

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

ISO New England Inc.) Docket Nos. EL18-182-000
) ER20-1567-000

**MOTION FOR LEAVE TO ANSWER AND SECOND 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 and 385.213 (2020), the New England States Committee on Electricity (“NESCOE”) moves for leave to answer and files this second answer in the above-captioned proceeding. On May 15, 2020, NESCOE filed a protest (“NESCOE Protest”)¹ to ISO New England Inc.’s (“ISO-NE”) proposed energy security improvements (“ESI”) program (“ESI Proposal”).² The ISO-NE Filing, made in response to the Commission’s July 2018 order,³ included a description of three proposed New England Power Pool (“NEPOOL”) modifications to the ESI program (“NEPOOL Proposal”).⁴

NESCOE filed an initial answer in this proceeding on June 1, 2020 (“First Answer”).

This filing responds to the answers filed on June 5, 2020 by (i) the New England Power

¹ Attachment A of the NESCOE Protest is the Prepared Testimony of James F. Wilson in Support of the Protest of the New England States Committee on Electricity (“Wilson Testimony”).

² ISO New England Inc., Compliance Filing of Energy Security Improvements Addressing New England’s Energy Security Problems, Docket Nos. EL18-182-000 and ER20-1567-000 (filed April 15, 2020) (“ISO-NE Filing”). Attachment C of the ISO-NE Filing included an April 2020 report from the Analysis Group, Inc., the Energy Security Improvements Impact Analysis (“Impact Assessment”). 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”).

³ *ISO New England Inc.*, 164 FERC ¶ 61,003 at P 2 (2018) (“July 2018 Order”).

⁴ The NEPOOL Proposal would (i) limit ISO-NE’s procurement of Replacement Energy Reserve (“RER”) to the winter period, (ii) eliminate an allowance for load forecast error that ISO-NE would reflect in the quantity of RER purchased, and (iii) adjust the strike price through a \$10 per megawatt hour (“MWh”) adder (“Strike Price Adder”).

Generators Association (“NEPGA”),⁵ and (ii) Calpine Corporation (“Calpine”) and Vistra Energy Corp. (“Vistra”) (together “Calpine/Vistra”).⁶

I. MOTION FOR LEAVE TO ANSWER

NESCOE respectfully seeks leave to answer the Generator Parties’ filings. While the Commission’s rules generally do not allow an answer in response to answers or protests, the Commission can allow such an answer where good cause is shown. *See* 18 C.F.R. §§ 385.213(a)(2) and 385.101(e) (2020). NESCOE’s answer meets this standard because it provides the Commission with a more complete and accurate record upon which to base its decision.⁷ NESCOE’s answer corrects inaccuracies and clarifies the record in this proceeding. Accordingly, there is good cause for the Commission to accept this answer.

II. ANSWER

A. Generator Parties’ Mischaracterization of the NESCOE Protest Injects Confusion into the Record

Out of the gate, Generator Parties create unnecessary confusion through their descriptions of the NESCOE Protest. Calpine/Vistra elevate NESCOE’s filing to new heights, calling it “no mere answer” and asserting that it represents almost 200 pages in support of the NEPOOL Proposal.⁸ NEPGA labels the NESCOE Protest an effective “second case-in-chief” that is “more

⁵ Motion for Leave to Answer and Answer of the New England Power Generators Association, Inc., Docket No. ER20-1567-000 (filed June 5, 2020) (“NEPGA Answer”).

⁶ Motion to Answer and Answer of Calpine Corporation and Vistra Energy Corp., Docket Nos. EL18-182-000 and ER20-1567-000 (filed June 5, 2020) (“Calpine/Vistra Answer”). Attachment A of the Calpine/Vistra Answer is the Testimony of Seth Berend on Behalf of Calpine Corporation and Vistra Energy Corp. (“Berend Testimony”). NEPGA and Calpine/Vistra are collectively referred to herein as the “Generator Parties.”

⁷ *See, e.g., ISO New England Inc.*, 171 FERC ¶ 61,160 at P 25 (2020) (accepting answers because they provided information that assisted the Commission 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); *PJM Interconnection, L.L.C.*, 139 FERC ¶ 61,165 at P 24 (2012) (same).

⁸ Calpine/Vistra Answer at 2.

appropriately viewed as an extension of the NEPOOL filing.”⁹ These misrepresentations needlessly muddy the record.¹⁰

The NESCOE Protest, like the Commission rule it cites, means what it says. The filing, including its expert testimony, supports NESCOE’s request that the Commission reject the ESI Proposal. That request is unqualified. It is factually untrue to state, as Calpine/Vistra claim, that the entirety of the NESCOE Protest is dedicated to describing the NEPOOL Proposal and providing NESCOE’s position, and evidence in support of, that alternative.¹¹ NESCOE expressed support for the NEPOOL Proposal *only to the extent the Commission declined to reject ESI*.¹² The NESCOE Protest was not circumspect on this point, as NEPOOL noted recently in its answer in this proceeding.¹³

Calpine/Vistra also assert, without support, that the NEPOOL Proposal is borne out of “idiosyncrasies of the ISO-NE stakeholder process.”¹⁴ That charge mischaracterizes the NEPOOL process and is misplaced. NEPOOL’s institutional position with respect to proposed market rule changes, or other Tariff revisions, is a function of New England’s Commission-approved governance arrangements, which set forth NEPOOL voting rules and procedures.¹⁵

⁹ NEPGA Answer at 3-4.

¹⁰ While NESCOE is compelled to respond to mischaracterizations of its filing, it does not take a position on the Generator Parties’ requests to answer the NESCOE Protest. NESCOE’s interest is ensuring that its protest is accurately represented in connection with those requests.

¹¹ Calpine/Vistra Answer at 2.

¹² NESCOE Protest at 6-7, 47-64.

¹³ Motion for Leave to Answer and Answer of the New England Power Pool Participants Committee, Docket Nos. EL18-182-000 and ER20-1567-000 (filed June 1, 2020) (“NEPOOL Answer”), at n. 20. The liberties that Calpine/Vistra take in misstating NESCOE’s position is not limited to the early pages of its answer. *See, e.g.*, Calpine/Vistra Answer at 18-19 (ignoring NESCOE’s protest of ESI and mischaracterizing its alternative support for the NEPOOL Proposal).

¹⁴ Calpine/Vistra Answer at n. 4.

¹⁵ *See* Participants Agreement at §§ 11.1.2-11.1.3, 11.1.5, available at https://www.iso-ne.com/static-assets/documents/2015/10/parts_agree.pdf.

Whether NESCOE plays a relatively passive or active role in developing or sponsoring proposed changes within the stakeholder process is irrelevant to NEPOOL's adoption, through its long-standing voting procedures, of an alternative to an ISO-NE proposal. NEPOOL members use their independent judgment to assess proposals. And despite inevitable differences of perspective on issues, NESCOE has appreciated its engagement with Calpine, Vistra, NEPGA, and many NEPOOL stakeholders over the course of many years.

B. Attempts to Expand the Scope of the July 2018 Order Beyond the Winter Period Are Unavailing

Generator Parties employ several strategies in support of a more expansive directive than the July 2018 Order provides in connection with fuel security concerns. Picking a fight that doesn't exist, NEPGA inaccurately describes the NESCOE Protest as "seek[ing] to improperly limit the Commission's ability to fashion a remedy in its final determination" and argues the administrative law truism that the Commission has discretion to issue a subsequent order that includes further directives.¹⁶ The specificity of the July 2018 Order that ties fuel security to the winter months is not of NESCOE's making. It is the Commission's directive.¹⁷ NEPGA itself recognized the limited scope of that order in earlier comments identifying fuel security as solely a winter issue.¹⁸ While NEPGA is free to revise its position, as it appears to have done here, parties are entitled to adequate notice of the scope of the Commission's action. As NESCOE previously explained, the Commission's acceptance of the ESI Proposal would fail to provide

¹⁶ NEPGA Answer at 5-6.

¹⁷ NESCOE Protest at 17-22.

¹⁸ See NEPOOL Answer at n. 36 (quoting NEPGA's identification of fuel security as a winter issue as part of its protest to ISO-NE's interim fuel security mechanism).

notice, in violation of the Administrative Procedure Act and Court precedent, that the July 2018 Order implicated the non-winter period.¹⁹

Calpine/Vistra present some of the same false choices regarding out-of-market actions²⁰ and satisfying reliability standards²¹ that NESCOE has already demonstrated to be untrue.²² Reference to a recent system event in late May 2020 similarly fails to support the need for ESI outside of the winter.²³ First, as with other examples Generator Parties and a small group of suppliers have provided, Calpine/Vistra establish no connection between the May 2020 event and a fuel security issue.²⁴ That is because no connection exists between this non-winter event and regional fuel security. In fact, the description that Calpine/Vistra provide of the event confirms that ESI is focused on enhancing ISO-NE's ability to respond to contingency events, a critical objective but not one in which ISO-NE has established a nexus to the fuel security risks the Commission identified.²⁵ Second, as Calpine/Vistra acknowledge and ISO-NE confirmed, ISO-NE maintained system reliability through the event and there were no violations of reliability standards.²⁶ While Calpine/Vistra allege without explanation that the May 2020 event "illustrates the benefits" of the RER product,²⁷ it provides no connection between the event and

¹⁹ NESCOE Protest at 17-22.

²⁰ Calpine/Vistra Answer at 4-5; Berend Testimony at 10.

²¹ Calpine/Vistra Answer at 5.

²² First Answer at 15-17.

²³ Calpine/Vistra Answer at 4-5; Berend Testimony at 12.

²⁴ See First Answer at 15.

²⁵ See NESCOE Protest at 24.

²⁶ Calpine/Vistra Answer at 5; Vamsi Chadalavada, ISO-NE Executive Vice President and Chief Operating Officer, NEPOOL Participants Committee Report, June 2020 ("COO Report"), at Slides 19-20, available at http://nepool.com/uploads/NPC_20200604_Composite5.pdf. The COO Report begins on page 23 of 369 of the document.

²⁷ Calpine/Vistra Answer at 5.

the need for ISO-NE to procure, day-ahead, a reserve product (*i.e.*, RER), that would address a *third* contingency event.²⁸ The May 2020 event involved two contingencies, the loss of a generation facility followed by the loss of a transmission intertie facility.²⁹

Calpine/Vistra repeat blanket statements that ESI is needed to address an evolving resource mix.³⁰ This is a red herring. Because ESI does not fit into the box of compliance that the July 2018 Order requires, *post hoc* attempts to move the goal posts of the order cannot redeem the program as meeting the Commission's directives.

C. Generators Fail to Refute Overwhelming Record Evidence that ESI Overcharges Consumers

Generator Parties pile on in attacking NESCOE for exposing ESI's excessive costs. Their arguments include a misplaced defense of new market designs,³¹ presenting a false choice between ESI and out-of-market actions,³² unsuccessful attempts to normalize the energy option design feature and promote ESI's relationship to marginal reliability value,³³ and hyperbolic claims regarding NESCOE's illustration of ESI's estimated costs.³⁴ These arguments are wide of their mark. Nonetheless, several clarifications are necessary.

First, claims that "*much* of the ESI Proposal is tried and tested"³⁵ or that "it is akin in *some respects* to" another region's market reforms³⁶ leave an obvious loose end. While ESI may

²⁸ See NESCOE Protest at 34; First Answer at 15-16.

²⁹ COO Report at 19-20.

³⁰ Calpine/Vistra Answer at 7; *see* First Answer at 17.

³¹ Calpine/Vistra Answer at 9-10; NEPGA Answer at 12

³² Calpine/Vistra Answer at 11; Berend Testimony at 10.

³³ NEPGA Answer at 10-12; Calpine/Vistra Answer at 10, 12.

³⁴ NEPGA Answer at 9-10; Calpine/Vistra Answer at 13.

³⁵ NEPGA Answer at 12 (emphasis added).

³⁶ Calpine/Vistra Answer at 10 (emphasis added).

establish day-ahead reserves like other ancillary services markets, its key design feature, the energy call option, is markedly different. The Wilson Testimony identified this critical difference, where suppliers are exposed under ESI “to the potentially very high [real-time] prices that could occur if they are called but do not generate electricity.”³⁷ In other words, unlike the understanding of a call option as a risk management tool, ESI is designed to *create* risk by paying resources that accept exposure to high prices should they fail to perform when called. The novelty of this design—a call on energy rather than a forward sale of reserves—has injected uncertainty and engendered confusion about its core function,³⁸ exposing consumers to inefficiencies and high costs.³⁹

Furthermore, supporting innovation in market design and guarding against excessive charges are not mutually exclusive. The Federal Power Act establishes a uniform just and reasonable standard in the Commission’s rate review, whether those rates result from an established market design or from one that, like ESI, is more experimental.⁴⁰ Just as a hurricane is not “merely a fresh breeze,”⁴¹ neither can ESI’s high costs be rationalized away as simple exaggeration.⁴²

Second, NEPGA’s claim that NESCOE is unfairly selective in its reference to certain scenarios in the Impact Assessment is untrue.⁴³ What is true is that ISO-NE chose to highlight

³⁷ Wilson Testimony at 13.

³⁸ First Answer at 2-3.

³⁹ NESCOE Protest at 46-47.

⁴⁰ See NESCOE Protest at 26-27.

⁴¹ *United States v. Shaid*, 937 F.2d 228, 239 (5th Cir. 1991) (Williams, J., dissenting).

⁴² Calpine/Vistra Answer at 13 (criticizing NESCOE for “hyperventilating” over ESI costs as too high compared to the reliability benefits it would provide).

⁴³ NEPGA Answer at 9.

those very scenarios in requesting the Commission’s approval of ESI.⁴⁴ NEPGA never wrestles with the fact that ISO-NE’s primary record evidence quantifying ESI’s impact clearly shows scenarios where revenues are grossly disproportionate to incremental holding costs.⁴⁵ Instead, NEPGA focuses on a mild winter scenario, describing how the scenario showed negative net revenues for oil only steam resources and gas-fired resources with liquefied natural gas contracts and “relatively low net positive revenues for other resource types” compared to the market rules currently in place.⁴⁶ Curiously, for illustrative purposes, NEPGA then assigns a 33% probability of that mild scenario occurring,⁴⁷ begging the question why a group of generators would ever support ESI when net revenues would be negative or negligible roughly one out of every three years and suggesting that the upside in the other two years must be perceived by NEPGA members as generous. Indeed, contrary to NEPGA’s assertion,⁴⁸ a market-wide lens across all studied scenarios confirms that ESI’s incentives are excessive.⁴⁹

In addition, NEPGA appears to argue that just because a *month* of ESI is, according to NEPGA’s math, projected to cost the same as a *day* of energy, that ESI’s charges are minimal.⁵⁰

⁴⁴ See NESCOE Protest at 4-5 (citing ISO-NE Filing at 30).

⁴⁵ *Id.* at 5, 39-40.

⁴⁶ NEPGA Answer at 9 and n. 34.

⁴⁷ *Id.* at 10.

⁴⁸ *Id.* at 9-10.

⁴⁹ Tables 11-13 and 62-64 of the Impact Assessment present analysis of incremental incentives for oil- and gas-fired resources (the only two resource types for which incremental incentives were calculated) across the three winter cases representing the ESI Proposal and the design-related scenarios, respectively. A comparison of these six tables shows how even under various design-related scenarios ESI’s incentives are excessive.

Separately, the Impact Assessment’s net revenues analysis (Tables 26-28, 37, 38) projects revenues that a range of resource types would earn under ESI versus current market rules. The net revenues analysis is consistent with the changes in day-ahead market results anticipated by the implementation of the ESI Proposal (Tables 19-21, 33, 34). The net revenues analysis merely identifies the projected winners and losers among supply resources. That some resource types will not fare as well under ESI relative to the current market rules does not illustrate whether ESI’s incentives are excessive or not.

⁵⁰ NEPGA Answer at 10.

The possibility that ESI's projected costs may bear some proportion to other market costs is not an answer to whether ESI's incentives are excessive and are a good bargain for consumers. Under NEPGA's apparent way of thinking, a car owner would pay \$500 for an oil change because compared to the cost of the car that high priced oil change is immaterial.

Third, there is no merit to the Calpine/Vistra claim that NESCOE fails to "quantify" the reliability benefits of the NEPOOL Proposal.⁵¹ That contention employs the false premise that to protest ESI, as NESCOE has in this proceeding, a party is required to provide the Commission with an alternative proposal. Calpine/Vistra either misunderstand NESCOE's clear position in protest of ESI or seek to impose, without support, a new rule for parties protesting a compliance filing. In any event, as explained in the First Answer, NESCOE dedicated an entire subsection of its protest to walking through each feature of the NEPOOL Proposal and demonstrating how the Impact Assessment illustrated that the NEPOOL changes would have little to no effect on ESI's generous revenues with "much room to spare."⁵²

Finally, any claims that ESI will produce charges that reflect a marginal reliability value do not hold up to scrutiny.⁵³ NEPGA's contention that Generation Contingency Reserve will price higher than RER, and that prices will be co-optimized, establishes nothing about whether those prices reflect a marginal reliability value to consumers. Mr. Wilson explained why the maximum prices that ISO-NE is willing to pay for different quantities of reserves bears no

⁵¹ Calpine/Vistra Answer at 13; *see also id.* at 20 ("[T]he NEPOOL amendments reduce costs without accounting for the resulting reduction in incentives for generators to make fuel arrangements.").

⁵² First Answer at 9 (citing NESCOE Protest at 62-64).

⁵³ NEPGA Answer at 10-11; *see also* Calpine/Vistra Answer at 12 ("ISO-NE's proposal, as with any sound market design, will produce rates that rise and fall based on whether and to what extent the products are needed.")

relationship under ESI to marginal reliability value.⁵⁴ Moreover, even if all resources offer into the market competitively⁵⁵—an open question in practice that the Internal Market Monitor (“IMM”) has identified as an “inherent risk” of the ESI design⁵⁶—clearing prices will at times substantially exceed the marginal reliability value if ISO-NE pays resources maximum prices well above the marginal reliability value.⁵⁷

D. Generators’ New Testimony Rehashes Old Arguments Regarding Load Forecast Error and the Strike Price Adder

On behalf of Vistra/Calpine, Mr. Berend attempts to recast the NEPOOL Proposal’s elimination of load forecast error from the quantity of RER that ISO-NE would procure under ESI. He characterizes those supporting the proposal as “effectively saying that they do not want operators, such as ISO-NE, to appropriately acquire what they need for grid reliability via a market process.”⁵⁸ That charge is baseless. NESCOE has twice explained why. ISO-NE has itself described ESI as setting the RER quantity to what is needed to meet reliability standards for operating and contingency reserves without increasing that procurement for load forecast error.⁵⁹ To the extent Mr. Berend argues that ISO-NE cannot over-procure replacement reserves as long as they are acquired through a “market mechanism” like ESI,⁶⁰ there is no merit to that

⁵⁴ Wilson Testimony at 64-69.

⁵⁵ See NEPGA Answer at 11.

⁵⁶ See First Answer at 3, 6 (citing Comments of the Internal Market Monitor of ISO New England Inc. on Energy Security Improvements, Docket Nos. EL18-182-000 and ER20-1567-000 (filed May 15, 2020) (“IMM Comments”)).

⁵⁷ Wilson Testimony at 68-69.

⁵⁸ Berend Testimony at 10.

⁵⁹ First Answer at 19; NESCOE Protest at 56-58.

⁶⁰ Berend Testimony at 10-11.

blanket claim. Again, the record does not support why ISO-NE needs to procure more RER than it identifies as needed to meet the applicable reliability standards.⁶¹

Similarly, Mr. Berend recycles arguments regarding the Strike Price Adder that NESCOE has already addressed. He asserts that “the strike price adder could encourage some generators to offer Day-Ahead Ancillary Service options even when their ability to procure fuel is uncertain.”⁶² The Wilson Testimony explained why this claim about “uncovered” energy options, which arose in the stakeholder process, is overstated. While the Strike Price Adder reduces the expected settlement, it should also reduce the option price by roughly the same amount and therefore make its impact on settlement close to a wash.⁶³ The potential profit from offering an uncovered option should be roughly unchanged.⁶⁴ Similarly, NESCOE has already explained why, contrary to Mr. Berend’s claim,⁶⁵ the Strike Price Adder is likely to increase rather than impede participation in ESI.⁶⁶

Furthermore, a resource offering the energy call option faces a potential settlement that could be hundreds or even thousands of dollars per MWh if the real-time price spikes. With the relatively modest Strike Price Adder, a supplier considering whether to offer an uncovered option would still see this as a potentially enormous settlement risk. While the risk of very high settlements would be nearly unchanged, the Strike Price Adder would modestly reduce the option price, providing consumer savings while not undermining the design objective. This

⁶¹ See First Answer at 19.

⁶² Berend Testimony at 8.

⁶³ Wilson Testimony at 84, 91.

⁶⁴ *Id.*

⁶⁵ Berend Testimony at 8.

⁶⁶ NESCOE Protest at 59.

continued exposure to high settlement discredits exaggerated claims that the Strike Price Adder makes offering an uncovered option more attractive.

Concerns about “uncovered” energy options are, in any case, more appropriately directed to ISO-NE. As discussed in the First Answer, both ISO-NE and the IMM have described those options as financial and not physical, and the IMM has identified “the inherent risk in ESI’s design that suppliers will not make competitive option offers and would instead ‘elect to sell energy options ‘naked’ without making additional fuel arrangements and just assume the closeout price risk, or find ways to hedge the closeout risk other than through fuel arrangements[.]”⁶⁷

III. CONCLUSION

For the reasons discussed herein, NESCOE respectfully requests that the Commission grant its motion to answer, accept and consider its answer in this proceeding, and provide the requested relief that NESCOE sought in its protest to the ESI Proposal.

Respectfully submitted,

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⁶⁷ First Answer at 6 (quoting IMM comments at 3); *see also id.* at 3 (discussing the lack of a consistent, shared, and clear understanding of the energy call option).

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 22nd day of June, 2020.

/s/ Jason Marshall _____

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