden of proof to show that its proposal is just and reasonable and not unduly discriminatory.²⁸ Specifically, Exelon argues that ISO-NE's aspirations to develop a long-term market-based fuel security solution and competitively develop transmission solutions for the Boston area do not constitute substantial evidence that it is just and reasonable to eliminate a reliability safeguard. Exelon states that the rationale for eliminating the reliability safeguard does not outweigh the potential negative consequences that could follow; therefore, the proposal is not just and reasonable.²⁹

B. Answers

1. ISO-NE Answer

14. ISO-NE disputes Exelon's argument that Mystic 8 and 9 would have been treated differently if the units were retained for a local transmission need, instead of for fuel security.³⁰ ISO-NE claims that, in response to Mystic 8 and 9's Retirement De-List Bids,

²⁶ *Id.* at 7-8.

²⁷ *Id.* at 8-11.

²⁸ *Id.* at 11-13.

²⁹ *Id.* at 12.

³⁰ ISO-NE Answer at 4.

ISO-NE commenced two simultaneous processes: one to develop a market design to improve fuel security and another to address any potential local transmission reliability needs. ISO-NE adds that the competitive transmission planning process, including the Boston Area Needs Assessment and the forthcoming RFP, was taken in response to Exelon's submission of Retirement De-List Bids for Mystic 8 and 9 and that the need-by date for transmission improvements coincides with the retirement date of Mystic 8 and 9.³¹

15. ISO-NE asserts that neither path is more favorable than the other.³² ISO-NE explains that a resource retained for transmission security loses its interconnection rights once the specific transmission security need for which it has been retained is resolved; the resource is not subsequently evaluated for some other reliability need.³³ Therefore, ISO-NE argues that, rather than treating fuel security resources unfairly as Exelon suggests, ISO-NE's proposal remedies unfair treatment of resources retained for transmission security.

16. ISO-NE also argues that the proposal is necessary so that market participants can be assured that the harm caused by out-of-market retention is for a specific, limited duration with no possible extension. ISO-NE contends that removing uncertainty is consistent with the Commission's instruction that out-of-market actions be taken "on a limited basis, only as a last resort, and only after there has been a specific showing of an immediately reliability need."³⁴ ISO-NE concludes that eliminating the possibility of retaining a resource beyond its planned retirement date is not unjust and unreasonable or unduly discriminatory, as Exelon suggests.

2. NEPOOL Answer

17. In response to Exelon's argument that the ability to retain Mystic 8 and 9 for another reliability reason is an important safeguard, NEPOOL states that it is not a safeguard that ISO-NE or NEPOOL want.³⁵ NEPOOL claims that the Commission made it clear that retaining resources for fuel security purposes was intended solely as a

³¹ *Id.* at 5-6.

³² *Id.* at 4.

³³ *Id.* at 4, 7.

³⁴ *Id.* at 8 (citing *Grid Reliability and Resilience Pricing and Grid Resilience in Regional Transmission Organizations and Independent System Operators*, 162 FERC ¶ 61,012, at P 11 n.14 (2018)).

³⁵ NEPOOL Answer at 4.

stop-gap measure while ISO-NE develops its long-term market-based solution.³⁶ NEPOOL notes that it did not support extending the ability to retain fuel-secure resources beyond FCA 14 when ISO-NE proposed tariff changes in response to the Commission's FPA Section 206 action.³⁷ NEPOOL agrees with ISO-NE that ISO-NE's proposal is consistent with the broadly-held objective of limiting the retention of resources through out-of-market arrangements.³⁸

18. In response to Exelon's arguments that ISO-NE's proposal is short-sighted, NEPOOL states that speculation about the future is insufficient to call into question the reasonableness of the proposal.³⁹ NEPOOL reiterates ISO-NE's description of the planning currently underway to develop a transmission solution through a competitive process and to develop a fuel security solution through enhanced market design.

19. NEPOOL states that NEPOOL stakeholders unanimously approved this proposal, noting that Exelon was not present during the Participants Committee vote.⁴⁰ NEPOOL claims that Exelon has recognized that, while stakeholder support alone cannot prove that a rate design is just and reasonable, stakeholder consensus is an important factor to consider in reviewing the justness and reasonableness of a rate design.⁴¹

3. Exelon Answer

20. Exelon argues that neither ISO-NE's nor NEPOOL's answers provide any new reason to support Filing Parties' proposal. Exelon states that it understands ISO-NE's concern that out-of-market contracts undermine the markets but argues that this concern does not justify artificially limiting ISO-NE's ability to maintain reliability.⁴² Exelon argues that it may be in the best interests of both Mystic 8 and 9 and the New England region for Mystic 8 and 9 to remain in service until ISO-NE can implement its long-term

³⁶ *Id.* at 5.

³⁷ *Id.* at 5 n.21.

³⁸ *Id.* at 4-5.

³⁹ *Id.* at 6.

⁴⁰ *Id.* at 2 n.6.

⁴¹ *Id.* at 7 (citing Exelon's Protest at 13 & n.39 (citing *ISO New England Inc.*, 132 FERC ¶ 61,122, at P 22 (2010) (citations omitted)).

⁴² Exelon Answer at 3.

fuel security solution because Mystic 8 and 9 could then provide customers a needed service at an acceptable rate.⁴³

C. Deficiency Letter, Response, and Protest

1. Deficiency Letter

21. The deficiency letter asked ISO-NE to explain: (1) how resources retained for fuel security impact ISO-NE's transmission planning process, including the Boston Area Needs Assessment; and (2) how ISO-NE would mitigate potential reliability issues if it did not develop a transmission solution prior to the retirement of a fuel security resource.

2. ISO-NE Response

22. ISO-NE states that, in response to the first question, the instant filing will have no impact on the Boston Area Needs Assessment study. ISO-NE clarifies that the Boston Area Needs Assessment assumes that Mystic 8 and 9 are retired because the Tariff requires that ISO-NE model any resources that have submitted Retirement or Permanent De-List Bids as out-of-service, regardless of whether those bids clear or the resources are retained.⁴⁴

23. ISO-NE explains that, regarding the second question, it has two ways to address potential violations of reliability standards if a competitive transmission solution cannot be implemented before Mystic 8 and 9 retire.⁴⁵ First, ISO-NE could implement real-time operating procedures to mitigate the reliability concerns identified in the Boston Area Needs Assessment. ISO-NE contends that it would have greater operational flexibility than its planning studies suggest because the assumptions used for planning studies are intentionally conservative. ISO-NE states that it could use real-time operating procedures to mitigate the two reliability concerns identified in the Boston Area Needs Assessment, which are: (1) reliability violations during peak periods; and (2) reliability violations during the system restoration procedures that would occur after a significant outage. ISO-NE explains that it could temporarily reconfigure its system or implement controlled, localized load shedding to avoid any reliability violations during peak periods.

⁴³ *Id.* at 4.

⁴⁴ Deficiency Letter Response at 3-4 (citing ISO-NE Tariff, Attachment K, § 4.1(f)).

⁴⁵ *Id.* at 5.

ISO-NE adds that it would be able to restore the system after a significant outage while avoiding any reliability violations but that the restoration process would take longer.⁴⁶

24. Second, ISO-NE explains that it could utilize the “gap RFP” provisions of its Tariff to solicit a limited and tailored load response or supplemental supply solution to any remaining reliability needs in the Boston Area. ISO-NE argues that the gap RFP process is preferable to extending the retention of Mystic 8 and 9 for a local transmission reliability need because ISO-NE would need to make a determination to retain Mystic 8 and 9 for a local reliability need during the 2020 qualification process, well before determining whether competitive transmission solutions will be operational for June 2024.⁴⁷

3. Exelon Protest

25. Exelon protests ISO-NE’s Deficiency Letter Response, arguing that it does not address the concerns raised by Exelon and fails to provide additional support to demonstrate that the proposal is just and reasonable and not unduly discriminatory.⁴⁸ Exelon contends that, even if ISO-NE can identify a competitive transmission solution on time, the selected project will only have three years to complete design, permitting, and construction before the termination of Mystic’s fuel security agreement. Exelon notes that siting and permitting are particularly challenging in New England.

26. Exelon disputes ISO-NE’s ability to rely on a gap RFP or real-time operating procedures if a competitive transmission solution cannot be developed on time. Exelon contends that, while it may be appropriate to rely on operational actions at times, restricting the available alternative options in favor of relying on the ability to shed load is patently unreasonable.⁴⁹ Exelon also asserts that, like competitive transmission solutions, there is no guarantee that a gap RFP project could be selected and operational in time. Thus, Exelon asks the Commission to reject Filing Parties’ proposal to reduce ISO-NE’s ability to address reliability concerns.

⁴⁶ *Id.* at 5-6.

⁴⁷ *Id.* at 6-7.

⁴⁸ Exelon Protest to Deficiency Letter Response at 1.

⁴⁹ *Id.* at 2-4.

IV. Discussion

A. Procedural Matters

27. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

28. Rule 213(a) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We accept Exelon's, ISO-NE's, and NEPOOL's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

29. We reject Filing Parties' proposal because we do not find it to be just and reasonable. Filing Parties argue that removing the potential for an additional out-of-market retention prioritizes the use of competitive processes. While we favor limiting the scope and length of out-of-market actions, we seek to balance that objective against the ability to address reliability concerns. The proposal here would remove ISO-NE's ability to retain a fuel security resource to address potential future transmission reliability issues that may arise simply because the resource in question had been retained previously for fuel security. Under Filing Parties' proposal, instead of retaining such a resource for transmission security (as it would any other resource that was not previously retained for fuel security), ISO-NE would need to address this issue through either real-time operating procedures, such as shedding load, or through the use of a gap RFP solicitation.

30. Filing Parties argue that the instant filing is necessary to ensure that ISO-NE will prioritize the use of competitive processes rather than retaining Mystic 8 and 9 under an out-of-market construct to address transmission security in the Boston area. Filing Parties explain that "competitive processes" include the long-term fuel security solution and the competitive transmission solution RFP in response to the Boston Area Needs Assessment. However, these processes have not yet resolved the reliability concerns identified in the Boston Area Needs Assessment. We note that responses to ISO-NE's RFP were submitted on March 4, 2020, and ISO-NE must complete a review process prior to selecting and implementing a transmission solution.⁵⁰ We remain open to Filing Parties proposing to revise the relevant reliability review timeline to ensure that resources

⁵⁰ See Deficiency Letter Response at n.8 (citing ISO-NE, *Issuance of the Boston 2028 Request for Proposal* (Dec. 20, 2019), https://www.iso-ne.com/static-assets/documents/2019/12/boston_2028_rfp_announcement.pdf).

are not unnecessarily retained when transmission solutions will be in place in time to address identified reliability needs. However, as noted above, we do not find Filing Parties' proposal to make a resource retained for fuel security ineligible to be further retained for transmission reliability purposes just and reasonable.

The Commission orders:

Filing Parties' proposed Tariff revisions are hereby rejected, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.