UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

ISO-New England Inc.	)	
	)	
and	)	**Docket No. ER15-2208-000**
	)	
New England Power Pool	)	
Participants Committee	)	

MOTION TO INTERVENE AND LIMITED PROTEST OF THE NEW ENGLAND POWER GENERATORS ASSOCIATION, INC., AND THE ELECTRIC POWER SUPPLY ASSOCIATION

Pursuant to Rules 211 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"),[1] and in accordance with the Commission's Combined Notice of Filings # 2, dated July 15, 2015, the New England Power Generators Association, Inc. ("NEPGA") and the Electric Power Supply Association ("EPSA") [2] hereby file this Motion to Intervene and Limited Protest in response to ISO New England, Inc.'s ("ISO-NE") and the New England Power Pool Participants Committee's ("Participants Committee"- jointly with ISO-NE, the "Filing Parties") proposals to pay resources for a portion of the carrying costs of fuel inventory procured for, but not used during the next three winter seasons.[3] Rather than creating a market-based structure that allows all resources to compete to provide the desired winter reliability product at the marginal price, these out of market subsidies interfere with the ability of the markets to identify the efficient price to meet New England's resource adequacy and system reliability needs, and mute the price signals necessary to incent new or existing

[1] 18 C.F.R. §§ 385.211 and 214 (2014).
[2] The comments expressed herein represent those of NEPGA and EPSA as organizations, but not necessarily those of any particular member.
[3] ISO New England Inc. and New England Power Pool Participants Committee Winter Reliability Filings, Docket No. ER15-2208 (filed July 15, 2015).

economic resources. If the Commission approves either Filing Party proposal, subsidies will interfere with rational economic pricing in New England's energy and reserves markets for five consecutive winters.

As NEPGA and EPSA have explained throughout the now several years of winter reliability program filings, New England's winter resource adequacy and reliability needs should be met through a market design that allows all resources to compete to provide a winter system reliability product that is currently not priced through the existing market designs. The Commission has repeatedly agreed with NEPGA and EPSA, preferring a market-based remedy to what is a market design issue, but has stopped short of ordering ISO-NE to file a market-based winter program. Instead, the Commission has relied on ISO-NE's assurances that it would work with NEPOOL stakeholders to develop a market solution, one that is obviously not forthcoming. Unfortunately, ISO-NE has not satisfied the Commission's expectation of a market-based solution, leaving the Commission instead with an unfortunate choice between two competing out of market programs. It is clear therefore that ISO-NE requires firm direction from the Commission, whether under the Commission's Section 206 authority or otherwise, to guarantee that necessary market design changes will be made promptly, if at all. NEPGA and EPSA respectfully request that the Commission not leave future market improvements to assurances that the market improvements will come, but instead order ISO-NE to make market rule changes when the Commission deems them necessary.

Should the Commission find that either Filing Party proposal is just and reasonable, NEPGA and EPSA respectfully request that the Commission order ISO-NE to amend its Tariff to define the formula for calculating the Winter Reliability Program payment rate. It appears that ISO-NE is proposing a change to the payment rate methodology it used to establish the 2014-

2015 Winter Reliability Program rate, though ISO-NE did not bring that change through the NEPOOL stakeholder process, instead announcing it through a memorandum. Because changes to the program payment rate directly affect the rates paid to resources that take on obligations under the Filing Party proposals, all NEPOOL stakeholders should be afforded notice of changes to the rate methodology and an opportunity to deliberate those changes through the NEPOOL stakeholder process and, if necessary, before the Commission. Explicitly defining the program formula rate in the Tariff will cause ISO-NE to provide that notice and opportunity should it wish to make changes to the payment rate formula in the future.

I. Motion to Intervene and Communications

NEPGA is a private, non-profit trade association advocating for the business interests of competitive electric power generators in New England. NEPGA's member companies represent approximately 26,000 megawatts of installed capacity throughout the New England region. NEPGA's mission is to support competitive wholesale electricity markets in New England. NEPGA's member companies are responsible for generating and supplying electric power for sale within the New England bulk power system. As active participants in the ISO-NE capacity and wholesale electricity markets, NEPGA's member companies have substantial and direct interests in the outcome of these proceedings, and those interests cannot be adequately represented by any other party in the proceeding.

EPSA is the national trade association representing competitive power suppliers, including generators and marketers. These suppliers, who account for nearly 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities serving global power markets. EPSA seeks to bring the benefits of competition to all power customers. The comments contained in this filing represent the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue. As active participants in the ISO-NE capacity and wholesale electricity markets, EPSA's member companies have substantial and direct interests in the outcome of these proceedings, and those interests cannot be adequately represented by any other party in the proceeding.

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II. Limited Protest

A. The ISO-NE and NEPOOL Proposals Each Harm Competitive Markets by Muting Price Signals and Setting an Artificial Price for Winter System Reliability

Since 2013, when ISO-NE first proposed to supplement its market constructs with an administratively priced, out of market mechanism in effect during the winter months, NEPGA, EPSA and the Commission have agreed that the subsidies provided by these annual winter out of market programs harm New England's capacity and energy markets.[4] New England relies on its markets to send appropriate price signals to attract merchant generation to meet its resource adequacy and reliability needs at the most efficient price. Out of market subsidies like those

[4] *See, e.g.*, *ISO New England Inc. and New England Power Pool Participants Committee*, 148 FERC ¶ 61,179, at P 39 (2014) ("[T]he Commission still prefers a long-term, market-based solution."); *Order on Clarification*, 150 FERC ¶ 61,029, at P 10 (2015) (directing ISO-NE to determine whether a winter reliability solution is necessary for the 2015-2016 winter, and if so, to develop an "appropriate market-based solution.").

proposed by ISO-NE and NEPOOL distort rational pricing[5] and mute the price signals merchant generation relies on to make investment, operational and retirement decisions,[6] both in the Energy and Forward Capacity Markets.[7] Though avoiding market-based pricing may be seen as advantageous to reduce the cost to load in the short-term, in the long-term it often causes rate shock "as supply and demand fundamentals seek to quickly correct imbalances that have been allowed to develop."[8] Either the ISO-NE or NEPOOL proposal, if approved, will distort pricing in the Day-Ahead and Real-Time Energy Markets for what in the end will be a total of five consecutive winters. ISO-NE and NEPOOL stakeholders have developed and put into practice several changes over the past two years within the existing market design that allow the market to better price system needs efficiently and rationally. Several years of subsidized market price distortion will frustrate the purpose of these market rule changes, creating in itself a highly inefficient market design.

The Filing Parties' requests that the Commission approve what would ultimately cause five consecutive years of out of market payments to certain resources is symptomatic of the failure of the ISO-NE markets to properly price New England's winter reliability needs. New England's capacity, reserve and energy markets should allow for proper price formation and send appropriate price signals to incent investment in the resources necessary to maintain system

[5] *Cf. ISO New England Inc., et al.*, 144 FERC ¶ 61,204, at P 50 (2013) (believing that program subsidies will have less of an effect on market outcomes when natural gas sets the locational marginal price more frequently than oil).
[6] *ISO New England Inc. and New England Power Pool Participants Committee*, 151 FERC ¶ 61,052, *Concurring Opinion of Commissioner Clark* (2015).
[7] For purposes of the Net Cost of New Entry and De-List Bid reviews, the IMM and ISO-NE assume that capacity resources will realize a certain amount of revenue from the Energy Markets. To the extent not accounted for in the Net CONE and De-List values, locational marginal price suppression in the Energy Markets distorts the Forward Capacity Market pricing.
[8] *ISO New England Inc. and New England Power Pool Participants Committee*, 151 FERC ¶ 61,052, *Concurring Opinion of Commissioner Clark* (2015).

reliability.[9] The Filing Party proposals unfortunately represent a failure to achieve those goals through the markets. Casting a critical eye towards future out of market proposals colloquially defines a Commission standard of review on ISO-NE or NEPOOL filings,[10] but prospective direction and leadership from the Commission is also necessary to better protect the New England markets from out of market repairs to market design issues. Going forward, the Commission should specifically order that ISO-NE and NEPOOL develop market-based solutions to market design issues when the Commission deems market-based solutions preferable, rather than reserving its authority and discretion based on assurances that market-based solutions will be developed.

Had the Commission more definitively ordered ISO-NE to file a market-based construct to address New England's winter reliability needs, the question of how to amend the market design may have received the urgent attention and effort it deserves. ISO-NE first developed an out of market program to meet the winter 2013-2014 system reliability needs, which the Commission approved "given the urgency of the need to protect reliability, the interim [one season] nature" of the program, and the "late date" at which ISO-NE developed and filed its proposal.[11] ISO-NE again proposed an out of market solution for the 2014-2015 winter season, which the Commission approved "because of its temporary nature."[12] The Commission declined requests, including NEPGA's request that it order ISO-NE to file a market-based solution for

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[9] *See California Independent System Operator Corp.*, 142 FERC ¶ 61,248, at P 64 (2013) ("The Commission has previously affirmed the need to employ market-based tools to provide transparent and effective locational price signals to ensure reliability.")
[10] *ISO New England Inc. and New England Power Pool Participants Committee*, 151 FERC ¶ 61,052, *Concurring Opinion of Commissioner Clark* (2015).
[11] *ISO New England Inc., et al.*, 144 FERC ¶ 61,204, at PP 42, 54 (2013).
[12] *ISO New England Inc. and New England Power Pool Participants Committee*, 148 FERC ¶ 61,179, at P 41 (2014).

winters beginning in 2015-2016 solely because of "ISO-NE's recent and ongoing efforts to develop and propose long-term, market-based solutions."[13]

Rather than take the Commission's directives as a call to deliver a market-based proposal for effect beginning in the 2015-2016 winter season, ISO-NE disputed the meaning of the Commission orders, compelling NEPGA to seek clarification from the Commission.[14] This needless litigation caused further delay, leaving ISO-NE with even less time to develop a market-based proposal. Even so, the Commission's January 2015 clarification that ISO-NE was to determine whether a winter reliability solution is necessary for future winter seasons and, if so, to "develop an appropriate market-based solution through the stakeholder process," did not compel a purposeful market-based proposal from ISO-NE. Instead, ISO-NE announced that if it were to file a market-based proposal, it would propose to increase the Reserve Constraint Penalty Factors ("RCPF"),[15] and that any other market-based approach would need to be created and agreed to by NEPOOL stakeholders for ISO-NE to consider it and participate in its development.[16] Rather than fulfilling its obligation to "administer[ ] and seek[ ] to enhance sustainable, competitive and efficient energy markets in New England,"[17] ISO-NE tepidly

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[13] *Id*.

[14] *ISO New England Inc. and New England Power Pool Participants Committee, Order on Clarification*, 150 FERC ¶ 61,029 (2015).

[15] *See* ISO-NE Presentation to the NEPOOL Markets Committee, March 10-11, 2015, Agenda Item A05A, at p. 3, *available at*: http://www.iso-ne.com/committees/markets/markets-committee (reporting that if the Commission does not grant ISO-NE rehearing on its order clarifying the Commission's expectation that it develop a market-based approach, that it will propose to increase the RCPFs).

[16] *See* ISO-NE Presentation to the NEPOOL Markets Committee, January 13-14, 2015, Agenda Item A06A, at p. 8, *available at*: http://www.iso-ne.com/committees/markets/markets-committee (reporting that "[i]f there is no consensus" among NEPOOL stakeholders on a market-based approach, that ISO-NE will simply propose to carry-forward prior out of market approaches to future winter periods).

[17] ISO-NE Agreements and Contracts, Participants Agreement, Preamble at p. 5; *see also* ISO-NE Transmission, Markets and Services Tariff, at § I.1.3(b) (ISO-NE mission is to, among other obligations, "create and sustain open, non-discriminatory, competitive, unbundled markets for energy, capacity, and ancillary services (including Operating Reserves) that are (i) economically efficient and balanced between buyers and sellers, and (ii) provide an opportunity for a participant to receive compensation through the market for a service it provides in a manner consistent with proper standards of reliability and the long-term sustainability of competitive markets.").

responded to the Commission's directives with a hasty and inadequate[18] RCPF "proposal" and by passing its responsibilities onto NEPOOL stakeholders.

The Commission's past reliance on assurances, rather than in exercising its authority, have in this and other contexts caused harm to the New England markets.[19] NEPGA and EPSA hope and expect that future directives from the Commission will catalyze efforts to develop market solutions for deficiencies in the market design, rather than to serve as a starting point to develop out of market band-aids for necessary market design changes. One way to assure that is for the Commission to provide ISO-NE with a clearly defined and enforceable order when the Commission deems market design changes necessary and preferable. NEPGA and EPSA respectfully request that the Commission do so in the future.

B. The Payment Rate Formula Should be Formalized in the Tariff to Provide Market Participants With Transparency and Notice of Proposed Changes

ISO-NE recently posted on its website the rates at which resource types will be paid under the Filing Party proposals, and the precise formulas it used to arrive at the rates ("ISO-NE Payment Rate Memo").[20] ISO-NE is proposing to use a different methodology to calculate the program payment rate under the Filing Parties' proposals than it used for the 2014/2015 Winter Reliability Program. In order to provide transparency and notice of changes to the program rate formula, should the Commission approve either Filing Party proposal, NEPGA and EPSA respectfully ask the Commission to order ISO-NE to amend the Tariff to include the formula it

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[18] The vast majority of merchant generation is sold at hourly Day-Ahead Energy Market prices, which prices do not reflect the Reserve Constraint Penalty Factor pricing intended as the incentive under a RCPF-only market-based approach. The failure to develop a more equitable, market-based approach served only to direct NEPOOL stakeholders back to the out-of-market proposals. A more genuine effort may have resulted from a more direct Commission order to develop a fair, market-based approach.

[19] *See, e.g.*, *Motion for Clarification and Request to Direct Compliance of the New England Power Generators Association, Inc.*, Docket No. ER14-1639-002 (filed June 22, 2015) (explaining that the Commission expected, and ISO-NE committed to file sloped zonal demand curves for effect in FCA 10, but that ISO-NE will not do so).

[20] ISO New England Inc. Memo to NEPOOL Members Re: 2015-2016 Winter Program Payment Rate, *available at*: http://www.iso-ne.com/markets-operations/markets/winter-program-payment-rate.

used to calculate the payment rates for the Filing Parties' proposals, as reflected in its Payment Rate Memo.

The Analysis Group, on behalf of ISO-NE, calculated a proposed payment rate equal to $18/barrel of oil for the 2014/2015 Winter Reliability Program.[21] The Analysis Group explained that it arrived at the $18/bbl rate in a two-step process. First, it estimated a "holding costs per barrel" and maximum inventory for each oil-fired and dual-fuel unit in New England, based in part on each unit's maximum on-site fuel storage capacity, heat rate, and the fuel content of the type of oil used by the resource (residual or distillate).[22] The Analysis Group then set the program payment rate at the holding costs for the marginal unit necessary to meet a cumulative oil fuel inventory equal to the 2014/2015 target oil inventory volume of 3.5 million barrels.[23]

For the Filing Parties' proposals, ISO-NE proposes a methodology that differs from the Analysis Group methodology in three material respects. First, ISO-NE does not calculate unit-specific carrying costs and then set the program payment rate at the marginal unit's carrying costs, but instead calculates a single carrying cost rate based in part on certain unit assumptions not necessarily applicable to each unit type (*e.g.*, the fuel price is for distillate rather than residual fuel oil).[24] Second, the Analysis Group adjusted each unit's carrying costs by the unit's historical winter availability, dividing the gross carrying cost rate by an availability factor, effectively increasing the rate to account for unit unavailability.[25] ISO-NE instead adjusts each resource's total program payment downward (but makes no change to the payment rate) to the

[21] *See* Analysis Group, Inc. Memo to ISO-NE Re: Further Explanation on Rate Calculations (May 28, 2014), *available at*: http://www.iso-ne.com/committees/comm_wkgrps/mrkts_comm/mrkts/mtrls/2014/jun32014/a02a_analysis_group_memo_05_28_14.pdf ("Analysis Group Payment Rate Memo").
[22] *Id.*
[23] *Id*.
[24] ISO-NE Payment Rate Memo at pp. 1-2.
[25] Analysis Group Payment Rate Memo at p. 2.

extent the resource is unavailable at any time during the winter season. Third, for purposes of applying a risk-free return variable to the carrying cost calculation, ISO-NE uses a 1-Year Treasury Rate whereas the Analysis Group used a 3-Month Treasury Rate.[26]

NEPGA brings these differences to the Commission's attention not to protest ISO-NE's payment rate methodology, *per se*, but to ask that the Commission order ISO-NE to explicitly define in its Tariff the methodology it will use to establish a program payment rate. Changes in the methodology can have a significant impact on program payment rates, and all market participants should be on notice of, and have an opportunity to deliberate through the NEPOOL process, any proposed changes to the payment rate methodology. Market practices and rate methodologies should be filed with and approved by the Commission when they significantly affect rates and are not so generally understood as to make their definition in the Tariff superfluous.[27] Though not all practices potentially affecting wholesale rates must be on file, "[p]ractices that significantly affect rates, terms and conditions of service must be included in a Commission-approved tariff rather than in other documents."[28] To allow a change to a practice "that significantly affects the rates, terms, and conditions of a Commission jurisdictional service through a technical bulletin, without Commission approval and without a clear and complete record, would be inconsistent with longstanding Commission policy."[29]

The carrying cost payment rate is central to the Filing Parties' subsidy programs, in that it is the very incentive for resources to procure and retain oil and other fuels. A change to the

[26] Analysis Group Payment Rate Memo at p. 2; ISO-NE Payment Rate Memo at p. 1.
[27] *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985) (utilities should file practices that "affect rates and service *significantly*, that are realistically *susceptible* of specification, and that are not so generally understood . . . as to render recitation superfluous . . . .") (emphasis in original); *see also KeySpan-Ravenswood, LLC v. FERC*, 474 F.3d 804, 810-811 (D.C. Cir. 2007); *New York Pub. Serv. Comm'n v. FERC,* 813 F.2d 448, 454 (D.C. Cir. 1987).
[28] *Energy Spectrum, Inc. v. New York Indep. Sys. Operator, Inc.*, 141 FERC ¶ 61,197, at P 51, n.25 (2012) (citations omitted) (finding improper the use of a technical bulletin to clarify ambiguous tariff language).
[29] *Id.* at P 51.

formula or the values imputed into the formula can have a significant effect on the program payment rate, as evidenced by the proposed change from last year's $18/bbl to the ISO-NE's proposed $12.90/bbl rate for winter 2015/2016.[30] Consistent with Commission policy and judicial holdings, should the Commission approve one of the Filing Parties' proposals, NEPGA and EPSA respectfully request that the Commission order ISO-NE to amend its Tariff to explicitly define the program payment rate formula.

III. Conclusion

Wherefore, NEPGA and EPSA respectfully request that in future proceedings the Commission order ISO-NE to make market design changes when the Commission deems changes necessary, rather than rely on commitments to make the changes. NEPGA and EPSA further respectfully request that should the Commission find that either Filing Party proposal is just and reasonable, that the Commission order ISO-NE to amend its Tariff to define the formula for calculating the Winter Reliability Program payment rate.

[30] Analysis Group Payment Rate Memo at p. 1; ISO-NE Payment Rate Memo at p. 1.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the comments by via email upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Boston, Massachusetts, August 5, 2015.

*/s/ Bruce Anderson*_______________

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