UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New England Power Generators Association, Inc.	)	
v.	)	Docket No. EL16-120-000
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 Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission" or "FERC"), 18 C.F.R. §§ 385.212, 385.213, the New England States Committee on Electricity ("NESCOE") files this Motion for Leave to Answer and Answer in the above-captioned proceeding.

I. MOTION FOR LEAVE TO ANSWER

Pursuant to Rule 212, NESCOE seeks leave to answer the New England Power Generators Association, Inc.'s ("NEPGA") answer filed on November 4, 2016 (the "NEPGA Answer"). Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2), prohibits an answer to an answer or protest unless otherwise ordered by the decisional authority. The Commission has discretion to accept answers such as this one where they provide information that assists the Commission in its decision-making process.[1] NESCOE's reply to NEPGA's Answer meets this standard because it provides the Commission with a more complete and accurate record upon which to base its decision in this complex

[1] *See, e.g., New England Power Generators Ass'n, Inc. v. ISO New England, Inc.*, 146 FERC ¶ 61,039 at P 45 (2014) (accepting answers because they provided information that assisted FERC in its decision-making process); *HORUS Central Valley Solar 1, LLC, et al. v. California Independent System Operator Corp.*, 157 FERC ¶ 61,085 at P 29 (2016) (same).

matter. NESCOE's answer below corrects certain mischaracterizations of NESCOE's position contained in the NEPGA Answer. Accordingly, NESCOE submits that there is good cause for the Commission to accept this answer.[2]

II. ANSWER

NEPGA's complaint contended that the Peak Energy Rent ("PER") Adjustment mechanism has become unjust and unreasonable because the level of the PER Adjustment has become, according to NEPGA, too high.[3] In response, NESCOE explained in its protest that the fact that the rebates may have been larger than suppliers would have liked does not itself render the PER Adjustment unjust and unreasonable. As NESCOE explained, NEPGA did not meet its burden of proof because, *inter alia*, the Complaint omitted information about the premiums that suppliers would have received to assume the risk that the PER Adjustment mechanism would trigger and require suppliers to provide rebates.[4] NESCOE used as a proxy the amount by which ISO New England Inc. ("ISO-NE") reduced the Net Cost of New Entry ("CONE") value ($0.43/kW-month) in its filing to eliminate the PER mechanism. Following the Forward Capacity Auction ("FCA") for the 2019-2020 capacity commitment period (*i.e.*, FCA 10), the future recalculations of Net CONE would no longer include estimated PER costs.[5]

NEPGA's Answer mischaracterizes NESCOE's argument. At the outset, NEPGA says that NESCOE "claims that capacity suppliers received a $0.43/kW-month premium annually in"

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[2] NESCOE limits this answer to responding to certain mischaracterizations contained in the NEPGA Answer, and its silence on other issues should not be construed as agreement with NEPGA's arguments.

[3] Complaint of the New England Power Generators Association, *New England Power Generators Ass'n v. ISO New England Inc*., Docket No. EL16-120-000 (Sept. 30, 2016) ("Complaint"), at 3, 13-14.

[4] Protest of the New England States Committee on Electricity, *New England Power Generators Ass'n v. ISO New England Inc*., Docket No. EL16-120-000 (Oct. 20, 2016) ("NESCOE Protest"), at 11-12.

[5] *Id*. at 12-13 (citing PER Mechanism Changes Filing, *ISO New England Inc. and NEPOOL*, Docket No. ER15-1184 (Mar. 6, 2015), at 5).

FCAs 5-8 "for the value of the expected Rebate."[6] This is not true. NESCOE, of course, has no way of knowing how each company would have assessed the risk in connection with the PER rebate, or any other risk for that matter in assuming a Capacity Supply Obligation ("CSO"). In the absence of any information provided by the Complaint, NESCOE used the $0.43/kW-month figure as an approximation for the premium suppliers would have required for the prior FCAs to account for the PER rebate.[7]

NEPGA's argument that "NESCOE fails to consider the fact that the CONE value used in FCAs 5, 6 and 7 explicitly did not reflect a 'premium' to account for the Rebate"[8] assumes, mistakenly, that NESCOE's position is that the PER premium is included as an explicit line-item in CONE for those prior auctions. That is not the case. As NESCOE explained in the Protest, "suppliers were able to reflect in their auction bids a premium to assume the risk that the PER Adjustment mechanism would trigger and suppliers would need to provide rebates."[9] That suppliers accepted the floor price for these FCAs does not demonstrate, as NEPGA appears to argue, that the clearing price failed to account for the risk of a PER rebate. To the contrary, suppliers would only undertake a CSO if they viewed the corresponding auction price as sufficient to offset the risk of the PER rebate (and other risks). The acceptance of the floor price is a strong indication that suppliers viewed these prices as already covering a sufficient premium to offset PER rebates.

NEPGA appears to be playing a semantics game here. It is true that there was no "explicit" PER Adjustment premium in Net Cone or in the floor price for FCAs 5-7, or in the

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6 NEPGA Answer at 4.

7 "[T]he precise amount of such a premium is not available to NESCOE"; "The Net CONE value used for FCA 9 (and discontinued in FCA10) is informative." NESCOE Protest at 12.

8 NEPGA Answer at 5.

9 NESCOE Protest at 12

administrative price set for FCA 8.[10] Just because the premium was not "specific" or "explicit," however, does not mean suppliers received no value for the risk of PER rebates, or that they somehow waived it. To the contrary, even NEPGA acknowledged in its Complaint that "[l]oad in theory 'purchases' a hedge in the form of slightly higher capacity market clearing prices, since the marginal unit's offer may include an expected Rebate value."[11] As explained above, the premium required to offset the PER Adjustment is a company-specific analysis. NEPGA's implication in its Answer is that capacity suppliers did not account for one penny in the floor price to reflect the risk that they would have to provide PER rebates. It is implausible to assume that participants in the FCA would not have accounted for the possibility of a PER deduction in their bids. The fact that the clearing price of the FCA was at the floor for several auctions simply indicates that, even including the value of the PER risk premium, the value of capacity to both buyers and sellers was relatively low for those auctions.

NEPGA also complains that NESCOE's use of the $0.43/kW-month figure is inappropriate because the Commission did not approve the higher Reserve Constraint Penalty Factors ("RCPFs") until after ISO-NE's administration of FCA 8, and therefore, "suppliers had no opportunity to reflect this significantly higher risk in their supply offers for FCAs 5-8."[12] NESCOE does not dispute that some suppliers might have targeted a premium in excess of $0.43/kW-month for the relevant FCAs to account for higher RCPFs. NESCOE recognizes, as it did in the Protest, that the number is an "imperfect proxy" for the company-specific assessment that would weigh the risk of PER rebates against the premium for taking on that risk. To debate the precision of the proxy number, however, misses the fundamental point of the illustration: In

[10] *See id*. at 6.

[11] Complaint at 18-19.

[12] NEPGA Answer at 6.

focusing solely on rebates imposed on suppliers but ignoring PER-related premium costs that consumers would have incurred, NEPGA fails to satisfy its burden of proof under section 206 of the Federal Power Act, 16 U.S.C. § 824e. As NESCOE stated in the Protest, just because suppliers may not be earning *as much* money as they would like, this "by no means demonstrates that the suppliers are suffering 'severe financial harm' or 'extraordinary financial harm;' that there is a gross inequity at play here; or that the PER mechanism has become unjust and unreasonable."[13]

NEPGA's characterization of NESCOE's argument as an "attempt to cherry-pick a single market parameter from FCA 9"[14] misses the mark. That "single market parameter" is directly related to the issue raised by the Complaint, *i.e.*, whether the PER rebates have reached a level where the PER Adjustment mechanism is no longer just and reasonable. NEPGA is asking the Commission to whistle in the dark by making a determination that the PER rebate level is too high without weighing how much consumers have paid for the price hedge that the PER Adjustment provides. That is like asking the Commission to allow a company to collect in rates the costs of storm damage without first crediting the amount of insurance proceeds received — which the Commission clearly does not allow.[15] Additionally, NEPGA's assertion of cherry-picking ignores the Commission's ruling on NEPGA's prior complaint that NEPGA had failed to address "whether the increased PER deduction would be greater than the amount of above-market revenues due to the price floor, and thus whether the net revenues received by capacity resources after accounting for the PER deduction would fall below market-clearing levels" and

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13 NESCOE Protest at 13.

14 *Id*.

15 *See, e.g., Dauphin Island Gathering Partners*, 130 FERC ¶ 61,262 at P 12 (2010) (accepting tariff sheets subject to clarification "that amounts received from insurance and recoveries received from third parties associated with eligible costs shall be credited").

"the possibility that if higher PER Adjustment payments occur, they may be offset by higher day-ahead LMPs in hours where Reserve Constraint Penalty Factors in the real-time market and the associated PER deduction could be expected in the day-ahead time frame."[16]

III. CONCLUSION

For the reasons stated herein, NESCOE respectfully requests that the Commission accept this Answer, and, as requested in NESCOE's Protest, deny the Complaint and take other necessary and appropriate actions consistent with the NESCOE Protest.

[16] *New England Power Generators Ass'n, Inc. v. ISO New England Inc.*, 150 FERC ¶ 61,053 at PP 37-38 (2015), *reh'g denied*, 153 FERC ¶ 61,222 (2015).

Respectfully Submitted,

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Date: November 15, 2016

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, MA this 15th day of November, 2016.

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