

**WRITTEN TESTIMONY  
OF  
BILL BOTTIGGI  
GENERAL MANAGER, BRAINTREE ELECTRIC LIGHT DEPARTMENT  
ON BEHALF OF THE NORTHEAST PUBLIC POWER ASSOCIATION**

**Before the House Energy & Commerce Committee Subcommittee on Energy and Power  
“A Legislative Hearing on Eight Energy Infrastructure Bills”  
February 2, 2016**

Chairman Whitfield, Ranking Member Rush, and Members of the Committee: Thank you for inviting me to speak at today’s hearing. I wish to extend particular thanks to Congressman Joe Kennedy III for his work on this Committee and in Congress to bring attention to problems with the forward capacity market in New England and for inviting me to speak today.

My name is Bill Bottiggi; I am the General Manager of Braintree Electric Light Department. Braintree Electric is a non-profit, municipal utility owned by the residents of Braintree, Massachusetts. Our founder was Thomas Watson; co-inventor of the light bulb, who also started the Fore River Shipyard in Quincy, MA and the kindergarten program in Braintree. As a municipal utility, our service territory is limited to the Town of Braintree, and our mission is to provide highly reliable electric service at the lowest reasonable rates. Currently our residential electric rate is 14 cents/kw-hr (for reference, the investor-owned utilities surrounding our service territory charge 21 cents/kw-hr).

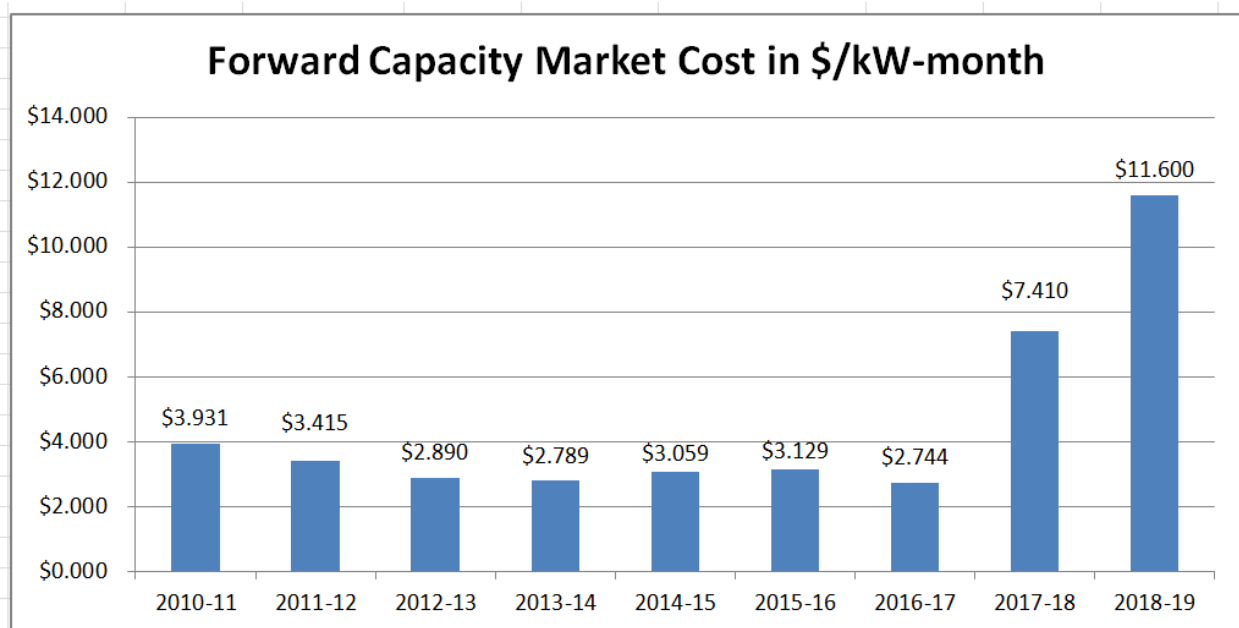
Braintree Electric is also a member of the Northeast Public Power Association (NEPPA), the trade group representing not-for-profit, consumer-owned electric utilities in the six New England States. I am pleased to speak on behalf of NEPPA on this matter, although the views expressed are my own.

## **I. Background and History of New England's Forward Capacity Market**

My remarks will focus on the forward capacity market and H.R. 2984, the Fair RATES Act. Since not all regions of the country have a capacity market, I will begin with a bit of history and background. In the late 1990s, New England undertook deregulation of the electric utility market. This involved a transition from a vertically-integrated marketplace – where a single utility company might own a power plant, transmission lines, and the distribution lines connecting to customer homes – to open access to transmission lines and a centralized, competitive market for generation administered by an RTO: ISO-New England. The belief was that forcing the vertically-integrated, investor-owned utilities to sell their generation assets would result in the private development of new, more efficient generation, thereby driving down the cost of electricity. Public power (including Braintree Electric) was exempt from the requirement to divest, because our not-for-profit business model is designed to keep costs low for consumers. As a result of deregulation, thousands of megawatts of generation were built in the early 2000's to take advantage of the competitive market, but the existing generation did not retire as expected. With the surplus of generating capacity, some plants were not running frequently enough to provide the owners with the revenue they needed to cover their fixed costs. Several declared bankruptcy.

Realizing the power plant owners needed additional revenue to stay in business, in 2007 ISO-New England created a new revenue stream: the forward capacity market. Unlike the market for *energy*, where power plants bid their marginal cost and the ISO calls on the cheapest resources to run, the market for electric *capacity* provides payment to generators in exchange for having a physical resource *available* to run. Like an option arrangement, it is the right to call on

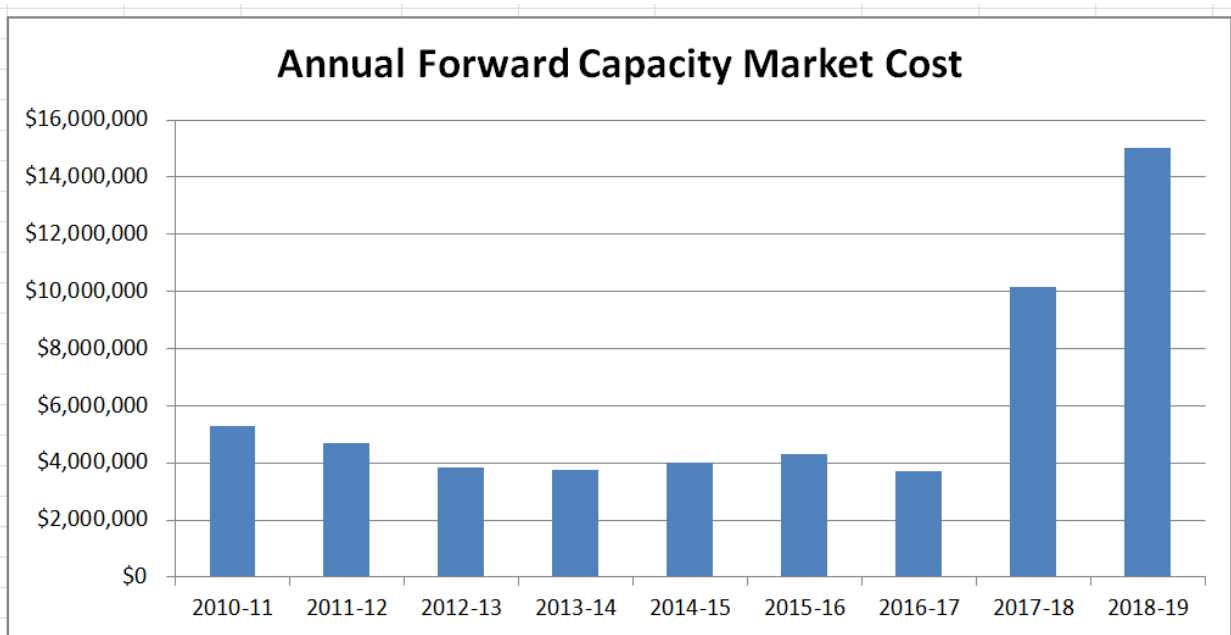
a resource to produce electricity when needed – in the case of New England’s capacity market, that time is three years in the future. Capacity prices are set based on the need for new generation to meet the expected peak demand for that year. In theory, the results of the auction should provide a market signal that new power plants are needed. In practice, incumbent generators receive a windfall when new generation clears in the market causing New England customers to pay literally billions in annual capacity charges. Meanwhile, few new power plants are being built. This windfall is displayed in the graph below.



## II. The Forward Capacity Market Has Resulted in Extraordinary Costs to Consumers

Braintree Electric, NEPPA, and public power in New England generally, believe the capacity market is a fatally flawed construct. New generation generally requires long-term contracts to secure financing, as opposed to short-term, volatile capacity market prices and frequently changing rules. APPA studies have shown that 98 percent of new generation completed in recent years has been built with financing from direct ownership or long-term contracts while only 6 percent of new generation in 2013 was constructed within RTOs with

mandatory capacity markets. Instead of building new resources, incumbent generators are simply pocketing capacity payments for their existing plants. And consumers are paying the price. New England-wide, the cost of capacity after FCA-9 (starting in 2018) will be over \$4 billion. The impact on Braintree Electric’s rate payers would have been an increase of \$11 million per year from 2010 until 2018 if Braintree Electric was not exempt from deregulation and still vertically integrated. In terms of the monthly electric bill Mr. Kennedy’s constituents might be looking at, that translates to a \$21/month increase - just for the capacity portion of the bill. The graph below again shows what Braintree Electric’s historic and projected capacity costs would be if they were not vertically integrated.



The modern operation of the forward capacity market has seen numerous “tweaks” from its inception, as ISO-New England struggles to adjust the market rules to achieve the desired result. Among the most harmful changes to not-for-profit utilities was the removal of our right to “self-supply,” i.e., use our own power plants to meet our own growing capacity needs – something we specifically bargained for when the capacity market was created. Because ISO-

New England mandates our participation in these markets, we would be required to purchase capacity from another generator if we build a new resource that isn't selected by the market. Of course, we would still have our own fixed costs to pay for that resource, on top of the capacity we would be forced to buy from the market. Self-supply allowed municipal utilities to control our capacity costs. Unfortunately, ISO-New England removed the right of municipal utilities to self-supply our own capacity, citing concerns about "buyer side market power," after Forward Capacity Auction (FCA) 7 in 2013.

### **III. FERC Deadlocks on Allegations of Manipulation in FCA 8, Rate Becomes Law**

In 2014, FCA-8 was the first auction where new generation was needed. The surplus of capacity had kept costs low in prior auctions, but many units retired due to the economics of the energy market. Two units, Vermont Yankee and Norwalk Harbor, closed that year. Just prior to the auction, a third plant – Brayton Point – abruptly withdrew from the market, despite that fact that it had just been purchased by a new owner. In all, 4300 MWs of generation retired and only 1500 MWs of new generation cleared the market. ISO-New England determined there was insufficient competition and administratively set capacity prices of \$15/kw-month for the affected region and \$7.025 for the rest of the power pool. For reference, these prices are up from approximately \$3.00/kw-month for the prior seven years. The total cost to the region was \$3 billion – triple the prior year's cost.

FCA8 demonstrated how dysfunctional this market really is. When ISO-New England filed a \$3 billion auction result with the Federal Energy Regulatory Commission (FERC), it should have presented an opportunity to investigate whether the last-minute closure of Brayton Point was an act of market manipulation by owners who realized they could receive higher payments for their fleet of plants by constraining supply, or whether the rules in place were

followed, but so fundamentally flawed as to allow a final rate that was unjust and unreasonable. Unfortunately, FERC was unable to step in because of a vacancy on the Commission – with two Commissioners voting to let the rate stand and two voting to review the results, there was a deadlock. Adding insult to injury, not only will New England consumers have to pay billions in capacity costs, the deadlock removed any mechanism to review or contest the results, as well. Under the Federal Power Act, the FERC’s inaction meant that the rate became effective by operation of law, and customers cannot challenge the rate without a FERC order to protest.

#### **IV. The Fair RATES Act is a Needed, Reasonable Solution**

H.R. 2984 is an important piece of legislation to allow redress when unjust and unreasonable rates go into effect under operation of law. It would simply make the same administrative review procedures currently available to rates approved by the Commission applicable to rates that take effect by operation of law. I believe this change is necessary, because even though vacancies are a reality of life – even now, FERC only has four sitting Commissioners – it likely did not factor into the statutory scheme established in the Federal Power Act, creating the gap that left New England \$3 billion poorer and scratching our heads. The Fair RATES Act is an opportunity to rectify that.

This is a modest, technical fix to that gap in the statute. While many of us would have liked to see a complete and thorough investigation into FCA8, and those of us in the public power sector would like to see the capacity market fundamentally reformed, we cannot turn back the clocks. This bill finds a narrower target to ensure this problem does not recur in New England or any other region of the country. Should a questionable rate be filed in any of your home districts today, FERC may deadlock again and leave your constituents paying potentially

unjust and unreasonable utility bills. Pass the Fair RATES Act, and they will have an avenue to challenge those unfair costs tomorrow.

**V. Conclusion**

I commend Congressman Kennedy for introducing this bill, and the Committee for holding this important hearing on what can be an opaque and confusing subject. On behalf of Braintree Electric, NEPPA, and myself, I hope the Committee will continue to examine mandatory capacity markets and support reform to provide relief to New England consumers.