

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

New England Power Generators Association, Inc.)	
)	
)	
v.)	Docket No. EL15-25-000
)	
ISO New England Inc.)	

**MOTION TO INTERVENE AND PROTEST OF THE
NEW ENGLAND STATES COMMITTEE ON ELECTRICITY**

Pursuant to Rules 211, 212, and 214 of the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) Rules of Practice and Procedure (the “Rules”), 18 C.F.R. §§ 385.211, 385.212, and 385.214 (2014), and the Commission’s December 4, 2014 Notice of Complaint, the New England States Committee on Electricity (“NESCOE”) hereby files this Motion to Intervene and Protest in response to the complaint filed by the New England Power Generators Association, Inc. (“NEPGA”) against ISO New England Inc. (“ISO-NE”) on December 3, 2014 (the “Complaint”).¹ NEPGA contends that the Peak Energy Rent² (“PER”) adjustment to monthly capacity payments (“PER Adjustment”) is unjust and unreasonable and requests that the Commission direct ISO-NE to (1) modify the PER Adjustment with a \$250 per MWh adder for the immediate Capacity Commitment Period (“CCP”) 5 through CCP 8, and (2) remove the PER Adjustment before the upcoming ninth auction, thus permanently

¹ *New England Power Generators Ass’n., Inc. v. ISO New England, Inc.*, Complaint Requesting Shortened Comment Period and Fast Track Processing of the New England Power Generators Association, Inc., Docket No. EL15-25-000 (filed Dec. 3, 2014) (the “Complaint”).

² Capitalized terms not defined in this pleading are intended to have the meaning given to such terms in the ISO-NE Transmission, Markets and Services Tariff (the “Tariff”).

eliminating the PER Adjustment for CCP 9 and beyond.³ The Commission should reject the New England generators' campaign to impose significant and costly rule changes on a rushed schedule.

I. INTRODUCTION

The Complaint is one in a series of attempts, in what is now an annual “holiday blitz” of filings by generators, to refashion on a fast track the ISO-NE capacity market on the eve of the next auction.⁴ This annual expression of discontent with the level of revenue opportunities available to generators through the competitive markets is in contrast to NEPGA’s advice to policymakers and others that the markets, as currently structured, are responding to the region’s needs.⁵ The Commission should reject this campaign by generators to rush through these significant and costly rule changes.

Moreover, the changes NEPGA seeks would undo a proposal around which NEPGA members and some states and load interests coalesced, just last year, which garnered super-

³ Complaint at 1. In consideration of the multi-year forward commitments of the Forward Capacity Market (“FCM”), it is helpful to consider three time periods correlated with various Forward Capacity Auctions (“FCAs”): (1) FCAs 5-8 ~ the years that have already held their primary auction, (2) FCA 9 ~ the auction coming up in February 2015, and (3) FCA 10 and beyond. The CCPs associated with these auctions range from 2014-2015 (FCA 5) to 2019-2020 (FCA 10).

⁴ See *Exelon Corp., et al., v. ISO New England, Inc.*, Complaint Seeking Fast Track Processing, Docket No. EL15-23-000 (filed Nov. 26, 2014); *New England Power Generators Ass’n., Inc. v. ISO New England, Inc.*, Complaint Requesting Fast Track Processing of the New England Power Generators Association, Inc., Docket No. EL15-21-000 (filed Nov. 14, 2014); *New England Power Generators Ass’n., Inc. v. ISO New England, Inc.*, Complaint Requesting Fast Track Processing and Shortened Comment Period and Request for Tariff Waiver of the New England Power Generators Association, Inc., Docket No. EL14-17-000 (filed Jan. 8, 2014); *New England Power Generators Ass’n., Inc. v. ISO New England, Inc.*, Complaint of the New England Power Generators Association, Inc. and Request for Fast Track Processing, Docket No. EL14-7-000 (filed Oct. 31, 2013).

⁵ See New England Power Generators Association, Inc., *The New England Energy Industry: A Point of Inflection*, Oct. 27, 2014, available at www.nepga.org/files/library/NEPGA-EnergyIndustry-PointofInflection.pdf. NESCOE provided a response to NEPGA’s paper, which is available at www.nescoe.com/uploads/Thoughts_on_NEPGA_advice_Nov_14_2014.pdf.

majority support of NEPOOL members.⁶ The effect of the increased Reserve Constraint Penalty Factors (“RCPFs”) on the PER was discussed among NEPGA members, who aggressively negotiated this package of rule changes. States and NEPOOL stakeholders considered proposals to modify the PER Adjustment and, after deliberations, those proposals were not included in the NEPOOL filing of FCM changes (the “NEPOOL Proposal”).⁷

NEPGA attempts to force through changes it failed to achieve in the stakeholder process, in the eleventh hour and on a fast track. Granting the Complaint would completely eliminate consumer protections that have been in place since the inception of the FCM. It would also, without question, chill the stakeholder process and dampen the interest of states and stakeholders in coalescing around proposals (which inevitably include compromises on all sides), by sending the message that such proposals, once accepted by the Commission, could be as easily (and quickly and frequently) unwound through late-breaking litigation by generators.

The Commission should reject NEPGA’s complaint for several reasons. First, NEPGA’s request to tack on an adder to PER for CCP 5 through CCP 8 is an inappropriate end-run of ISO-NE’s tariff, which sets out specific processes for considering and implementing changes to the PER. Second, NEPGA seeks to rush through changes for FCA 9 that would wholly eliminate consumer protections that have been in place since the beginning of the FCM and which were expressly left unchanged in the NEPOOL Proposal that NEPGA’s members supported only a year ago. Third, NEPGA’s request to remove the PER for CCP 10 and beyond inappropriately

⁶ *ISO New England Inc., New England Power Pool Participants Committee*, Performance Incentives Market Rule Changes, Docket Nos. ER14-1050-000 and -001 (filed Jan. 17, 2014) (“Performance Incentives Joint Filing”), Transmittal Letter on behalf of NEPOOL, at 6.

⁷ Performance Incentives Joint Filing, Attachment N-1g: Summary of NEPOOL Participant Processes Regarding the ISO-NE and NEPOOL Proposals, at 8-9.

preempts the New England stakeholder process considering this issue. There is no need for immediate action by the Commission to prejudge the outcome of that process.

In addition, as separate grounds for dismissal, the Complaint fails to meet the basic requirements under Section 206 of the Federal Power Act (“FPA”), 16 U.S.C. § 824e. NEPGA has not met its burden of demonstrating that the existing rule is unjust, unreasonable or unduly discriminatory. NEPGA fails to provide evidence to support its contention that auction outcomes would have been different with the RCPF changes in place, and inappropriately disregards expanded opportunities the higher RCPFs provide to generators to earn substantial energy and ancillary services revenues that will not be rebated to capacity purchasers through the PER Adjustment. NEPGA also wrongly contends that the currently effective PER Adjustment is incompatible with the Commission’s recent approval of increases to the RCPFs that are intended to incentivize real-time resource performance. As explained below, by providing the potential for revenue reductions during scarcity events, the PER Adjustment complements the RCPF changes by discouraging the exercise of market power through withholding.

NEPGA also has not provided the Commission with evidence necessary to find that its proposed market rule changes are just and reasonable. Even if the Commission were to permit retrospective changes, the proposed changes to the Strike Price for CCPs 5 through 8 are unjust and unreasonable, eviscerating important consumer protections and eliminating a complement to incentives for real-time performance. As explained below, the PER was the subject of a recent stakeholder process that failed to garner sufficient support for ISO-NE to file changes that would have retrospectively adjusted the PER for CCP 5 through CCP 8.

Further, the elimination of the PER Adjustment altogether beginning with CCP 9 would unreasonably disadvantage consumers at this late point in the FCM cycle in two key respects.

First, the Net CONE includes an *adder* to account for PER that NEPGA does not propose to adjust as part of its alternative provisions. Second, consumers would incur unnecessary costs arising from de-list bids that would have included resources' expectation of revenue reductions from the current PER. De-list bids for FCA 9 have already gone through a required Internal Market Monitor ("IMM") review process that began last spring and cannot be restarted.⁸ NEPGA's requested relief would thus set the stage for the auction to clear at a price that accounts for revenue reductions from the PER and the inclusion of PER in Net CONE, while at the same time stripping out the very hedge benefit that consumers purchased.

If changes to the PER Adjustment are needed in the future, a fast-tracked and contested FPA Section 206 proceeding is ill-suited to give the Commission, states and NEPOOL stakeholders a sufficient opportunity to evaluate these changes. As described in detail below, the PER was the subject of a recent stakeholder process and, since then, ISO-NE has commenced a separate stakeholder process to consider prospective revisions to PER for FCA 10 and beyond. Unfortunately, by initiating litigation, NEPGA has impeded this important stakeholder process. There is no need for urgent action and the Commission should allow this stakeholder process to continue uninterrupted.

⁸ *ISO New England Inc.*, Informational Filing for Qualification in the Forward Capacity Market, (Docket No. ER15-328-000) (filed Nov. 4, 2014) ("FCA 9 Info Filing"), at 11.

II. COMMUNICATIONS

Pursuant to Rule 203, 18 C.F.R. § 385.203 (2014), the persons to whom correspondence, pleadings, and other papers in regard to this proceeding should be addressed and whose names should be placed on the Commission’s official service list are designated as follows:

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III. BACKGROUND

A. **PER Mechanism and its Purposes**

The PER Adjustment has been part of the FCM design since inception. It provides for a reduction in capacity payments equal to the “peak energy rents” expected to be earned by a hypothetical, proxy peaking generator with characteristics that make it the least efficient generator on the system.⁹ A key attribute of the proxy generator is its very high heat rate of 22,000 BTUs per kWh, which as the tariff explains “reflect[s] a level slightly higher than the marginal generating unit in the region that would be dispatched as the system enters a scarcity condition.”¹⁰ The unit is also indexed to the marginal fuel and is assumed simply to have no start-up, ramp rate or minimum runtime constraints.¹¹

⁹ See *Devon Power LLC*, 115 FERC ¶ 61,340 (2006) (“FCM Settlement Order”) at P 24. See also Explanatory Statement of the Settling Parties in Support of Settlement Agreement and Request for Expedited Consideration, *Devon Power LLC*, Docket No. ER03-563-030 et al. (filed Mar. 6, 2006) (“FCM Settlement Agreement”), at 12, available at http://www.iso-ne.com/static-assets/documents/regulatory/ferc/filings/2006/mar/er03_563_000_030_055_3_7_06_corrected.pdf.

¹⁰ Tariff, § III.13.7.2.7.1.1.1(b)(iii) (Hourly PER Calculations).

¹¹ Tariff, § III.13.7.2.7.1.1.1(b)(i)-(ii).

The settling parties, including NEPGA members, recognized the PER Adjustment’s dual purpose to “act as both as disincentive for suppliers to raise prices in the energy market and a hedge for load against energy price spikes.”¹² Even if a generator has market power and, by withholding, can create price spikes, the PER Adjustment dampens the generator’s incentive to abuse its market power because revenues it would earn above the PER strike price are deducted from its capacity payments. The PER Adjustment is also a hedge for load serving entities and effectively returns price spikes to them through the capacity market.

Recognizing that the heat rate is the key parameter driving the level of the Strike Price, both the Tariff and the FCM settlement set out a specific process to adjust the proxy unit’s heat rate:

Any changes to the heat rate of the PER ‘proxy unit’ shall be considered in the stakeholder process in consultation with state utility regulatory agencies, shall be filed pursuant to Section 205 of the [FPA], and shall be applied prospectively to the settlement of future [FCAs].¹³

B. RCPFs and NEPGA’s Complaint

On May 30, 2014, the Commission issued an order establishing section 206 proceedings to address ISO-NE’s “Pay for Performance” (“PFP”) proposal and the “jump ball” alternative supported by NEPOOL.¹⁴ In that decision, the Commission combined elements of both proposals, including adopting the jump ball alternative’s proposal to increase the RCPFs for two operating reserves products. The higher RCPFs, the Commission noted, would “enhance performance incentives in the near-term” and “should help address in the near-term the gas-

¹² FCM Settlement Agreement at 12.

¹³ Tariff, § III.13.7.2.7.1.1.1(b)(iii); *see also* FCM Settlement Agreement at 37.

¹⁴ *ISO New England Inc. and New England Power Pool*, 147 FERC ¶ 61,172 (May 30, 2014) (“May 30 Order”).

electric coordination issues that have contributed to resource non-performance.”¹⁵ The Commission ordered the increases to the RCPFs to become effective on December 3, 2014, and ordered the PFP rule changes effective for CCP 9.¹⁶

Anticipating the potential for higher real-time prices as a result of the relaxed operating reserves price caps, NEPGA contends that the PER Adjustment must be modified to reduce the peak energy rents rebated to capacity purchasers. Specifically, NEPGA requests that the Commission direct ISO-NE to modify its Tariff to increase the PER Strike Price by \$250 per MWh for CCPs 5 through 8, even though those capacity auctions have already taken place, and eliminate the PER Adjustment completely for CCP 9, which correlates with the upcoming ninth annual capacity auction, and thereafter.

IV. MOTION TO INTERVENE

NESCOE is the Regional State Committee for New England. It is governed by a board of managers appointed by the Governors of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont and is funded through a regional tariff that ISO-NE administers.¹⁷ NESCOE’s mission is to represent the interests of the citizens of the New England region by advancing policies that will provide electricity at the lowest reasonable cost over the long-term, consistent with maintaining reliable service and environmental quality.

The Complaint concerns, *inter alia*, the FCM, and has system reliability, consumer cost and environmental implications. NESCOE has a direct, immediate, and substantial interest in this proceeding, which will not be adequately represented by any other party. In addition,

¹⁵ *Id.* at PP 108-09.

¹⁶ *ISO New England Inc. and New England Power Pool*, Order on Compliance Filing, 149 FERC ¶ 61,172, Docket Nos. ER14-2419-000, ER14-2419-001, and EL14-52-000 (Oct. 2, 2014), at Ordering Para. (A), PP 23 and 33.

¹⁷ *ISO New England Inc.*, 121 FERC ¶ 61,105 (2007).

NESCOE's participation in this proceeding as the representative of the New England Governors will serve the public interest. NESCOE respectfully requests leave to intervene in this matter.

V. PROTEST

The Complaint should be rejected. Just over six months ago, the Commission approved what New England market participants asked for with overwhelming support: increases to the RCPFs *without* corresponding changes to the PER Adjustment. NEPGA now seeks to reopen the package of rule changes recently approved by the Commission in an effort to limit, and eventually eliminate, consumer protections that have been in place since the beginning of the FCM. ISO-NE has already initiated discussion of potential changes to the PER mechanism for FCA 10 and beyond. That process, not the last minute litigation pursued by NEPGA, should be the forum in which the region's regulators and stakeholders consider significant changes to these consumer protections. These reasons alone are grounds for rejection of the Complaint.¹⁸

The Complaint should also be dismissed for failing to meet NEPGA's burden under Section 206. In bringing this Complaint, NEPGA must first demonstrate that the existing rate, rule, or practice is "unjust and unreasonable, unduly discriminatory or preferential."¹⁹ Then, to obtain the remedies it proposes, NEPGA must demonstrate that its proposal is a just and reasonable alternative.²⁰ As detailed below, NEPGA has not shown that the current rules are

¹⁸ NESCOE is not suggesting that parties do not have the right to use the Commission's complaint processes when they believe the outcome of the stakeholder process is unjust and unreasonable. However, context is very important, and as discussed below, the circumstances surrounding the region's attempt to develop solutions on these issues demonstrate the unreasonableness of NEPGA's proposals.

¹⁹ 16 U.S.C. § 824e(a).

²⁰ See, e.g., *Municipal Electric Utilities Ass'n of NY v. Niagara Mohawk Power Corp. d/b/a National Grid et al.*, 148 FERC ¶ 61,175, at P 35 (2014) (pointing out that complainant "in its answer acknowledges its burden as the complainant to make a demonstration both that the existing rates are unjust and unreasonable and its proposed replacement rate is just and reasonable") (*reh'g pending on other grounds*); *Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 10 (D.C. Cir. 2002). Alternatively, if the Commission finds the existing tariff unjust and unreasonable, and does not adopt one of the Complainants' alternatives, it shoulders the burden of determining a just and reasonable alternative. *FirstEnergy Service Co. v. FERC*, 758 F.3d 346 (D.C. Cir. 2014).

unjust and unreasonable and unduly discriminatory. Nor has NEPGA demonstrated that its alternative remedies are just and reasonable.

A. The Commission Should Deny NEPGA’s Request to Direct a New “Balancing of the Equities” When the Tariff Prohibits the Retroactive Changes NEPGA Seeks, FERC Approved the RCPF Changes Without Accompanying Revisions to the PER Adjustment, and There Is an Ongoing Stakeholder Process to Consider Prospective Changes

Both the Tariff and FCM settlement preclude NEPGA’s request to modify the PER Adjustment for CCPs 5 through 8. As detailed above, there is a specific process pursuant to the Tariff and settlement to adjust the proxy unit’s heat rate:

Any changes to the heat rate of the PER ‘proxy unit’ shall be considered in the stakeholder process in consultation with state utility regulatory agencies, shall be filed pursuant to Section 205 of the [FPA], and shall be applied prospectively to the settlement of future [FCAs].^[21]

Changes to the heat rate are allowed, but only *prospectively*. NEPGA impermissibly attempts to circumvent this process by seeking a change to the Strike Price that would produce the same end result. The Tariff forecloses the retroactive changes NEPGA wishes to effect for CCPs 5 through 8.

In addition, as described above, a key attribute of the PER is the proxy generator’s very high heat rate of 22,000 BTUs per kWh, which, as the Tariff states, “reflect[s] a level *slightly higher* than the marginal generating unit in the region that would be dispatched as the system enters a scarcity condition.”²² NEPGA’s proposal for CCPs 5 through 8 would impose a substantial increase in that level. For example, using the \$558 Strike Price that occurred over

²¹ Tariff, § III.13.7.2.7.1.1.1(b)(iii); *see* FCM Settlement Agreement at 37.

²² Tariff, § III.13.7.2.7.1.1.1(b)(iii) (emphasis added).

several hours on July 19, 2013,²³ that translates to a \$25.36 fuel price when divided by the heat rate of 22,000 BTUs per kWh. Increasing the Strike Price by \$250, as NEPGA requests, would have raised the Strike Price to \$808, which translates to an equivalent heat rate of 31,861 BTUs per kWh (\$808/25.36). This is a 44% increase in the heat rate, *substantially* more than the marginal generating unit and impermissible under the Tariff.

Moreover, under the plain language of the Tariff, changes to the heat rate can only be made pursuant to a Section 205 filing by ISO-NE. In the third quarter of 2014, ISO-NE presented for consideration a proposal to raise the Strike Price to \$250 per MWh.²⁴ As recounted in the Complaint, the proposal failed to garner support of 60% of stakeholders in the Markets Committee and received only 47.14% support at the October 3, 2014 Participants Committee meeting.²⁵ ISO-NE declined to file changes under FPA Section 205 to the PER provisions given the lack of stakeholder support because it recognized that its proposal “addresses revenue allocation issues that raise equity issues and does not address reliability or economic efficiency concerns.”²⁶ NEPGA’s requested relief for CCPs 5 through 8 thus fails to comport both with the Tariff and the position of states and a majority of stakeholders. The Commission should reject NEPGA’s attempt to revive these market rule changes through the Complaint.

²³ ISO-NE, Peak Energy Rent (‘PER’) Adjustment Mechanism: Summary of Participant Comments and ISO Proposal (Aug. 5-6, 2014), Presentation by Catherine McDonough at the NEPOOL Markets Committee, at Slide 17, available at http://www.iso-ne.com/static-assets/documents/committees/comm_wkgrps/mrkt comm/mrkt/mtrls/2014/aug562014/a03_iso_presentation_08_05_14.pptx.

²⁴ See ISO-NE, Peak Energy Rent (PER) Adjustment Mechanism, Summary of ISO Proposal & Response to GDF Suez Proposals (Sept. 3-4, 2014), Presentation by Catherine McDonough to the NEPOOL Markets Committee (“September 2014 Presentation”), available at http://www.isone.com/static-assets/documents/2014/08/a09_iso_presentation_per.pptx; see also ISO-NE, Memorandum from Catherine McDonough to NEPOOL Markets Committee, PER Modifications for CCP5-CCP8, Aug. 27, 2014 (“August 2014 Memo”), available at http://www.iso-ne.com/static-assets/documents/2014/08/a09_memo_per.docx.

²⁵ See Complaint at 10.

²⁶ September 2014 Presentation at Slide 4.

The Commission should also reject NEPGA’s attempt to force through changes for FCA 9. The modification of the PER Adjustment was actively debated, considered, and rejected as part of the lengthy stakeholder process that resulted in the package of changes that ultimately became the NEPOOL Proposal in December 2013. As discussed above, the Commission approved the increases to the RCPFs just last May, *without* changes to the PER provisions.

Indeed, stakeholders began discussing issues relative to the PER early in the process of developing what would become the NEPOOL Proposal. In a November 16, 2012 whitepaper, NRG Energy (“NRG”) proposed an increase to the RCPFs as an alternative to ISO-NE’s PFP design.²⁷ NRG included the elimination of the PER Adjustment as part of a NEPOOL alternative to PFP that was initially considered in a presentation to the Markets Committee on March 12, 2013.²⁸ The issue continued to be discussed through the NEPOOL technical committee process over the ensuing year, culminating in discussion and consideration at the December 6, 2013 Participants Committee meeting. At that meeting, NRG sponsored an amendment to eliminate the PER mechanism. Only 44% of stakeholders supported the proposal, and it was not incorporated into the NEPOOL alternative proposal.²⁹ GDF Suez Energy Marketing North America (“GDF Suez”) also offered an amendment regarding the PER provisions, which failed by a show of hands.³⁰ No party offered an amendment asking for a delayed effective date for the RCPF increases. Despite this discussion during the lengthy development of the NEPOOL

²⁷ See NRG presentation to the NEPOOL Markets Committee, FCM Performance Incentives – An Alternative Proposal (Nov. 16, 2012), available at http://www.iso-ne.com/static-assets/documents/committees/comm_wkgrps/mrks_comm/mrks/mtrls/2013/jan292013_joint_mtng/a02b2_nrg_alternative_proposal_11_16_12.pdf.

²⁸ See NRG presentation to the NEPOOL Markets Committee, Market Reform Proposals (Mar. 12, 2013), at Slide 13, available at http://www.iso-ne.com/static-assets/documents/committees/comm_wkgrps/mrks_comm/mrks/mtrls/2013/mar11122013/a14_nrg_presentation_03_12_13.ppt.

²⁹ See, e.g., Performance Incentives Joint Filing, Attachment N-1g: Summary of NEPOOL Participant Processes Regarding the ISO-NE and NEPOOL Proposals, at 8-9.

³⁰ *Id.* at 9.

Proposal, as the Complaint notes, the proposal ultimately “did not include a corresponding modification to the PER Adjustment.”³¹

NEPGA argues that the omission of a corresponding PER Adjustment in the NEPOOL proposal is immaterial. NEPGA urges the Commission to consider the region’s deliberate decision not to include a PER Adjustment to be irrelevant because that proposal “necessarily reflected a compromise package of market reforms” and asks the Commission to instead “focus on the shift in the balance of rights and obligations” presented by the PER Adjustment in its current form.³² NESCOE agrees that the NEPOOL Proposal reflected a compromise package among stakeholders. That is precisely why the absence of changes to PER in the NEPOOL Proposal is conspicuous in the context of this proceeding; such absence was an explicit and deliberate decision.³³ NEPGA’s members in the NEPOOL generation sector as a whole supported the NEPOOL Proposal, with only one sector member voting in opposition.³⁴ In its comments in the proceeding, NEPGA never raised issues related to PER or what it perceived to be a shifting in the balancing of equities between suppliers and consumers.³⁵

³¹ Complaint at 17. NEPGA states in the Complaint that the “NEPOOL proposal came together late in the process at the December 6, 2013 Participants Committee meeting.” *Id.* at 18. This statement creates a potential misimpression that the NEPOOL Proposal, which deliberately leaves in tact the PER provisions, was developed in haste at that Participants Committee meeting. As detailed above, there was a lengthy process, beginning with the November 2012 Markets Committee meeting, for consideration and development by NEPOOL of an alternative proposal to ISO-NE’s PFP design.

³² *Id.*

³³ Performance Incentives Joint Filing, Transmittal Letter on behalf of NEPOOL, at 13 (“Beyond the changes described herein, all other currently effective FCM provisions would remain in place (including the Peak Energy Rent provisions).”).

³⁴ Performance Incentives Joint Filing, Attachment N-1h: Tabulation of NEPOOL Participants Committee Votes Taken on the ISO-NE and NEPOOL Proposals.

³⁵ *See generally* *New England Power Generators Ass’n, Inc. and Electric Power Supply Ass’n, Inc.*, Motion to Intervene and Comments of the New England Power Generators Ass’n, Inc. and the Electric Power Supply Ass’n, Inc., Docket Nos. ER14-1050-000 and -001 (filed Feb. 12, 2014).

NEPGA's apparent "buyer's remorse" over the package its members supported as a sector (with only one opposition) is no reason for the Commission to rush through significant market changes on the eve of the next auction. Nor is it cause for the Commission to upset what even NEPGA acknowledges to be a carefully negotiated compromise package, developed only a year ago, which received the support of over 80% of NEPOOL stakeholders.³⁶ This support, which includes some of NEPGA's own members, belies the urgency that NEPGA now places on changes to the PER provisions.

The remedies NEPGA seeks through the Complaint are counter to the expectations states and market participants would reasonably have for FCA 9 based on the PER rules and related stakeholder discussions. The issues that NEPGA identifies as requiring expedited Commission attention were well known by NEPGA's members when stakeholders voted on the NEPOOL Proposal. The PER Adjustment has also been the subject of a stakeholder process later this year, as discussed above. A majority of stakeholders again chose not to support the very same increased Strike Price NEPGA now asks the Commission to adopt. The Commission should reject NEPGA's attempt to cherry pick from among a negotiated package of rule changes that, with respect to the RCPFs, have only very recently become effective. NEPGA's Complaint, if granted, would erode confidence among states and stakeholders in the sustainability of the consensus-driven stakeholder process. To the extent future changes to the PER mechanism are warranted, as explained below, they should be considered as part of the ongoing stakeholder process that ISO-NE has already initiated.

³⁶ See Complaint at 18.

B. The Complaint Does Not Demonstrate that the FCM Rules Are Unjust and Unreasonable

1. Auction Outcomes Do Not Support NEPGA's Claims of Financial Harm

NEPGA fails to support its contention that auction prices would have been any different with higher RCPFs in place.³⁷ The Complaint alleges that resources “had no way of knowing that the Commission would direct an increase in the RCPFs in May 2014” and, even if they did, such resources could not have factored into their delist offers the increased PER deduction.³⁸

The Complaint ignores the fact that the clearing prices in FCAs 5 through 8 were all set by administrative pricing rules. In the case of FCAs 5 through 7, the auctions cleared excess capacity at the administrative floor price (with the exception of the NEMA/Boston load zone clearing at a separate administrative price in FCA 7).³⁹ In FCA 8, the auction cleared at very high rates set by an administrative rule, in this case triggered by insufficient competition in the market.⁴⁰ NEPGA fails to show how the RCPF changes would have driven a different auction price outcome when administrative prices were in effect. To the contrary, given the excess capacity at the time of the respective auctions, it is far more likely that the administrative price would have continued to set the price. For any real change to have occurred, thousands of MWs would have had to delist for prices to have cleared in excess of the administrative price floors that were in place.

³⁷ *Id.* at 16-17.

³⁸ *Id.* at 16.

³⁹ See ISO-NE, Internal Market Monitor, 2013 Annual Markets Report, May 6, 2014, at 91, available at http://www.iso-ne.com/markets/mkt_anlys_rpts/annl_mkt_rpts/2013/2013_amr_final_050614.pdf.

⁴⁰ See *ISO New England Inc.*, Forward Capacity Auction Results Filing, Docket No. ER14-1409-000 (filed Feb. 28, 2014), at 2, 4, available at http://www.iso-ne.com/static-assets/documents/regulatory/ferc/filings/2014/feb/er14_1409_000_fca8_results_filing_2_28_2014.pdf.

In addition, without the supply curves for these respective auctions—which are non-public—NEPGA cannot make credible assertions about how RCPF levels, and their interplay with PER, might have affected the behavior of market participants in the context of an administrative pricing regime. Only bidders know what PER premium was built into their willingness to accept the administrative prices set by the FCM rules, and whether this premium would have increased due to the RCPF changes. NEPGA’s assertions are mere conjecture.

NEPGA’s claim regarding past auction outcomes is unsupported. Its assertions regarding significant financial harm to suppliers that are an underpinning of the Complaint are without evidentiary support.

2. NEPGA Misinterprets ISO-NE’s Analysis and Understates Generators’ Opportunities to Earn Higher Energy and Ancillary Services Revenues

Contrary to NEPGA’s claims, ISO-NE has not established that the current PER Strike Price has the “potential to significantly decrease capacity market revenues without a corresponding increase in energy market revenues.”⁴¹ NEPGA’s reliance on this ISO-NE analysis, intended to facilitate stakeholder discussion, is misplaced. This so-called “back-cast” analysis that NEPGA uses to support the Complaint is based on a single year of data and excludes the potential impact of day-ahead energy market and other ancillary services market revenues. Further, NEPGA’s interpretation of the analysis draws unsupported conclusions and exaggerates the magnitude of the financial impact on resources.

In September 2014, ISO-NE offered a proposal regarding the PER mechanism for stakeholder discussion that included limited analysis of the estimated the revenue impact of

⁴¹ Complaint at 22, citing September 2014 Presentation at Slides 16-17.

higher RCPFs.⁴² For purposes of the analysis, ISO-NE assumed that historical reserve deficiencies would result in energy prices being set by the applicable RCPF and estimated the change in real-time reserves market revenues for CCPs 3 and 4.⁴³ ISO-NE observed that the increase in real-time reserve market revenues would range from \$3.34 million in CCP 3, to \$24.68 million in CCP 4, an 86% revenue increase.⁴⁴ ISO-NE then simulated the theoretical PERs and associated PER Adjustment payments for the single CCP 4 timeframe.⁴⁵

NEPGA's view appears to be that this limited data—a simulation isolated to a *single* CCP—is a reliable and robust indicator for all future years. Such an assumption places too much emphasis on a limited back-cast analysis that does not purport to represent a projection of future real-time reserves market revenues, PERs, and/or PER Adjustment payments, all of which are, of course, subject to volatility and fluctuations depending on market conditions.

More importantly, NEPGA relies on a simulation that does not take into account the very reason for the increased RCPFs in the first place: better operational performance by capacity resources during scarcity conditions. By assuming that the number and frequency of past reserve deficiencies are equal to those expected in the future, NEPGA either presumes that system performance will not improve *or* overestimates the likelihood of RCPFs setting the price and triggering the PER Adjustment. This limited data set and questionable assumptions are insufficient to demonstrate that existing Tariff provisions are unjust and unreasonable.

⁴² September 2014 Presentation at Slide 15.

⁴³ *See id.* at Slide 16; ISO-NE, Peak Energy Rent ('PER') Adjustment Mechanism: Implications of the May 30, 2014 FERC Order: Discussion (July 8-10, 2014), Presentation by Catherine McDonough at the NEPOOL Markets Committee, at Slide 6, *available at* http://www.iso-ne.com/static-assets/documents/committees/comm_wkgrps/mrks_comm/mrks/mtrls/2014/jul89102014/a13_iso_presentation_07_10_14_r2.pptx.

⁴⁴ *See* September 2014 Presentation at Slide 16 (\$3.34 Million in CCP 3 to \$24.68 Million in CCP 4 = 86% increase ($24.68 - 3.34 / 24.68 = 86\%$)).

⁴⁵ *Id.* at Slide 17.

NEPGA's interpretation of the ISO-NE analysis also ignores the potential for higher energy and ancillary services revenues with the RCPF changes in effect.⁴⁶ As explained by ISO-NE, but omitted by NEPGA's expert testimony, the ISO-NE analysis excludes the potential impact of higher RCPFs on day-ahead energy market revenues.⁴⁷ If higher RCPFs lead to higher real-time prices, it is reasonable to expect that, eventually, real-time and day-ahead prices would converge and suppliers would receive higher day-ahead revenues. Further, the higher RCPFs would likely lead to higher Forward Reserve Market ("FRM") prices. Since the value of providing forward reserves is based on the opportunity costs of providing real-time reserves, increased expectations associated with higher RCPFs, and associated reserve deficiencies translating to higher real-time reserve prices, should likewise extend to FRM revenues. In addition, other factors beyond higher RCPFs, such as increased natural gas basis differentials during winter months, could serve to increase energy and ancillary services market revenues. These myriad considerations, which raise valid questions about the predictive value of the analysis upon which NEPGA relies, are noticeably absent from the Complaint.

3. The Current PER Adjustment Complements the RCPF Changes

The PFP program and the NEPOOL alternative were each intended to strengthen incentives for resource performance. In approving the RCPF increases, the Commission held that these changes, together with a modified PFP, "represent a just and reasonable solution to the

⁴⁶ Piling onto these unsupported allegations, NEPGA proceeds to overstate the potential financial impacts of the higher RCPFs and the current PER Strike Price. By focusing only on the change in PER Adjustment revenues estimated in the back-cast analysis for CCP 4, NEPGA claims that the Commission should "focus solely on the equity of a nearly 400% annual increase in payments from suppliers to load." Complaint at 14. However, NEPGA's own expert calculated the change in total capacity revenues for CCP 4 to be approximately 5.7%. *See id.* at Attachment A, Affidavit of Dr. David Hunger ("Hunger Affidavit"), at 5 ($\$0.15 / \$2.53 = 5.7\%$). A focus on only the estimated change in the capacity payment rebate, rather than on net capacity market revenues, substantially diminishes, in a misleading way, the overall revenues that suppliers earn.

⁴⁷ September 2014 Presentation at Slide 17.

region's resource performance problems."⁴⁸ In addition, the Commission stated that the RCPF increases "are not intended to be a complete panacea to the region's resource performance problems, but rather part of a comprehensive solution that will enhance performance incentives in the near-term until ISO-NE's proposal, as adopted here, begins impacting real-time performance."⁴⁹

Maintaining the PER Strike Price at its current level works in conjunction with the RCPF enhancement. In the real-time energy market, RCPFs set the clearing price when there are reserve deficiencies.⁵⁰ The PER Adjustment provides the potential for revenue reductions during scarcity events and thus complements the RCPF changes by discouraging withholding and the exercise of market power. Contrary to NEPGA's claim, the current PER provisions provide an important consumer protection function that is compatible with the RCPF increases.

C. The Complaint Fails to Show That NEPGA's Alternative Is Just and Reasonable

1. NEPGA's Proposed Alternative Remedy for CCPs 5 through 8 Would Weaken Consumer Protections and Erode a Mechanism to Incent Performance

NEPGA proposes to have the Commission increase the current PER Strike Price by \$250 per MWh for CCPs 5 through 8. This change would have significant implications for seller market power and the offset against high prices for which load has already paid.

As described above, one of the primary purposes of the PER Adjustment is to curb the incentive to exercise market power that would harm consumers through the withholding of

⁴⁸ May 30 Order at P 107.

⁴⁹ *Id.* at P 108.

⁵⁰ See ISO-NE Market Development Memorandum to the NEPOOL Markets Committee (March 5, 2013) RE: Operating Reserve Deficiency Information – Historical Data, at 2, available at http://www.iso-ne.com/static-assets/documents/committees/comm_wkgrps/mrks_comm/mrks/mtrls/2013/mar11122013/a14_iso_reserves_memo_03_05_13.pdf.

supply during periods of high prices (a strategy to drive the price up even farther). The other primary purpose is to provide consumers with the value of a hedge against scarcity prices in the spot market.

Increasing the PER Strike Price above and beyond an inefficient hypothetical resource in the supply stack,⁵¹ which the NEPGA proposal would do, heightens the incentive for suppliers to exercise market power in the real-time market. NEPGA claims that “load only pays real-time prices that reflect scarcity rents to a small fraction of capacity suppliers.”⁵² That there may be fewer suppliers that might exercise market power is neither an assurance that it will not occur nor a basis to find that NEPGA’s replacement provisions are just and reasonable. To grant the relief requested in the Complaint could increase supplier market power incentives for capacity suppliers beyond a reasonable level.

NEPGA has also failed to establish that raising the Strike Price would ensure that consumers receive appropriate value for the hedge they purchased in FCAs 5 through 8. NEPGA mischaracterizes ISO-NE’s September 2014 presentation as advocating for a \$250 per MWh Strike Price on the basis that it would “help restore the value of the hedge purchased by load . . . and honor settled market expectations.”⁵³ To the contrary, on the same slide cited by NEPGA, ISO-NE explicitly cautioned that its proposal’s purpose was only to “address[] revenue allocation issues that raise equity issues”—and was not necessary for reliability or economic efficiency reasons. Further ISO-NE explained that it did not anticipate filing changes with FERC unless at least 60% of stakeholders supported the proposal.⁵⁴ Stakeholders decided not to

⁵¹ See *id.* at Slide 36 (listing a 22,000 Btu/kWh heat rate machine as the marginal generating proxy unit).

⁵² Complaint at 15.

⁵³ *Id.* at 24.

⁵⁴ September 2014 Presentation at Slide 4.

support that proposal and now NEPGA is attempting to resuscitate it through litigation. Yet, NEPGA has not demonstrated how the increased Strike Price assures its rule change proposal is fair to consumers and thus is just and reasonable, and its proposed revisions should be rejected.

In addition, as discussed above, by reducing the incentive to withhold, the current PER mechanism works in conjunction with the RCPF changes. NEPGA's proposal does not consider how "recalibrating" the Strike Price could undermine the efficacy of this mechanism.

Particularly given the PER's purpose of providing consumer protections and the Commission's interest in ensuring incentives for real-time performance, NEPGA's proposal to modify the Strike Price is not just and reasonable.

2. NEPGA Fails to Demonstrate that Eliminating the PER for FCA 9 Is Just and Reasonable

For FCA 9, NEPGA would have the Commission, just two months from the auction and on a fast-track basis, eliminate the PER, thus completely removing consumer protections that have been in place since the inception of the FCM. That proposal is clearly unjust and unreasonable and should be rejected. As a threshold matter, the Complaint's request that the Commission undertake the complex evaluation associated with this substantial request under a shortened timeframe is unreasonable. Indeed, despite the clear requirements in Rule 206(b)(11), NEPGA does not explain the reason for its request for fast track processing or explain why the standard processes are inadequate for expeditiously resolving its complaint.

NEPGA's proposal to eliminate PER for FCA 9 also fails to consider the unjust and unreasonable impacts for consumers. The Complaint does not discuss the implications of removing PER for FCA 9 when there is a \$0.43 per kW-month adder to Net CONE specifically

to account for the PER deduction.⁵⁵ This omission underscores a significant shortcoming in considering the PER adjustment in isolation. NEPGA never appeared to have considered a reduction in Net CONE if PER is eliminated, which alone should be fatal to its assertion that the proposed remedy is just and reasonable.

Eliminating PER could also cause consumers to bear unnecessary costs arising from de-list bids that have already priced risks associated with PER into submissions the IMM reviewed, which cannot be changed at this late stage in the FCA process. NEPGA states that the “PER values incorporated into existing de-list bids are the historic values provided by ISO-NE and do not reflect the increase in the RCPFs.”⁵⁶ However, these bids would have included resources’ expectation of revenue reductions from the PER. NEPGA does not explain why it is just and reasonable for consumers to pay capacity prices that are inflated on account of PER when PER is abolished for FCA 9 under the NEPGA proposal.

As detailed above, the initial Commission order largely approving PFP and approving the RCPF increases was issued on May 30, 2014. De-list bids for existing resources were due to the IMM by mid-June 2014.⁵⁷ Following an iterative review process in July and August, the IMM notified market participants on September 26, 2014 of final qualification for existing resource de-list bids.⁵⁸ In light of the iterative IMM bid review process, capacity resources had, at minimum, several months after the May 30 Order was issued to incorporate a risk premium to

⁵⁵ See The Brattle Group, Net CONE for the ISO-NE Demand Curve: Final Proposal, Presented to the NEPOOL Markets Committee (Mar. 12, 2014), at Slide 7, available at http://www.iso-ne.com/static-assets/documents/committees/comm_wkgrps/mrktls_comm/mrktls/mtrls/2014/mar12132014/a02a_the_brattle_group_demand_curve_net_cone_final_proposal_03_12_14.pptx. This adder is applied to Rest of Pool.

⁵⁶ Complaint at 28.

⁵⁷ FCA 9 Info Filing at 11. According to ISO-NE, a “total of 8,301 MW of de-list bids were submitted for the ninth FCA.” *Id.* at 5.

⁵⁸ *Id.* at 2, 11.

account for the effects of the RCPFs into their de-list bids. In any event, de-list bids were prepared well after the initial January 2014 filing of the NEPOOL Proposal requesting that the increase in RCPFs, with no changes to the PER, be implemented immediately. Consequently, NEPGA's proposal creates the potential for an unjust and unreasonable outcome, where consumers no longer benefit from the hedge that is priced into de-list bids, while these de-list bids could set the clearing price at a higher rate that accounts for PER.

NESCOE agrees—as it did during the stakeholder process to consider the NEPOOL Proposal⁵⁹—that the PER mechanism warrants reconsideration going forward in light of fundamental FCM changes. However, it would be inappropriate, procedurally and substantively, to wholly remove this long-standing provision less than two months from the next auction. NEPGA contends that “PER is a poor hedge for load,”⁶⁰ but it is a hedge that may be redefined after consideration of its value under the new FCM rules.

3. Changes to PER for FCA 10 and Beyond are the Subject of a Stakeholder Process and Should be Allowed to Continue on that Path

States and stakeholders need a meaningful opportunity to consider and discuss the numerous issues NEPGA raises. NEPOOL has had only one in-depth discussion on many of the arguments made in the Complaint.⁶¹ Prior to the Complaint being filed, the functioning of the

⁵⁹ See Minutes of the Dec. 6, 2013 Participants Committee Meeting at 2908 (“The NESCOE representative indicated support for the view that the PER deduction could result in consumer savings but also support for reconsidering the mechanism. He went on to indicate that the States would, however, collectively oppose the elimination of the PER deduction and NRG Amendment #2.”), available at http://www.nepool.com/uploads/Minutes_NPC_2013_1206.pdf.

⁶⁰ Complaint at 10.

⁶¹ See ISO-NE, Peak Energy Rent (PER) Adjustment Mechanism: FCA-10 and Beyond: Discussion Materials (Nov. 13, 2014), Presentation by Catherine McDonough at the NEPOOL Markets Committee (“November 2014 Presentation”), available at http://www.iso-ne.com/static-assets/documents/2014/11/a12_iso_presentation_11_13_14.pptx.

PER Adjustment in conjunction with a downward sloping demand curve was the subject of stakeholder discussions.⁶² This process should be allowed to proceed.

There are complicated and complex questions that will benefit from the continued good faith dialogue around these issues. NEPGA's own witness struggles with the complexity of the market design in his testimony. He states that "the PER Adjustment will cause an upward shift in the demand curve because it will raise the net cost of new entry[,] thus increasing the clearing price" but later concedes that "it is impossible to predict the precise relationship between the PER Adjustment and FCA clearing prices, much less guarantee that the PER Adjustment will be completely accounted for in FCA clearing prices."⁶³

NEPGA's litigation appears to have already chilled important stakeholder discussion of the PER mechanism. ISO-NE indicated in November 2014 that it would pursue a several month process with stakeholders, with the potential for an initial vote on proposals in the February 2015 timeframe.⁶⁴ ISO-NE removed discussion of the PER mechanism from the December 2014 Markets Committee agenda.⁶⁵ While this schedule may be delayed somewhat as a consequence of NEPGA's litigation, the Commission should permit that discussion to continue by denying NEPGA's complaint.

⁶² See NEPOOL Markets Committee Agenda, Revision 1, Dec. 9-10, 2014 ("MC December Agenda"), at Item #12, available at http://www.iso-ne.com/static-assets/documents/2014/12/agenda_14120910.doc.

⁶³ Hunger Affidavit at 10.

⁶⁴ See November 2014 Presentation at Slide 24.

⁶⁵ See MC December Agenda at Item #12.

VI. CONCLUSION

For the reasons stated herein, NESCOE respectfully requests that the Commission (i) grant its Motion to Intervene, (ii) deny the Complaint, and (iii) take other necessary and appropriate actions consistent with the foregoing protest.

Respectfully submitted,

/s/ Benjamin S D'Antonio

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New England States Committee on Electricity

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Date: December 23, 2014

CERTIFICATE OF SERVICE

In accordance with Rule 2010 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day served by electronic mail a copy of the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Longmeadow, Massachusetts this 23rd day of December, 2014.

Respectfully submitted,

/s/ Benjamin S D'Antonio

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