

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

ISO-New England Inc.

Docket No. ER20-1567-000

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**MOTION FOR LEAVE TO ANSWER AND ANSWER OF
THE NEW ENGLAND POWER GENERATORS ASSOCIATION, INC.**

Pursuant to Rules 212 and 213 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 Motion for Leave to Answer and Answer. NEPGA seeks to respond to the protest filed by the New England States Committee on Electricity (“NESCOE Protest”).³ NESCOE argues that the Commission must reject ISO New England Inc.’s (“ISO-NE”) Energy Security Improvements proposal (“ESI Proposal”) on any one of three bases: (1) it is outside the scope of the Commission’s directives; (2) that ISO-NE has not yet filed mitigation rules governing the ESI Proposal; and (3) the ESI Proposal reliability benefits are not justified by the projected costs, *i.e.*, the replacement rate proposed by ISO-NE is unjust and unreasonable. The Commission should reject each argument and each NESCOE-proposed amendment, as adopted by NEPOOL.

First, as a matter of law the Commission did not fix a replacement rate in instituting the underlying proceeding under Section 206 of the Federal Power Act (“FPA”) upon its preliminary

¹ 18 C.F.R. §§ 385.212, 385.213 (2019).

² The comments expressed herein represent those of NEPGA as an organization, but not necessarily those of any particular member.

³ *Protest of the New England States Committee on Electricity*, Docket No. ER20-1567-000 (filed May 15, 2020).

finding that the Tariff may be unjust and unreasonable,⁴ much less fix it to one limited to the winter months. Section 206 requires the Commission to adjust rates according to a two step-process: first, by making a finding that the existing rate is unjust and unreasonable, and second upon fixing a replacement rate as just and reasonable in approving a compliance filing. The Commission has done neither, and thus has not fixed a replacement rate—one that NESCOE claims constrains the Commission to a winter only remedy. Indeed, in an on-going Section 206 proceeding, the Commission’s ratemaking power is at its “zenith” in fashioning a remedy.⁵ NESCOE’s argument to the contrary should thus be rejected.

Second, in a Section 206 proceeding nothing prohibits the Commission from conditionally accepting one part of an overall design conditioned on latter approval of mitigation rules. NESCOE mistakenly relies on a FPA Section 205 case that was rejected (without prejudice) due to its lack of market power analysis. ISO-NE here acknowledges the need for, and is in the process of completing a market power analysis, and has asked the Commission to approve the ESI Proposal conditioned on subsequent Commission-approved mitigation rules. It thus is well within the Commission’s authority to approve one aspect of a compliance filing conditioned on other necessary approvals.

Third, NESCOE fails to consider the totality of the cost evidence in concluding that the replacement rate is “excessive” relative to the benefits and thus unjust and unreasonable. NESCOE seeks to demonstrate “excessive costs” by citing largely to the highest revenue projections from

⁴ *ISO New England, Inc.*, 164 FERC ¶ 61,003 (2018) (directing ISO-NE to submit short- and long-term solutions to address fuel security concerns or to show cause why such solutions are unnecessary) (“Show Cause Order”).

⁵ *La. Pub. Serv. Comm’n v. Federal Energy Reg. Comm’n*, 174 F.3d 218, 225 (D.C. Cir. 1999) (“the breadth of the Commission’s discretion is at its zenith when fashioning remedies” (internal alterations and quotation marks omitted)).

the Impact Assessment⁶ for two specific resource types. But, the potential margins of two resource types operating under highly-stressed winter conditions says little about the justness and reasonableness of the rates. Instead, the more relevant comparison is total potential market-wide costs averaged over multiple years versus the reliability benefits those costs will bring. As explained below, when the totality of the Impact Assessment projected cost evidence is considered, it shows relatively modest costs more than justified in that they represent the cost of a reliable day-ahead operating plan for the near and long-term.

In sum, as NEPGA explained in its Comments, ISO-NE has provided ample evidence for the Commission to fix a just and reasonable rate through the adoption of ISO-NE's permanent market solution without modification or, alternatively, if the Commission finds any part of the filing to be outside the scope of the compliance directive, to find that ISO-NE has satisfied the requirements of FPA Section 205. The NESCOE arguments, together with the NEPOOL Amendments, should be rejected.

I. Motion for Leave to Answer

Although the Commission's rules generally do not permit answers to protests, the Commission permits such answers for good cause shown, such as when the response aids in the explanation of issues or facilitates the development of the record.⁷ In this instance, NESCOE has effectively filed a second case-in-chief that demands a response. As NESCOE was also the sponsoring entity of each amendment that ultimately created the NEPOOL proposal (the

⁶ *ISO New England Inc., Compliance Filing of Energy Security Improvements Addressing New England's Energy Security Problems*, Attachment C, *Analysis Group's Energy Security Improvements Impact Assessment* ("Impact Assessment").

⁷ See, e.g., *Morgan Stanley Capital Grp., Inc. v. New York Indep. Sys. Operator, Inc.*, 93 FERC ¶ 61,017, at 61,036 (2000).

“NEPOOL Amendments”), their arguments are more appropriately viewed as an extension of the NEPOOL filing. NEPGA’s answer here seeks to add to and correct the record to provide the Commission with a more appropriate basis to make a determination in this proceeding. NEPGA thus seeks leave to answer and requests that the Commission accept this filing.

II. THE ENERGY SECURITY IMPROVEMENTS PROPOSAL IN ITS ENTIRETY IS RESPONSIVE TO THE COMMISSION’S DIRECTIVES

NESCOE argues that the Commission should reject the ESI Proposal because it exceeds the scope of the Commission’s directives in the Show Cause Order.⁸ According to NESCOE, the Commission limited the scope of the compliance filing by directing ISO-NE “to establish a long-term, market-based solution to address specific fuel security concerns” that “*relate* to the winter period.”⁹ NESCOE finds “no basis to believe the scope of the Commission’s directive ... is broader than requiring Tariff revisions to address fuel security problems in the winter period.”¹⁰ NESCOE points to several factors it believes confirm this directive, including the Operational Fuel Security Analysis and Mystic Retirement Studies, the short-term Tariff rules providing for fuel security cost-of-service treatment, the Impact Assessment, and elsewhere.¹¹

While these factors were sufficient for the Commission to make a preliminary finding that the Tariff *may* be unjust and unreasonable and to adopt a “stop gap” measure,¹² such a finding neither constricted ISO-NE from proposing, nor the Commission from adopting, permanent, market-based year-round fuel security rules after the Commission first makes an express finding

⁸ NESCOE Protest at 6 (arguing that the Commission can reject the ESI Proposal on this basis or on the basis that the Commission would so violate its Federal Power Act obligations).

⁹ *Id.* at 17, citing Show Cause Order at PP 2, 49 (emphasis added). See also NESCOE Protest at 27.

¹⁰ *Id.* at 18.

¹¹ *Id.* at 17-22.

¹² See *ISO New England, Inc.*, 170 FERC ¶ 61,099 at P 20 (2020) (describing the Fuel Security Reliability Retention Mechanism as a “stop gap” measure until a permanent market mechanism can be adopted).

that the Tariff without a market solution to address fuel security concerns is unjust and unreasonable.¹³ NESCOE cites to no law or precedent that supports its belief that the Commission's discretion is so limited.

NESCOE apparently seeks to treat this proceeding as if it were one where the Commission makes "findings on general ratemaking principles that require[] translation into something more concrete in the compliance filing."¹⁴ In such a case, the Commission's directive is exceedingly precise and limited, "for example, where the only change mandated by the Commission is elimination of a single fixed-cost element in [a] cost of service, whose impact upon the rate structure can be readily calculated."¹⁵ In contrast, in the Show Cause Order, the Commission directed ISO-NE to submit, "permanent Tariff revisions reflecting improvements to its market design to better address regional fuel security concerns," after finding that the "Tariff does not sufficiently address the fuel security issues currently facing the region, which could result in a violation of mandatory reliability standards."¹⁶ NESCOE looks for a level of specificity in the Show Cause Order (and other documents) that does not exist.

As is the case with the vast majority of Commission 206 Orders and compliance filings, "[i]t is not the case that the Commission's underlying order ... is a final judgment to which the compliance filing must conform. To the contrary, it is merely one stage in an ongoing proceeding that is not completed until the rates themselves are approved."¹⁷ Under FPA Section 206 the Commission may "hold the compliance filing to every jot and tittle of the underlying order, but it may also entertain second thoughts and revise its earlier judgment."¹⁸ Even assuming *arguendo*

¹³ *Emera Maine v. Federal Energy Regulatory Com.*, 854 F.3d 9, 24 (D.C. Cir. 2017).

¹⁴ *Entergy Services Inc. et al.*, 125 FERC ¶ 61,128 at P 10 (2008).

¹⁵ *Electrical Dist. No. 1 v. Federal Energy Regulatory Com.*, 774 F.2d 490, 493 (D.C. Cir. 1985) (Scalia, J.).

¹⁶ Show Cause Order at P 55.

¹⁷ *City of Cleveland v. Federal Energy Regulatory Com.*, 773 F.2d 1368, 1375 (D.C. Cir. 1985) (Scalia, J.) (*citing Electrical District No. 1 v. Federal Energy Regulatory Com.*, 774 F.2d 490 (D.C. Cir. 1985)).

¹⁸ *Id.* at 1375.

that the Commission in the Show Cause Order preliminarily found that a market solution should be in place for the winter months only, which it did not, NESCOE seeks to improperly limit the Commission's ability to fashion a remedy in its final determination—a point in time in which the “Commission's discretion is at its zenith.”¹⁹

As NEPGA explains in its Comments, the ESI Proposal complies with the Commission's Section 206 directives because it creates a wholesale market design to meet ISO-NE's day-ahead operating plan obligations, in an efficient (in co-optimizing calls on energy and scheduled energy) and resource-neutral manner (by procuring calls on energy without any bias or limit on how that energy is produced), that will therefore adapt to the region's existing and evolving reliability needs and resource capabilities “permanently” and in the “long-term.”²⁰ The ESI Proposal thus both meets the principles directed by the Commission in the Show Cause Order and is just and reasonable.²¹ The Commission should thus approve it.

¹⁹ *La. Pub. Serv. Comm'n v. Federal Energy Regulatory Com.*, 174 F.3d 218, 225 (D.C. Cir. 1999).

²⁰ *The New England Power Generators Association, Inc.'s Comments in Support of ISO New England Inc.'s Energy Security Improvements Proposal*, at 6-8, Docket No. ER20-1567-000 (filed May 15, 2020) (“NEPGA Comments”).

²¹ NESCOE's arguments that ISO-NE's proposal must be rejected as beyond the scope of the Commission's Section 206 directive is also flawed because it fails to recognize that ISO-NE specifically requested that if the Commission deems aspects of ESI to fall outside of the scope of compliance such aspects should be considered under Section 205 of the FPA. ISO-NE has demonstrated that ESI is a just and reasonable market design that must be approved even if evaluated by the Commission under Section 205 of the FPA. ESI possesses many of the core characteristics of sound, efficient, market design that the Commission has favored. In particular, ESI promotes better price formation by establishing a market-based approach for pricing reliability needs in the market in a manner that ensures accurate, transparent price signals. Moreover, this design will enable operators to rely less on out-of-market actions to preserve system reliability. In fact, NESCOE concedes ESI is good market design. For these reasons, if the Commission concludes that aspects of ESI warrant Section 205 review, the Commission should find those aspects are just and reasonable.

III. NESCOE ARGUES THAT THE REPLACEMENT RATE IS NOT JUST AND REASONABLE ON TWO BASES

A. CONTRARY TO NESCOE’S CLAIM, THE COMMISSION CAN APPROVE THE ESI PROPOSAL CONDITIONED ON THE FUTURE FILING OF A MITIGATION PLAN

According to NESCOE, because ISO-NE has not filed mitigation rules together with the ESI Proposal the filing “cannot be deemed just and reasonable, does not represent a complete proposal, and is non-compliant with the July 2018 Order.”²² NESCOE cites to *Midwest Independent Transmission System Operator, Inc.*²³ (“MISO”) for support. In *MISO*, the Commission considered whether MISO’s then-existing mitigation rules adequately addressed market power for a day-ahead ancillary market proposed under FPA Section 205, whereas here, as part of an ongoing Section 206 proceeding, ISO-NE has explained that it is in the process of developing proposed mitigation rules and asks the Commission to approve the ESI Proposal conditioned on the Commission’s subsequent approval of those mitigation rules.²⁴ These are material differences that render *MISO* neither on point nor controlling. The Commission routinely conditionally accepts Section 206 compliance filings and may do so here whether conditioned on Commission approval of the mitigation rules or of some other aspect of the overall design prior to the date on which the design changes will take effect.

ISO-NE has reasonably asked the Commission to accept the ESI Proposal conditionally, pending an acceptable mitigation proposal for several important reasons, including to provide certainty to FCA 15 and FCA 16 activities and to inform the very market power analysis ISO-NE is in the process of completing.²⁵ Notably, neither the EMM nor IMM object to the Commission’s

²² NESCOE Protest at 28.

²³ 119 FERC ¶ 61,311 at PP 37-43 (2007) (“MISO”).

²⁴ *ISO New England Inc., Compliance Filing of Energy Security Improvements Addressing New England’s Energy Security Problems*, Transmittal Letter at 70-71, Docket Nos. EL18-182-000 and ER20-1567-000 (filed April 15, 2020) (“ESI Filing Transmittal Letter”).

²⁵ *Id.* at 69-70.

conditional approval of the ESI Proposal prior to the filing of mitigation rules. The EMM explains its reasons for “generally supporting the proposed changes.”²⁶ The IMM submits comments “to assist the Commission in its review of the proposed revisions,” including stating its “preference for ex ante mitigation rules.”²⁷ Neither challenges the Commission’s authority to conditionally approve the ESI Proposal.

The Commission should reject NESCOE’s reading of *MISO* and argument that the Commission is barred from conditionally approving the ESI Proposal.

B. NESCOE’S CLAIM THAT THE ESI PROPOSAL CREATES AN UNJUST REPLACEMENT RATE IS NOT SUPPORTED BY THE RECORD

NESCOE asserts that the ESI Proposal “overcharges” consumers in that it: (1) is not required to satisfy ISO-NE’s NPCC and NERC requirements; (2) procures more day-ahead reserves than is necessary to operate the system reliably; (3) does not price the day-ahead options according to “marginal reliability value”; and (4) creates “excessive” financial incentives.²⁸ Together, NESCOE argues that the ESI Proposal creates an unjust and unreasonable rate in that its costs are unjustified by the reliability benefits they would provide.²⁹ NESCOE also finds fault in the ESI Proposal as “novel and untried.”³⁰

As NEPGA explained in its Comments, ISO-NE has submitted ample evidence to demonstrate that the quantity and quality of day-ahead options the ESI Proposal will procure are directly calibrated to ISO-NE’s day-ahead operating plan needs, including the need to procure

²⁶ *Motion to Intervene and Comments of the ISO-New England External Market Monitor*, at 1, Docket Nos. EL18-182-000 and ER20-1567-000 (filed May 15, 2020) (“EMM Comments”).

²⁷ *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”).

²⁸ NESCOE Protest at 33-41.

²⁹ *Id.* at 41.

³⁰ *Id.* at 46, citing *Prepared Testimony of James F. Wilson in Support of the Protest of the New England States Committee on Electricity* at 54 (“Wilson Testimony”).

reserves capable of responding to contingencies, longer-ramping resources to most efficiently return ISO-NE to its contingency reserve requirements, load forecast error, and clearing less day-ahead demand than forecast.³¹ The quantity of reserves cannot be said to be “more than necessary” when they are derived from the specific reliability needs of the system. That there may be some other approach that may meet ISO-NE’s NERC and NPCC requirements is immaterial. ISO-NE is not required to develop a suite of alternative designs that may address reliability in different ways, but instead one that is within a range of reasonableness that addresses the Commission’s Section 206 directives. There is no alternative compliance filing before the Commission, and after nearly two years of NEPOOL discussion no party has developed a proposal structurally different from that proposed by ISO-NE.

In one form or another, NESCOE repeatedly characterizes the costs to be borne by the ESI Proposal as “excessive,”³² citing to the Impact Assessment results for support. NESCOE cites almost entirely to the highest cost scenarios for two specific resource types (dual-fuel and oil-steam units) in concluding that the Impact Analysis leads “to the undeniable conclusion that ESI’s financial incentives are excessive.”³³ NESCOE conveniently ignores the winter central case where the change in net revenues *are negligible to negative* for certain resources under the ESI Proposal compared to the current market rules.³⁴ A market-wide picture of the potential costs of the ESI Proposal over all modelled scenarios, however, is the more appropriate lens through which to

³¹ NEPGA Comments at 8-10.

³² NESCOE Protest at 33 (“The ESI Proposal Overcharges Customers”), 35 (“overcharging customers”), 37 (“high prices”), (“incremental revenues from ESI that ‘far exceed’ the additional costs they would incur to hold fuel”), 40 (“excessive incentive levels”).

³³ NESCOE Protest at 38, 40.

³⁴ *See, e.g.*, Impact Assessment at 74, Table 28 (showing negative net revenues for oil only steam resources and gas resources contracting for LNG (the latter, (\$20,320)/MW capacity), and relatively low net positive revenues for other resource types, ESI versus current market rules, over three winter months with infrequent cold snap conditions assumption).

evaluate the potential impact to load, and the more appropriate basis upon which to consider the costs versus the reliability benefits.

The Analysis Group created three winter and two non-winter base case scenarios.³⁵ The Impact Assessment is deterministic and thus does not put a probability on any of the scenarios occurring with any frequency. If, however, for purposes of illustration, there is a 33% probability for each of the winter scenarios and a 50% probability on each of the non-winter scenarios, the average cost impact versus Current Market Rules is \$32 million in incremental costs in the three winter months, and \$107 million over the nine non-winter months.³⁶ Thus, the cost for a reliable day-ahead operating plan under this analysis would average approximately \$11.6 million per month. In comparison, wholesale energy costs have averaged \$11.2 - \$16.7 million *per day* since 2015.³⁷ Further, the Impact Analysis does not factor the elimination of costs due to ISO-NE's proposal to eliminate the Locational Forward Reserve Market and any downward pressure the ESI Proposal may cause of the Forward Capacity Market's Net Cost of New Entry. When these cost savings are accounted for, the net impact of the ESI Proposal will be significantly less.

Notwithstanding the Impact Assessment, according to NESCOE customers will be "overcharged" in part because the ESI Proposal products will not be priced according to a

³⁵ Impact Assessment at 14. The Frequent Stressed Conditions is based on the 2013/14 winter season, the Extended Case on the winter of 2017/18, which experiences on extended period with fuel system constraints during a long cold-snap, and the Infrequent case modelled on the winter of 2016/17 where generally mild temperatures resulted in no periods of stressed conditions. For the non-winter months, the Impact Analysis modelled a Severe Case, based on 2018 conditions with relatively high customer loads, and a Moderate Case based on 2017 conditions which had relatively few stressed market conditions.

³⁶ See Impact Assessment at 45, Table 7 (showing change in total payments versus current market rules of \$132 million in Frequent Case, (-\$69 million) in the Extended Case, and \$35 million in the Infrequent case, for a mean of: \$132 million - \$69 million + \$35 million / 3 = \$32 million); *id.* at 83, Table 35 (showing change in total payments versus current market rules of \$89 million in the Moderate Case and \$125 million in the Severe Case, for a mean of: \$89 million + \$125 million / 2 = \$107 million).

³⁷ See ISO-NE Internal Market Monitor 2019 Annual Markets Report at 26, Figure 2-1 (showing annual ISO-NE wholesale energy costs ranging from \$4.1 - \$6.1 billion, 2015-2019), available at: <https://www.iso-ne.com/static-assets/documents/2020/05/2019-annual-markets-report.pdf>.

“marginal reliability value.”³⁸ In other words, NESCOE finds fault in that the day-ahead options will not be priced on a sloped demand curve, but instead, effectively, on a vertical demand curve with a set quantity each hour. As an initial matter, the ESI Proposal in fact does price energy and day-ahead options according to their reliability value, in that faster-responding day-ahead options awards (GCRs) will price higher than replacement energy day-ahead options (RERs), and energy will be co-optimized against the day-ahead options – thus every award and clearing price in the Day-Ahead Energy Market will reflect relative reliability values and efficiencies.

Nonetheless, a vertical demand curve (or in this case, a stepped curve) does not render a market design unjust and unreasonable. For years, the Forward Capacity Auction cleared capacity on a vertical demand curve, and when ISO-NE changed to a sloped demand curve beginning in FCA 9 it was upon the Commission’s Section 205 finding that ISO-NE’s proposed sloped curve was lawful, not on a finding that the vertical curve was unjust and unreasonable.³⁹ The Commission has since affirmed the use of a vertical demand curve, including in MISO’s capacity market, finding that it “continues to be a just and reasonable method” to procure capacity.⁴⁰ NESCOE does not cite to any precedent that distinguishes the justness and reasonableness of a vertical demand curve in a capacity market versus one in a day-ahead ancillary services market, and it should not form the basis of any finding that the ESI Design is unjust and unreasonable.

The ESI Proposal likewise cannot be said to create “excessive” costs in that it prices the system’s reliability needs economically. Both the IMM and EMM explain that the ESI Proposal will competitively price the day-ahead options based on the system’s reliability needs in any given hour or day.⁴¹ The IMM further explains that the ESI Proposal will make for a more competitive

³⁸ Wilson Testimony at 68, 72.

³⁹ *ISO New England Inc. and New England Power Pool Participants Committee*, 147 FERC ¶ 61,173, at P 1 (2014).

⁴⁰ *Midcontinent Indep. Sys. Operator*, 162 FERC ¶ 61,176, at P 120 (2018).

⁴¹ IMM Comments at 5-6; EMM Comments at 3-4.

Forward Capacity Market by making resources that better contribute to energy security (by clearing competitively in the day-ahead option markets) more competitive, a benefit to load not reflected in the Impact Analysis.⁴²

NESCOE attempts to find fault in the ESI Proposal as “a novel and untested approach to improving price formation,” repeating this refrain, but with no real consequence, throughout its pleading and testimony.⁴³ First, NESCOE greatly overstates the “novelty” of the ESI Proposal. As the EMM notes, “[m]any elements of the ISO Proposal have been implemented in other” day-ahead ancillary service markets such as those in NYISO, MISO, CAISO, and SPP.⁴⁴ Further, the energy call-option product is frequently used and well-understood.⁴⁵ Thus, much of the ESI Proposal is tried and tested, rather than novel and untested. Regardless, for the Commission to hold that a new rate design is unjust and unreasonable on the basis that it is “novel” would violate the common interest in wholesale market designs that evolve and improve upon prior designs. This undertaking has not been taken lightly. The ESI Proposal is the result of a rigorous market design effort and years of stakeholder consideration and represents a significant improvement to energy security and price formation. Simply because no other RTO/ISO has designed its wholesale market precisely as ISO-NE now proposes is not a basis for rejection, and to find so would serve only to interfere with the evolution and progress of the New England wholesale electricity markets.

Second, the primary difference between the ESI Proposal and other day-ahead ancillary service markets is in its settlement mechanism. NESCOE itself explains that what is unique is the

⁴² IMM Comments at 6.

⁴³ NESCOE Protest at 3, 16, 24, 32, 46, 47; Wilson Testimony at 13, 39, 54, 55. Even assuming *arguendo* that NESCOE’s argument has an underlying foundation, markets would never innovate if the Commission were to adopt NESCOE’s position and prohibit ISOs from adopting “novel and untested approach[es] to improving price formation.”

⁴⁴ EMM Comments at 4.

⁴⁵ See, e.g., ESI Filing, Attachment B, *Energy Security Improvements: Creating Energy Options for New England*, at 6 (explaining that settlement of call option on energy “is a familiar, standard multi-settlement rule used in a variety of commodity markets to manage uncertainty.”).

settlement against real-time energy prices,⁴⁶ as opposed to settling against the real-time clearing price for the same reserve product (as is the case in other day-ahead ancillary service markets). Indeed, this two-settlement feature is the heart of the day-ahead and real-time energy market design.

Though NESCOE rightfully notes that this may cause suppliers to include in supply offers a risk premium commensurate with this settlement risk,⁴⁷ this again is neither novel nor untested. Suppliers in all ISOs/RTOs markets may include risk premiums for various supply offers (e.g. Pay for Performance risk in Forward Capacity Auction Offers), and the IMM proposes to mitigate any supply offer uncertainty by providing Market Participants “with guidance on the formulation of what is intended to be a competitive Option Offer.”⁴⁸ Further, the EMM finds “desirable features” in the ESI Proposal settlement mechanism in that it will “provide stronger incentives in some circumstances,” and “allocate reserve to resources that would be most economic to provide energy if needed in real-time.”⁴⁹ The IMM explains that the challenge will be one of developing competitive offer benchmarks due to different resource means, costs, and risk premiums necessary for supply offers to cover a day-ahead option, but not one of a “lack of similar understanding among participants of the underlying product and how it is intended to be valued.”⁵⁰

⁴⁶ Wilson Testimony at 55.

⁴⁷ *Id.*

⁴⁸ IMM Comments at 4.

⁴⁹ EMM Comments at 4.

⁵⁰ IMM Comments at 9.

IV. NESCOE GENERALLY FOLLOWS THE REASONING IN NEPOOL’S COMMENTS FOR SUPPORT FOR THE NEPOOL AMENDMENTS, WHICH ARGUMENTS FAIL FOR THE REASONS EXPLAINED IN NEPGA’S COMMENTS

A. NESCOE’S ARGUMENTS ON REPLACEMENT ENERGY RESERVES IN THE NON-WINTER MONTHS ARE FUNDAMENTALLY FLAWED

NESCOE asks the Commission to direct ISO-NE to set the quantity of Replacement Energy Reserves in all non-winter months to zero on two bases: (1) that the Commission directed a winter-only solution; and (2) ISO-NE has failed to show that the reliability benefits of the Replacement Energy Reserves in non-winter months justify their costs.⁵¹ These flawed arguments largely mirror those raised by NEPOOL, to which NEPGA responded in its Comments and above (with respect to the scope of the Commission’s directives). In sum, NEPGA explained that the Replacement Energy Reserve product is responsive to the Commission’s directives, is just and reasonable in that it contributes to a reliable day-ahead operating plan on a competitive basis, and that its absence in the non-winter months would compromise the ability of the ESI Proposal to address ISO-NE’s energy and fuel security needs in the long-term.⁵² No party proposes to eliminate ISO-NE’s existing reliance on out-of-market actions and uncompensated, and available reserve energy on demand to maintain a reliable operating system, only to continue failing to compensate it in non-winter months. Additional arguments raised by NESCOE, as well as the IMM’s and EMM’s pleadings, do nothing to question that conclusion.

NESCOE cites to affidavits filed by NEPOOL, specifically those that: (1) note the Impact Assessment found operating reserve shortages only in the winter months under current market rules; (2) assert NERC and NPCC standards “provide no justification for applying [Replacement Energy Reserves] beyond the winter months.”⁵³ The Impact Assessment, however, is not a

⁵¹ NESCOE Protest at 48-55.

⁵² NEPGA Comments at 13-17.

⁵³ NESCOE Protest at 48.

reliability assessment, but an economic model – the Analysis Group explains the limits of the Impact Assessment in drawing any specific reliability (*e.g.*, reserve shortage) conclusions. It is also deterministic, and thus does not provide any information as to the likelihood of a particular set of projected reliability conditions. Together, these limitations render the Impact Assessment an inappropriate basis for a conclusion on the extent of reliability need for Replacement Energy Reserves.

Conversely, ISO-NE provided evidence, through the testimony of its VP of System Operations and Administration, Peter Brandien, that NERC, NPCC, and ISO-NE Operating Procedures require that it account for replacement energy and load forecast error, requirements that are not seasonal but year-round.⁵⁴ NESCOE characterizes as “expensive” the non-winter month Replacement Energy Reserve costs of \$41 to \$69 million per year, but this simply reflects the cost of a reliable operating system in the near and long-term. Whether it is “expensive” or not is a matter of context, as discussed further above. Indeed, it might appear to be expensive compared to load for years enjoying the benefits of available replacement energy and that necessary to account for load forecast error for free (specifically, free of charges to load). But when properly thought of as the cost to maintain a reliable day-ahead operating plan, the costs are reasonable and justified in that they pay for the exact quantities of reserves ISO-NE presently plans for and relies on in its day-ahead operating plan.⁵⁵

The IMM agrees that the Replacement Energy Reserve product is properly thought of as a year-round product. As it explains, “[s]hould the Commission agree with the need and specification of the 90-minute and 4- hour replacement reserve products comprising [Replacement Energy Reserves], and the inclusion of forecast error, then such products should be procured and

⁵⁴ ESI Filing, Attachment A, *Testimony of Peter T. Brandien*, at 6-7.

⁵⁵ ESI Filing Transmittal Letter at 32.

priced transparently year round, and not for a portion of the year.”⁵⁶ The IMM goes onto explain that Replacement Energy Reserves will price economically according to demand, assuming ample supply and a well-functioning market (both satisfied under the ESI Proposal), which “should be reflected in relatively low clearing prices when the product is in low demand.”⁵⁷ The EMM as well supports the procurement of Replacement Energy Reserves year-round, finding it unreasonable to eliminate the Replacement Energy Reserve requirement rather than to allow the market to price it according to the supply and demand conditions in non-winter months.⁵⁸ The EMM reasons that the market will dictate the value of the product, *e.g.*, that supply will clear at a low price during conditions of “prevailing excess.”⁵⁹

The EMM also warns that if ISO-NE fails to procure Replacement Energy Reserves in all months, ISO-NE may be compelled to make “distortionary out-of-market actions” should “latent reserves” not be available.⁶⁰ The EMM evaluated historic conditions finding shortage of “latent reserves” in 2 out of 92 days (assuming zero EFORd due to lack of furl or otherwise) and that the risk of a smaller margin in future years makes it “very important to have a market mechanism that will provide transparent and efficient price signals.”⁶¹ The EMM concludes that the Replacement Energy Requirement will help avoid out of market actions, and encourage “better investment and retirement decisions.”⁶²

The Commission should accept the application of Replacement Energy Reserve requirement in all months for these reasons.

⁵⁶ IMM Comments at 23.

⁵⁷ *Id.*

⁵⁸ EMM Comments at 5.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.* at 7-8.

⁶² *Id.* at 8-9.

B. NESCOE’S REQUEST TO ELIMINATE LOAD FORECAST ERROR AS A CONTRIBUTOR TO THE REPLACEMENT ENERGY RESERVE QUANTITY SHOULD BE REJECTED

NESCOE asks the Commission to direct ISO-NE to eliminate load forecast error from the calculation of the Replacement Energy Reserve quantities, arguing that it will “compound the excessive costs consumers will be charged,” in that it will increase resource revenues with no associated incremental change in holding costs.⁶³ As above, NESCOE cites to incremental revenues under the frequent cold snap conditions case, and for oil-steam and dual-fuel resources only, in asserting the “excessive” costs.⁶⁴ And again, from a more appropriate consumer cost perspective, the Impact Analysis shows modest market-wide cost impacts in exchange for limiting the risk of degraded reliability.⁶⁵ NESCOE otherwise largely agrees with arguments raised by NEPOOL, to which NEPGA responded in its Comments.⁶⁶ In sum, NEPGA explained that it is just and reasonable to include load forecast error in the Replacement Energy Reserve quantity because ISO-NE must account for it in its day-ahead operating plan, and that it represents an efficient improvement to ISO-NE’s current practice of “borrowing” from 30-minute reserves to address load forecast error in its day-ahead operating plan.⁶⁷

C. ADDING \$10/MWH TO THE STRIKE PRICE IN ALL HOURS WOULD UNDERMINE THE VERY PRICE SIGNALS ESI IS DESIGNED TO PROMOTE

NESCOE again largely follows NEPOOL in asking the Commission to direct ISO-NE to add \$10/MWh to the Strike Price in all hours. NESCOE first asserts that the Strike Price Adder is

⁶³ NESCOE Protest at 56-7.

⁶⁴ *Id.*

⁶⁵ See p. 10, *supra*.

⁶⁶ NEPGA Comments at 21-24.

⁶⁷ *Id.* at 23.

necessary “given the potential for resources to exercise market power.”⁶⁸ Yet, ISO-NE has yet to complete its market power analysis and thus has not drawn a conclusion to support NESCOE’s claim. Until the market power analysis is complete, no party can confirm that undue market power may be exercised under the ESI Proposal. Further, the Strike Price adder would serve as an inefficient mitigation measure.

NESCOE’s other arguments, including those based on the EMM’s reasoning, likewise fail for the reasons NEPGA explained in its Comments. All parties agree that the Strike Price Adder will reduce revenues in non-stressed conditions but differ in how they interpret the consequences. NESCOE concludes that the Strike Price Adder “could not materially affect incentives”⁶⁹ because it “mainly reduces the magnitude of [e]nergy [o]ption settlement in low-price hours when energy security is less of a concern, and with a much smaller impact in higher price hours.”⁷⁰ In this respect NESCOE, like NEPOOL, misses the mark. The question is not whether potential margins are higher during stressed conditions and less so during more mild system conditions.⁷¹ The question is whether the design, in the long-term, provides the necessary incentives for secure energy and day-ahead operating plans. A supplier’s decision to make investments in energy security takes a multi-year view, given that a supplier cannot predict the year in which stressed system conditions may occur and thus cannot “time” investment only to a particular year that maximizes its revenues.⁷² The ESI Proposal thus provides incentives year-round, and over multiple weather and other system conditions, to incentive investment in firm energy when needed

⁶⁸ NESCOE Protest at 58.

⁶⁹ *Id.* at 60, *citing* Wilson Testimony at 84-89.

⁷⁰ NESCOE Protest at 60, *citing* Wilson Testimony at 83; *see also* NEPGA Comments at 18 (citing the EMM, Analysis Group, and ISO-NE findings that the Strike Price Adder reduces incentives).

⁷¹ NEPGA Comments at 19-21.

⁷² *Id.*

due to contingencies, energy constraints, or otherwise. The Strike Price Adder would dilute this long-term revenue opportunity.

V. CONCLUSION

For the reasons stated above, the Commission has ample evidence to make the express finding that the ISO-NE Tariff is unjust and unreasonable without the inclusion of a permanent market solution to address fuel security, and should then fashion a just and reasonable remedy that rejects each NEPOOL Amendment and adopts the ESI Proposal without modification. In the alternative, should the Commission determine that any part of the ESI Proposal must be considered under FPA Section 205, NEPGA urges the Commission to find that ISO-NE has demonstrated the ESI Proposal to be just and reasonable without the inclusion of any NEPOOL Amendment.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the comments via email upon each person designated on the official service list compiled by the Secretary in this proceeding. Dated at Boston, Massachusetts, June 5, 2020.

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