

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

ISO New England Inc.

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Docket Nos. ER18-1509-000
EL18-182-000

REQUEST FOR REHEARING OF THE MASSACHUSETTS ATTORNEY GENERAL

On July 2, 2018, the Federal Energy Regulatory Commission (“Commission”) issued its “Order Denying Waiver Request, Instituting Section 206 Proceeding, and Extending Deadlines” (“Waiver Order”) in the above referenced proceeding.¹ The Waiver Order denies the request of the Independent System Operator for New England (“ISO-NE”) to waive provisions of its Transmission, Markets and Services Tariff (“Tariff”) to permit it to retain two retiring generating units owned by Exelon Generation Company, LLC (“Exelon”), Mystic 8 and 9, for fuel security purposes. The Order also institutes a proceeding under section 206 of the Federal Power Act² (“FPA”) (“Section 206”) in Docket No. EL18-182-000 based on the Commission’s preliminarily finding that ISO-NE’s Tariff may be unjust and unreasonable.³ Pursuant to Rule 713 of the Commission’s Rules of Practice and Procedure⁴ and Section 313 of the FPA,⁵ the Attorney General for the Commonwealth of Massachusetts (“Massachusetts Attorney General”) hereby requests rehearing of the Waiver Order.

¹ *Order Denying Waiver Request, Instituting Section 206 Proceeding, and Extending Deadlines*, 164 FERC ¶ 61,003 (July 2, 2018) [hereinafter Waiver Order].

² 16 U.S.C. § 824e (2012).

³ Waiver Order, *supra* note 1, at 1.

⁴ 18 C.F.R. § 385.713 (2018).

⁵ 16 U.S.C. § 825i(a) (2012).

I. STATEMENT OF ISSUES

Pursuant to Rule 713(c),⁶ the Massachusetts Attorney General respectfully submits that the Commission's decision to institute a Section 206 proceeding is insufficiently supported.⁷ Specifically, the Commission erred by relying solely on ISO-NE's highly contested Operational Fuel Security Analysis ("OFSA")⁸ and the Mystic Retirement Studies (together "Studies") to support a finding that the retirement of Mystic 8 and 9 may cause ISO-NE to violate North American Electric Reliability Corporation ("NERC") reliability criteria due to fuel security concerns.⁹

Initiation of the Section 206 proceeding based on the Commission's unsupported findings that the Studies are "reasonable and support our preliminary findings in this order" and are evidence of "serious fuel security challenge[s] that must be addressed," may result in interim Tariff revisions that are unnecessary or inappropriate and may lead to a rate outcome that is unjust and unreasonable which will significantly impact ratepayers in Massachusetts. Thus, the Commission should terminate the Section 206 proceeding.

The Massachusetts Attorney General also requests that the Commission reconsider the timeline for the permanent tariff solution and set the deadline for implementation no later than February 2020.

⁶ 18 C.F.R. §§ 385.713 (2018).

⁷ Waiver Order, *supra* note 1, at 1.

⁸ See ISO New England, *Operational Fuel-Security Analysis*, (January 2018) (hereinafter "OFSA"), available at https://www.iso-ne.com/static-assets/documents/2018/01/20180117_operational_fuel-security_analysis.pdf.

⁹ Waiver Order, *supra* note 1, at 30.

II. REQUEST FOR REHEARING

1. The Waiver Order Errs in Relying on ISO-NE's Studies to Institute a Proceeding Under Section 206 of the FPA.

Pursuant to a preliminary finding that the ISO-NE Tariff may be unjust and unreasonable, the Commission instituted a Section 206 proceeding.¹⁰ The Commission based its preliminary finding on ISO-NE's claim that the "Tariff fails to address specific regional fuel security concerns identified in the record" that could cause reliability violations.¹¹ In making this determination, the Commission relied on only ISO-NE's Studies that purport to identify fuel security concerns.¹² The Commission did not perform any additional inquiry. However, because multiple parties to the proceeding have identified several fundamental flaws in the Studies' assumptions, which call into question the Studies' results, the Commission erred in singularly relying on the Studies as evidence of regional fuel security concerns.^{13,14}

Specifically, the OFSA's underlying questionable assumptions biased the analysis in favor of finding significant fuel security risk, when in fact, once those assumptions are corrected (as they were in ISO-NE's re-runs of the OFSA model with modified assumptions, made at the request of NEPOOL members), the risk is drastically reduced.¹⁵ Since, for purposes of its

¹⁰ *Id.* at 1, 28.

¹¹ *Id.*

¹² *Id.* at 2-4, 27-28.

¹³ Glick Dissent at 1-2, 4.

¹⁴ See e.g. Joint Requesters' comments to ISO-NE on the OFSA (February 15, 2018), available at <https://www.iso-ne.com/event-details?eventId=135336>; see also Massachusetts Attorney General in, *ISO New England Inc.*, 164 FERC ¶ 61,003 (May 23, 2019).

¹⁵ See e.g. ISO New England, "Operational Fuel-Security Analysis: Stakeholder Requests for Additional Scenarios" (March 28, 2018), pp. 30-81 available at https://www.iso-ne.com/static-assets/documents/2018/05/a2_operational_fuel_security_presentation_march_2018_rev1.pdf; see also Joint Requesters' comments to ISO-NE on the OFSA (February 15, 2018), available at <https://www.iso-ne.com/event-details?eventId=135336>; see also comments to ISO-NE on the OFSA (February 15, 2018) submitted by the New England States Committee on Electricity, ENGIE North America, Avangrid, and the Environmental Defense Fund, available at <https://www.iso-ne.com/event-details?eventId=135336>; see also Attorneys General of Massachusetts, Rhode Island and Vermont comments in FERC AD18-7 (May 9, 2018), pp. 3-12 [hereinafter "Attorneys General Comments"].

Mystic Retirement Studies’ analysis, ISO-NE did not update many of the OFSA’s flawed assumptions, the Mystic Retirement Studies’ analysis is plagued by the same flawed assumptions and also results in unreliable outcomes.

For example, the OFSA and the Mystic Retirement Studies’ conclusions that grid reliability would be compromised in the winters of 2024/2025, and 2022/2023 and 2023/2024 respectively, due to a fuel security reliability need did not account for *existing* levels of interconnected renewable generation or battery storage,^{16,17} assumed a high – near doubling – of the local distribution gas demand growth,¹⁸ did “not incorporate state policy goals and requirements for clean energy”,¹⁹ and wholly failed to account for ISO-NE’s own new Competitive Auctions with State Policy Resources and the Forward Capacity Market (“FCM”) Pay-For-Performance (“PFP”) program, the latter which took effect on June 1, 2018 and was designed to address this very issue.²⁰

Despite having before it a record reflecting significant concerns (including those presented by experts, states, and industry) with the Studies’ analytical framework and assumptions, *see e.g.*, comments of the Massachusetts Attorney General, Cavus Energy, Inc., the Environmental Defense Fund, and the Public Interest Organizations, the Commission gave little weight to the detailed stakeholder criticism of ISO-NE’s Studies. Instead of carefully

¹⁶ OFSA, *supra* note 8, at 26-27; *see also* Attorneys General Comments, at 3-12.

¹⁷ *Id.* at 14, 54.

¹⁸ ISO-NE relies on the forecasting methodology used in Petak, Kevin and Brock, Frank. “New England LDC Gas Demand Forecast Through 2030.” Participants Advisory Council, ISO-NE (December 14, 2016), *available at* <https://www.iso-ne.com/static-assets/documents/2016/12/iso-ne-ldcdemand-forecast-03-oct-2016.pdf>. The Joint Requesters’ 0.7 percent figure is based on data available from the Energy Information Administration (“EIA”). Data for gas consumption by nonelectric generation purposes since 2010 has a growth of 0.7 percent per year. *See* <https://www.eia.gov/naturalgas/>.

¹⁹ OFSA, *supra* note 8, at 33.

²⁰ The FCM PFP program increased financial incentives for resource owners to make investments to ensure their resource’s reliability during periods of scarcity

considering the facts before it, as the Commission was required to do,²¹ the Commission simply offered the truism that it is “possible to achieve different results in a study by changing assumptions in the model used.”²² The point is not whether different results might be obtained by modifying assumptions—the point is that ISO-NE’s assumptions included significant errors and omissions.²³ Moreover, the Commission’s pat observation that “[t]he fact that stakeholders can modify a model and/or a set of assumptions to achieve different outputs that show a less severe fuel security outcome does not necessarily render ISO-NE’s analyses...unreasonable,” begs the question whether ISO-NE’s analysis *is* indeed unreasonable.²⁴ The Commission failed to acknowledge that the Studies’ results were based on factually incorrect data and assumptions that were selected solely by ISO-NE, absent stakeholder involvement and scrutiny. Further, the Commission appears to find that the large number of scenarios run by ISO-NE in the Mystic Retirement Studies proves the reliability of the results.²⁵ Such a finding misses the mark: ISO-NE could run 100 scenarios, but if the assumptions are flawed, the results will be flawed. Given the Commission’s singular reliance on ISO-NE’s Studies, the Studies’ underlying flawed assumptions, and the Commission’s failure to adequately consider stakeholder criticism, the Commission did not have sufficient evidence on which to base a determination that the Tariff may be unjust and unreasonable. Therefore, the Commission erred in initiating a Section 206 proceeding.

²¹ See *New England Power Generators Association v. F.E.R.C., et al.*, 881 F.3d 202 (2018), p. 8; *NSTAR Electric & Gas Co. v. F.E.R.C.*, 481 F.3d 794 (2007), p. 8.

²² Waiver Order, *supra* note 1, at 29.

²³ See e.g. Joint Requesters’ Comments to ISO-NE on the OFSA (February 15, 2018), available at <https://www.iso-ne.com/event-details?eventId=135336>; see also Massachusetts Attorney General in, *ISO New England Inc.*, 164 FERC ¶ 61,003 (May 23, 2019); see also, Comments of the Attorneys General of Massachusetts, Rhode Island and Vermont in FERC AD18-7, Grid Resilience in Regional Transmission Systems and Independent Systems Operators (May 2018).

²⁴ Waiver Order, *supra* note 1, at 30.

²⁵ *Id.* at 28.

III. THE COMMISSION SHOULD RECONSIDER THE TIMELINE FOR THE PERMANENT TARIFF SOLUTION AND ORDER ISO-NE TO IMPLEMENT IT NO LATER THAN FEBRUARY 2020.

ISO-NE initially stated its intent that its interim fuel security Tariff provisions allowing for cost of service agreements would be in effect for the 14th and 15th Forward Capacity Auctions (“FCA”), conducted in February 2020 and 2021 respectively for capacity commitment periods in 2023-2024 and 2024-2025.²⁶ As a result of the Commission’s Waiver Order and ISO-NE’s election to file interim cost of service Tariff provisions by August 31, 2018, the interim Tariff provisions will also cover FCA 13 conducted in February 2019 for the 2022-2023 capacity commitment period. In the Waiver Order, the Commission committed to expedited consideration of the interim Tariff provisions so that the short-term cost of service remedy is in place prior to the running of FCA 13 in February 2019.²⁷ The Commission further ordered ISO-NE to submit “permanent Tariff revisions reflecting improvements to its market design to better address regional fuel security concerns” by July 1, 2019.²⁸

The Massachusetts Attorney General respectfully requests that the Commission commit to expedited consideration of the market-design Tariff solution as it did for the interim cost of service provisions so that, if approved, ISO-NE may have a permanent, market-based fuel security solution in place no later than February 2020, before the retirement window for FCA 15 opens in early March 2020. This would effectively limit the applicability of the interim cost of service solution to FCAs 13 and 14. If the timeline proposed by the Massachusetts Attorney General is adopted, the Commission will also need to account for the possibility that the

²⁶ See ISO New England, *Reliability Reviews for Fuel Security: Criteria for Unit Retention in the Forward Capacity Market (FCM)* (May 15, 2018) at 4, available at https://www.iso-ne.com/static-assets/documents/2018/05/a6_3_op24_presentation.pdf.

²⁷ Waiver Order, *supra* note 1, at 61 (“[W]e estimate that we would be able to render a decision on any proposed short-term, interim Tariff revisions that ISO-NE files in response to this order before ISO-NE runs FCA 13.”)

²⁸ *Id.*

Commission would require revisions to the proposal before approving any permanent Tariff solution.

When this proposed expedited timeline was raised at a meeting of stakeholders on July 13, 2018, ISO-NE indicated that it was open to considering having the permanent market-based solution in place prior to FCA 15. Thus, the revised timeline that the Massachusetts Attorney General proposes is both achievable and desirable from a pro-market perspective. The Commission expressly stated in the Waiver Order that “[w]e reaffirm our support for market solutions as the most efficient means to provide reliable electric service to New England consumers at just and reasonable rates.”²⁹ The more quickly a permanent market-based fuel security solution is in place, the sooner ratepayers can be relieved of the substantial burden of cost of service contracts and the more quickly market participants can be relieved of the market-distorting characteristics of such contracts. The Commission should decide the justness and reasonableness of ISO-NE’s (and possibly stakeholders’) permanent market-based fuel security proposal(s) no later than February 2020, so that ratepayers will be protected from having to pay potentially hundreds of millions of dollars in out of market cost of service agreements that ISO-NE may deem necessary for the FCA 15 commitment period. If ISO-NE is ordered to have the long-term solution in place prior to the retirement window for FCA 15, and the permanent market-based solution is FCA related, the interim cost of service solution will no longer be needed for FCA 15.

Even if the permanent Tariff-based fuel security solution is outside of the Forward Capacity Market and instead involves some other wholesale electric market product or mechanism, the proposed February 2020 deadline will prevent units that might otherwise retire (or seek a cost of

²⁹ Waiver Order, *supra* note 1, at 53.

service agreement) for the FCA 15 Capacity Commitment Period from doing so and instead will provide them the opportunity to qualify for a market-based remedy. For these reasons the Massachusetts Attorney General requests that the Commission reconsider or clarify the timeline for imposition of the permanent market-based Tariff solution for fuel security in New England and expressly commit to deciding this issue no later than February 2020.

IV. CONCLUSION

For the foregoing reasons, the Massachusetts Attorney General respectfully requests that the Commission grant rehearing of the Waiver Order to remedy the error identified herein, find that there is insufficient evidence to initiate a Section 206 proceeding, and terminate the Section 206 proceeding. Finally, the Massachusetts Attorney General requests that the Commission reconsider the timeline for the permanent tariff solution and set a deadline for implementation no later than February 2020.

Respectfully submitted,

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Dated: August 1, 2018

CERTIFICATE OF SERVICE

In accordance with 18 C.F.R. § 385.2010, I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Boston, Massachusetts this 1st day of August 2018.

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