UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New England Power Generators Association, Inc.	)	
	)	
v.	)	Docket No. EL14-7-000
	)	
ISO New England Inc.	)	

MOTION FOR LEAVE TO ANSWER AND ANSWER OF THE NEW ENGLAND STATES COMMITTEE ON ELECTRICITY

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission's ("Commission" or "FERC") Rules of Practice and Procedure (the "Rules"), 18 C.F.R. §§ 385.212 and 385.213 (2012), the New England States Committee on Electricity ("NESCOE") hereby moves for leave to answer, and submits this answer, in response to the December 16, 2013 answer filed by the New England Power Generators Association, Inc. ("NEPGA") in this proceeding.[1]

I. MOTION FOR LEAVE TO ANSWER

Pursuant to Rule 212, NESCOE seeks leave to answer the NEPGA Answer. While the Commission's Rules generally prohibit replies to answers, the Commission has discretion to accept answers such as this one where it provides information that assists the Commission in its decision-making process.[2] NESCOE's response to NEPGA's Answer meets this standard

[1] Protest of Tariff Filing and Motion for Leave to Answer and Answer of the New England Power Generators Association, Docket Nos. EL14-7-000 and ER14-463-000 (filed Dec. 16, 2013) ("NEPGA Answer"). In addition to answering protests of NEPGA's Complaint and the Answer of ISO New England Inc. ("ISO-NE") to NEPGA's Complaint, NEPGA states that its pleading also serves as a protest of one aspect of the filing made by ISO-NE in Docket No. ER14-463-000 (*id*. at 1) "because the issues presented . . . concern the same components of the ISO-NE Tariff and are highly interrelated and overlapping." *Id.* at 2 (footnote omitted). However, NESCOE's response addresses NEPGA's answer only.

[2] *See e.g., PJM Interconnection, L.L.C.*, *et al.,* 130 FERC ¶ 61,126 at P 20 (2010) (accepting the answers because they "have helped the Commission understand the complex matters at issue in this proceeding."); *Luzenac Am.,*

because it provides the Commission with a more complete and accurate record upon which to base its decision in this complex matter. NESCOE's answer below corrects certain misstatements and inaccuracies in the NEPGA Answer. Accordingly, NESCOE submits that there is good cause for the Commission to accept this answer.

II. ANSWER

A. Brief Background and Introduction

On October 31, 2013, NEPGA filed with the Commission a complaint against ISO-NE and request for fast track processing (the "Complaint").[3] The Complaint concerned price setting mechanisms in two areas of the Forward Capacity Market ("FCM") rules: (1) Inadequate Supply or Insufficient Competition (collectively, "IS/IC"), and (2) the Capacity Carry Forward Rule.[4] NEPGA requested that the Commission act in time for the changes to be made effective for the next Forward Capacity Auction ("FCA").[5] NESCOE filed a motion to intervene and protest on November 27, 2013 ("NESCOE Protest").[6] ISO-NE filed an answer that same day and many other parties submitted protests and comments. The NEPGA Answer was filed on December 16, 2013.

NESCOE is responding to the NEPGA Answer because it misunderstands and misrepresents both NESCOE's positions and certain facts relevant to this complaint proceeding.

Inc., 121 FERC ¶ 61,084 at P 28 (2007) (accepting the answers "given the complex issues presented herein and because these answers have provided information that aided in clarifying the relevant facts"); *ISO New England Inc. v. New England Power Pool*, 106 FERC ¶ 61,280 at P 19 (2004) (accepting the answers "given the complex nature of this proceeding and because these answers aided in clarifying certain issues").

[3] Complaint of the New England Power Generators Association, Inc. and Request for Fast Track Processing, Docket No. EL14-7-000 (filed Oct. 31, 2013).

[4] 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").

[5] Complaint at 2.

[6] Motion to Intervene and Protest of the New England States Committee on Electricity, Docket No. EL14-7-000 (filed. Nov. 27, 2013).

The NEPGA Answer includes numerous and significant inaccuracies and misstatements. In addition to NEPGA's strained interpretations of NESCOE's positions, NEPGA also inaccurately describes a number of facts and Commission orders relevant to this proceeding and misstates the burden that NEPGA must meet to obtain relief under section 206 of the Federal Power Act ("FPA"), 16 U.S.C. §824e (2012). These misstatements and inaccuracies undermine the credibility of NEPGA's arguments. NEPGA fails to show that its Complaint demonstrated that the existing rules are unjust and unreasonable or that its proposed alternative rules are just and reasonable.

B. NEPGA's Response that its Complaint Is Not a Collateral Attack Mischaracterizes and Omits Materials Facts

The NESCOE Protest recounts that just nine months prior to the NEPGA Complaint, the Commission issued an order finding the same pricing provisions at issue in the Complaint just and reasonable, and that neither NEPGA nor any other generator interest sought rehearing of that ruling.[7] These rule revisions, as noted in NESCOE's Protest, have not even had the opportunity to be triggered in a single auction. In defending itself against NESCOE's and others' arguments that NEPGA's Complaint is in essence a collateral attack on the Commission's February 2013 Order,[8] NEPGA attempts to rewrite this procedural history. As it did in the Complaint, NEPGA once again labels the rule revisions "temporary measures" or "placeholder" tariff changes.[9] This is simply not the case as a factual matter, and NEPGA's mischaracterization is not borne out by

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7 NESCOE Protest at 10, citing to *ISO New England Inc.*, 142 FERC ¶ 61,107 (2013) at PP 127-128, n. 120 ("February 2013 Order").

8 NESCOE Protest at 11-14; *see also* Protest by the Connecticut Public Utilities Regulatory Authority, the Connecticut Office of Consumer Counsel, George Jepsen, Attorney General for the State of Connecticut, and the Connecticut Department of Energy and Environmental Protection, Docket No. EL14-7-000 (filed Nov. 27, 2013), at 12-15; Protest of the Massachusetts Attorney General, Docket No. EL14-7-000 (filed Nov. 27, 2013), at 5-6.

9 NEPGA Answer at 11, 16 (emphasis removed).

the Commission in its recent action. Nowhere in the February 2013 Order did the Commission qualify its acceptance of the provisions on the basis that they were interim changes. When the Commission approves rates on a temporary or interim basis, it explicitly states that this is what it is doing.[10] That is clearly not the case in the February 2013 Order. Furthermore, even if the Commission had accepted the provisions as interim changes, as explained in the NESCOE Protest, the FPA "does not allow the Commission to accept provisions that are unjust and unreasonable merely because they are going to be in effect for only a temporary period."[11]

Additionally, NEPGA is mistaken in relying on the Commission's April 13, 2011 order ("April 2011 Order").[12] Asserting that the April 2011 Order sustains its Complaint, NEPGA cites the following from the order:

> We do not believe that the fact that prior FCAs . . . may have resulted in just and reasonable outcomes precludes ISO-NE or any other party from arguing, or the Commission from finding, that some specific provisions of the existing FCM rules or of the Joint Filing are unjust and unreasonable. First, taken to its logical conclusion, parties' arguments in this regard would mean that no section 206 challenge to any market design rates on file could succeed and that any such rate on file, once approved, is just and reasonable in perpetuity unless and until the utility itself files a proposed change under section 205.[13]

NEPGA also states that "the fact that the Commission has approved a particular market rule, and even the fact that such market rule may have produced just and reasonable rates in the past, does not shield that rule from scrutiny under section 206 of the FPA."[14] NESCOE agrees with this

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[10] *See, e.g., PacifiCorp*, 144 FERC ¶ 61,135 at P 2 (2013) ("PacifCorp's currently-effective rates . . . are interim rates that were agreed to in a settlement . . . .").

[11] NESCOE Protest at 14.

[12] *ISO New England Inc. and New England Power Pool Participants Committee*, 135 FERC ¶ 61,029 (2011), *order on reh'g and clarification*, 138 FERC ¶ 61,027 (2012).

[13] April 2011 Order at P 44. *See* NEPGA Answer at 14.

[14] NEPGA Answer at 14.

general statement. However, in light of the fact that the provisions about which NEPGA complains have never been used—not even in a single auction—NEPGA's filing of the Complaint in October 2013 is no different than had NEPGA filed the Complaint in March 2013. The Complaint does not involve provisions that have been in place "in perpetuity" or that have produced *any* rates. The changed rules have been effective for less than a year and may be applied for the very first time in a future auction. There are no past outcomes to evaluate and, as detailed in NESCOE's Protest, NEPGA provides insufficient support for its claim that the current rules are unjust and unreasonable. Consistent with Commission precedent, the Complaint should be rejected as a collateral attack where NEPGA (i) had the recent opportunity to object to the rule changes by seeking rehearing of the order approving them, but did not, (ii) has not and cannot demonstrate that the rule is not functioning as intended, and (iii) fails to show any changed circumstances justifying an abrupt and further rule change.[15]

Also, in response to unattributed arguments, NEPGA contends that ISO-NE's failure to initiate a stakeholder process to consider revising the rules at issue "cannot now be cited as grounds for foreclosing Commission consideration of these critically important issues."[16] While it is unclear to whom NEPGA directs this response, NESCOE's position on this matter is straightforward: the Commission should have the opportunity to consider these and any other rule changes, but only after a meaningful stakeholder process.[17] Absent a sufficient justification for a material last-minute change on the eve of the next auction, which NEPGA has not provided,

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[15] *See* NESCOE Protest at 13, citing to *Calif. Electricity Oversight Board v. Calif. Independent System Operator Corp*., 109 FERC ¶ 61,182 at P 28 (2004). *See also Calif. Independent System Operator Corp.*, 123 FERC ¶ 61,285 at P 31 (2008) ("the appropriate forum to raise these concerns should have been on rehearing of the September 2006 Order"); *S. Cal. Edison Co.*, 135 FERC ¶ 61,164 at P 61 (2011) ("The county does not suggest that circumstances have changed or that we are dealing with new matters here. Therefore, to again contend that we were required to prepare an EIS is an improper, untimely collateral attack on the November 15, 2007 order.").

[16] NEPGA Answer at 17.

[17] *See, e.g.,* NESCOE Protest at 32-35.

the Commission should not direct changes to recently-approved provisions that could result in billions of dollars in additional consumer costs.

C. NEPGA Mischaracterizes FERC Orders

In addition to NEPGA inaccurately labeling the pricing provisions as temporary, NEPGA misreads other Commission findings upon which it relies. NEPGA's most obvious error is an attempt to recast Commission proceedings regarding the Offer Review Trigger Price ("ORTP") of a combustion turbine ("ORTP-CT") as having a nexus to the IS/IC rules.[18] NEPGA discusses the design of ORTP values, and then conspicuously fails to explain the actual purpose behind them.

NEPGA's OTRP discussion, at best, confuses or distracts from facts. The Commission directed ISO-NE to develop ORTPs out of a concern for buyer-side market power.[19] In the February 2013 Order, the Commission described the role of ORPTs as "a screen: offers at or above the trigger price are accepted into the FCA with no further review; offers below the trigger price may nevertheless be accepted into the FCA if they are justified with the [Internal Market Monitor] during the unit-specific review process."[20] As ISO-NE stated in a recent filing it made with the Commission, the purpose of ORTPs is "to screen for new resources offering into the FCA at levels that could inappropriately suppress capacity prices."[21] ORTPs are, therefore, a benchmark for trigger of Internal Market Monitor review to ensure that so-called "out-of-market" capacity does not distort the market. ORTPs bear no relationship to the clearing price, and are wholly inapposite to an administratively-set price when there is Inadequate Supply or

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[18] *See* NEPGA Answer at 3, 24-25.

[19] *See* April 2011 Order at P 169.

[20] February 2013 Order at P 38.

[21] ISO New England Inc., Revisions to Forward Capacity Market Offer Review Trigger Price Provisions, Docket No. ER14-616-000 (filed Dec. 13, 2013), at 4.

Insufficient Competition. NEPGA's reliance on the Commission's approval of ORTP benchmark values is confused, confusing, and misplaced.

NESCOE responds to NEPGA's additional misrepresentations:

- NEPGA contends that the Commission did not reject NEPGA's proposed modification to the IS/IC pricing provisions to pay existing resources "slightly above the benchmark cost of a peaker, so as to provide the proper incentive for new entry."[22] NEPGA claims that this was not a "decision on the merits of the remedy proposed" because the Commission found it "unnecessary" to consider alternative proposals after accepting ISO-NE's revised mitigation rules.[23] Despite NEGPA's attempt to turn the Commission's rejection of its proposal into a mere procedural decision not to have considered it, the Commission did, in fact, explicitly and substantively "reject" NEPGA's suggested change:

  > We reject NEPGA's suggestion that the price paid to existing resources in the event of inadequate supply or insufficient competition should be slightly above the benchmark cost of a peaker. In the context of the revised mitigation regimes proposed by ISO-NE and accepted by the Commission, we find this suggested modification unnecessary.[24]

- NEPGA contends that Commission orders issued on PJM market rules establish a precedent "barring discrimination between new and existing resources."[25] The PJM orders NEPGA cites do not always require the same pricing between new and existing resources. Instead, because incentives are needed for new resources, the Commission has approved different pricing for new and existing resources.[26]

- NEPGA argues that a recent Commission order approving PJM's proposed increase to its Minimum Offer Price Rule ("MOPR") value to 100% of net cone supports the Complaint.[27] NEPGA omits the critical factor that, as in ISO-NE, the purpose of PJM's MOPR is to act as a review trigger to "prevent the exercise of

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[22] NEPGA Answer at n. 5; *see* April 2011 Order at P 339. As NESCOE stated in its protest, testimony in the proceeding submitted on NEPGA's behalf indicated that such a "peaker" would be a new gas-fired combustion turbine. *See* Opening Brief of the New England Power Generators Association, Inc., Docket Nos. ER 10-787-000, et al. (July 1, 2010), Exhibit 2, Testimony of Robert B. Stoddard, at 85.

[23] NEPGA Answer at n. 5, *quoting* April 2011 Order at P 342.

[24] April 2011 Order at P 342.

[25] NEPGA Answer at 21, citing to *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275 at PP 149-50 (2009), *order on clarification*, 127 FERC ¶ 61,104 (2009), *order on reh'g*, 128 FERC ¶ 61,157 at PP 101-04, 112-13 (2009).

[26] *See* NESCOE Protest at 30-31.

[27] NEPGA Answer at 27.

> buyer-side market power[.]"[28] NEPGA does not demonstrate how PJM's MOPR relates to PJM's, let alone ISO-NE's, pricing rules in the event there is inadequate supply or insufficient competition. In addition, PJM's net cone value is a representative benchmark, and resources are permitted to bid below that amount if they are exempted from the MOPR (e.g., self-supply, competitive-entry)[29] or are able to establish that a unit-specific exception is warranted.[30]

D. NEPGA Misstates Its Burden under FPA Section 206

The Commission should reject NEPGA's attempt to shift its burden under section 206 to other parties. In its answer, NEPGA suggests that parties adverse to its position bear an obligation to defend the current rules and to justify price differences between new and existing resources.[31] This is plainly not true. NEPGA cannot impose on protestors a standard that does not exist. Accordingly, NEPGA's reliance on the fact that ISO-NE indicated that it intended to file further revisions at a later time[32] is misplaced. Prior statements by ISO-NE about what ISO-NE may or may not have been thinking about at some prior point in time is not evidence that the current rules are unjust and unreasonable or that NEPGA's alternative is just and reasonable.

Similarly, NEPGA relies in several places on the fact that ISO-NE recommended in its December 2012 compliance filing using ORTP-CT as the better proxy for cost of new entry.[33] ISO-NE's statements in a compliance filing that even ISO-NE recognized were outside the scope of compliance in that docket[34] are not evidence that the current rules are unjust and unreasonable.

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28 *See PJM Interconnection, LLC, et al.*, 143 FERC ¶ 61,090 at P 20 (2013).

29 PJM Interconnection, L.L.C., Open Access Transmission Tariff, Attachment DD, sections 5.14(h)(6)-5.14(h)(7).

30 *Id.* at sections 5.14(h)(8)-(9).

31 NEPGA Answer at 20.

32 *Id.* at 24 ("this change is also consistent with ISO-NE's prior recommendation, as set out in the December 2012 Compliance Filing…"); *see id*. at 26.

33 *Id.* at 24, 26.

34 *See* ISO New England Inc., Exigent Circumstances Filing of Revisions to Forward Capacity Market Rules, Docket No. ER14-463 (Nov. 25, 2013), at 2. Indeed, in the February 2013 Order, the Commission does not even acknowledge ISO-NE's statements regarding use of ORTP-CT in this context.

NEPGA also misstates its burden regarding its complaint against the Capacity Carry Forward Rule, arguing that protesters such as NESCOE "do not show that the current market rule is just and reasonable."[35] That is not protestors' burden. NEPGA cannot shift the burden of proof it assumed for itself in deciding to bring its untimely complaint. The current market rule is the rate on file at the Commission. It is NEPGA that must demonstrate that the current rule is unjust and unreasonable.

E. NEPGA's Answer Misrepresents NESCOE's Positions

NEPGA's answer is littered with misleading characterizations of NESCOE's positions and basic facts underpinning NEPGA's proffered response. In perhaps the most egregious example, NEPGA blatantly misstates NESCOE's contention that not all price differences constitute undue discrimination. NEPGA's strained interpretation of NESCOE's argument is that "prices paid to new entrants are *intended to reflect the exercise of market power* and, therefore, the much lower prices paid to existing generation are the prices that actually reflect competitive market outcomes."[36] A plain read of NESCOE's protest disproves this obvious distortion:

> Moreover, just because existing resources may earn less than new resources in the context of an uncompetitive auction does not make the pricing provisions unduly discriminatory. There is no justification for existing resources to be paid the same as new entrants year-on-year when competition—and a competitive market price—does not exist. In fact, as Mr. Wilson explains, there may be a rational basis for paying new resources a high, uncompetitive price (*e.g.*, added incentive for new entry), but that does not make it appropriate to pay the same price to existing resources. Instead, the market should "attempt to ensure that all resources are paid prices that reflect competitive circumstances,

[35] NEPGA Answer at 40.

[36] *Id.* at 22 (emphasis in original).

> which prices can at times be quite high, rather than to extend supra-competitive pricing to all resources."[37]

That NEPGA twists a basic argument about price differentials between new and existing resources into an accusation about the role of market power in the FCM exposes NEPGA's understanding of the flaws in its complaint. NEPGA attempts to distract from Mr. Wilson's balanced perspective that, while "resources providing the same service under the same conditions should be paid the same price without regard to whether they are existing resources or new resources," there are legitimate and rational reasons for treating new resources differently *when there is a lack of competition*.[38] Indeed, just three paragraphs preceding this mischaracterization, NEPGA itself recognizes that price differences do not inherently mean that undue discrimination has occurred.[39]

NEPGA also inaccurately states that NESCOE argued that prices during Inadequate Supply or Insufficient Competition "should at all times be below the benchmark cost of new entry."[40] NESCOE made no such contention. Rather, in explaining the deficiencies in NEPGA's Complaint and its inability to meet its burden under section 206, NESCOE detailed that under the current market-based pricing provisions, existing resources might be paid *less* in some years but could receive in other years substantially *more* than the benchmark price in NEPGA's proposal, 1.1 times the ORTP-CT.[41] As noted in the NEPGA Answer, the Commission has stated that "FCM capacity prices will need to average out over time to the cost

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[37] NESCOE Protest at 16 (footnotes omitted).

[38] *Id.*, Exhibit 1, Testimony of James E. Wilson, at 25-26; *see* NESCOE Protest at 16.

[39] NEPGA Answer at 20 ("While it is correct, as certain parties note, that *not all rate differentials amount to undue discrimination*, there is no basis to justify or support the extreme price discrimination present here.") (emphasis added; footnote omitted).

[40] *Id.* at 26.

[41] *See* NESCOE Protest at 15-16.

of new entry."[42] NEPGA fails in both the Complaint and its answer to acknowledge the possibility that the current administrative price outcomes could vary and, depending on market conditions, exceed the ORTP-CT. This is similar to how market prices could react when Inadequate Supply or Insufficient Competition does not exist.

Furthermore, as discussed above, NEPGA's assertion again appears to attempt to shift the burden under section 206 to other parties. It is not NESCOE's obligation to justify an appropriate benchmark price. NEPGA bears the burden. The Commission should reject NEPGA's repeated attempts to obfuscate the burden NEPGA assumed as complainant. To the extent NESCOE addresses benchmark values or any component of the rules, it is premised on NEPGA's failure to demonstrate, as it must under section 206, that the current rule is unjust and unreasonable and that its replacement provisions are just and reasonable.

NEPGA rests its challenge to NESCOE's comparison to the PJM market on information that is contrary to past auction results. NEPGA claims that "while certain parties argue that the price levels in PJM are below the benchmark values applicable in ISO-NE, these parties fail to allege, let alone prove, that there has been any new entry in ISO-NE at the price levels seen in PJM."[43] NEPGA later asserts that "[a]s was shown in the most recent FCA, new entry occurs *only* at prices well in excess of the ORTP for a combustion turbine . . . ."[44] This is simply untrue. For example, new entry accepted a Capacity Supply Obligation ("CSO") in FCA 6 at the

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[42] NEPGA Answer at 29, *quoting ISO New England Inc.*, 125 FERC ¶ 61,102 at P 43 (2008), *reh'g denied*, 130 FERC ¶ 61,089 (2010).

[43] NEPGA Answer at 27

[44] *Id.* at 47 (emphasis added).

auction clearing price of $3.434/kW-month.[45] This included 1,727 MW of new supply resources (in-region generation and imports) and 314 MW of new demand resources.[46]

In FCA 7, new entry again cleared at the floor price of $3.15/kW-month.[47] NEPGA conveniently refers to the higher price of new entry in a single zone (NEMA/Boston) that had Insufficient Competition, and then completely ignores 1,844 MW of new supply resources (in-region generation and imports) and 198 MW of new demand resources that cleared in other zones that were competitive, at a price well below the ORTP-CT.[48]

As reflected in the slides below, contrary to NEPGA's contention, new entry has cleared in *every* FCA held in New England and at prices similar to PJM and below the 14.98/kW-month

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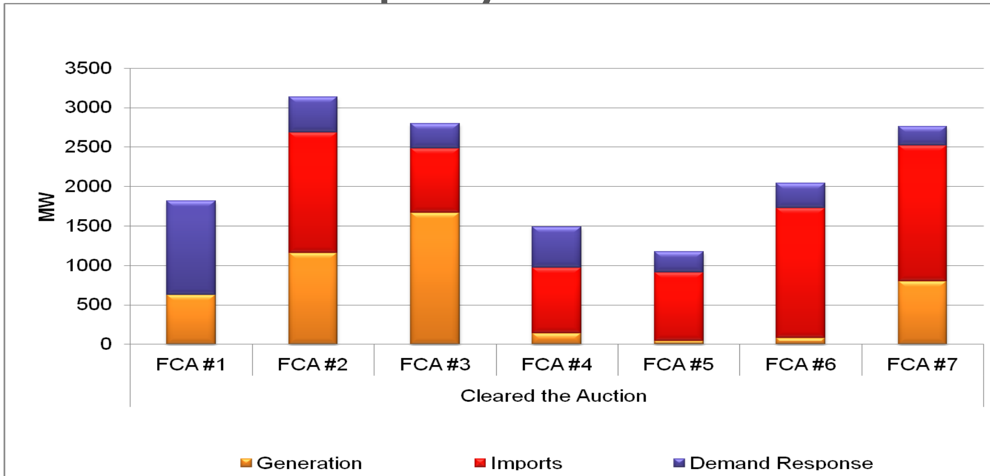
[45] *See* ISO New England Inc., Forward Capacity Auction Results Filing, Docket No. ER12-1678-000 (filed Apr. 30, 2012), at 6 (citing the FCA 6 auction floor price) and at Attachment A (listing new and existing resources with a CSO for the 2015-2016 delivery year corresponding with FCA 6), *available at* http://www.iso-ne.com/regulatory/ferc/filings/2012/apr/er12-1678-000_04-30-12_6th_fca_results_filing.pdf.

[46] *See* ISO-NE, Forward Capacity Auction #6 (FCA #6) Results Summary, May 15, 2012 Reliability Committee Meeting, at Slide 5, *available at* http://www.iso-ne.com/committees/comm_wkgrps/relblty_comm/relblty/mtrls/2012/may152012/index.html.

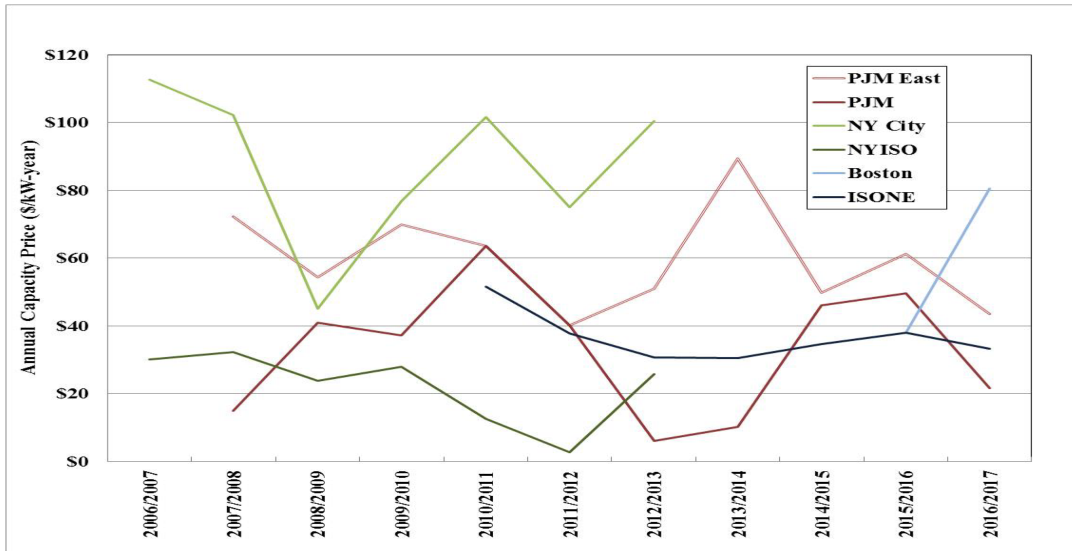
[47] *See* ISO New England Inc., Forward Capacity Auction Results Filing, Docket No. ER13-992-000 (filed Feb. 26, 2013), at 5 (citing the FCA 7 auction floor price) and at Attachment A (listing new and existing resources with a CSO for the 2016-2017 delivery year corresponding with FCA 7), *available at* Attachment A at http://www.iso-ne.com/regulatory/ferc/filings/2013/feb/er13-992-000_2-26-13_7th_fca_results_filing.pdf.

[48] *See* ISO-NE, Forward Capacity Auction #7 (FCA #7) Results Summary, Mar. 19, 2013 Reliability Committee Meeting ("ISO-NE FCA 7 Results Summary"), at Slides 5 and 20, *available at* http://www.iso-ne.com/committees/comm_wkgrps/relblty_comm/relblty/mtrls/2013/mar192013/index.html. The new supply resources amount of 1,844 MW reflects total new supply resources of 2,518 MW less 674 MW in NEMA/Boston. The new demand resources amount of 198 MW reflects total new demand resources of 245 MW less 47 MW in NEMA/Boston.

that NEPGA cites:



Source: ISO-NE FCA 7 Results Summary at Slide 7.



Source: FERC Staff Report, Centralized Capacity Market Design Elements, Docket No. AD13-7-000, Aug. 23, 2013, at 3.

The Commission should give no weight to NEPGA's claim that new entry price levels in PJM are inapposite to that in New England. NEPGA's answer is based on a false and, as shown above, disproven premise.

F. NEPGA's Repackaging of the Complaint Cannot Overcome its Deficiencies

In its answer, NEPGA tries to recast or rehabilitate arguments made in its Complaint. These attempts at a second bite of the apple are unsuccessful. Nothing in the NEPGA Answer demonstrates that (i) the current rules are unjust and unreasonable, or (ii) even if they are, that NEPGA's proposed solution is just and reasonable.

NEPGA suggests in it answer that its proposed replacement provisions "more closely approximate the results of a competitive market" than the existing pricing mechanism.[49] NEPGA fails to follow this conclusory assertion with any evidence of how an administrative price based on one resource type set in time (the NEPGA proposal) more closely resembles the results of a competitive market than a price based on an *actual* competitive market outcome (the current provisions).

In addition, NEPGA inaccurately states that "price discrimination is an element of the current market rules" and points to the IS/IC rules as responsible for this purported discrimination.[50] In a competitive auction, new and existing resources would be paid the same price. To the extent price differences between new and existing resources occur, a lack of competition drives this result. NEPGA's blame is misdirected. The "discrimination" that NEPGA alleges is primarily a consequence of insufficient competition—not an unjust and unreasonable rule designed to mitigate seller market power.

NEPGA also creates a moving target in its complaint: For the first time, NEPGA offers that its alternative proposal using ORTP-CT serves as a cap on the price paid to existing resources.[51] This interpretation is too narrowly drawn. Under NEGPA's proposal, the price

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[49] NEPGA Answer at 24.

[50] *Id.* at 20-21.

[51] *Id.* at 26, 28.

would be set to the *lower* of the Capacity Clearing Price or 1.1 times the ORTP-CT. Whenever there is Insufficient Competition and the clearing price is higher than the ORTP-CT, as occurred in FCA 7 in NEMA/Boston, NEPGA's proposal would guarantee that existing resource receive *no less than* a set proxy price (e.g., $11/kW-month in FCA 8). For NEPGA to state definitively that this is a "cap" ignores the fact that when higher clearing prices occur, existing resources are guaranteed to be paid at least the proxy price, an outcome that more closely resembles a price floor in times of Insufficient Competition. This "floor" does not take into account the level of payments over time and could ensure that resources will average out, over time, a higher level of payments. Also, notably, while raising the notion of a price cap, NEPGA never addresses NESCOE's contention that there may be lower cost ways to address NEPGA's concerns.[52]

With respect to the Capacity Carry Forward Rule, NEPGA generally repeats the same conclusory assertions, without evidentiary support, that it makes in the Complaint. In one attempt to bolster its Complaint, NEPGA offers supplementary information to display pricing outcomes under the current rule and NEPGA's proposed change.[53] This graphic illustration proves nothing. It compares an actual price with an estimate of what the price "could be" without underlying support for how it derived the estimated price or other information in NEPGA's hypothetical.

NEPGA's argument that zero priced bids can suppress prices (and distort market prices and create undue discrimination)[54] ignores that the zero priced bid requirement is the reason the Capacity Carry Forward Rule sets an administrative price in the first place. The question is

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[52] NESCOE Protest at 21-22.

[53] NEPGA Answer at 46.

[54] *Id.* at 37-38.

whether that administrative price is unjust and unreasonable—which NEPGA has not demonstrated.

III. CONCLUSION

For the reasons stated herein, NESCOE respectfully requests that the Commission (i) accept this answer, (ii) reject the Complaint, and (iii) grant the relief requested by NESCOE in its Protest.

Respectfully submitted,

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Date: December 31, 2013

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 Boston, Massachusetts this 31st day of December, 2013.

Respectfully submitted,

/s/ Jason R. Marshall

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