

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

New England Power Generators Association, Inc.)	
)	
v.)	Docket Nos. EL16-120-000
)	EL16-120-001
)	ER17-2153-000
ISO New England Inc.)	ER17-2153-001
)	

**COMMENTS OF THE
NEW ENGLAND STATES COMMITTEE ON ELECTRICITY**

Pursuant to Rule 602(f) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”), 18 C.F.R. § 385.602(f) (2016), the New England States Committee on Electricity (“NESCOE”) submits these comments on the Offer of Settlement filed by the New England Power Generators Association, Inc. (“NEPGA”), NESCOE, the Retail Energy Supply Association (“RESA”), the New England Power Pool Participants Committee, Exelon Corporation, H.Q. Energy Services (U.S.) Inc., Eversource Energy Service Company, Dominion Resources Services, Inc., Entergy Nuclear Power Marketing, LLC, Cogentrix Energy Power Management, LLC, and NRG Power Marketing LLC (collectively, the “Parties”) on July 28, 2017¹ in the above captioned proceeding (the “Settlement”).²

As a Party to the Settlement, NESCOE supports the Settlement and believes the Commission should approve it as fair and reasonable and in the public interest. As discussed

¹ The settlement was filed on July 26, 2017, and resubmitted with no modifications on July 28, 2017 to correct the eTariff database.

² As required by the Commission’s rules, the Parties included an Explanatory Statement with the Settlement. Capitalized terms not defined in this filing are intended to have the meaning given to such terms in the ISO New England Inc. (“ISO-NE”) Transmission, Markets and Services Tariff (the “Tariff”). Market Rule 1 is Section III of the Tariff.

below, although the Parties to the Settlement agreed on a revised methodology for the Peak Energy Rent (“PER”) mechanism, the Parties did not agree on the application of the Settlement PER methodology to the Capacity Commitment Period for Forward Capacity Auction (“FCA”) 9. NESCOE urges the Commission to ensure that the Settlement PER methodology is applied solely within the relevant period that was at issue in the complaint and that the Commission set for settlement and hearing procedures (*i.e.*, part of the Capacity Commitment Period for FCA 7 and the Capacity Commitment period for FCA 8). In other words, and as explained in more detail below, once the Capacity Commitment Period corresponding with FCA 9 commences on June 1, 2018, the Settlement PER methodology would “sunset” and the PER mechanism to be used would be that in effect prior to the Settlement. The application of the Adjusted PER Methodology to capacity payments in the FCA 9 period would constitute excessive payments to suppliers and produce a resulting unjust and unreasonable rate.

I. BACKGROUND

On January 19, 2017, the Commission granted, in part, a complaint filed by NEPGA arguing that the PER mechanism had become unjust and unreasonable in light of its interaction with higher Reserve Constraint Penalty Factors (“RCPFs”).³ As explained in the Settlement, “[t]he PER Adjustment causes a reduction to capacity payments otherwise due a Market Participant with a Capacity Supply Obligation in the Forward Capacity Market [(“FCM”)] when the Real-Time Energy Market price in any hourly pricing and settlement interval exceeds a daily Strike Price (referred to as a “PER Event”).”⁴ In general, such a “PER Event causes a reduction in capacity payments through the PER Adjustment in each of the twelve consecutive months of

³ *New England Power Generators Ass’n, Inc. v. ISO New England Inc.*, 158 FERC ¶ 61,034 (2017) (“January 2017 Order”).

⁴ Settlement at 2.

capacity payments following the month in which the PER Event occurred.”⁵ However, as part of the elimination of the PER mechanism beginning at the commencement of the Capacity Commitment Period for FCA 10, NESCOE understands that the payments related to a PER Event occurring in the FCA 9 Capacity Commitment Period will sunset at the commencement of the FCA 10 commitment period (*i.e.*, June 1, 2019) and will not continue into the subsequent Capacity Commitment Period associated with FCA 10.⁶

NEPGA’s complaint sought relief from the PER Adjustment for a portion of Capacity Commitment Period for FCA 7 and all of Capacity Commitment Period for FCA 8.⁷ The Commission agreed with NEPGA that “capacity resources were unable to anticipate a future increase in [RCPFs], and accordingly, were unable to reflect a corresponding increase in their capacity offers” for the applicable period covering FCAs 7 and 8.⁸ The Commission found that “this problem can be remedied by raising the PER Strike Price” and that this “would return the PER rebate to an amount that more closely reflects the expectations of the parties at the time of FCAs 7 and 8.”⁹ The January 2017 Order did not direct (nor did the complaint request) that PER Events occurring in the FCA 8 Capacity Commitment Period would result in a modified PER Adjustment to be applied in the FCA 9 Capacity Commitment Period.

⁵ *Id.*

⁶ By letter order dated May 5, 2015, in Docket No. ER15-1184, the Commission accepted ISO-NE’s revisions to its Tariff that eliminate the PER Adjustment as of June 1, 2019. This elimination of the PER Adjustment is reflected in Tariff section III.13.7.2.7.1.1.

⁷ January 2017 Order at P 13.

⁸ *Id.* at P 51.

⁹ *Id.*

The Commission “set the question of the appropriate method of calculating the PER Strike Price for hearing and settlement judge procedures under section 206 of the [Federal Power Act (“FPA”)].”¹⁰ The Commission also explained that:

any changes to the calculation of the PER Strike Price under ISO-NE Tariff section III.13.7.2.7.1.1.1 would be *prospective only* from September 30, 2016, as required by FPA section 206, and would not impact the application of any PER Adjustment occurring before September 30, 2016.¹¹

The Commission stated that the administrative law judge would not determine “the monthly application of the PER Adjustment for settlement purposes” under the ISO-NE Tariff.¹²

On February 15, 2017, NEPGA filed with the Commission a request for clarification or, in the alternative, rehearing which seeks to apply the revised PER methodology to PER Event hours occurring prior to the refund effective date (*i.e.*, September 30, 2016) and to obtain refunds for such PER Events.¹³ NESCOE and RESA filed separate answers opposing the NEPGA Rehearing and Clarification Request.¹⁴ NEPGA’s request remains pending before the Commission and, as the Settlement explains, “[t]he issue of whether the capacity suppliers will receive any refunds for PER Events that occurred in August 2016 will be decided by the Commission.”¹⁵

¹⁰ *Id.* at P 57

¹¹ *Id.* at P 61 (emphasis added).

¹² *Id.*

¹³ Request for Clarification or, in the Alternative, Rehearing of the New England Power Generators Association, Inc., *New England Power Generators Ass’n, Inc. v. ISO New England Inc.*, Docket No. EL16-120-001 (Feb. 15, 2017) (“NEPGA Rehearing and Clarification Request”).

¹⁴ Answer of the Retail Energy Supply Association to the Request for Clarification or, in the Alternative, Rehearing of New England Power Generators Association, Inc. (Mar. 2, 2017); Answer of The New England States Committee on Electricity (Mar. 2, 2017), each filed in Docket No. EL16-120.

¹⁵ Settlement at 6 (Provision 11).

Following settlement discussions, the Parties submitted the Settlement on July 26, 2017 (resubmitted on July 28, 2017). The Settlement is unopposed among participants in settlement discussions.¹⁶ The Settlement includes the following terms and conditions:

- **Provision 9 – PER Strike Price Methodology.** From “the Refund Effective Date (September 30, 2016) until the end of the Capacity Commitment Period associated with the eighth Forward Capacity Auction (ending May 31, 2018), for each PER Event, ISO-NE will increase the Daily PER Strike Price for each hour by the amount that actual five-minute reserve shadow prices were in excess of the pre-December 2014 RCPFs value for thirty-minute operating reserves and ten-minute non-spinning reserve (\$500/MWh and \$850/MWh, respectively).”¹⁷ Provision 9 includes a formula for implementing this revision.¹⁸
- **Provision 10 – Applicability of Strike Price Methodology to FCA 9.** Settlement was not reached “regarding the application of the Strike Price methodology agreed to in this Settlement to the ninth Forward Capacity Auction (‘FCA 9’) Capacity Commitment Period (June 1, 2018 – May 31, 2019).”¹⁹ Provision 9 reserves to Parties and intervenors “the right to opine on the applicability of the Strike Price methodology to FCA 9 in comments, if any, filed following the filing of the Settlement and Explanatory Statement.”²⁰ The Settlement is explicit that “Commission resolution of the issue identified in Provision 10 shall not be considered a modification of the Settlement.”²¹
- **Provision 11 – Refunds for August 2016 PER Events.** As discussed above, the Settlement provides that “[t]he issue of whether the capacity suppliers will receive any refunds for PER Events that occurred in August 2016 will be decided by the Commission.”²² It also states that “approval of this Settlement is not contingent upon the resolution of that issue nor shall the resolution of that issue delay the approval of this Settlement.”²³

¹⁶ See *id.* at 4.

¹⁷ *Id.* at 4-5 (Provision 9).

¹⁸ *Id.* at 5 (Provision 9).

¹⁹ *Id.* at 5 (Provision 10) (footnote omitted).

²⁰ *Id.* at 5-6 (Provision 10).

²¹ *Id.* at n. 8.

²² *Id.* at 6 (Provision 11) (footnote omitted).

²³ *Id.*

II. COMMENTS

A. The Settlement Reflects a Fair and Reasonable Outcome and Serves the Public Interest

NESCOE supports the Settlement and respectfully requests that the Commission approve the Settlement agreement as fair and reasonable and in the public interest. NESCOE participated actively in settlement discussions and appreciates the collaborative work of many parties and FERC Trial Staff, as well as the technical expertise and assistance of ISO-NE and the facilitation of Judge H. Peter Young, in arriving at a revised Strike Price methodology that favors neither supplier nor load interests.

The Settlement and Explanatory Statement explain the mechanics and rationale for the proposed methodology. As discussed in greater detail in those documents, the proposed approach would apply an *hourly* Strike Price adder instead of a *static* Strike Price adder.²⁴ Under this “netting out” methodology, the PER Adjustment would apply specific adders based on actual pricing scenarios and would “net out” reserve prices in excess of the original RCPFs (\$500 MWh/\$850 MWh) (the “Adjusted PER Methodology”).²⁵

In contrast to this approach, the “rough justice” attempted through a *static* Strike Price adder would risk over- or under- correcting for the PER Adjustment. For example, it may overcorrect during periods when the original RCPFs are not exceeded, providing no justification for applying a Strike Price adder. Instead, in those periods, the PER Adjustment might have been triggered for other reasons wholly unrelated to the RCPF increases, *e.g.*, high oil or gas prices.

²⁴ See *id.* at 4-5 (Provision 9); Explanatory Statement at 6-8.

²⁵ See Settlement at 4-5 (Provision 9); Explanatory Statement at 6-8.

Accordingly, the Adjusted PER Methodology seeks to limit the risk of over- or under-correcting the PER rebate value. This methodology is consistent with the Commission’s finding in the January 2017 Order that the remedy should “return the PER rebate to an amount that more closely reflects the expectations of the parties at the time of FCAs 7 and 8.”²⁶

B. Consistent with the January 2017 Order, the Adjusted PER Methodology Should Not Be Applied to the FCA 9 Capacity Commitment Period

The Settlement states that the Parties and non-opposing intervenors do not agree regarding the application of the Adjusted PER Methodology to the FCA 9 Capacity Commitment Period.²⁷ It reserves the right for Parties and intervenors “to opine on the applicability of the Strike Price methodology to FCA 9 in comments”²⁸ and clarifies that “Commission resolution of [this] issue . . . shall not be considered a modification of the Settlement.”²⁹ In contrast to the open issue reflected in Provision 11,³⁰ to the extent the Commission approves the Settlement, resolution of the issue related to applicability of the Adjusted PER Methodology to FCA 9 is critical to how ISO-NE will develop Tariff language to comply with the Commission’s order. NESCOE, therefore, respectfully requests that, concurrent with approval of the Settlement, the Commission provide the clarity needed on this issue to facilitate ISO-NE’s ability to efficiently proceed with the required Tariff changes.

Specifically, NESCOE requests that consistent with the January 2017 Order, the Commission direct that the Adjusted PER Methodology is to be applied solely within the relevant period, *i.e.*, part of FCA 7 and all of FCA 8 (September 30, 2016 through May 31,

²⁶ January 2017 Order at P 51.

²⁷ Settlement at 5 (Provision 10); *see also* Explanatory Statement at 6.

²⁸ Settlement at 5-6 (Provision 10).

²⁹ *Id.* at n. 8.

³⁰ *See supra* note n. 22 and accompanying text.

2018). The methodology and any effect of the change should not be continued into the Capacity Commitment Period corresponding with FCA 9. In other words, the application of the Adjusted PER Methodology 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 Methodology into the FCA 9 Capacity Commitment Period would create the potential for unjust and unreasonable capacity prices and, illogically, would settle “the expectations of the parties at the time of FCAs 7 and 8”³¹ by *unsettling* the expectations of parties to FCA 9.

The January 2017 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.*”³² 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 Methodology 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.

The plain language of the January 2017 Order supports this finding. As the Commission recounts, NEPGA’s complaint sought relief solely regarding a portion of the FCA 7 Capacity

³¹ January 2017 Order at P 51.

³² *Id.* (emphasis added).

Commitment Period and all of the FCA 8 period.³³ The only issue the Commission set for settlement and hearing was how to “calculate the PER Strike Price so as to reestablish consistency between the expectations market participants had at the time of the relevant FCA and actual market outcomes *for the period for which NEPGA’s complaint seeks relief – a portion of Capacity Commitment Period 7 and Capacity Commitment Period 8.*”³⁴ NEPGA’s complaint never sought relief with respect to the FCA 9 period. Nor did NEPGA seek rehearing of the January 2017 Order on the basis that it failed to apply to resources participating in FCA 9. Nothing in the January 2017 Order provides for the application of the remedy to the FCA 9 period.

NESCOE expects that some commenters will assert that PER Adjustments must be rigidly applied to capacity payments covering the subsequent twelve-month period. The Commission should reject these arguments, which are divorced from the January 2017 Order and from the rules that ISO-NE will apply for the FCA 10 Capacity Commitment Period. As discussed above, the PER mechanism has been eliminated for FCA 10 and beyond, with FCA 9 being the last period in which PER Adjustments will be made.³⁵ As NESCOE understands, PER Adjustments incurred during the FCA 9 Capacity Commitment Period (June 1, 2018- May 31, 2019) will not be applied during the FCA 10 Capacity Commitment Period (June 1, 2019-May 31, 2020). For example, if a PER Event occurs on March 1, 2019 during the FCA 9 period, the application of the PER Adjustment will end abruptly on May 31, 2019. Under that circumstance, consumers would not get the benefit of the PER Adjustment over the subsequent twelve-month period.

³³ *Id.* at PP 13, 48, 59.

³⁴ *Id.* at P 59 (emphasis added).

³⁵ *See* Tariff section III.13.7.2.7.1.1.

The current rules thus do not employ a rigid application of PER calculations from one Capacity Commitment Period to another. If, on the other hand, suppliers succeed in imposing such a rigid application in connection with this proceeding, it would be appropriate for ISO-NE and the Commission to revisit how PER Events occurring during the FCA 9 period are applied to PER Adjustments reducing capacity payments in the FCA 10 period.

Accordingly, if the Commission approves the Settlement, it should direct ISO-NE to submit a compliance filing with Tariff language that appropriately limits the application of the Adjusted PER Methodology to the relevant period of FCA 7 and FCA 8 (*i.e.*, September 30, 2016 to May 31, 2018). The Tariff language should specify that beginning in June 2018, the PER Adjustment should be calculated using the Hourly PER values produced by the Daily PER Strike Price from the previous twelve months, using the PER Methodology that was in effect prior to the Settlement.³⁶

³⁶ For example, for June 2018, the PER Adjustment would be based on the Hourly PER values produced by the Daily PER Strike Price from June 2017 to May 2018.

III. CONCLUSION

For the reasons stated herein, NESCOE respectfully requests that the Commission:

(i) approve the Settlement, and (ii) direct ISO-NE to submit a compliance filing of revised Tariff provisions implementing the Settlement and specifying that the Adjusted PER Methodology will “sunset” on June 1, 2018, thus having no effect on FCM settlements beginning June 1, 2018.

Respectfully Submitted,

/s/ Jason Marshall _____

Jason Marshall
General Counsel
New England States Committee on Electricity
655 Longmeadow Street
Longmeadow, MA 01106
Tel: (617) 913-0342
Email: jasonmarshall@nescoe.com

Dated: August 17, 2017

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 17th day of August, 2017.

Respectfully submitted,

/s/ Jason Marshall

Jason Marshall
General Counsel
New England States Committee
on Electricity
655 Longmeadow Street
Longmeadow, MA 01106
Tel: (617) 913-0342
jasonmarshall@nescoc.com