UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

New England Power Generators Association, Inc.,	)	**Docket No. EL21-___-000**
Complainant	)	
v.	)	
ISO New England Inc.,	)	
Respondent.	)	

COMPLAINT AND REQUEST FOR FAST-TRACK PROCESSING OF THE NEW ENGLAND POWER GENERATORS ASSOCIATION, INC.

Pursuant to Sections 206, 306 and 309 of the Federal Power Act (the "FPA")[1] and Rule 206 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure,[2] the New England Power Generators Association, Inc., ("NEPGA")[3] respectfully submits this complaint ("Complaint") requesting that the Commission find that ISO New England Inc. ("ISO-NE") has violated its Tariff[4] and the filed-rate doctrine by recalculating and reviewing with the New England Power Pool ("NEPOOL") stakeholders a Net Cost of New Entry ("Net CONE") in violation of the express requirements of ISO-NE's Tariff on file with the Commission. The Tariff requires that forecast energy and ancillary services ("EAS") margins for the Net CONE reference unit reflect "reasonable expectations of first-year energy and ancillary services revenues,

[1] 16 U.S.C. §§ 824e, 825e, 825h (2018).
[2] 18 C.F.R. §§ 385.206 (2020).
[3] The comments expressed herein represent those of NEPGA as an organization, but not necessarily those of any particular member.
[4] All references to the Tariff in this Complaint are to ISO-NE's Transmission, Markets and Services Tariff on file with the Commission.

and projected revenue for subsequent years."[5] Yet, in recalculating and reviewing Net CONE in accordance with its Tariff obligations, ISO-NE has ignored that requirement. Instead, ISO-NE unreasonably bases its forecast of energy, reserves and other non-capacity market revenue for the reference unit on the simple and overriding assumption that the system capacity equals the Net Installed Capacity Requirement in the assumed first-year of operation (*i.e.*, in 2025-2026) and in every one of the following 19 years of the forecast period.

The Tariff is unambiguous in how Net CONE must be recalculated – the forecast of energy and other non-capacity market revenues must account for reasonable expectations of non-capacity market revenues in the first year to which the Net CONE value would apply and to subsequent years in the 20-year forecast period. ISO-NE's new, novel Net CONE recalculation methodology is wholly inconsistent with the Tariff requirements, and thus violates the Tariff. Further, supporting the conclusion that ISO-NE has violated its Tariff, the Complaint demonstrates that this changed methodology also diverges from ISO-NE's prior practice. NEPGA submits an affidavit from Robert Stoddard to support this complaint, as Attachment A, which explains how ISO-NE's 2020 Net CONE recalculation methodology fundamentally deviates from past practice and is inconsistent with the plain methodological requirements set forth in the Tariff definition of Net CONE. Mr. Stoddard further demonstrates that ISO-NE's proposed methodology materially changes the Net CONE value relative to a methodology that complies with the Tariff on file with the Commission.

ISO-NE's changed approach to recalculating Net CONE has a profound impact. As demonstrated by Mr. Stoddard, and described below, the methodology ISO-NE has chosen for

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[5] Tariff Section I – General Terms and Conditions, *available at*: https://www.iso-ne.com/static-assets/documents/regulatory/tariff/sect_1/sect_i.pdf .

modeling system conditions distorts the revenue offset calculation in a number of ways. The impact of the proposed methodology on the Net CONE value is a reduction of, conservatively, 0.82/kW-month, when compared to a methodology that complies with the Tariff.

This then leads to a clear violation of the filed-rate doctrine in that ISO-NE has applied a Tariff provision not on file with the Commission. The existing Tariff obligates ISO-NE to recalculate Net CONE and review that recalculation with stakeholders prior to filing it with the Commission. In implementing these Tariff requirements, ISO-NE was required to apply the definition of Net CONE on-file with the Commission. ISO-NE failed in this respect, instead applying an unfiled revised definition of Net CONE. While ISO-NE has characterized that proposed tariff provision as a mere clarification of the existing Tariff, it is evident that the proposed revisions materially change the meaning of Net CONE, and more critically, the methodology that drives its calculation. Yet, ISO-NE intends to file the proposed revision to the Net CONE definition at the same time it files for acceptance of the updated 2020 Net CONE value before the Commission has accepted the change. Thus, ISO-NE will be seeking approval of a proposed Tariff provision that it has already applied to calculate the updated Net CONE value. ISO-NE's implementation of its Tariff utilizing an unfiled Tariff provision is a violation of the filed-rate doctrine.

While NEPGA anticipates ISO-NE will file its updated Net CONE values later this month, including its proposed tariff revisions, NEPGA 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. Most critically, the Tariff violation has already occurred. ISO-NE has implemented the Tariff using a changed methodology for calculating Net CONE that is wholly inconsistent with the Tariff and is applying an unfiled Tariff provision to justify that changed methodology. This unlawful deviation from the filed rate not only drives ISO-NE's calculation of Net CONE to be filed this month for effect in FCA 16, but will also serve as the basis of the Net CONE value for the FCA 17 and 18 Net CONE adjustment updates. ISO-NE is not authorized to circumvent the Commission's statutorily mandated review of fundamental methodological changes, even by imbedding such changes within the Net CONE updates filing. Furthermore, granting the relief expeditiously is administratively efficient, as it would obviate the need for the Commission and interested parties to litigate the updated Net CONE values recalculated under a methodology that has not been filed with or accepted by the Commission.

For these reasons, and as discussed in further detail below, NEPGA respectfully asks that the Commission find that ISO-NE has violated its Tariff by failing to recalculate and review with NEPOOL stakeholders a Net CONE value consistent with the Tariff, and violated the filed-rate doctrine by applying a Net CONE Tariff definition not on file with the Commission. NEPGA asks that the Commission reject ISO-NE's proposed Net CONE values recalculated under this unlawful methodology, and direct ISO-NE to implement its Tariff according to the existing rate that is currently on file. Recognizing that this relief would leave ISO-NE without a recalculated Net CONE value accepted prior to the beginning of the FCA 16 calendar,[6] NEPGA requests that the Commission direct ISO-NE to apply the Tariff-defined annual adjustment factors to the Forward Capacity Auction ("FCA") 15 Net CONE value to be used for the FCA 16 Net CONE value.[7] Such relief is consistent with a change to ISO-NE's Tariff accepted by the Commission.[8] NEPGA

[6] The FCA calendar is generally considered to begin in the March prior to the FCA, when Retirement De-List Bids (if any) must be submitted to ISO-NE. For example, for FCA 16 running in February 2022, Retirement De-List Bids are due on March 12, 2021.
[7] Tariff § III.13.2.4.
[8] *See* ISO New England Inc. and New England Power Pool Participants Committee Filing Re: Consolidation of FCM Parameter Review, Docket No. ER18-395-000 (Nov. 14, 2018) (asking for Commission acceptance of Tariff revisions to effectively delay for one year ISO-NE's obligation to recalculate Net CONE no less than once every three years, an accepted by letter order December 9, 2018).

further asks that should the Commission grant this relief, it reject ISO-NE's proposed Net CONE value for FCAs 16-18 that will be filed later this month as an unlawful and unjust and unreasonable rate.

I. CORRESPONDENCE AND COMMUNICATIONS

All correspondence and communications related to this proceeding should be addressed to the following individual, who should be place on the Commission's official service list in this proceeding:

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II. DESCRIPTION OF COMPLAINANT AND RESPONDENT

A. COMPLAINANT NEW ENGLAND POWER GENERATORS ASSOCIATION, INC.

NEPGA is the trade association representing competitive power generators in New England. NEPGA's member companies represent nearly 95% of the installed capacity in New England. NEPGA's mission is to support competitive wholesale electricity markets in New England. NEPGA believes that open markets guided by stable public policies are the best means to provide reliable and competitively-priced electricity for consumers. A sensible, market-based approach furthers economic development, jobs and balanced environmental policy for the region. 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 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.

B. Respondent ISO New England Inc.

ISO-NE is the private, non-profit entity that serves as the regional transmission organization ("RTO") for New England. ISO-NE operates the New England bulk power system and administers New England's organized wholesale electricity market pursuant to the ISO-NE Tariff. As an RTO, ISO-NE has the responsibility to protect the short-term reliability of the New England Control Area and to operate the system according to reliability standards established by the Northeast Power Coordinating Council, Inc. and the North American Electric Reliability Corporation.

III. BACKGROUND

Beginning in 2014, with the switch from a vertical to sloped demand curve in ISO-NE's FCA, the Net CONE value serves two primary purposes establihsing FCA parameters. First, the Net CONE value is used to position the demand curve so that the curve prices capacity equal to Net CONE at the Net Installed Capacity Requirement ("NICR") quantity, *i.e,* at the 1-in-10 reliability standard.[9] The Net CONE value also sets the FCA Starting Price, which is equal to the greater of the Gross CONE value and 1.6 x Net CONE.[10] At the time of this transition from a

[9] Stoddard Affidavit at ¶ 3.
[10] Tariff § III.13.2.4.

vertical to sloped demand curve, the Commission accepted, effective for FCA 9, the same definition of Net CONE that is on file today.[11]

The Tariff states:

> **Net CONE is an estimate of the Cost of New Entry, net of the first-year non-capacity market revenues, for a reference technology resource type and is intended to equal the amount of capacity revenue the reference technology resource would require, in its first year of operation, to be economically viable given reasonable expectations of the first year energy and ancillary services revenues, and projected revenue for subsequent years**.[12]

The Tariff requires that ISO-NE recalculate and review with stakeholders a Net CONE value prior to filing that value for Commission acceptance, specifically:

> **CONE and Net CONE shall be recalculated for the Capacity Commitment Period beginning on June 1, 2025 and no less often than once every three years thereafter. Whenever these values are recalculated, the ISO will review the results of the recalculation with stakeholders and the new values will be filed with the Commission prior to the Forward Capacity Auction in which the new value is to apply.**[13]

ISO-NE has calculated Net CONE twice before, initially in 2014 for effect in FCAs 9-11, and recalculated again in 2017 for effect in FCAs 12-15.[14] In recalculating Net CONE, ISO-NE first selects a reference unit. ISO-NE then estimates the costs necessary to develop and bring the project to commercial operation – the Gross CONE value. To translate Gross CONE to Net CONE,

[11] Stoddard Affidavit at ¶¶ 3-5; *see also* ISO New England Inc and New England Power Pool, Demand Curve Change Filing, Tariff Definitions Redlines, at 60 (page 328 of the pdf file), Docket No. ER14-1639-000 (April 1, 2014) ("2014 ISO-NE Net CONE Filing").
[12] Tariff § I – General Terms and Conditions.
[13] Tariff § III.13.2.4.
[14] *See* ISO New England Inc. and New England Power Pool, Docket No. ER14-1639-000, Demand Curve Changes (filed Apr. 1, 2014) ("2014 Net CONE Filing"); *see also* ISO New England Inc Filing of CONE and ORTP Updates, Docket No. ER17-795-000 (filed Jan. 13, 2017) ("2017 Net CONE Filing").

ISO-NE subtracts from Gross CONE the estimate of the profit margin the reference unit is likely to earn from sales of energy and ancillary services ("net E&AS revenue") and other non-capacity market revenues (or penalties) (together, "EAS Margins"). Net CONE accounts for forecast margins from the Day-Ahead and Real-Time Energy Market, Real-Time Reserves, the Locational Forward Reserve Market, and the second-settlement under the Pay-for-Performance design. The EAS Margins forecast has a one-for-one impact on Net CONE, meaning that for every unit less of forecast EAS Margins the Net CONE value increases by one unit.

ISO-NE recently completed recalculating and reviewing with stakeholders the CONE and Net CONE values it proposes for effect beginning in FCA 16, concluding with a vote on ISO-NE's proposed values at the December 3, 2020, NEPOOL Participants Committee meeting.[15] This process began at the May 12, 2020, NEPOOL Markets Committee meeting, when ISO-NE and its consultants (Concentric Energy Advisors ("Concentric") and Mott MacDonald) made an introductory presentation.[16] At the June 10, 2020, NEPOOL MC meeting, ISO-NE introduced its proposed methodologies to modeling system conditions as the basis for calculating the EAS Offsets.[17] ISO-NE described its proposed methodologies as assuming the system at equilibrium, meaning that the quantity of capacity supply equals the NICR for all 20 years of the reference unit's amortization period. NEPGA and its Members have repeatedly objected to ISO-NE's proposed Net CONE methodology in the NEPOOL process as inconsistent with the Tariff on file

[15] *See* Initial Notice of the December 3, 2020, NEPOOL Participants Committee meeting, *available at*: https://www.iso-ne.com/static-assets/documents/2020/11/npc_20201203_initial.pdf.
[16] *See* ISO-NE CONE and ORTP Analysis, Concentric Energy Advisors, May 12, 2020 NEPOOL Markets Committee presentation, Agenda Item #7A, *available* at: https://www.iso-ne.com/static-assets/documents/2020/05/a7_iso_presentation_cone_ortp.pptx. ("May 12 Presentation").
[17] June 10, 2020, NEPOOL Markets Committee Meeting Agenda Item 7A, ISO-NE CONE and ORTP Analysis, at p 52 *available at*: https://www.iso-ne.com/static-assets/documents/2020/06/a7a_cea_presentation_cone_ortp.pptx. ("June 10 Presentation").

and as a material change to how ISO-NE has previously recalculated Net CONE. For example, at the August 12 MC Meeting:

> **"A NEPGA representative commented he disagrees with the contention that the ISO's tariff revision to the definition of Net CONE is a clarifying change, and noted he interprets this to be a fundamental change. The representative also voiced concerned [sic] that the ISO is changing the definition so late in this stakeholder process."[18]**

Further, beginning at the July 15, 2020, NEPOOL MC Meeting, Robert Stoddard presented at the NEPOOL stakeholder meetings his conclusions on behalf of NEPGA concerning ISO-NE's proposed methodologies.[19] Stoddard opined that ISO-NE's proposal violates the Tariff definition of Net CONE, and that compliance with the Tariff requires that the EAS Offset reflect expected market revenues, "not market prices that would occur in a hypothetical at *criterion* system" in all years of the reference unit life.[20] Mr. Stoddard's analysis formed the basis of an amendment filed by NEPGA in the NEPOOL process to address those concerns.[21]

At the September 10 MC meeting, ISO-NE first presented its proposed Tariff language amending the definition of Net CONE (ISO-NE had previously suggested or explained its intent to "clarify" the Tariff, and then first brought those redlines to the September 10 MC meeting).[22]

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[18] NEPOOL Markets Committee Minutes, August 11-13, 2020, at 6-7, *available at*: https://www.iso-ne.com/static-assets/documents/2020/10/a1a__august_mc_meeting_minutes_final.docx.

[19] July 15, 2020, NEPOOL Markets Committee Agenda Item # 5(B)(iii), Resource Balance for Net CONE Calculation, Robert Stoddard at the request of the New England Power Generators Association, at 10-11, *available at*: https://www.iso-ne.com/static-assets/documents/2020/07/a5_b_iii_nepga_resource_balance_for_net_cone_calculation.pdf.

[20] *Id.* at 11.

[21] *See id*.

[22] NEPOOL Markets Committee Presentation, Agenda Item # 6(A)(i), Cost of New Entry & Offer Review Trigger Prices: Estimated revenue offsets association with Energy Security Improvements REVISION 1, at 17, *available at*: https://www.iso-ne.com/static-assets/documents/2020/09/a6_a_i_iso_presentation_offests_and_esi.pptx.

Such changes, which will be filed at the Commission later this month, are shown here as redlines against the Tariff definition of Net CONE on file with the Commission:

> **Net CONE is an estimate of the Cost of New Entry, net of ~~the first-year~~ non-capacity market revenues, for a reference technology resource type and is intended to equal the amount of capacity revenue the reference technology resource would require ~~, in its first year of operation,~~ to be economically viable given reasonable expectations of the ~~first year~~ energy and ancillary services revenues under long-term equilibrium conditions~~, and projected revenue for subsequent years~~.**

ISO-NE asserts that these changes are necessary "clarifications" to the definition of Net CONE, in that the Tariff definition "does not clearly reflect that E&AS revenues are calculated reflecting the system at long-term equilibrium" and "does not capture the methodology used to calculate Net CONE," and thus the redlined language "more accurately describes the Net CONE calculation."[23]

IV. COMPLAINT

A. ISO-NE HAS VIOLATED ITS TARIFF

1. THE TARIFF SETS FORTH THE METHODOLOGY AND PROCESS FOR CALCULATING NET CONE

In considering whether a Tariff violation has occurred, the Commission first looks to the plain meaning of the Tariff language under question.[24] The Courts also look to the Tariff's plain meaning in evaluating a Tariff violation claim.[25] Where the Tariff language is unambiguous, the

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[23] *Id.*
[24] *NEPGA v. ISO-NE, Order on Complaint*, 144 FERC ¶ 61,157, at PP 49, 53-54 (2013).
[25] *Con. Ed. v. FERC*, 347 F.3d 964, 972-973 (D.C. Cir. 2003).

"plain language of the tariff controls."[26] The Tariff requires that ISO-NE periodically recalculate Net CONE, and review the results of that recalculation with NEPOOL stakeholders, prior to filing it with the Commission. ISO-NE has now implemented those Tariff provisions. In so doing, however, ISO-NE has unlawfully used a methodology for calculating Net CONE that is demonstrably inconsistent with, and thus in violation of, the Tariff.

The Tariff contains two provisions that govern the methodology and the process for how Net CONE shall be recalculated. The definition of Net CONE describes the methodology that ISO-NE must apply in recalculating Net CONE, and Section III.13.2.4 of Market Rule 1 of the Tariff explains the process for ISO-NE's recalculation of Net CONE, self-evidently as defined by the Tariff on file with the Commission. The definition of Net CONE is the lone, and therefore governing Tariff provision that describes a methodological approach for calculating Net CONE. The Tariff definition of Net CONE explains that it must equal the capacity revenue the reference unit requires "in its first year of operation, to be economically viable," meaning in the first Capacity Commitment Period to which the Net CONE value would apply.[27] Thus, capacity revenues added to non-capacity revenues in the first-year of operation must sum to equal the reference unit's amortized gross CONE value.[28]

[26] *Cal. Indep. Sys. Operator Corp.,* 140 FERC ¶ 61,168, at P 7 (2012) (citing *Koch Gateway Pipeline Co. v. FERC*, 136 F.3d 810, 814 (D.C. Cir. 1998)).

[27] In 2014, the year in which ISO-NE amended its Tariff to include the current definition of Net CONE, ISO-NE's consultant forecast the reference unit margins by applying forward power and gas prices, specifically for the years 2018-2019, to historical LMPs. It did so because 2018-2019 coincided with the first Capacity Commitment Period to which the calculated Net CONE value would apply, the FCA 9 Capacity Commitment Period, for a value that would apply in FCAs 9-11. *See* 2014 Net CONE Filing, Testimony of Dr. Samuel A. Newell and Mr. Christopher D. Ungate on Behalf of ISO New England Inc. Regarding the Net Cost of New Entry for the Forward Capacity Market ("2014 Net CONE Report") at 7.

[28] Given the recent Commission directive to eliminate the 7-year price lock, this is particularly important beginning with FCA16 as all capacity resources must rely on each FCA to recover costs not possible from projected non-capacity revenues.

This requirement to base the sum of capacity and non-capacity revenues on the first year of operations makes it eminently clear that the forecast of non-capacity revenues must reflect the likely market conditions in the first year of operation. The remainder of that section of the Tariff requires that non-capacity revenues must be forecast based on "reasonable expectations of the first-year energy and ancillary services revenues" and, separately, "projected revenue for subsequent years,"[29] A plain reading of the definition thus demonstrates that Net CONE must reflect the "reasonable expectations" of first year revenues, and projected revenue for subsequent years for all non-capacity market revenues.

Section 13.2.4 defines the process ISO-NE is required to follow when recalculating Net CONE. As noted above, the Tariff requires the following process:

> CONE and Net CONE shall be recalculated for the Capacity Commitment Period beginning on June 1, 2025 and no less often than once every three years thereafter. Whenever these values are recalculated, the ISO will review the results of the recalculation with stakeholders and the new values will be filed with the Commission prior to the Forward Capacity Auction in which the new value is to apply.[30]

ISO-NE's obligation to recalculate Net CONE is thus straightforward and unambiguous. ISO-NE is first required to recalculate Net CONE as that term is defined in the Tariff. The results of that recalculated Net CONE value shall be reviewed with stakeholders, and then filed with the Commission. That is the entirety of the Net CONE recalculation process as defined in the Tariff. Further, the only fair reading of the "values" ISO-NE is required to recalculate and review are the values derived from the Tariff Net CONE definition, not those from a definition of Net CONE not yet on file with the Commission.

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[29] Tariff § I – General Terms and Conditions.
[30] Tariff § III.13.2.4 (emphasis added).

2. ISO-NE'S PROPOSED METHODOLOGY VIOLATES THE PLAIN MEANING OF THE TARIFF

In the attached affidavit, NEPGA's expert witness Robert Stoddard demonstrates that ISO-NE's proposed methodology for forecasting energy market revenues is entirely inconsistent with the plain meaning of the Tariff. Mr. Stoddard describes the fundamental and material differences between the methodology required under the Tariff versus ISO-NE's 2020 Net CONE EAS Margins methodologies. In forecasting Day-Ahead and Real-Time Energy and reserves prices, ISO-NE begins (as it did in 2014) with the three most recent years of actual LMPs and real-time reserves prices, for the period 2017-2019.[31] After first adjusting the historical prices based on a relatively minor "scarcity pricing" adjustment,[32] ISO-NE then makes a significant adjustment to the historical prices according to its "Level of Excess Adjustment."[33] This four-step adjustment, described in detail in the Stoddard Affidavit, is intended to "remove the effect of excess supply" during the historical period.[34] ISO-NE does so by "successively removing resources from the supply stack until the system was at criteria and estimating what prices would have been if the installed capacity was at criteria."[35]

Mr. Stoddard explains that this methodology is "irreconcilable with the express definition of Net CONE in the Tariff."[36] He first observes that the Tariff language fails to refer at all to "equilibrium" or "long term" but instead states and restates that any adjustment to historical prices must account for reasonable expectations of first year revenues.[37] Moreover, Mr. Stoddard

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[31] Draft ISO-NE Net CONE and ORTP Impacts, An Evaluation of the Net Cost of New Entry and Offer Review Trigger Price Parameters to be Used in the Forward Capacity Auction Report (Nov. 2020) at 57, *available at*: https://www.iso-ne.com/static-assets/documents/2020/12/npc-20201203-composite6.pdf. ("Draft 2020 Net CONE Report") (starting at p. 255 of the linked pdf file).
[32] Stoddard Affidavit at ¶ 25.
[33] Draft 2020 Net CONE Report at 57.
[34] Stoddard Affidavit at ¶ 29.
[35] Draft 2020 Net CONE Report at 60.
[36] Stoddard Affidavit at ¶39.
[37] *Id.*

concludes that "ISO's approach throughout the 2020 stakeholder process has resolutely refused to take such a comprehensive and fact-based view of "'reasonable expectations of first year energy and ancillary services earnings.'"[38] ISO-NE simply ignores that requirement in its forecast of EAS Margins. More specifically, Mr. Stoddard finds error in ISO-NE's failure to account for reasonably likely exit and entry from the market based on current and expected conditions.[39] Mr. Stoddard explains that by only removing resources to bring supply to equal NICR, ISO-NE ignores the fact that substantial energy additions are reasonably expected before 2025, constituting a material omission.[40] Mr. Stoddard demonstrates that substantial changes to the resource mix will occur by FCA 16, including an influx of generation from intermittent resource pursuant to state public policies, and substantial reductions in load through new energy efficiency and behind the meter solar.

ISO-NE makes no attempt to account for these future energy market conditions nor for the changing resource mix during the historical test period, 2017-2019. Rather, ISO-NE simply uses a fictional snapshot of the market, by assuming arbitrarily that available resource supply equals the NICR value for every one of the forecast twenty years. Mr. Stoddard further explains that even if the system were "at equilibrium" in 2025 and for all 19 years thereafter, "that system will look very different than the system in 2017, 2018 or even 2019" and that changing system will have "impacts on future earnings of gas-fired generators, regardless of the level of capacity balance."[41]

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[38] *Id*. at ¶¶ 44-47.
[39] *Id.*
[40] *Id.* at ¶ 46. As Mr. Stoddard notes, several New England state policies compel their EDCs to contract for significant quantities of specific resources, including 1,000 MW of contracted hydro power, and several GWs of offshore wind, much of which is expected to be in-service during the period in which this Net CONE value would apply (*i.e.*, from 2025 – 2029). He further observes that several New England states have increased their commitments to procure incremental resources through Renewable Portfolio Standards by 2030." Together, "these states' mandates will require substantial additions of renewable energy" and "[b]ecause these resources typically offer energy at or below zero, their addition will have a material impact on LMPs." *See id.*
[41] *Id.* at ¶ 42.

By ignoring expected energy market conditions in calculating the reference unit's EAS Margins, ISO-NE's methodology for calculating expected non-capacity revenues for the reference unit is demonstrably in violation of the Tariff. ISO-NE simply failed to account for reasonable expectations of non-capacity market revenues given those expected market conditions, as is explicitly required by the Tariff.

Mr. Stoddard's reasoning and conclusions likewise hold true for ISO-NE's use of the "at equilibrium" assumption for its scarcity hours forecast.[42] As discussed above, the assumed annual scarcity hours is a primary factor in forecasting Pay-for-Performance and scarcity hour revenues. Assuming the system at equilibrium drives a higher assumption of scarcity hours relative to a system that has demonstrably long energy supply, and in turn drives a higher forecast of Pay-for-Performance and scarcity pricing revenues. Actual historical hours of scarcity, due in part to a system that has been long for several years, should compel a scarcity hour forecast that accounts for these historical values and system conditions. Instead, as with its energy margins forecast, ISO-NE assumed that the system will be at equilibrium for all 20 years of the forecast period. As is the case with ISO-NE's approach to its energy and real-time reserves revenues forecast, this approach to forecast Pay-for-Performance and scarcity hours is a plain violation of the Tariff, in that it fails to account for reasonable expectations of first-year and future years conditions in forecasting non-capacity revenues.

ISO-NE's proposed Tariff revisions provides further evidence of how ISO-NE's proposed methodology for calculating Net CONE so substantially deviates from the methodology defined in the existing Tariff. As described above, ISO-NE's proposed Tariff revisions delete all four references to "first year revenues," and the reference to "projected revenues in future years," and

[42] *Id.* at ¶¶ 60-62.

replaces them with “long-term equilibrium.” ISO-NE thus removes the Tariff obligation to reflect reasonable expectations of first year revenues and, separately, future year conditions in the non-capacity market revenue forecasts, replacing it with an approach that requires an accounting only of reasonable expectations given “long-term equilibrium conditions.” It is simply not reasonable to view ISO-NE’s proposed Tariff revisions as “clarifications.” Rather, the Tariff redlines further illustrate that ISO-NE’s methodology for calculating the Net CONE value starkly deviates from the existing Tariff on file.

B. ISO-NE’s Prior Practice Has Been Consistent with the Tariff Requirements

ISO-NE’s past practice in applying the Tariff in the only two prior calculations of Net CONE under its filed Tariff definition is informative of ISO-NE’s own interpretation of the Tariff. ISO-NE’s prior calculations of Net CONE in 2014 and 2016 demonstrate that, in both instances, ISO-NE utilized a methodology for calculating Net CONE that is consistent with the express terms of the Tariff on file with the Commission. While ISO-NE claims that its proposed 2020 methodology is consistent with its prior practice, NEPGA’s expert Robert Stoddard demonstrates that ISO-NE’s proposed 2020 methodology starkly diverges from ISO-NE’s prior practice. Given that ISO-NE implemented the tariff to calculate Net CONE during those years under the same Tariff provisions that govern this most recent Net CONE recalculation, this is further evidence that the proposed methodology deviates substantially from the methodology required by the Tariff. This constitutes a clear Tariff violation. Any change to the Tariff definition of Net CONE is worthy of a full airing of arguments on all sides with a real opportunity for the Commission to weigh the arguments and decide prior to ISO-NE implementation.

In 2014 and 2016, during the two prior Net CONE calculations under the Tariff language currently on file with the Commission, ISO-NE forecast the reference unit's net energy, Pay for Performance and other revenues based on reasonable expectations of future system conditions. In each case, ISO-NE took deliberate methodological steps to account for future changes in the inputs material to these revenue forecasts. As explained by Mr. Stoddard, ISO-NE's prior Net CONE recalculations demonstrate how it applied the Tariff, interpreted the definition of Net CONE, and used the methodology set forth in that definition as the basis for its periodic Net CONE recalculations. Mr. Stoddard concludes that the Net CONE recalculation efforts in 2014 and 2016, and more specifically the approach to determining non-capacity revenue offsets, were both consistent with the plain reading of the methodology described in the definition of Net CONE on file with the Commission. Mr. Stoddard further concludes, that by comparing ISO-NE's prior approaches to the 2020 proposed methodology, it becomes clear that the 2020 proposed methodology starkly diverges from the ISO-NE's prior approaches to Net CONE, and in so doing, deviates from the existing Tariff.

1. 2014 Net CONE Calculation

a. ISO-NE's Energy Margin Forecast Reflected Its Reasonable Expectations of Forecast Margins in the First Year of Operations

In 2014, ISO-NE calculated the Net CONE value for effect in FCAs 9-11, describing its approach to the energy and real-time reserves revenue forecast to "calculate the *first year* E&AS margins for each candidate reference technology using historical margins for similar plants adjusted for differences in electricity prices indicated by available futures settlement prices."[43]

[43] 2014 Net CONE Report at 48.

ISO-NE first estimated historical margins and then adjusted those estimated margins based on the ratio of historical on-peak prices and on-peak Mass Hub futures settlement prices, specifically those in 2018/2019, for the FCA 9 Capacity Commitment Period,[44] in part to "reflect future market conditions."[45] ISO-NE summarized its EAS Offset forecast as the "E&AS margins for the candidate reference technologies in 2018/2019"[46] – *i.e.,* the "first-year of operation"[47] for a resource assuming a Capacity Supply Obligation in FCA 9.

ISO-NE also forecast Pay for Performance and Peak Energy Rent revenue offsets, each highly dependent on an assumed number of scarcity hours.[48] ISO-NE examined the resulting net margin for a single year, 2018/19, which was the first year of the capacity commitment period covered by ISO-NE's filing. Thus, from the perspective of a resource participating in FCA 9, its estimate was a reasonable one of "the first year energy and ancillary services revenue" because it used observable, tradeable market prices to estimate those revenues.[49] ISO-NE applied short-term market expectations to forecast the number of scarcity hours, a value that drives the Pay for Performance and scarcity energy net revenue forecasts, which are both included in the revenue offset to Gross CONE.[50] Specifically, in considering its forecast of 21.2 hours (at criteria) and an historical average of 3 hours, ISO-NE observed an implied declining heat rate in Intercontinental Exchange energy and gas futures, and concluded that "declining market heat rates are hardly consistent with anticipating a large increase in scarcity hours, from the 3-hour recent historical

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44 Stoddard Affidavit at ¶¶ 12-14; 2014 Net CONE Report at 49.
45 2014 Net CONE Report at 49 (noting that it adjusted historical margins according to Mass Hub futures settlement prices from ICE and then estimated "first-year E&AS margins assuming that the margins vary linearly with electricity prices.").
46 2014 Net CONE Report at 58.
47 Tariff § 13.2.4.
48 Stoddard Affidavit at ¶¶ 12-14.
49 Stoddard Affidavit at ¶ 13.
50 2014 Net CONE Filing, Testimony of Samuel Newell and Kathleen Spees on behalf of ISO-NE Regarding a Forward Capacity Market Demand Curve, at 59-60.

average."[51] ISO-NE thus adopted a forecast of 5.8 hours of scarcity for its forecast of 2018/19 revenues.

2. 2017 Net CONE Recalculation

a. ISO-NE Applied Several Reasonable Expectations to System Conditions and Entry and Exit Over the Course of All Twenty Years of the Energy Margins Forecast

In 2017, ISO-NE applied a different EAS revenue forecast methodology than it did in 2014, but like 2014 took deliberate methodological steps to reflect reasonable expectations about future market conditions in its revenue forecast. As Mr. Stoddard summarizes in his affidavit, in 2017, ISO-NE forecast future LMPs based on several expectations of changes in system and market conditions, including specific considerations of the forecasts of delivered gas prices, emission allowances for carbon dioxide, load growth, plant additions and retirements, and future transmission additions including those to import energy from neighboring control areas.[52]

ISO-NE confirmed its intent in adjusting its forecasts based on expected changes in that it found "the objective of the CONE/Net CONE analysis is to calculate what a merchant developer would need to enter the market given reasonable expectations of future system conditions."[53]
Mr. Stoddard also explains that ISO-NE forecast scarcity hours according to different expectations about short-term and long-term market conditions impacting the likelihood of scarcity. ISO-NE forecast 6 and 11.3 scarcity hours for Years 1-3 and Years 4-20, respectively, by "review[ing] the most recent ISO NE projections of scarcity hours in New England" and "extrapolat[ing] a value of 6 hours of scarcity conditions per year over the next 3 years based on current excess capacity

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[51] *Id.*
[52] Draft 2020 Net CONE Report at 49; Stoddard Affidavit at ¶ 17.
[53] Draft 2020 Net CONE Report at 64.

levels, and 11.3 hours over the balance of the forecast period."[54] Completely absent ISO-NE's discussion of its methodology, benchmarking and results for the 2017 Net CONE recalculation is any mention of equilibrium or a system at criterion.

3. ISO-NE's Proposed 2020 Net CONE Recalculation Methodology Differs Significantly From Its 2014 and 2016 Net CONE Recalculations

Mr. Stoddard has compared ISO-NE's recalculation of Net CONE in 2014 and 2016 to the energy margins methodology it applied in the 2020 Net CONE recalculation and concludes that the new approach "is a significant departure from the methodology used in ISO's 2014 and 2016 filings and with ISO's approach to economic studies conducted for other purposes."[55] Though he finds the new approach to be "superficially akin" to the 2014 Net CONE recalculation, he concludes that the adjustments "differ sharply."[56] While, in 2014, ISO-NE used on-peak and off-peak futures settlement prices for 2018/2019 to adjust historical earnings, in 2020 ISO-NE adjusted historical prices to remove the effect of excess supply on both the supply stack and scarcity pricing.[57]

Mr. Stoddard characterizes the 2014 approach as "complete" and "unbiased" in that "using futures prices provides an unbiased, market-based estimate of LMPs and, consequently, net E&AS market earnings, in the future." By contrast, he concludes that the 2020 Net CONE methodology "ignores the market's expectations about how numerous other factors affecting the New England region will also affect future earnings."[58] Thus, where the 2014 Net CONE recalculation "implicitly used *all* information in the market to adjust historical margins to reflect expected future

[54] *Id.*
[55] Stoddard Affidavit at ¶ 28.
[56] *Id.* at ¶ 30.
[57] *Id.*
[58] *Id.*

market conditions, ISO's 2020 approach makes the crude assumption, untethered from reasonably expected future market conditions, that the New England system and the adjacent Control Areas commence at criterion and remain there for the reference resource's 20-year life."[59]

Mr. Stoddard also evaluated the difference between ISO-NE's approaches in 2017 and 2020, finding the difference to be similarly "stark."[60] As he explains, in 2017 ISO-NE used "a detailed, forward-looking production-cost simulation model, with each year of a long-term horizon modeled separately with a good-faith attempt to include all foreseeable factors in the market," including by inserting the reference unit into the model dispatch supply stack "thereby taking proper account of the negative impact on LMPs its operation causes."[61] In contrast, in 2020 ISO-NE "shifts to estimating net E&AS revenues for a single future year based on historical earnings and a single-factor adjustment that increases LMPs by excluding certain units (that may or may not retire)," with no adjustments for "future load growth, generator additions inclusive of the reference unit, and various impacts of state environmental policies on load growth, distributed resources, and demand for renewable energy, despite the fact that these issues are even more salient today than they were three years ago."[62]

Based on his evaluations of ISO-NE's prior Net CONE recalculations, Mr. Stoddard concludes that the Commission "should dismiss any assertion by ISO that its approach to modeling net EAS revenues this year is essentially unchanged."[63] In neither prior Net CONE recalculation did ISO-NE make "an explicit adjustment to account for capacity supply imbalances even when there had been persistent and substantial excess supply in the market," but instead "made

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[59] *Id.*
[60] *Id.* at ¶ 31.
[61] *Id.*
[62] *Id.* at ¶ 31.
[63] *Id.* at ¶ 37.

thoughtful and unbiased adjustments to the current facts on the ground to adjust for reasonably anticipated changes in market conditions."[64] Conversely, in the 2020 Net CONE recalculation "no such adjustment to historical earnings were made except a naïve exercise to slice off surplus capacity."[65]

Likewise, ISO-NE's approach to forecasting scarcity hours in its 2020 Net CONE recalculation is materially different than its approaches in 2014 and 2017. As described above, in 2014 ISO-NE forecast scarcity hours for the first three years of the forecast period based in part on historically low annual scarcity hours and implied heat rates from futures prices. In 2017, ISO-NE based its forecast scarcity hours in the first three years of the forecast period "based on current excess capacity levels."[66] Conversely, in 2020 ISO-NE proposes a scarcity hour forecast methodology that looks not at historical values of futures prices for reasonable expectations, but instead applies the same "at equilibrium" assumption it proposes for forecasting energy margins. These are entirely different methodologies, the former two looking to historical values and expected future conditions as a forecast of expected scarcity hours in the short-term, whereas the latter ignores future expectations but instead applies the constant assumption of a system at equilibrium for 20 consecutive years.

4. ISO-NE's 2020 Net CONE Recalculation Methodology Violates the Tariff

As demonstrated above, a plain reading of the Tariff definition of Net CONE and of Tariff Section 13.2.4 establishes that ISO-NE has applied its Tariff requirement to recalculate Net CONE and reviewed that recalculation with NEPOOL stakeholders, but has done so using an approach

[64] *Id.*
[65] *Id.*
[66] 2017 Net CONE Report at 64.

that is in violation of the Tariff. ISO-NE has applied a methodology for calculating Net CONE that is demonstrably inconsistent with the Tariff. Specifically, ISO-NE has not forecast EAS Margins based on reasonable expectations of first-year or future year market conditions, but instead forecast those margins based on the simple and arbitrary assumption that LMPs, Real-Time reserves prices, and scarcity hours will reflect a system "at equilibrium" for the first-year and all years thereafter. The Tariff requires a more thoughtful consideration of future market conditions, starting with year one, in recalculating Net CONE. If there is any ambiguity in the Tariff, ISO-NE's past practice elucidates ISO-NE's own interpretation of the Net CONE definition. In 2014 and 2016, ISO-NE took deliberate methodological steps to evaluate expected market conditions in determining the revenue offsets. Yet in 2020, ISO-NE simply and arbitrarily assumed the system would be at equilibrium. For these reasons, NEPGA respectfully requests that the Commission reject ISO-NE's attempt to use this new methodology for updating Net CONE in violation of its Tariff.

C. ISO-NE HAS VIOLATED THE FILED RATE DOCTRINE

The filed-rate doctrine forbids a regulated entity to charge rates for its services other than those properly on file with the appropriate federal regulatory authority.[67] Under Section 205 of the FPA, when a utility wishes to change the rate on file, it must provide sixty days of notice to the Commission and file new rate schedules explaining the change to be made and the time when the change will go into effect.[68] Calling a tariff change a "clarification" does not extinguish ISO-NE's statutory obligation. Though the Commission may waive the sixty-day notice requirement for good cause, the corollary doctrine, the rule against retroactive ratemaking, "prohibits the

[67] *See Ark. La. Gas Co. v. Hall*, 453 U.S. 571, 577 (1981); *Montana- Dakota Utils. Co. v. Nw. Pub. Serv. Co.*, 341 U.S. 246, 251-52 (1951).
[68] 16 U.S.C. §§ 824e(a), 824d(d) (2018).

Commission from adjusting current rates to make up for a utility's over- or under-collection in prior periods."[69] There are two exceptions to these legal principles in which a rate adjustment may take effect prior to a FPA Section 205 filing: when parties have notice that a rate is tentative and may be later adjusted with retroactive effect, or when they have agreed to make a rate effective retroactively.[70] Absent those conditions, the Commission itself has no authority to amend the Tariff retroactively to allow ISO-NE to apply its proposed new definition of Net CONE to the already completed recalculation and review of the Net CONE value.[71]

When evaluated according to these legal principles, ISO-NE's completed recalculation and review of a Net CONE value relying on a Tariff provision that remains unfiled is unlawful. First, as explained above, the proposed tariff provision reflects a materially different definition of Net CONE than that on file with the Commission. Second, ISO-NE has not given legal notice of this Tariff change. ISO-NE cannot apply a change to the Tariff without first giving legal notice,[72] and ISO-NE has not yet filed its proposed changes to the definition of Net CONE with the Commission. Consequently, Market Participants were not on notice that the definition of Net CONE on file with the Commission could later be adjusted with retroactive effect. Nor have Market Participants agreed to make ISO-NE's proposed definition of Net CONE effective retroactively. It is "inconsistent with longstanding Commission policy" for an ISO/RTO "to implement a change to a practice that significantly affects the rates, terms, and conditions of a Commission jurisdictional service ... without Commission approval and without a clear and complete record."[73] Over the

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[69] *Towns of Concord, Norwood, and Wellesley Mass. v. FERC*, 955 F.2d 67, 68 (D.C. Cir. 1992).
[70] *See West Deptford Energy, LLC v. FERC*, 766 F.3d 10, 22-23 (D.C. Cir. 2014).
[71] *Old Dominion Elec. Coop. Inc. v. FERC*, 892 F.3d 1223, 1230 (D.C. Cir. 2018) ("*ODEC*"), citing *Columbia Gas Transmission Corp. v. FERC*, 895 F.2d 791, 794-97 (D.C. Cir. 1990); *see also, e.g., Ark. La. Gas Co. v. Hall*, 453 U.S. 571, 578 (1981) (finding that the Commission itself has no power to alter a rate retroactively").
[72] *ODEC* at 1232 [citations omitted].
[73] *See Energy Spectrum, Inc., Riverbay Corporation v. New York Independent System Operator Inc.*, 141 FERC ¶ 61,197 at P 51 (2012).

past several months, ISO-NE implemented the Tariff utilizing an unfiled Tariff definition that significantly changes the Net CONE value relative to the definition on file with the Commission without legal notice and without Commission acceptance.

Here, ISO-NE has applied this new recalculation methodology without first satisfying the FPA's requirement that ISO-NE file any changes to the terms, rates, and conditions of its tariff pursuant to Section 205 and demonstrate that such changes are just and reasonable prior to their application.

The Tariff explains the following:

> **CONE and Net CONE shall be recalculated for the Capacity Commitment Period beginning on June 1, 2025 and no less often than once every three years thereafter. Whenever these values are recalculated, the ISO will review the results of the recalculation with stakeholders and the new values will be filed with the Commission prior to the Forward Capacity Auction in which the new value is to apply.**

Consistent with this Tariff obligation, ISO-NE has completed its recalculation and review with stakeholders for the new Net CONE value that it will soon file with the Commission. In so doing, however, ISO-NE applied a newly proposed definition of Net CONE that has yet to be filed with the Commission, rather than the existing definition lawfully on file. ISO-NE's use of a proposed tariff provision to implement its Tariff violates the filed rate doctrine. A new provision can only become effective with sixty days notice upon filing of the Commission.[74] Yet, ISO-NE chose to apply the proposed tariff provision in its implementation of the Tariff. That is simply not lawful.

That the Net CONE value derived from this new methodology proposed by ISO-NE will be used in FCA 16, an auction that will occur in the future, is of no consequence. ISO-NE's

[74] *ODEC* at 1232 [citations omitted].

violation is in how and when it applied its Tariff. In *VEPCO*, the Commission faced a similar set of facts, and delineated its approach to the filed-rate doctrine in determining whether an ISO/RTO action is prospective in nature. In that case, the Commission authorized a waiver to allow PJM to deviate from its methodology for calculating a resource's forced outage rate. The Commission's approval was based on its determination that the calculation of the resource's forced outage rate would occur at a future date.[75] Unlike in *VEPCO*, ISO-NE has already recalculated and reviewed a Net CONE value with stakeholders, and will seek approval of a proposed Tariff change that describes the methodology that would retroactively govern that recalculation. Such a retroactive application of a filed-rate constitutes a violation of the filed-rate doctrine.

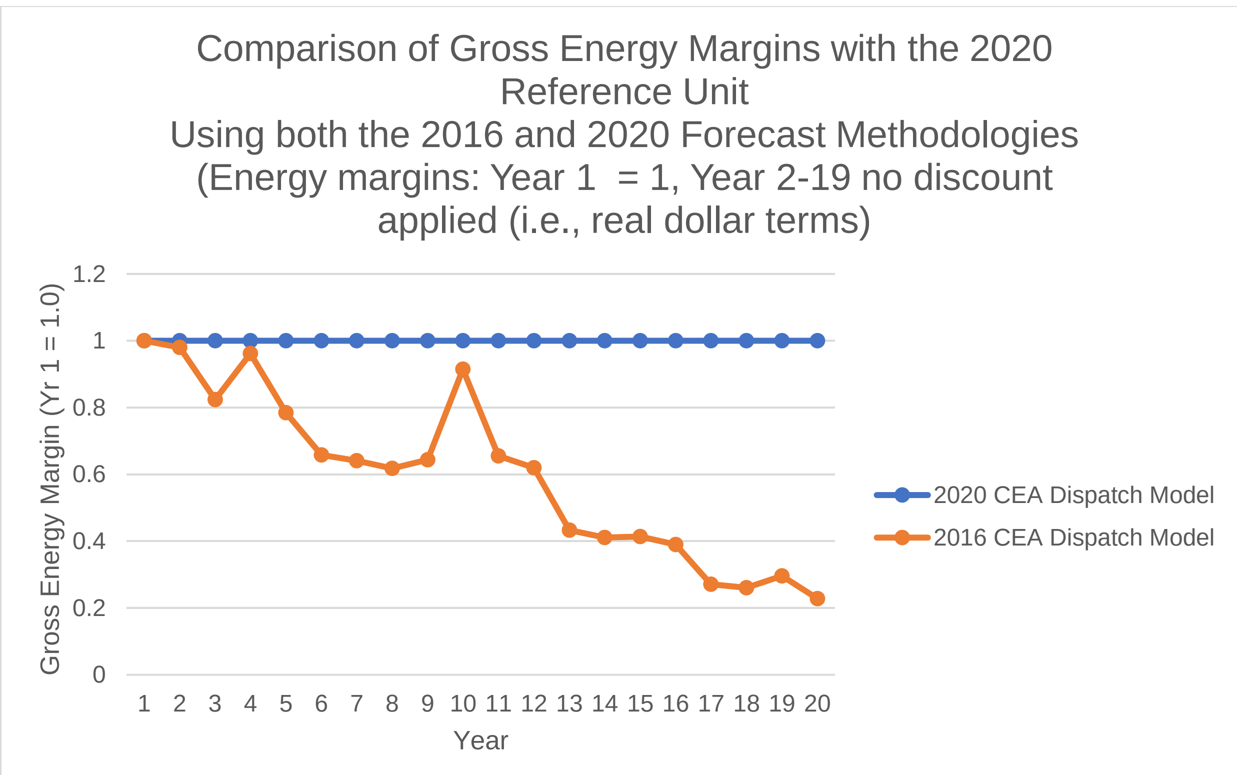
D. MATERIALITY OF THE DIFFERENCE BETWEEN THE ON-FILE TARIFF DEFINITION AND ISO-NE'S PROPOSAL

ISO-NE's failure to follow its Tariff in recalculating a Net CONE value has a signifcant impact on that value relative to a methodology that complies with the Tariff. Mr. Stoddard concludes that ISO-NE's proposed 2020 Net CONE recalculation methodology creates a material, asymmetric bias in lowering Net CONE such that it has a "harmful impact to the market."[76] Mr. Stoddard provides a quantitative and qualitative measure of this bias.

Mr. Stoddard first simply removes the Level of Excess Adjustment from ISO-NE's 2020 Net CONE recalculation model and finds that Net CONE would be approximately \$0.21/kW-month higher without the Level of Excess Adjustment.[77] Second, Mr. Stoddard observes that ISO-NE's new methodology implicitly assumes the same resource mix in the future as that from 2017 – 2019 (the period from which ISO-NE derived historical energy and reserves prices), less those

[75] *Order on Waiver Request, Virginia Elec. and Power Co.*, 173 FERC ¶ 61,129, at P 29 (2020).
[76] Stoddard Affidavit at ¶ 48.
[77] *Id.* at ¶ 53.

removed by ISO-NE to set the system "at equilibrium."[78] Finding this assumption "unsound" and plainly inconsistent with the existing Tariff, particularly because it fails to account for "[t]he impact on future earnings of a gas-fired turbine from this transition to zero-bid intermittent resources will be profound, and yet remain unexamined by ISO this year," Mr. Stoddard relies on ISO-NE's 2017 Net CONE recalculation methodology for an adjustment to account for reasonable expectations of the future resource mix, as contemplated by the existing Tariff.[79] The results show a significant decrease in forecast energy margins. Mr. Stoddard plotted the decrease in energy margins over the study period, with each year's energy earnings as a percentage of the first-year earnings, compared to the 2020 assumption of constant energy earnings throughout the 20-year economic life of the reference unit, as shown here:



78 *Id.* at ¶¶ 53-56.
79 *Id.*

Mr. Stoddard estimates that to account for forecast energy revenues in this way would result in a $0.37/kW-month reduction in the EAS Margin value, and thus a $0.37/kW-month increase in the Net CONE value.[80] Together with the removal of the Level of Excess Adjustment, described above, Mr. Stoddard concludes that the resulting EAS Margin value would be reduced by $0.53/kW-month. He explains that this total is slightly less than the sum of the individual impacts ($0.21 and $0.37/kW-month, respectively) because these are multiplicative adjustments.[81] Together, these adjustments would raise the Net CONE value relative to that recommended by Concentric from $7.02 to $7.55/kW-month, a 7.5% increase.[82] Mr. Stoddard explains why for several reasons this is a conservative estimate of the appropriate adjustment to Net CONE.[83]

As for the materiality of ISO-NE's proposed annual scarcity hours forecast, it can be measured by changing the assumed scarcity hours assumption in the ISO-NE discounted cash flow model. ISO-NE has applied an annual scarcity condition forecast assumption of 11.3 hours in all years. Based on ISO-NE's 2017 scarcity hour forecast. Mr. Stoddard instead assumes 6 hours for the first four years, rising to 11.3 hours for the balance.[84] Changing.[85] Applying these hours into the ISO-NE discounted cash flow model, rather than 11.3 hours for all years, results in an approximate increase in Net CONE of $0.29/kW-month, calculated conservatively, due to decreased in forecast Pay-for-Performance and scarcity condition revenues.[86]

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. This has a significant impact

[80] *Id.* at ¶ 57.
[81] *Id.* at ¶ 58.
[82] *Id.*
[83] *Id.*
[84] Stoddard Affidavit at ¶ 60
[85] 7.4 hours is the assumed annual scarcity hours ISO-NE proposes to use for purposes of developing Offer Review Trigger Prices.
[86] Stoddard Affidavit at ¶¶ 60-62.

on Market Participants and the value of providing reliability services in an FCA Capacity Commitment Period. The Tariff change ISO-NE's proposes, therefore, cannot be explained away as a clarification or immaterial to the Net CONE calculation.

V. RELIEF REQUESTED

NEPGA respectfully asks that the Commission find that ISO-NE has violated its Tariff and direct ISO-NE to recalculate, review with NEPOOL stakeholders, and file with the Commission a Net CONE value consistent with the existing Tariff definition. NEPGA recognizes that this relief may not allow time for ISO-NE to review its recalculated Net CONE value with NEPOOL stakeholders prior to the beginning of the FCA 16 calendar.[87] If so, NEPGA respectfully requests that the Commission 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. NEPGA further asks that should the Commission grant this relief, it find that ISO-NE's proposed Net CONE value for FCAs 16-18 that will be filed later this month is not a lawful rate and is thus unjust and unreasonable.

VI. REQUEST FOR FAST TRACK PROCESSING AND A SHORTENED COMMENT PERIOD

The issues NEPGA raises in this Complaint warrant fast track processing under Rule 206(b)(11) of the Commission's Rules of Practice and Procedure. As explained above, ISO-NE has recalculated and reviewed with NEPOOL stakeholders a Net CONE value in violation of its Tariff. ISO-NE will file its proposed Net CONE value for Commission acceptance in the coming

[87] The FCA calendar is generally considered to begin in the March prior to the FCA, when Retirement De-List Bids (if any) must be submitted to ISO-NE. For example, for FCA 16 running in February 2022, the FCA calendar is considered to begin on March 10, 2021, when Retirement De-List Bids are due.

weeks. A decision on whether ISO-NE's approach to calculating Net CONE constitutes a Tariff violation is a necessary antecedent to whether the Commission can or should evaluate the Net CONE filing on its merits. It would be administratively inefficient, and unneccesary, for the Commission to engage in an evaluation of ISO-NE's upcoming Net CONE filing if ISO-NE's approach to its Net CONE calculation were later deemed unlawful. Thus, Market Participants, ISO-NE and the Commission itself would benefit from expedited consideration of the issues raised in this Complaint in order to provide notice that pleadings and Commission deliberations on the Net CONE proposal are necessary, or that the Net CONE value filed by ISO-NE is the product of a Tariff or filed-rate doctrine violation, thus rendering ISO-NE's Net CONE filing moot. NEPGA therefore respectfully requests a Commission decision on this Complaint within 34 days, *i.e.*, by Friday, January 15.

VII. CONCLUSION

Wherefore, NEPGA respectfully requests that the Commission NEPGA respectfully asks that the Commission find that ISO-NE has violated it Tariff and direct ISO-NE to recalculate, review with NEPOOL stakeholders, and file with the Commission a Net CONE value consistent with the existing Tariff definition. NEPGA recognizes that this relief may not allow time for ISO-NE to review its recalculated Net CONE value with NEPOOL stakeholders prior to the beginning of the FCA 16 calendar.[88] If so, NEPGA respectfully requests that the Commission 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. NEPGA further asks that should the Commission grant

[88] The FCA calendar is generally considered to begin in the March prior to the FCA, when Retirement De-List Bids (if any) must be submitted to ISO-NE. For example, for FCA 16 running in February 2022, the FCA calendar is considered to begin on March 10, 2021, when Retirement De-List Bids are due.

this relief, it find that ISO-NE's proposed Net CONE value for FCAs 16-18 that will be filed later this month is not a lawful rate and is thus unjust and unreasonable.

Respectfully Submitted,

*/s/ Bruce Anderson*___________

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VIII. COMPLIANCE WITH RULE 206

A. RULES 206(b)(1) – (5): DESCRIPTION OF ALLEGED VIOLATION AND QUANTIFICATION OF IMPACT OR BURDEN

NEPGA alleges that ISO-NE has violated its Tariff by not complying with the Tariff definition of Net CONE in recalculating and reviewing with NEPOOL stakeholders a Net CONE value for effect beginning in FCA 16. NEPGA further alleges that ISO-NE has violated the filed-rate doctrine by applying a definition of Net CONE not on file with the Commission. ISO-NE's violation of the Tariff results in a Net CONE value that unjustly and unreasonably devalues Net CONE. With Net CONE as a primary factor in positioning the Forward Capacity Auction demand curve, a demand curve based on this Net CONE value with unjustly and unreasonable devalue capacity to the determinent of NEPGA's Members who each participate in and clear resources in the Forward Capacity Auction.

B. RULE 206(b)(6)OTHER PENDING PROCEEDINGS

As discussed above, ISO-NE recently completed its recalculation and review with NEPOOL stakeholders of a Net CONE value for effect beginning in FCA 16. ISO-NE will file its proposal in the coming weeks, a precise date not announced. ISO-NE will file the Net CONE value under Section 205 of the Federal Power Act, and it will therefore go into effect 60 days later absent the Commission not accepting the Net CONE filing, either in rejecting it outright or in setting settlement and evidentiary proceedings to resolve any material questions or fact.

C. RULE 206(b)(7)SPECIFIC RELIEF OR REMEDY REQUESTED

NEPGA asks that the Commission order ISO-NE to recalculate Net CONE according to the Tariff definition, or, should it seek to change the definition, initiate a NEPOOL stakeholder process to vet and deliberate the Net CONE definition change, and if filed and then accepted by the Commission to apply it prospectively. Recognizing that this relief may cause ISO-NE to not have a recalculated Net CONE value accepted prior to the beginning of the FCA 16 calendar, NEPGA respectfully requests that the Commission further direct ISO-NE to seek a waiver of its Tariff to allow it to apply the Tariff-defined annual adjustment factors to the FCA 15 Net CONE value to create the FCA 16 Net CONE value.

D. RULE 206(b)(8)SUPPORTING DOCUMENTS

In support of its Complaint, NEPGA provides the following supporiting documents:

Attachment A: Affidavit of Robert Sttodard
Attachment B: Robert Stoddard CV
Attachment C: Form of Notice

E. RULE 206(b)(9)PRIOR EFFORTS TO RESOLVE THIS DISPUTE

NEPGA has not initiated dispute resolution procecures prior to filing this complaint. As explained above, NEPGA and its Members raised this issue in the NEPOOL process, including NEPGA's position that ISO-NE has proposed a material change to the Tariff that cannot be put into effect until it has been filed with and accepted by the Commission. As further explained above, ISO-NE maintains that its proposed Tariff changes describing the methodology it has applied clarify the Tariff, and that it may lawfully apply this Net CONE methodology without first filing and receiving Commission acceptance for the Tariff changes and methodology they describe.

F. RULE 206(b)(10) FORM OF NOTICE

A form of notice of this Complaint is included herein as Attachment C.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this Complaint on the Respondent and on each New England state public utility commission. Dated at Boston, Massachusetts, December 11, 2020.

/s/ Bruce Anderson

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