UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England Inc.	)	
	)	**Docket No. ER22-1528-000**
New England Power Pool 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] files this Motion for Leave to Answer and Answer to several pleadings filed in response to ISO New England Inc.'s ("ISO-NE") and the New England Power Pool Participants Committee's ("NEPOOL") joint filing of Tariff[3] changes eliminating the Forward Capacity Market's ("FCM") Minimum Offer Price Rule ("MOPR") (the "Proposal").[4] As was the case in the NEPOOL stakeholder process, the pleadings collectively demonstrate a consensus among an extraordinarily diverse group of stakeholders that the Proposal is just and reasonable, and that Commission acceptance of the Proposal is the best path forward for New England.

[1] 18 C.F.R. § 385.212, 213 (2022).
[2] The comments expressed herein represent those of NEPGA as an organization, but not necessarily those of any particular NEPGA member.
[3] References herein to the Tariff are to the ISO New England Inc. Transmission, Markets, and Services Tariff.
[4] ISO New England Inc. and the New England Power Pool Participants Committee Filing Re: Revisions to ISO New England Transmission, Markets, and Services Tariff if Buyer-Side Market Power Review and Mitigation Reform, Docket No. ER22-1528-000 (filed March 31, 2022) (the "ISO-NE and NEPOOL Filing").

A handful of parties ask the Commission to choose between eliminating the MOPR effective in FCA 17 versus FCA 19, but that is not the matter before the Commission in this proceeding. The only question before the Commission is whether the Proposal, in its entirety, is just and reasonable. ISO-NE has provided ample evidence in support of the Proposal, and no party has demonstrated otherwise. For these reasons, NEPGA respectfully asks that the Commission accept the proposal as filed. NEPGA submits that this Answer adds to the record and clarifies certain issues before the Commission in this proceeding, and thus asks the Commission to accept and consider NEPGA's Answer.

I. ANSWER

A. THE PROPOSAL REPRESENTS A CONSENSUS AMONG STAKEHOLDERS THAT IT IS THE BEST PATH FORWARD FOR NEW ENGLAND

A broad array of stakeholders filed comments supporting or explicitly not opposing the Proposal, including new resource developers and existing resource owners, the New England states, both the External and Internal Market Monitor, NEPOOL, offshore wind resources under contract, and small and distributed resource owners and developers. Though some parties express a preference for one part of the Filing proposal over another, as is the case with any compromise agreement, the question before the Commission here is whether the Proposal is, in sum, just and reasonable. NEPGA explains in its Comments that the Proposal is just and reasonable for several reasons, including that it: (1) is a compromise solution among regional stakeholders and ISO-NE to eliminate the MOPR, the type of regional agreement long-encouraged and favored by the Commission;[5] (2) mitigates the consequential risks to resource adequacy and system reliability;[6]

[5] Comments of the New England Power Generators Association, Inc., at 3 – 6, Docket No. ER22-1528-000 (filed Apr. 21, 2022).
[6] *Id*. at 6 – 12.

and (3) improves upon the opportunities the existing wholesale market designs provide to large quantities of resources that satisfy New England state carbon-reduction policies.[7] Several parties agree with NEPGA.

One, Shell Energy North America, a large offshore wind developer active in Northeast wholesale markets, and a party to multiple state contracts for offshore wind, supports the Proposal as a balanced NEPOOL response to evolving system needs.[8] From its perspective as an offshore wind developer that both benefits from the elimination of the MOPR and delivers the energy and capacity the states seek, Shell offers that the Proposal creates the necessary "transparent, efficient, and predictable path to support entering and remaining in the market" that in turn give state-sponsored resources "financing on more attractive terms for those resources."[9] Advanced Energy Economy, representing several developers of resources favored by the New England states, concludes that the Proposal is "a significant improvement over current market rules," agrees that "capacity accreditation reform is needed"[10] and cites with approval to the Proposal's elimination of the MOPR.[11]

The External and Internal Market Monitors ("EMM" and "IMM," respectively) support the proposal on similar bases as well. The IMM sees the Proposal as a "positive step forward in allowing Sponsored Policy Resources … the opportunity to participate in an FCA."[12] The IMM further opines that if the Commission "agrees on the merits of the Proposal" that it is a "reasonable and practical approach for the region while mitigating some of the risks posed by its removal."[13]

[7] *Id*. at 12 – 15.
[8] Comments of Shell Energy North America (US), L.P., Docket No. ER22-1528-000 (filed Apr. 21, 2022).
[9] *Id.* at 5-6. (Shell further notes the consumer benefits of the lower financing rates).
[10] Comments of Advanced Energy Economy at 25, Docket No. ER22-1528-000 (filed Apr. 21, 2022).
[11] *Id.* at 27.
[12] Comments of the Internal Market Monitor at 1, Docket No. ER22-1528-000 (filed Apr. 21, 2022).
[13] *Id*. at 15.

The EMM observes that, in the context of MOPR elimination, capacity accreditation changes are "particularly important because some of the resources that [are] most over-accredited under ISO-NE's current rules are the Sponsored Policy Resources,"[14] *i.e.*, those resources that will assume Capacity Supply Obligations ("CSOs") at a controlled pace in FCAs 17 and 18 and unconditionally beginning in FCA 19 under the Proposal. The EMM thus supports the Proposal as "a reasonable means" to "support the performance of" the Forward Capacity Market while "essential improvements to capacity accreditation" are put into effect.[15]

The New England States Committee on Electricity ("NESCOE"), representing the "interests of the citizens of the New England region,"[16] does not oppose the Proposal, finding no cause for the Commission to reject it.[17] NESCOE explains that after months of NEPOOL deliberations it "recognize[s]" that ISO-NE intends to "mitigate the potential for short-term reliability risks and cost impacts,"[18] and recounts that it accordingly advocates for MOPR elimination as soon as possible but "in a manner that supports system reliability."[19] NESCOE like NEPGA "urges caution against" the Commission granting relief to parties "seeking a faster track to full reform,"[20] on the basis that to do so would risk failing to apply the RTR exemption in FCA 17.[21]

---

[14] Motion to Intervene and Comments of the ISO New England's External Market Monitor at 6, Docket No. ER22-1528-000 (filed Apr. 21, 2022).
[15] *Id.* at 7.
[16] Comments of the New England States Committee on Electricity at 3, Docket No. ER22-1528-000 (filed Apr. 21, 2022) (NESCOE notes that its position represents that of five of the six New England states, with New Hampshire not joining in the NESCOE Comments).
[17] *Id.* at 1 – 2 (explaining, in part, that "NESCOE does not oppose the limited two-year transition to full MOPR reforms reflected in the Filing so long as that deadline remains firm.").
[18] *Id.* at 10.
[19] *Id.*
[20] *Id.*at 11 (NESCOE cautions against granting relief to both those seeking MOPR elimination in FCA 17 and those "wanting to retain the existing MOPR framework," but no party filed a protest asking the Commission to reject the Proposal on the latter basis.).
[21] *Id.* at 11 (NESCOE states the risk as "that the *status quo* capacity market rules would remain intact for FCA 17.").

B. THE COMMISSION SHOULD REJECT PARTY REQUESTS THAT IT ACCEPT PART OF THE PROPOSAL AND REJECT OTHERS

Some parties ask the Commission to keep one part of the Proposal and reject the others. The Clean Energy and Consumer Advocates ("Advocates") provide testimony intending to "explain that the Commission should reject ISO-NE's proposed transition mechanism."[22] The Massachusetts Attorney General and Maine Public Advocates ("Consumer Advocates") likewise ask the Commission to reject the Proposal without prejudice and remand it "with guidance" to ISO-NE and NEPOOL, presumably, for ISO-NE to make a new Section 205 filing excluding the RTR Exemption.[23] These parties effectively are asking the Commission to "guide" ISO-NE in a way that the Commission may choose one part of the proposal over the others (via a new Section 205 filing). The question before the Commission instead however is whether the Proposal is in its entirety just and reasonable.

Following a long line of controlling precedent, the U.S. Court of Appeals for the District of Columbia Circuit most recently in 2017 confirmed that, with an exception only for ministerial changes, the Commission may not accept in part and reject in part a utility's proposed rate change under Section 205 of the Federal Power Act.[24] Were the Commission to remand with "guidance"

---

[22] *See, e.g.,*Protest of Clean Energy and Consumer Advocates, Testimony of Abigail Krich on Behalf of RENEW Northeast, *et al.*, at 3, Docket No. ER22-1528-000 (filed Apr. 21, 2022) ("The purpose of my testimony is to explain that the Commission should reject ISO-NE's proposed transition mechanism.");

[23] Joint Comments and Partial Protest of Massachusetts Attorney General Maura Healy and the Maine Office of the Public Advocate at 1, 24 ("Contrary to the requirements of the Federal Power Act (FPA) and FERC precedent, the ability of the transition mechanism to address the market risks identified by ISO-NE as arising from MOPR reform, as well as the purported benefits of a two-FCA delay, are unsubstantiated.") ("MassAG/Maine PA Comments").

[24] *See NRG Power Marketing, LLC v. FERC ("NRG"),* 862 F.3d, 108, 114-17; *see also Atl. City Elec. Co. v. FERC,* 295 F.3d 1, 10 (D.C. Cir. 2002); *Western Resources, Inc. v. FERC,* 9 F.3d 1568 (D.C. Cir. 1993); *Pub. Serv. Comm'n v. FERC,* 866 F.2d 487 (D.C. Cir. 1989); *Sea Robin Pipeline Co. v. FERC,* 795 F.2d 182, 186-87 (D.C. Cir. 1986); *City of Winnfield v. FERC,* 744 F.2d 871, 875 (D.C. Cir. 1984). Although several of those cases arose under section 4 of the Natural Gas Act, rather than section 205 of the Federal Power Act, the courts "apply[] interchangeably judicial interpretations of provisions from the Natural Gas Act to their substantially identical counterparts in the Federal Power Act." *See, e.g., City of Anaheim v. FERC,* 558 F.3d 521, 523 n.2 (D.C. Cir. 2009) (internal quotations omitted).

to file a proposal to eliminate the MOPR immediately, the new Section 205 filing would result in an "entirely different rate design" from that proposed by ISO-NE and NEPOOL and from "the rate design that was 'previously in effect.'"[25] Indeed, the specific relief the Consumer Advocates requests mirrors the procedural history giving rise to the Court's decision in *NRG Power*.[26] NEPGA asks that the Commission reject requests to do so accordingly, maintaining the clear precedent directed by the Court.

NEPGA here also looks to correct the record with respect to the collaboration between ISO-NE and NEPOOL stakeholders on the Proposal. The Consumer Advocates claim that the RTR Exemption quantity was "fossil-fuel-generator derived,"[27] and that a "paramount" motivation for ISO-NE in supporting the application of the RTR Exemption is in "protecting" incumbent generators.[28] This misrepresents the derivation of the Proposal, the breadth of agreement in the NEPOOL process, and simply is not true. ISO-NE agreed to the RTR Exemption quantity "as a reasonable compromise among stakeholders who objected to immediate MOPR elimination *and state representatives and others who were pushing for more rapid elimination of MOPR.*"[29] Further, the RTR Exemption was only one of several NEPOOL stakeholder-initiated changes to the Proposal that ISO-NE adopted in its Section 205 filing, including removal of a provision that netted MW from the RTR Exemption from those resources that received a CSO through the Substitution Auction in FCA 16, an amended definition of Sponsored Policy Resource, and an

[25] *NRG* at 116, *citing Western Resources Inc. v. FERC*, 9 F.3d 1568, 1578 (D.C. Cir. 1993); *City of Winnfield v. FERC*, 744 F.2d 871, 876 (D.C. Cir. 1984).
[26] *NRG* at 110 (describing the procedural background as the RTO/ISO making a rate filing under Section 205 and FERC's rejection of the rate filing with "suggested modifications that would, in FERC's view, make the proposal just and reasonable.").
[27] MassAG/Maine PA Comments at 20.
[28] *Id*. at 23.
[29] NEPOOL Participants Committee February 3, 2022 Meeting Minutes at 4580 (p 8 of pdf) (emphasis added), *available at*: https://nepool.com/wp-content/uploads/2021/11/Minutes_NPC_2022_0203.pdf.

amendment to "rollover" unelected RTR Exemption MWs from FCA 17 into FCA 18.[30] The RTR Exemption thus, like the other amendments to the Proposal, represents a "reasonable compromise, worked on by stakeholders and the States."[31] It is not, as the Consumer Advocates claim, at the behest of a subset of Market Participants.

The Advocates' assertion that the RTR Exemption will harm offshore wind resource owners is likewise uncompelling.[32] To begin, as noted above, Shell Energy, one of the largest developers of offshore wind, supports the Proposal and thus it is evident that for a major offshore wind developer that harm, if any, caused by the Proposal is outweighed by its benefits. Further, as the Commission is well aware, the development of offshore wind resources in New England for expected operation in the FCAs 17 and 18 commitment periods is exclusively pursuant to contract with local distribution companies. These contracts are either already executed and approved or in their final stages. Importantly, these contracts and associated prices were offered and accepted under market rules with the MOPR in effect for the offshore wind resources (and other resource types), and thus capacity revenues were likely not presumed in the execution of these contracts. In any event, the RTR Exemption allows for significant quantities of offshore wind resources to clear the Forward Capacity Auction in FCAs 17 and 18 and earn capacity revenues.[33] Thus to the extent the Advocates claim that such resources would be prevented from earning capacity revenues, such claims are mitigated by the impact of the RTR exemption. Further, given that those

[30] *Id.* at 4578 (p. 6 of the pdf file).
[31] *Id*. at 4579 (page 7 of the pdf).
[32] *See* Note 11, at 11-12; *see also* Note 11, Exh. C, Testimony of Michael Goggin (discussing offshore wind resources not clearing some part of the resource in FCAs 17 and 18).
[33] The 800 MW Vineyard Wind project, the only offshore wind resource to secure a CSO to date, has a summer qualified capacity of 156 MW and a winter qualified capacity of 278 MW. Thus, the 700 MW RTR could accommodate the equivalent of four-and-a-half offshore wind projects the size of Vineyard Wind (summer rating) and two-and-half projects based on the winter rating. *See* Vineyard Wind qualified capacity value, *available at*: https://www.iso-ne.com/static-assets/documents/2018/02/fca_obligations.xlsx.

resources have contracts that satisfy their revenue requirements, the Proposal will not interfere with the development of any offshore wind facility serving New England. With respect to other resource types, as NEPGA explained in its Comments, the Offer Review Trigger Prices in effect for FCA 17 effectively eliminate the MOPR for those favored by the New England states, including onshore wind, solar, and battery storage. Further, the Advocates entirely miscalculate and thus grossly overstate the potential cost consequences to consumers – their testimony to that effect should thus be given little to no evidentiary value.[34] Taken together, the Advocates fail to demonstrate the degree of harm to developer/owners and consumers they assert.

[34] Clean Energy Advocates Filing, Exh. C., Testimony of Michael Goggin at 8-9 ("Goggin Affidavit"). The affiant makes several errors in his analysis that overstate his estimated "excess cost of MOPR" by 400% or more. For example, the affiant asserts that customers would be forced to pay $11.39/kW-month (an estimate for the gross CONE value for a Combustion Turbine) even though the Rest-of-Pool clearing price has not exceeded $2.63/kW-month in the last three Forward Capacity Auctions. *See* Goggin Affidavit at 8). In addition, the affiant's upper bound cost estimate assumes that significant quantities of wind, solar, and storage would not clear due to the MOPR in FCAs 17 and 18, even though the Offer Review Trigger Prices for FCA 17 for those resource types are, respectively, $0/kW-month, $0/kW-month, and $0.86/kW-month (the first two types thus not subject to mitigation, and the last at a price well below any historical FCA clearing price). (Goggin Affidavit at 9.). More prosaically, the affiant makes arithmetic errors. When computing the FCA 18 "MOPRd capacity after RTR cap", the affiant appears to forget that capacity cleared under the 300 MW FCA 17 RTR cap need not be exempted again in FCA 18, and the affiant thus, by his own calculations, overstates the value by 300 MW (Goggin Affidavit at 8-9).

II. CONCLUSION

For the above reasons, NEPGA respectfully requests that the Commission grant NEPGA's Motion for Leave to Answer and consider this Answer in its decision-making in this proceeding.

Respectfully Submitted,

/s/Bruce Anderson

Bruce Anderson
Vice President, Market & Regulatory Affairs
New England Power Generators Association, Inc.
110 Turnpike Road, Suite 212
Westborough, MA 01581
617 817-6774
banderson@nepga.org

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 Cambridge, Massachusetts, May 5, 2022.

/s/ Bruce Anderson

Bruce Anderson
Vice President, Market & Regulatory Affairs
New England Power Generators Association, Inc.
110 Turnpike Road, Suite 212
Westborough, MA 01581
617 817-6774
banderson@nepga.org