

**New England Power Generators
Association, Inc.**

ISO New England Inc.

ANSWER OF THE NEW ENGLAND POWER GENERATORS ASSOCIATION, INC.

Pursuant to Rule 213(a)(3) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),¹ the New England Power Generators Association, Inc. (“NEPGA”)² hereby files this Answer³ to the Request for Clarification filed by the New England States Committee on Electricity (“NESCOE”) on March 1, 2018 (“NESCOE Request”).⁴ NESCOE filed its Request in response to the Commission’s February 20, 2018, order accepting an Offer of Settlement pursuant to which the parties agreed to a newly defined Adjusted Peak Energy Rent (“PER”) Strike Price (“Settlement Order”).⁵ The Offer of Settlement came after the Commission directed ISO New England Inc. (“ISO-NE”) to increase the PER Strike Price in its

⁵ *New England Power Generators Association Inc. v. ISO New England Inc.*, 162 FERC ¶ 61,144 (2018).

order on a complaint NEPGA filed in 2016 alleging that the PER Adjustment mechanism was unjust and unreasonable (“Complaint Order”).⁶

In its Request, NESCOE asks the Commission to find that the Adjusted PER Strike Price will “have no effect on Forward Capacity Market (“FCM”) settlements beginning June 1, 2018.”⁷ A plain reading of the Settlement Order, Complaint Order, Offer of Settlement and the ISO-NE Tariff,⁸ however, confirms that the Adjusted PER Strike Price applies to all PER event hours from September 30, 2016, through May 31, 2018, and that the Hourly and Monthly PER values calculated according to the Adjusted PER Strike Price are not subject to a retroactive change for the purpose of settling PER charges. NESCOE requests relief that would require a change to the Tariff to provide for the retroactive recalculation of Hourly and Monthly PER values, one for which NESCOE does not provide the requisite evidentiary support under Section 206 of the Federal Power Act. NEPGA therefore respectfully requests that the Commission deny NESCOE’s Request for Clarification.

I. Answer

Contrary to NESCOE’s belief that the Settlement Order does not “specifically address”⁹ the issue NESCOE raises, the Settlement Order clearly establishes that the Commission accepted a change to the PER Strike Price (to include the newly defined Adjusted Hourly PER Strike Price) and found that questions raised by NESCOE about its “applicability” are outside the scope of the proceeding. To the extent the Commission finds that its Settlement Order requires clarification, NESCOE’s request is inconsistent with the Settlement Order, the Complaint Order,

⁶ *New England Power Generators Association Inc. v. ISO New England Inc., Order Granting Complaint in Part and Setting Complaint for Hearing and Settlement Judge Procedures in Part*, 158 FERC ¶ 61,034, at P 57 (2017).

⁷ NESCOE Request at 2.

⁸ ISO New England Inc., Transmission, Markets and Services Tariff, Market Rule 1 (“Tariff”).

⁹ NESCOE Request at 5.

the Commission's actions in these proceedings, the Offer of Settlement, and, as explained below, the Tariff language ISO-NE intends to file in compliance with the Settlement Order.

A. The Commission Found NESCOE's Request for Relief Beyond the Scope of This Proceeding

NESCOE essentially repeats the arguments it raised in its comments on the Offer of Settlement, in concluding that the PER Strike Price change ordered by the Commission should cease to apply to PER charges against FCM payments beginning on June 1, 2018.¹⁰ The Commission considered NESCOE's comments, acknowledging that the Offer of Settlement noted a disagreement on the issue NESCOE raises,¹¹ and found that "this issue" – the application of the Adjusted Hourly PER Strike Price to the FCA 9 Capacity Commitment Period – is "beyond the scope of this proceeding."¹² In quite certain terms the Commission has therefore considered and denied NESCOE's request for relief in this proceeding.

There is nothing ambiguous about the Settlement Order compelling clarification. The Commission explained that "the PER Strike Price was shown to be unjust and unreasonable for the period at issue in NEPGA's complaint, i.e., September 30, 2016 – May 31, 2018,"¹³ and that the applicability of the Adjusted Hourly PER Strike Price to PER events outside of that time frame are outside the scope of this proceeding. Implicit in the Complaint Order and Settlement Order is that the Tariff dictates the next steps necessary to settle PER charges once the Adjusted Hourly PER Strike Price is applied, and that any questions as to those steps are beyond the scope of this proceeding. NESCOE apparently finds ambiguity in the Commission's finding that the

¹⁰ See Comments of the New England States Committee on Electricity, Docket Nos. EL16-120-000, *et al.* (filed Aug. 17, 2017).

¹¹ Settlement Order at P 3.

¹² *Id.*

¹³ *Id.*

applicability of the Adjusted Hourly PER Strike Price to “events” that occur after May 31, 2018, are outside the scope of the proceeding. But the Commission’s reference to “events” is instead more reasonably read as a finding that the Adjusted Hourly PER Strike Price is relevant only to the calculation of Hourly PER values on PER event days (which in turn are summed to Monthly PER values), and that any question as to how it applies after May 31, 2018, can only be in reference to PER event days that occur after May 31, 2018. And with respect to that question, the Commission found it to be beyond the scope of this proceeding. In ordering the PER Strike Price increase and in denying NESCOE’s request for relief, the Commission unquestionably understands how the PER Adjustment mechanism works and how the Adjusted PER Strike Price ultimately effects PER charges against FCM payments. NESCOE makes it seem as though the Commission has simply not considered the issue it raises, but the Commission has now three times confirmed that it ordered only one change to the Tariff¹⁴ – a change to the PER Strike Price – fully aware of the role the PER Strike Price plays under the Tariff.

The Tariff dictates that the PER Strike Price is compared to the hourly Locational Marginal Price in the Real-Time Energy Market to create an Hourly PER value (where there is a positive difference) and that the Hourly PER values are then summed to create a Monthly PER Value.¹⁵ The Tariff does not allow for a change to an Hourly PER value or Monthly PER value once calculated. All that remains once the Monthly PER values are set is the settlement of the

¹⁴ See Complaint Order at P 61 (“[W]e note that the question we are placing before the ALJ concerns how the PER Strike Price is calculated pursuant to ISO-NE Tariff section III.13.7.2.7.1.1.1, and not the monthly application of the PER Adjustment for settlement purposes as governed by ISO-NE Tariff section III.13.7.2.7.1.1.2.”); *New England Power Generators Association Inc. v. ISO New England Inc.*, Order Denying Request for Clarification and Denying Request for Rehearing,, 161 FERC ¶ 61,193, at P 12 (2017) (the Complaint Order “is clear in that it addresses a change to the calculation of the PER strike price as set forth in section III.13.7.2.7.1.1.1.”); Settlement Order at P 1 (“[T]he Settlement revises ISO-NE’s method for calculating the PER Strike Price, requiring ISO-NE to increase the PER Strike Price for each hour.”).

¹⁵ ISO-NE Transmission, Markets and Services Tariff, Market Rule 1, Section III.13.7.2.7.1.1.1(a). This calculation will be modified to account for five-minute pricing of energy and reserves under the terms agreed to in the Offer of Settlement. See Offer of Settlement at P 9.

Monthly PER charges through the rolling twelve-month average.¹⁶ The Tariff therefore clearly provides that the Adjusted PER Strike Price ordered by the Commission will come into play solely in calculating Hourly PER values, and that the Hourly PER values are not subject to retroactive change. NESCOE tellingly makes no attempt in its Request to explain how the Tariff dictates or even allows for the relief it requests.

B. NESCOE Requests Relief That Would Require a Change to the Tariff

NESCOE seeks what requires a change to the Tariff, to provide that as of June 1, 2018, ISO-NE will re-calculate the Hourly PER values for months prior to June 2018, based on the pre-existing PER Strike Price rather than the agreed to Adjusted Hourly PER Strike Price. To demonstrate, the May 2018 PER reduction to capacity payments will equal the average of the prior 12 Monthly PER values, each based on the sum of Hourly PER values using the Adjusted Hourly PER Strike Price. The June 2018 PER reduction to FCM payments will likewise be based on a rolling-12 month average, but according to NESCOE should be based not on the Monthly PER values used for the May 2018 settlement, but on re-calculated Hourly PER values summed into new Monthly PER values based on the pre-existing PER Strike Price methodology. Neither the existing Tariff, the Offer of Settlement, nor the Tariff language ISO-NE intends to file in compliance with the Settlement Order, allow for this to occur.

The Offer of Settlement provides that for the period beginning with 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) (the “Relief Period”), ISO-NE will increase the PER Strike Price “for each hour” when certain reserve shadow prices exceed certain

¹⁶ *Id.*, Section III.13.7.2.7.1.1.2(a).

levels according to the Adjusted Hourly PER Strike Price formula.¹⁷ The Offer of Settlement further provides that the Hourly PER values will be calculated according to the Adjusted Hourly PER Strike Price.¹⁸ Though the Offer of Settlement notes that certain parties “do not agree regarding the application of the Strike Price methodology agreed to in this Settlement to the [FCA 9 Capacity Commitment Period],”¹⁹ this notation does not modify the change to the Tariff provided for under the Offer of Settlement. Though parties may disagree as to how PER charges *should* be calculated, there can be no disagreement as to the settled terms or the Commission’s Complaint Order, which as discussed above make no change to the finality of Hourly PER values and Monthly PER values currently provided for under the Tariff.

The Settlement Order requires that ISO-NE make a compliance filing of Tariff changes reflecting the terms agreed to in the Offer of Settlement. ISO-NE presented the redlined Tariff language it intends to file in compliance with the Settlement Order at the March 6, 2018, NEPOOL Markets Committee meeting (“March MC Meeting”).²⁰ The Tariff changes simply adopt the terms agreed to in the Offer of Settlement. The redlines, all under the section titled “Hourly PER Calculations,” show that the addition of the Adjusted Hourly PER Strike Price variable applies to “hours within the period beginning September 30, 2016, through May 31, 2018.”²¹ There is no redline language rescinding the Hourly and Monthly PER values as of June 1, 2018, nor any other language providing for a retroactive change to these values at some future date. Prompted by a question by NESCOE at the March MC Meeting, ISO-NE explained that it

¹⁷ Offer of Settlement at P 9.

¹⁸ *Id.*

¹⁹ *Id.* at P 10.

²⁰ March 6, 2018, NEPOOL Markets Committee Materials, Agenda Item A03 Market Rule Redlines – Peak Energy Rent Strike Price FERC Compliance, available at: https://www.iso-ne.com/committees/markets/markets-committee/?eventId=134539&sort=normalized_document_title_s.asc.

²¹ *Id.*, Section III.13.7.2.7.1.1.1(a).

interprets the Tariff language as amended to provide that all PER event hours prior to May 31, 2018, are subject to the Adjusted Hourly PER Strike Price, and that there is no subsequent change to those values for purposes of settlement. Therefore, the Tariff changes ISO-NE intends to file are consistent with a finding that the change in the Hourly PER value calculation ordered by the Commission is not subject to a retroactive change.

The finality of Hourly and Monthly PER values is consistent with the Commission's decision in the Complaint Order proceeding, where it found that the increase to the PER Strike Price did not apply to PER event hours occurring prior to the Refund Effective Date (September 30, 2016), even though the settlement of the Monthly PER values included PER charges against 10 monthly Forward Capacity Market payments made within the Relief Period.²² The Commission explained, in part, that it ordered the PER Strike Price increase to take effect only after the Refund Effective Date, and that as a result Hourly PER values and Monthly PER values in months prior to the Refund Effective Date were not subject to later change. The Commission intended for ISO-NE to use the then-existing PER Strike Price for "event hours"²³ that occurred prior to the Refund Effective Date, and to use the revised PER Strike Price (*i.e.*, the Adjusted Hourly PER Strike Price) "only for event hours that occur after September 30, 2016."²⁴ That same direction applied here compels a finding that the Adjusted Hourly PER Strike Price applies to all PER event hours that occur within the Relief Period. Just as the Hourly PER values from PER event hours outside of the Relief Period are not subject to change for purposes of settlement against FCM payments within the Relief Period, Hourly PER values for PER event hours within

²² *New England Power Generators Association Inc. v. ISO New Eng. Inc., Order Denying Request for Clarification and Denying Request for Rehearing*, 161 FERC ¶ 61,193, at PP 11-12 (2017).

²³ *Id.* at P 11.

²⁴ *Id.*

the Relief Period should not be subject to change for purposes of settlements that occur outside of the Relief Period. It would be logically inconsistent, and arbitrary and capricious, for Hourly PER values to be subject to change in one circumstance and not the other.

II. Conclusion

NEPGA respectfully requests that the Commission deny NESCOE's Request for Clarification. The Commission has already dismissed the issue NESCOE raises as outside the scope of this proceeding, and the relief NESCOE requests would require a Tariff change contrary to Commission precedent, unsupported by evidence, and inconsistent with the Commission's previous actions in these proceedings.

Respectfully Submitted,

/s/ Bruce Anderson

Bruce Anderson
Vice President, Market and Regulatory Affairs
New England Power Generators Association, Inc.
33 Broad Street, 7th Floor
Boston, MA 02109
Tel: 617-902-2347
Fax: 617-902-2349
Email: banderson@nepga.org

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, March 16, 2018.

/s/ Bruce Anderson_____

Bruce Anderson
Vice President, Market and Regulatory Affairs
New England Power Generators Association, Inc.
33 Broad St., 7th Floor
Boston, MA 02109
Tel: 617-902-2347
Fax: 617-902-2349
Email: banderson@nepga.org