

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

ISO New England, Inc.)	
New England Power Pool)	Docket No. ER21-1637-000
Participants Committee)	
)	

**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 moves to answer and answers the North East Offshore, LLC (“NEO”) protest of ISO New England Inc.’s (“ISO-NE”) proposed Offer Review Trigger Price (“ORTP”) for offshore wind (“OSW”) resources.³

NEO argues that the NEPOOL-proposed ORTP for OSW resources is just and reasonable and preferable to ISO-NE’s proposed value in part because the capital costs underlying NEPOOL’s proposed value are “within the reasonable range of *expected* prevailing market conditions.”⁴ Indeed, NEO goes so far as to suggest that the ORTP for OSW resources *must* reflect current expectations of future capital costs for it to be just and reasonable.⁵ NEO further maintains

¹ 18 C.F.R. §§ 385.212, 385.213 (2020).

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

³ North East Offshore LLC’s Comments in Support of the NEPOOL Proposal and Protest of the ISO-NE Proposal, Docket No. ER21-1637-000 (filed Apr. 28, 2021) (“NEO Protest”).

⁴ NEO Protest, Attachment A, Affidavit of Claus Bojle Moller and Kenneth Bowes in Support of North East Offshore LLC’s Comments in Support of the NEPOOL Proposal and Protest of the ISO-NE Proposal at P 16 (“Moller/Bowes Affidavit”) (emphasis added).

⁵ *Id.* at P 26 (“[T]he analysis for calculating the break-even contribution needed from the capacity market for a new offshore wind project for the 2025-2026 Capacity Commitment Period should necessarily be based on a forward-looking approach to reflect not only the fact that it is happening in the future but to also reflect the downward cost trends that are expected in the offshore wind sector.”).

that ISO-NE's failure to speculate about future capital costs renders its ORTP for OSW unjust and unreasonable. But neither NEO's expectations, nor its opinion on a just and reasonable ORTP methodology, inform whether NEPOOL's methodology for "inferring" capital costs renders its capital cost assumption reasonable. The justness and reasonableness of NEPOOL's capital cost assumption rests on whether it is properly grounded in fact, which, as the ISO-NE Internal Market Monitor ("IMM") explains in its Comments,⁶ is lacking. NEO's speculation as to future OSW resource capital costs neither remedies the flaws in NEPOOL's methodology nor overcomes the evidence the IMM has provided in response showing that NEPOOL's capital cost assumption has no basis in fact and entirely contradicts the IMM's review of actual wholesale market data.

In its Protest in this proceeding, NEPGA respectfully requests that the Commission reject, without prejudice, ISO-NE and NEPOOL's proposed ORTPs as having impermissible retroactive effect.⁷ If the Commission does not apply the retroactive ratemaking doctrine here, it should nevertheless find that the equitable solution—that is consistent with settled expectations of suppliers—is to hold the sixteenth Forward Capacity Auction ("FCA") with the ORTPs that are in place now, i.e., the ORTPs for FCA 15. Should the Commission decline to grant either remedy, NEPGA asks that the Commission consider this Answer together with NEPGA's Protest and reject NEPOOL's proposed ORTP for OSW resources and NEPOOL's proposed changes to the Tariff

⁶ Comments of the Internal Market Monitor on the Recalculation of the Offer Review Trigger Prices and Proposed Jump Ball NEPOOL Alternative, Docket No. ER21-1637-000 (filed Apr. 28, 2021 ("IMM Comments")).

⁷ Protest of the New England Power Generators Association, Inc., Docket No. ER21-1637-000 (filed Apr. 28, 2021).

as unjust and unreasonable. Good cause exists to permit this answer because it clarifies the record and law in this proceeding and responds to evidence newly filed by NEO in its Protest.⁸

I. ANSWER

The IMM, unlike NEO or any other party, has had the benefit of reviewing all actual FCA market information, specifically cost workbooks (including capital costs) from all OSW resources that have sought to offer in the FCA below the ORTP.⁹ It is based on these reviews that the IMM concludes that the OSW ORTP and underlying capital costs “are false.”¹⁰ The IMM explains that it has “seen no evidence in the data submitted for mitigation review (of comparable Offshore Wind resource) in recent years that supports” NEPOOL’s OSW resource capacity costs, proposed-ORTP, or belief that “such overnight costs are decreasing.”¹¹ This unequivocal and informed comparison of the capital cost assumptions for actual OSW resource FCA offer prices, versus NEPOOL’s “inferred” capital cost methodology, alone gives the Commission reason to reject the ORTP that NEPOOL proposes for OSW resources. The opinion NEO offers that it expects capital costs to decrease to the degree assumed by NEPOOL does nothing to correct for the fundamental flaws in NEPOOL’s methodology or to overcome the facts and evidence presented by the IMM in response.

⁸ See, e.g., *Calpine Corp. v. PJM Interconnection, LLC*, 173 FERC ¶ 61,061 at PP 7, 9 (2020) (accepting answers to answers that “have provided information that assisted [FERC] in [its] decision-making process”); *PJM Interconnection, LLC*, 173 FERC ¶ 61,028 at P 29 (2020) (explaining “Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority,” and accepting answers to protest and answers “because they have provided information that assisted [the Commission] in [its] decision-making process”); *Tennessee Gas Pipeline Co., L.L.C.*, 161 FERC ¶ 61,265 at P 11 (2017) (“Although the Commission’s Rules of Practice and Procedure do not permit answers to protests or answers to answers, our rules also provide that we may waive this provision for good cause shown. We will accept the filings here because they have provided information that assisted us in our decision-making process.”).

⁹ IMM Comments at 3.

¹⁰ *Id.*

¹¹ *Id.* at 3.

NEO submits the Moller and Bowes Affidavit¹² for the purpose of showing that the capital costs assumed by NEPOOL are just and reasonable because they are consistent with NEO's and other capital cost forecasts for OSW resources in New England. According to NEO, NEPOOL's assumed capacity costs are "within the reasonable range of expected prevailing industry expectations,"¹³ and that it and its partners "expect cost reductions to continue" leading up to the FCA 16 (2025-2026) Capacity Commitment Period.¹⁴ NEO further opines that the ORTP "should necessarily be based on a forward-looking approach to reflect not only the fact that it is happening in the future but to also reflect the downward cost trends that are expected in the offshore wind sector."¹⁵ These NEO opinions however do not speak to or remedy the fatal flaws in NEPOOL's methodology, and reflect an incorrect belief that ISO-NE must apply some type of "expectation" factor to adjust the IMM's actual capital cost observations in order for its proposed ORTP be considered just and reasonable.

The Internal Market Monitor, in its comments filed in this proceeding, explains that NEPOOL's capital cost assumption methodology — inferring OSW capital costs from Power Purchase Agreements — is not as robust or reliable as and differs starkly from the use of "direct capital cost data."¹⁶ The IMM further explains that NEPOOL solves for capital costs based on its assumptions about future cash flows, rendering it highly sensitive to those cash flow assumptions when in reality cash flows have no bearing whatsoever on capital costs.¹⁷ The NEPOOL capital

¹² NEO Protest, Attachment A, Affidavit of Claus Bojle Moller and Kenneth Bowes in Support of North East Offshore LLC's Comments in Support of the NEPOOL Proposal and Protest of the ISO-NE Proposal ("Moller/Bowes Affidavit").

¹³ *Id.* at P 21.

¹⁴ *Id.* at P 23.

¹⁵ *Id.* at P 26.

¹⁶ IMM Comments at 22 (noting that ISO-NE used direct capital cost data in developing its OSW resource capital cost assumption.)

¹⁷ *Id.* at 23.

cost assumption is therefore unreasonable in two parts, first because it is derived from a causal relationship (capital costs to forecast revenues) that does not exist, and second because of the extremely high sensitivity of the capital cost assumption to this fictional relationship.¹⁸ For these and other reasons the IMM concludes, “any inferred capital cost value will be too low.”¹⁹ On top of this, NEO offers as support for NEPOOL’s (and implies that the ORTP in fact must include) current expectations about future capital cost. Together, NEPOOL and NEO ask the Commission to accept as just and reasonable (or as preferable to ISO-NE’s approach) a flawed methodology supported in part by speculation, when these are not reasoned bases for recalculating ORTPs.

Further, NEPOOL’s use of future expectations about cash flow to determine capital costs is duplicative of a mechanism already in the Tariff. To incorporate changes in capital costs, the Tariff requires an annual adjustment to each of the line items underlying the ORTPs based on actual historical changes in capital costs.²⁰ For example, the wind turbine capital costs line item is adjusted annually by the Bloomberg Wind Turbine Price Index based on the most recent 12 months of published turbine costs.²¹ An ORTP recalculated based on an expectation of future capital costs is duplicative in two ways. First, the annual adjustment itself accounts for trends in capital costs, causing increases or decreases to the assumed capital costs year over year based on the most recent actual cost information. Speculating in advance of these annual adjustments is less sound than the fact-based approach and redundant to the Tariff requirements. Second, if the NEPOOL speculative approach were to be accepted, any actual decreases to capital costs reflected in the annual adjustments would duplicate the presumed reduction in capital costs based on NEO’s

¹⁸ *Id.* at 23, note 39 (IMM finding that the Offer Floor Price can be reduced by as much as 45% by making small adjustments in a number of the input variables).

¹⁹ *Id.*

²⁰ ISO-NE Transmission, Markets and Services Tariff § III.A.21.1.2(e)(1)-(3).

²¹ *Id.*

expectations, causing a second counting of actual capital cost decreases. The capital cost cannot be considered reasonable when it accounts for capital cost reductions twice over.

Finally, it is important to recount that an ORTP is a benchmark price used to confirm that new capacity resource offers are competitive. An ORTP does not prohibit a Market Participant from offering into the FCA. The ORTP is simply a rule that requires that a Market Participant wishing to offer below a price set at the low end of a facially, reasonable competitive offer, must provide the IMM with information to support its actual costs. If future OSW capital costs turn out to be as low as NEO suggests, it or any other Market Participant should be able to satisfy that information production requirement with ease through the due course of the IMM's review. Further, OSW resource Market Participants have the same due process rights as all other resources with regard to IMM mitigation review, in that they may challenge existing mitigation rules—as NEPGA has—as unjust and unreasonable through its rights under the Federal Power Act Section 206.²² Because the ORTP is a generic line of demarcation dictating which offers must be first submitted to the IMM for review, it need not and should not be set based on a methodology highly sensitive to variables independent of one another and supported by future capital cost speculation.

²² See, e.g., *ISO New England, Inc. & New England Power Pool Participants Comm., New England Power Generators Ass'n v. ISO New England, Inc., PSEG Energy Resources & Trade LLC, et al.*, 138 FERC ¶ 61027 at P 121 (2012) (in a complaint proceeding initiated by NEPGA, the Commission, on rehearing, found “that the dynamic de-list bid threshold of \$1/kW-month is a reasonable competitive default capacity bid that appropriately balances the risk of over and under mitigation.”)

II. CONCLUSION

For these reasons, and those explained in its Protest, NEPGA respectfully requests that the Commission reject, without prejudice, ISO-NE and NEPOOL's proposed ORTPs as having impermissible retroactive effect. If the Commission does not apply the retroactive ratemaking doctrine here, it should nevertheless find that the equitable solution—that is consistent with settled expectations of suppliers—is to hold the sixteenth Forward Capacity Auction with the ORTPs that are in place now, i.e., the ORTPs for FCA 15. Should the Commission decline to do so, it should reject NEPOOL's proposed ORTP for OSW resources and NEPOOL's proposed changes to the Tariff as unjust and unreasonable.

Respectfully Submitted,

/s/ Bruce Anderson_____

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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, May 11, 2021.

/s/ Bruce Anderson _____

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