

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

)	
)	Docket Nos. ER18-1153-000
ISO New England Inc.)	ER17-2153-002
)	EL16-120-002
)	

**LIMITED PROTEST OF THE
NEW ENGLAND STATES COMMITTEE ON ELECTRICITY**

Pursuant to Rule 211 of the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) Rules of Practice and Procedure, 18 C.F.R. § 385.211 (2018), the New England States Committee on Electricity (“NESCOE”) files this limited protest in response to ISO New England Inc.’s (“ISO-NE”) March 22, 2018 compliance filing in this proceeding (the “March 22 Filing”).¹ On February 20, 2018, the Commission issued an order accepting an Offer of Settlement (“Settlement”) regarding the Peak Energy Rent (“PER”) adjustment.² The Settlement Order resolved a September 30, 2016 complaint asserting that the PER mechanism had become unjust and unreasonable because of higher Reserve Constraint Penalty Factors.³

The Settlement Order directed ISO-NE to file Tariff changes revising the methodology for calculating the PER Strike Price (the “Adjusted PER Strike Price”) for a specific time period beginning on September 30, 2016 and ending on May 31, 2018 (the “Refund Period”). While

¹ On March 26, 2018, NESCOE filed a doc-less motion to intervene in Docket No. ER18-1153-000. Capitalized terms not defined in this filing are intended to have the meaning given to such terms in the ISO-NE Transmission, Markets and Services Tariff (the “Tariff”).

² *New Eng. Power Generators Ass’n, Inc. v. ISO New England Inc.*, 162 FERC ¶ 61,144 (2018) (“Settlement Order”).

³ *New Eng. Power Generators Ass’n, Inc. v. ISO New England Inc.*, 158 FERC ¶ 61,034 (2017), *reh’g denied*, *New Eng. Power Generators Ass’n, Inc. v. ISO New England Inc.*, 161 FERC ¶ 61,193 (2017).

NESCOE supports the Adjusted PER Strike Price (as it did as an active party to the Settlement), NESCOE protests the application of that methodology beyond the Refund Period.

I. PROTEST

NESCOE respectfully requests that the Commission reject the March 22 Filing as non-compliant with the Settlement Order. The Settlement Order required ISO-NE to revise the PER Strike Price for the Refund Period, *i.e.*, September 30, 2016 through May 31, 2018.⁴ The end of the Refund Period corresponds with the end of Capacity Commitment Period 8 and the commencement, on June 1, 2018, of Capacity Commitment Period 9. The March 22 Filing, if accepted, would use the Adjusted PER Strike Price to calculate monthly capacity payments to resources for at least some, and potentially all, of Capacity Commitment Period 9. This outcome is inconsistent with the Settlement Order.

The March 22 Filing appropriately revises the PER mechanism to reflect the Adjusted PER Strike Price for the Refund Period.⁵ NESCOE was an active party to the Settlement and supported that change as a fair and balanced resolution of a contested issue. That methodology, however, should be applied solely to the Refund Period and should not be carried into payments in Capacity Commitment Period 9. The Tariff changes ISO-NE has proposed can and should be further revised to ensure that the fair balance achieved in the Settlement is not unwound due to a misunderstanding of the Commission's directives.

NESCOE recognizes ISO-NE's challenge in developing Tariff language to comply with the Settlement Order. The March 22 Filing discussed, in general, ISO-NE's calculation of PER and the operation of a twelve-month average of Monthly PER values to determine adjustments to

⁴ Settlement Order at PP 3-4. *See* March 22 Filing, Transmittal Letter, at 1.

⁵ *See* March 22 Filing, Transmittal Letter, at 1-2; Settlement Order at P 1.

capacity payments.⁶ ISO-NE stated that “absent contrary direction from the Commission,” it would “calculate Average Monthly PER (including for Obligation months that occur after the end of the Refund Period) to include, where applicable, Monthly PER values that may be affected by the revised Daily PER Strike Prices.”⁷

It is understandable that ISO-NE would require the Commission’s guidance in this area. On March 1, 2018, NESCOE filed with the Commission a request for clarification of the Settlement Order to confirm that ISO-NE’s compliance filing should appropriately limit the application of the Adjusted PER Strike Price to capacity payments through May 31, 2018 (*i.e.*, the end of the Refund Period).⁸ The Clarification Request, which is included herein as Attachment A, remains pending before the Commission.⁹ ISO-NE has taken no position regarding the Clarification Request, but it noted at a March 6, 2018 New England Power Pool Markets Committee meeting that there were no technical impediments to implementing Tariff changes consistent with the view that NESCOE expressed in the Clarification Request (the same view reflected in this filing).

The March 22 Filing confirms that, without the Commission’s guidance, the Adjusted PER Strike Price will be inappropriately applied to capacity payments in Capacity Commitment Period 9. In the March 22 Filing, ISO-NE informed the Commission that “impacted PER Events within the refund period occurred in October 2017.”¹⁰ Because PER calculations are based on a

⁶ March 22 Filing, Transmittal Letter, at 2.

⁷ *Id.*

⁸ Request for Clarification of the New England States Committee on Electricity, Docket Nos. EL16-120-000, ER17-2153-000, and ER17-2153-001 (filed Mar. 1, 2018).

⁹ NESCOE incorporates by reference and adopts in this compliance proceeding its Clarification Request and respectfully asks the Commission to consider the Clarification Request in reviewing the March 22 Filing.

¹⁰ March 22 Filing, Transmittal Letter, at 2.

twelve-month average of Monthly PER values, the Adjusted PER Strike Price will be used to calculate payments months after the Refund Period has expired. This is inconsistent with the Settlement Order, which required ISO-NE to revise the PER Strike Price for the September 30, 2016 through May 31, 2018 period.¹¹ For this period of time (the Refund Period), NESCOE agrees that the Adjusted PER Strike Price should be used in calculating monthly capacity payments. However, beginning on June 1, 2018, ISO-NE's adjustment for PER must revert to the methodology that was in effect prior to the Settlement.¹²

ISO-NE's use of the Adjusted PER Strike Price to calculate capacity payments in Capacity Commitment Period 9 will impose unfair and excessive charges on consumers. NESCOE explained why in the Clarification Request.¹³ Unlike resources with Capacity Supply Obligations ("CSOs") during the Refund Period, resources with CSOs in Capacity Commitment Period 9 could have accounted for the increased Reserve Constraint Penalty Factors in their supply offers. Those supply offers would have been based on the unadjusted PER Strike Price and not on the more Settlement methodology. Resources participating in Capacity Commitment Period 9 thus would have expected monthly capacity payments to include rebates reflecting the existing PER methodology at the time of the auction, not the Settlement methodology. However, under the approach set forth in the March 22 Filing, these resources will now receive a windfall, at consumers' expense, in the form of reduced rebates. ISO-NE has confirmed that this will

¹¹ Settlement Order at PP 3-4. *See* March 22 Filing, Transmittal Letter, at 1.

¹² As a technical matter, in calculating capacity market payments during Capacity Commitment Period 9, this would require ISO-NE to use the unadjusted PER Strike Price to determine the Monthly PER value in relation to prior PER Events. As stated above, ISO-NE has informed stakeholders that there are no technical impediments to implementing the Tariff in this way.

¹³ Clarification Request at 3-4, 6-7.

occur in relation to the October 2017 PER Events, and it will occur in relation to all other impacted PER Events through May 31, 2018.

In reviewing compliance filings, the Commission’s objective is “to ascertain whether the modifications are appropriate.”¹⁴ While the March 22 Filing properly includes a revision to the PER methodology that is consistent with the Settlement Order, it deviates from the Settlement Order’s directives regarding the application of that methodology to the Refund Period. In so doing, it imposes unjust and unreasonable costs on consumers.

II. CONCLUSION

For the reasons stated herein, NESCOE respectfully requests that the Commission reject that part of the March 22 Filing that expands the application of the Adjusted PER Strike Price to capacity payments made in Capacity Commitment Period 9 and direct ISO-NE to file Tariff changes that limit the application of the Adjusted PER Strike Price to the Refund Period.

Respectfully submitted,

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¹⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, 131 FERC ¶ 61,285 at P 19 (2010).

ATTACHMENT A

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

New England Power Generators Association, Inc.)	
)	
)	Docket Nos. EL16-120-000
v.)	ER17-2153-000
)	
ISO New England Inc.)	

**REQUEST FOR CLARIFICATION OF THE
NEW ENGLAND STATES COMMITTEE ON ELECTRICITY**

Pursuant to Rule 212 of the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) Rules of Practice and Procedure, 18 C.F.R. § 385.212 (2017), the New England States Committee on Electricity (“NESCOE”) hereby moves for clarification of the Commission’s February 20, 2018 order in the above-captioned proceedings (the “February 2018 Order”).¹

In the February 2018 Order, the Commission approved an Offer of Settlement (“Settlement”)² concerning ISO New England Inc.’s (“ISO-NE”) Peak Energy Rent (“PER”) adjustment.³ The Settlement included an “Adjusted PER Strike Price.”⁴ The February 2018 Order recognized that “the applicability of the [Adjusted PER Strike Price] to any events that occur during Capacity Commitment Period 9 is beyond the scope of this proceeding.”⁵

NESCOE respectfully requests clarification that the Adjusted PER Strike Price likewise does not apply to capacity payments in Capacity Commitment Period 9 (June 1, 2018 - May 31, 2019),

¹ *New Eng. Power Generators Ass’n, Inc. v. ISO New England Inc.*, 162 FERC ¶ 61,144 (2018).
² NESCOE joined the New England Power Generators Association, Inc. (“NEPGA”) and other parties in filing the Settlement.
³ Capitalized terms not defined in this filing are intended to have the meaning given to such terms in the ISO-NE Transmission, Markets and Services Tariff (the “Tariff”).
⁴ February 2018 Order at P 1.
⁵ *Id.* at P 3.

and that the Adjusted PER Strike Price will, therefore, have no effect on Forward Capacity Market (“FCM”) settlements beginning June 1, 2018, including as part of the operation of the PER twelve-month rolling average.

I. BACKGROUND

The PER mechanism “removes a rolling average of ‘peak energy rents’ from suppliers’ monthly capacity payments and rebates this revenue back to load.”⁶ As the administrator of this mechanism, ISO-NE “calculates a ‘strike price,’ a price just above the marginal cost of running the most expensive power generator in New England.”⁷ ISO-NE then “calculates hourly peak energy rents—roughly the excess of the real-time electricity price over the strike price—for any hour” where that real-time price is greater than the strike price.⁸ In settling FCM payments, ISO-NE “derives a monthly value of peak energy rents, averages it over the past twelve months, and subtracts this quantity from suppliers’ monthly capacity payments as the total [PER adjustment].”⁹ The PER mechanism will be eliminated effective June 1, 2019, at the start of Capacity Commitment Period 10.¹⁰

On September 30, 2016, NEPGA filed a complaint with the Commission asserting that the PER mechanism had become unjust and unreasonable because of higher Reserve Constraint Penalty Factors (“RCPFs”).¹¹ NEPGA’s complaint sought relief only for a portion of Capacity

⁶ *New Eng. Power Generators Assoc. Inc. v. FERC*, 879 F.3d 1192, 1196 (D.C. Cir. 2018) (“*NEPGA*”). In *NEPGA*, the Court denied challenges to a series of Commission orders, including the Commission’s rejection of NEPGA’s 2014 complaint regarding the PER mechanism. NESCOE filed a brief in *NEPGA* supporting the Commission’s determination.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *ISO New England Inc.*, 151 FERC ¶ 61,096 (2015).

¹¹ *New Eng. Power Generators Assoc., Inc. v. ISO New England Inc.*, 158 FERC ¶ 61,034 at PP 1, 13 (2017) (“*Complaint Order*”), *reh’g denied*, *New Eng. Power Generators Assoc., Inc. v. ISO New England Inc.*, 161 FERC ¶ 61,193 (2017) (“*Rehearing Order*”).

Commitment Period 7 and for all of Capacity Commitment Period 8.¹² The Commission granted the complaint, in part, finding “that ISO-NE should revise its method for calculating the PER strike price for the September 30, 2016 – May 31, 2018 period to remedy this situation.”¹³ The Commission set for hearing and settlement judge procedures the issue of how to revise the PER strike price for this period.¹⁴

The Settlement, filed in July 2017, proposed increasing “the PER Strike Price for each hour by the amounts that actual five-minute reserve shadow prices exceed the pre-December 2014 [RCPF] values for thirty-minute operating reserves and ten-minute non-spinning reserves (\$500/MWh and \$850/MWh, respectively)[.]”¹⁵ As the February 2018 Order recounts, the Settlement also provided that parties did not agree “regarding the application of the Strike Price methodology agreed to in this Settlement to Capacity Commitment Period 9.”¹⁶

In comments on the Settlement, NESCOE asked the Commission to “provide the clarity needed on this issue to facilitate ISO-NE’s ability to efficiently proceed with the required Tariff changes.”¹⁷ NESCOE stated that:

The methodology and any effect of the change should not be continued into the Capacity Commitment Period corresponding with [Forward Capacity Auction (“FCA”)] 9. In other words, the application of the [Adjusted PER Strike Price] should sunset at the commencement of the FCA 9 Capacity Commitment Period (June 1, 2018) and have no effect on capacity payments in FCA 9. To expand the application of the [Adjusted PER Strike Price] into the FCA 9 Capacity Commitment Period would create the potential for unjust and unreasonable capacity prices and, illogically, would

¹² Complaint Order at P 13.

¹³ Rehearing Order at P 3, citing Complaint Order at P 51.

¹⁴ Complaint Order at P 57.

¹⁵ February 2018 Order at P 1.

¹⁶ *Id.* at P 3.

¹⁷ Comments of the New Eng. States Comm. on Elec., Docket Nos. EL16-120-000, *et al.* (filed Aug. 17, 2017) (“NESCOE Comments”), at 7.

settle “the expectations of the parties at the time of FCAs 7 and 8” by *unsettling* the expectations of parties to FCA 9.

The [Complaint Order] was wholly, and intentionally, unrelated to FCA 9. Its scope was appropriately limited to FCAs 7 and 8 because “*for the time period in question*, capacity resources were unable to anticipate a future increase in [RCPFs], and accordingly, were unable to reflect a corresponding increase in their capacity offers.” By contrast, the RCPFs were increased prior to FCA 9 and resources accepting a Capacity Supply Obligation for that period were able to reflect this change. Resources participating in FCA 9 were thus able to include in their capacity supply offers an adjustment for the monthly application of the PER mechanism based on the existing Strike Price and its interaction with the higher RCPFs. To the extent there are PER Events during the FCA 8 period, continuing to apply the [Adjusted PER Strike Price] to capacity payments in the FCA 9 period would constitute excessive payments to suppliers and produce a resulting unjust and unreasonable rate. The Commission could not have intended such a result in seeking to remedy unjust and unreasonable rates for FCAs 7 and 8.^[18]

NESCOE concluded by stating that “if the Commission approves the Settlement, it should direct ISO-NE to submit a compliance filing . . . that appropriately limits the application of the [Adjusted PER Strike Price] to the relevant period of FCA 7 and FCA 8 (*i.e.*, September 30, 2016 to May 31, 2018)” and that FCM payments beginning with Capacity Commitment Period 9 would use the PER methodology “that was in effect prior to the Settlement.”¹⁹

ISO-NE noted in its comments that parties to the Settlement disagreed “about how the Average Monthly Peak Energy Rent will be calculated on and after June 1, 2018.”²⁰ ISO-NE asked the Commission to “resolve that issue.”²¹

¹⁸ *Id.* at 8 (emphasis in original; citations omitted).

¹⁹ *Id.* at 10.

²⁰ ISO New England Inc., Comments on Peak Energy Rent Settlements., Docket No. ER17-2153-000 (filed Aug. 16, 2017), at 2.

²¹ *Id.*

The February 2018 Order acknowledged the issue involving Capacity Commitment Period 9. Citing to the Complaint Order, the Commission stated that “the PER Strike Price was shown to be unjust and unreasonable for the period at issue in NEPGA’s complaint, i.e., September 30, 2016 – May 31, 2018.”²² The Commission found that “[a]ccordingly, the applicability of the [Adjusted PER Strike Price] to any events that occur during Capacity Commitment Period 9 is beyond the scope of this proceeding.”²³ The February 2018 Order did not specifically address the issue that NESCOE and ISO-NE raised: how FCM payments will be calculated beginning on June 1, 2018.

II. REQUEST FOR CLARIFICATION

NESCOE requests clarification of how FCM payments are to be calculated in Capacity Commitment Period 9 given the Tariff’s operation of a twelve-month rolling average for PER adjustments. As discussed above, ISO-NE “derives a monthly value of peak energy rents, averages it over the past twelve months, and subtracts this quantity from suppliers’ monthly capacity payments as the total [PER adjustment].”²⁴ The February 2018 Order clearly reiterated that NEPGA’s complaint concerned a period of time ending on May 31, 2018—prior to Capacity Commitment Period 9—and that the “applicability of the [Adjusted PER Strike Price] to any *events* that occur during Capacity Commitment Period 9 is beyond the scope of this proceeding.”²⁵ The February 2018 Order does not, however, specifically address the circumstance where a PER event occurs in Capacity Commitment Period 8 but the twelve-month rolling average for PER adjustments implicates FCM settlements in Capacity Commitment

²² February 2018 Order at P 3, citing to Complaint Order at P 48.

²³ February 2018 Order at P 3.

²⁴ *NEPGA* at 1196.

²⁵ February 2018 Order at P 3 (emphasis added).

Period 9. While NESCOE believes that the February 2018 Order confirms that payments in Capacity Commitment Period 9 should *not* reflect the Adjusted PER Strike Price, it respectfully requests clarification of this issue.

This clarification is critical to how ISO-NE will develop Tariff language to comply with the February 2018 Order.²⁶ Based on NESCOE’s understanding of the Commission’s directives in this proceeding, the Tariff language should specify that beginning on June 1, 2018, FCM payments would apply the PER adjustment using the PER methodology that was in effect prior to the Settlement, even with respect to PER events that occurred in Capacity Commitment Period 8 and are captured in the twelve-month rolling average.²⁷

As NESCOE previously explained, such Tariff language would protect consumers from paying excessive rates, a central purpose of the Federal Power Act. *See, e.g., Xcel Energy Servs. Inc. v. FERC*, 815 F.3d 947, 952 (D.C. Cir. 2016). The Commission found that for the period in question (part of FCA 7 and all of FCA 8), “capacity resources were unable to anticipate a future increase in [RCPFs], and accordingly, were unable to reflect a corresponding increase in their capacity offers.”²⁸ But, as NESCOE discussed, resources participating in FCA 9 were aware of the RCPF increases and “had the opportunity to reflect in their supply offers an increase for the monthly application of the PER mechanism based on the *existing* Strike Price and its interaction with the higher [RCPFs].”²⁹ There is no reasonable justification for providing Capacity

²⁶ ISO-NE has announced plans to discuss draft market rule changes with stakeholders on March 6, 2018, with its compliance filing with the Commission due by March 22, 2018. *See* ISO New England, Mar. 6, 2018 NEPOOL Markets Committee Meeting Materials – 1st Set, available at <https://www.iso-ne.com/event-details?eventId=134539>.

²⁷ As NESCOE explained in prior comments, the PER adjustment on June 1, 2018 would, for example, be based on the Hourly PER values produced by the Daily PER Strike Price from June 2017 to May 2018.

²⁸ Complaint Order at P 51.

²⁹ Reply Comments of the New Eng. States Comm. on Elec., Docket Nos. ER17-2153-000, *et al.* (filed Aug. 28, 2017), at 4 (emphasis added).

Commitment Period 9 resources with a more advantageous PER adjustment—effectively a bonus at consumers’ expense. The Commission, which has been consistently clear in its orders in this proceeding that NEPGA’s complaint does not apply to Capacity Commitment Period 9, could not have intended for the Adjusted PER Strike Price to roll into FCM settlements beginning on June 1, 2018. NESCOE asks the Commission to clarify that the Adjusted PER Strike Price should have no effect on FCM settlements beginning June 1, 2018.

III. CONCLUSION

For the reasons stated herein, NESCOE respectfully requests clarification that the February 2018 Order requires ISO-NE to submit Tariff language that limits the Adjusted PER Strike Price to capacity payments through May 31, 2018, and that will have no effect on such payments thereafter.

Respectfully submitted,

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Date: March 1, 2018

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 Cambridge, Massachusetts this 1st day of March, 2018.

Respectfully submitted,

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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 Washington, D.C. this 12th day of April, 2018.

Respectfully submitted,

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