



## I. COMMENTS

NESCOE supports the 2020 CONE Filing. As ISO-NE states, the updated CONE/Net CONE values and Capacity Performance Payment Rate are identical in both the ISO-NE proposal and the NEPOOL-supported alternative,<sup>4</sup> representing a consensus regional position on these parameters among ISO-NE, the six New England states, and a supermajority of market participants and stakeholders.<sup>5</sup>

ISO-NE's proposed updates reflected in the 2020 CONE Filing follow a highly technical and lengthy regional stakeholder process. Like some market participants and stakeholders, NESCOE did not agree with every input and assumption that ISO-NE used in updating the CONE/Net CONE values. NESCOE raised concerns with ISO-NE on the derivation of certain inputs and offered amendments during the stakeholder process that would have produced downward adjustments to the Net CONE values.<sup>6</sup> While NESCOE preferred the adoption of some alternative inputs and assumptions, ISO-NE has demonstrated the overall reasonableness of the updated values it proposes beginning in FCA 16, supported by the detailed CEA Report that is part of the 2020 CONE Filing.<sup>7</sup> ISO-NE has adhered to the process required in the Tariff for developing the CONE/Net CONE parameters.<sup>8</sup> NESCOE respectfully asks the Commission to

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Performance Payment Rate, the CEA Report also provides "detailed information . . . regarding the calculation of updated Offer Review Trigger Prices" which will be filed at a later time. 2020 CONE Filing at n. 3. NESCOE does not through these comments take a position regarding the ORTP values, which will be the subject of a separate proceeding.

<sup>4</sup> 2020 CONE Filing at 41.

<sup>5</sup> The NEPOOL Participants Committee supported the alternative proposal with over 70% voting in favor. *See* Noticed Actions of the NEPOOL Participants Committee Meeting (Dec. 4, 2020), available at [https://nepool.com/wp-content/uploads/2020/11/NPC\\_NOA\\_20201203.pdf](https://nepool.com/wp-content/uploads/2020/11/NPC_NOA_20201203.pdf); 2020 CONE Filing at 40.

<sup>6</sup> NESCOE elected not to request a vote on its amendments.

<sup>7</sup> 2020 CONE Filing at 5-24, 36-39 (citing to CEA Report).

<sup>8</sup> *See id.* at 6.

accept the proposed updates to CONE/Net CONE and the Capacity Performance Payment Rate as just and reasonable.

NESCOE also supports the revised language in Tariff Section I.2.2 defining “Net CONE.” ISO-NE describes these revisions as clarifying a long understood and established design intent to calculate Net CONE based on a system that is modeled under long-term equilibrium conditions (otherwise known as “at criterion”).<sup>9</sup> ISO-NE explains how this approach contrasts with the recent advocacy of the New England Power Generators Association (“NEPGA”) which, in a complaint that is pending before the Commission,<sup>10</sup> argues that Net CONE should be calculated based on a system modeled “as expected”—*i.e.*, what NEPGA describes as “reasonable expectations of first year revenues and, separately, future year conditions in the non-capacity market revenue forecasts.”<sup>11</sup> NEPGA asserts that ISO-NE’s revisions are not simply a clarification but instead constitute a material change to the meaning of Net CONE, which ISO-NE has applied in contravention of the filed rate.<sup>12</sup>

The Commission need not referee the contest between those contending that the revisions are a “clarification” and those advocating that they are a “material change.” It’s a distinction without a difference given the facts at play here. The method that ISO-NE has used to update Net CONE—and the resulting calculation itself—is before the Commission as part of this proceeding. Even if the existing Net CONE definition were as prescriptive as NEPGA claims,

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<sup>9</sup> See *id.* at 4, 24-36.

<sup>10</sup> Complaint and Request for Fast-Track Processing of the New England Power Generators, Inc., Docket No. EL21-26-000 (filed Dec. 11, 2020) (“NEPGA Complaint”). On December 31, 2020, ISO-NE filed a motion to dismiss and answer to the NEPGA Complaint (“ISO-NE Answer”). NESCOE filed a protest to the NEPGA complaint. See Protest of the New England States Committee on Electricity, Docket No. EL21-26-000 (filed Dec. 31, 2020) (“NESCOE Protest”). NESCOE is appending the NESCOE Protest hereto as Attachment A and incorporates it by reference into these comments.

<sup>11</sup> NEPGA Complaint at 16.

<sup>12</sup> *Id.* at 3-4.

an argument to which ISO-NE forcefully objects,<sup>13</sup> the methodology ISO-NE has employed applies prospectively to FCA 16 parameters *and* is currently under the Commission’s review pursuant to section 205 of the Federal Power Act (“FPA”) in this docket. NEPGA appears to read into the FPA a non-existent limitation on the Commission’s authority under section 205 to accept proposed Tariff revisions.

Moreover, ISO-NE’s explanation that it has always modeled system conditions “at criterion” in calculating Net CONE turns the table on the NEPGA Complaint. ISO-NE recounts how it has applied this methodology since 2014, when it first implemented Net CONE as an FCM design element in the Tariff.<sup>14</sup> Given this consistent course, had ISO-NE agreed with NEPGA’s current view and began applying an “as expected” approach to calculating Net CONE during the most recent stakeholder process, that action would diverge materially from what ISO-NE describes as its long-time prior practice and potentially expose it to the same types of claims that NEPGA asserts in its complaint.<sup>15</sup>

Additionally, ISO-NE has described how modeling the system “as expected” could overcharge consumers by departing from an essential design feature of the FCM, the procurement of capacity based on a 1-day-in-10 Loss of Load Expectation. ISO-NE explains:

NEPGA’s re-interpretation of the Net CONE definition would expressly upset this central design objective of the Forward Capacity Market, institutionalizing the procurement of excess capacity. Worse yet, and contrary to sound market design, it would do so for a system that, by NEPGA’s own characterization, is

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<sup>13</sup> ISO-NE Answer at 5-7.

<sup>14</sup> 2020 CONE Filing at 25-27.

<sup>15</sup> *See, e.g., Entergy Servs. v. FERC*, 568 F.3d 978, 984-85 (2009) (“The reasonableness of FERC’s interpretation is further confirmed by reference to the parties’ course of conduct. . . . In short, we cannot agree that the only plausible way to interpret the contract is precisely opposite from the way that Entergy itself interpreted it for more than twenty years.”).

presently expected to face excess supply conditions. If Net CONE were to be based on market conditions consistent with a capacity level that exceeds the Installed Capacity Requirement (such as under the current excess supply conditions), then the [Energy and Ancillary Services] revenue offsets would be smaller (in dollar terms) than if calculated for a system at criterion. The smaller revenue offsets would increase the value of Net CONE and, in doing so, produce an excessive value of Net CONE that would incent new entry even when the system does not need additional capacity. This would be neither cost effective, nor consistent with the Forward Capacity Market's stated 1-in-10 resource adequacy objective.<sup>[16]</sup>

NEPGA fails to explain how such an outcome would be just and reasonable.<sup>17</sup>

NESCOE strongly agrees with ISO-NE that the relief NEPGA requests in its complaint is both problematic and inappropriate.<sup>18</sup> The NESCOE Protest explained why no credible claim exists for postponing the application of ISO-NE's updated CONE/Net CONE values without materially impacting the outcome of FCA 16 and imposing unjust and unreasonable rates on consumers.<sup>19</sup> ISO-NE describes how granting NEPGA's request "would result in an inappropriate increase in consumer payments on the order of tens of millions, and possibly over a hundred million, dollars in FCA 16."<sup>20</sup> Moreover, "NEPGA is aware of the tight timing considerations at issue here, and that a recalculation based on its new interpretation of Net CONE would be impossible to accomplish in time for use in FCA 16."<sup>21</sup> The Commission

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<sup>16</sup> 2020 CONE Filing at 29 (footnote omitted).

<sup>17</sup> *ISO New England Inc.*, 173 FERC ¶ 61,106 at P 55 (2020) ("[T]he Commission must protect consumers from excessive rates and charges.") (citing *NextEra Energy Resources, LLC v. FERC*, 898 F.3d 14, 21 (D.C. Cir. 2018) (cleaned up)).

<sup>18</sup> 2020 CONE Filing at 34-35.

<sup>19</sup> See NESCOE Protest at 3-6.

<sup>20</sup> 2020 CONE Filing at 35 (footnote omitted).

<sup>21</sup> *Id.* at 34-35 (quoting NEPGA Complaint at 29).

should reject NEPGA's ploy and allow ISO-NE's updated values—recalculations that are foundational to proper price formation in the FCM—to take effect.

## II. CONCLUSION

For the reasons stated herein, NESCOE respectfully requests that the Commission consider the above comments in this proceeding.

Respectfully Submitted,

*/s/ Jason Marshall* \_\_\_\_\_

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Date: January 21, 2021

## 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 21st day of January, 2021.

*/s/ Jason Marshall* \_\_\_\_\_

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**Attachment A**

**Protest of the New England States Committee on Electricity**

**Docket No. EL21-26-000**

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

|                              |   |                        |
|------------------------------|---|------------------------|
| New England Power Generators | ) |                        |
| Association, Inc.            | ) |                        |
|                              | ) |                        |
| v.                           | ) | Docket No. EL21-26-000 |
|                              | ) |                        |
| ISO New England Inc.         | ) |                        |

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

Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”), 18 C.F.R. § 385.211 (2020), and the Commission’s December 15, 2020 Notice of Complaint, the New England States Committee on Electricity (“NESCOE”)<sup>1</sup> files this protest in response to the complaint that the New England Power Generators Association, Inc. (“NEPGA”) filed against ISO-NE on December 11, 2020 (the “Complaint”).<sup>2</sup>

**I. BACKGROUND**

The Tariff requires ISO-NE to recalculate the Cost of New Entry (“CONE”) and Net CONE at least every three years.<sup>3</sup> In the years between these recalculations, ISO-NE is required

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<sup>1</sup> On December 16, 2020, NESCOE filed a doc-less motion to intervene in this proceeding. NESCOE is the Regional State Committee for New England. It is governed by a board of managers appointed by the Governors of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont and is funded through a regional tariff that ISO New England Inc. (“ISO-NE” or “ISO”) administers. NESCOE’s mission is to represent the interests of the citizens of the New England region by advancing policies that will provide electricity at the lowest possible price over the long-term, consistent with maintaining reliable service and environmental quality.

<sup>2</sup> Complaint and Request for Fast-Track Processing of the New England Power Generators, Inc., Docket No. EL21-26-000 (filed Dec. 11, 2020). 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 (“Tariff”).

<sup>3</sup> Section III.13.2.4.

to adjust CONE and Net CONE for each Forward Capacity Auction (“FCA”) using a list of indices contained in Section III.A.21.1.2(e) of the Tariff.<sup>4</sup>

NEPGA asserts in the Complaint that ISO-NE violated the Tariff and the filed-rate doctrine in connection with its recalculation of Net CONE and its review of that calculation with New England Power Pool (“NEPOOL”) stakeholders.<sup>5</sup> NEPGA states that it “anticipates ISO-NE will file its updated Net CONE values later this month, including its proposed tariff revisions,” but it is “compelled to file this complaint in advance of ISO-NE’s filing, rather than raise these specific concerns as objections to ISO-NE’s filing.”<sup>6</sup> NEPGA asks the Commission to “reject ISO-NE’s proposed Net CONE value for FCAs 16-18 that will be filed later this month” and to “direct ISO-NE to apply the Tariff-defined annual adjustment factors to the [FCA] 15 Net CONE value to be used for the FCA 16 Net CONE value.”<sup>7</sup>

NESCOE understands that ISO-NE will today file its update to the values reflected in the Forward Capacity Market (“FCM”) for CONE, Net CONE, and other parameters beginning with FCA 16 pursuant to section 205 of the Federal Power Act (“CONE Update Filing”). Based on ISO-NE’s review with stakeholders of changes that will be reflected in that filing, its submission to the Commission will include redlined tariff language related to the Net CONE definition that lies at the core of NEPGA’s preemptive Complaint.<sup>8</sup>

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<sup>4</sup> *Id.*

<sup>5</sup> Complaint at 1.

<sup>6</sup> *Id.* at 3.

<sup>7</sup> *Id.* at 4-5 (footnote omitted).

<sup>8</sup> See NEPOOL Participants Committee, Dec. 3, 2020 Annual Meeting, Composite Materials, Item 9, Att. B, ISO-NE Proposal Tariff Redlines (“ISO-NE Proposal”), available at [http://nepool.com/uploads/NPC\\_20201203\\_Composite6.pdf](http://nepool.com/uploads/NPC_20201203_Composite6.pdf) (ISO-NE’s proposed change to the Net CONE definition is at PDF p. 176); Complaint at 10.

## II. PROTEST

NESCOE expects to comment on the Tariff language addressing Net CONE that is the subject of the Complaint as part of the more comprehensive CONE Update Filing proceeding. To the extent the Commission acts on the merits of the Complaint,<sup>9</sup> NESCOE respectfully asks the Commission to consider the record in the CONE Update Filing proceeding and to withhold action on the Complaint until that record has been developed. Additionally, the Commission should reject NEPGA's request to hurry action on its Complaint through fast-track processing.<sup>10</sup> Such fast-track processing is particularly inappropriate if the Commission has before it a recently-made section 205 filing addressing the very issues about which NEPGA complains.

NESCOE strongly objects to the relief that NEPGA seeks in the Complaint, a directive to ISO-NE "to apply the Tariff-defined annual adjustment factors to the [FCA] 15 Net CONE value to be used for the FCA 16 Net CONE value."<sup>11</sup> In making its request, NEPGA does scarcely more than reference the Tariff provision, Section III.13.2.4, that requires ISO-NE to perform annual updates to CONE and Net CONE in the years that ISO-NE does not undertake the more significant recalculations that must take place at least every three years.<sup>12</sup> NEPGA's brevity on this point suggests that the remedy would be of little consequence. It would be a big deal.

To begin, deferring ISO-NE's recalculation of Net CONE for FCA 16 cannot be viewed as simply a one-year postponement. NEPGA's proposed remedy requires context. In December 2018, the Commission granted a request from ISO-NE and NEPOOL for a single-year delay in

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<sup>9</sup> For example, the Commission has stated that it will not consider section 206 challenges to tariff provisions when the same provisions are pending in a separate proceeding. *New England States Comm. on Elec. v. ISO New England Inc.*, 142 FERC ¶ 61,108 at P 31 (2013) (citing *BP West Coast Products, LLC v. SFPP, L.P.*, 120 FERC ¶ 61,014 at P 5 (2007)).

<sup>10</sup> See Complaint at 29-30.

<sup>11</sup> *Id.* at 4; see *id.* at 29.

<sup>12</sup> See *id.* at 4 (citing Tariff § III.13.2.4.).

the recalculation of CONE, Net CONE, and other values for FCA 15 given unique regional circumstances.<sup>13</sup> In making the request, ISO-NE and NEPOOL stated that the values would be updated for FCA 16.<sup>14</sup> NEPGA’s proposal to delay the recalculation yet again would thus have the effect of transforming a required triennial update into a five-year pause.

The indices that ISO-NE uses to update its FCM parameters between the triennial update are no substitute for the detailed, “bottom-up” recalculation that ISO-NE undertakes to ensure that it accounts for changes in market conditions and technologies. For example, for FCA 16, ISO-NE commissioned an independent analysis from Concentric Energy Advisors, Inc. and its subcontractor, the engineering firm Mott MacDonald, to update CONE/Net CONE values and other parameters to be used beginning with that auction.<sup>15</sup> The CEA Report describes the detailed study scope and process used to examine, develop, and provide recommendations for the CONE/Net CONE values and Offer Review Trigger Prices for FCA 16.<sup>16</sup> This included the screening of resources types and, for those resources passing the screens, the completion of a substantial evaluation of costs and revenues covering the entirety of the resource’s expected life.<sup>17</sup>

Such a bottom-up methodology is foundational to the administration of the FCM. The indexed values used in the annual updates serve a practical purpose—“[u]pdating the FCM

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<sup>13</sup> *ISO New England Inc. and New England Power Pool Participants Comm.*, Delegated Letter Order, Docket No. ER19-335-000 (December 19, 2018).

<sup>14</sup> ISO New England Inc. and New England Power Pool Participants Committee, Filing re Consolidation of FCM Parameter Review, Docket No. ER19-335-000 (Nov. 14, 2018) (“2018 Filing”), at 4.

<sup>15</sup> See NEPOOL Participants Committee, Dec. 3, 2020 Annual Meeting, Composite Materials, Item 9, CEA CONE ORPT Report Master 11.20.20 (“CEA Report”), available at [http://nepool.com/uploads/NPC\\_20201203\\_Composite6.pdf](http://nepool.com/uploads/NPC_20201203_Composite6.pdf) (the CEA Report begins at PDF p. 255). NESCOE expects that ISO-NE will include the CEA Report in the CONE Update Filing.

<sup>16</sup> *Id.* at 8-11.

<sup>17</sup> *Id.* at 8.

parameters is a significant undertaking on behalf of both the ISO and stakeholders.”<sup>18</sup> But, like repointing a chimney, annual updates are not intended to or capable of identifying and addressing issues that lie at the foundation. NEPGA’s requested relief, if granted, would unreasonably delay key work that is overdue.

Moreover, the impact of NEPGA’s requested delay in updating Net CONE and other values would likely be substantial. ISO-NE has calculated the Net CONE value corresponding with FCA 15 as \$8.707/kW-month.<sup>19</sup> For FCA 16, based on the comprehensive bottom-up review ISO-NE has provided, the proposed Net CONE value is \$7.024/kW-month.<sup>20</sup> Notwithstanding the requirement of Rule 206(b)(4),<sup>21</sup> NEPGA does not even attempt to quantify the potential financial impact of the relief it requests,<sup>22</sup> which would replace ISO-NE’s proposed value with a calculation derived from applying updates to the indices set forth in Section III.A.21.1.2(e) of the Tariff. While those updates are not yet available for the period corresponding with FCA 16, recent annual adjustments illustrate that NEPGA’s requested remedy could force a dramatic increase compared to the value that ISO-NE is expected to file with the Commission for FCA 16.

Applying the escalated calculations corresponding with the last three annual adjustments (for FCAs 13-15) provides a range of potential outcomes for an FCA 16 value using the method NEPGA requests. As shown in the table below, the escalations have ranged from a .38% increase from FCA 13 to FCA 14, to a 6.35% increase in the latest adjustment for FCA 15.

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<sup>18</sup> 2018 Filing at 4.

<sup>19</sup> See ISO New England, FCM Parameters by Capacity Commitment Period, available at <https://www.iso-ne.com/markets-operations/markets/forward-capacity-market> (link labeled “Quick view of parameters”).

<sup>20</sup> ISO-NE Proposal at Section III.13.2.4. (the proposed Net CONE value is at PDF p. 177).

<sup>21</sup> 18 C.F.R. § 385.206(b)(4).

<sup>22</sup> See Complaint at 32.

| <b>Capacity Commitment Period</b> | <b>Net CONE Value<br/>(kW-Month)</b> | <b>Percentage Increase</b> |
|-----------------------------------|--------------------------------------|----------------------------|
| 2021-2022 (FCA 12)                | \$8.04                               |                            |
| 2022-2023 (FCA 13)                | \$8.156                              | 1.44%                      |
| 2023-2024 (FCA 14)                | \$8.187                              | .38%                       |
| 2024-2025 (FCA 15)                | \$8.707                              | 6.35%                      |

When applying these escalations to an FCA 15 to FCA 16 adjustment, at a low-end the Net CONE value for FCA 16 would be \$8.740/kW-month (.38% increase), and the high-end value would be \$9.260/kW-month (6.35% increase). Applying a three-year average of the percentage increases, 2.72%, translates to a Net CONE of \$8.943/kW-month. All of these values are substantially higher than the \$7.024/kW-month calculation that ISO-NE has proposed for FCA 16,<sup>23</sup> a value derived from a current, fundamental review of FCM parameters.

It is unjust and unreasonable for consumers to incur costs arising from such an overstated Net CONE value. This outcome stands in stark contrast to the limited one-year extension granted in 2018, where ISO-NE represented to the Commission that it did not identify “any significant reason to believe that postponing the updates of the FCM parameters will negatively impact the administration of FCA 15.”<sup>24</sup> Given the recalculations that ISO-NE has already performed for FCA 16, there is no credible claim for postponing the application of those updated values without materially impacting the outcome of the auction and negatively affecting consumers through the imposition of unreasonable rates.

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<sup>23</sup> Indeed, NEPGA fails to explain why it seeks a remedy that could translate to whole dollar increases to Net CONE when it estimates that the impact of the asserted Tariff violation is \$0.82/kW-month. Complaint at 28 (“Taken together, ISO-NE’s proposed Tariff change improperly reduces the calculated Net CONE value, conservatively by at least 12%, or \$0.82/kW-month.”).

<sup>24</sup> 2018 Filing at 5.

### III. CONCLUSION

For the reasons stated herein, NESCOE respectfully requests that the Commission consider this protest in determining its action on the Complaint.

Respectfully Submitted,

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Date: December 31, 2020

## 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 31st day of December, 2020.

*/s/ Jason Marshall* \_\_\_\_\_

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