

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

ISO-New England Inc. and)	
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)	
)	Docket No. ER15-257-000
)	
New England Power Pool Participants Committee)	
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)	

**MOTION TO INTERVENE AND PROTEST OF THE
NEW ENGLAND POWER GENERATORS ASSOCIATION, INC.**

Pursuant to Rules 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),¹ and in accordance with the Commission’s Combined Notice of Filings #1, dated October 31, 2014, the New England Power Generators Association, Inc. (“NEPGA”)² hereby files this Motion to Intervene and Protest in response to ISO New England, Inc.’s (“ISO-NE”) and the New England Power Pool Participants Committee’s (“NEPOOL”) November 4, 2014, joint filing of Market Rule 1 changes to integrate price-responsive demand resources³ into ISO-NE’s reserve markets (“PRD Filing”).

Price-responsive demand resources (“PRD Resources”) are ineligible to participate as supply-side resources in Commission-jurisdictional markets under the Federal Power Act, as the United States Court of Appeals for the District of Columbia Circuit held in *Electric Power*

¹ 18 C.F.R. §§ 385.212 and 214 (2014).

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

³ In its filing ISO-NE and NEPOOL use the term “price-responsive demand resources” to refer to Demand Response Resources, as defined by the ISO-NE Tariff, which in turn includes supply-side demand response resources such as Real-Time Demand Response Resources and Real-Time Emergency Generation. *See* PRD Filing, Transmittal Letter at p. 8 (explaining that the PRD Filing includes changes to integrate “Demand Response Resources” into the Forward Reserve Market and Operating Reserves structure); *see also* PRD Filing Transmittal Letter at p. 1, n. 2 (explaining that capitalized terms used but not defined in the PRD Filing are intended to have the meaning given to them in the ISO-NE Tariff). NEPGA adopts ISO-NE’s and NEPOOL’s use of the term “price-responsive demand resources” for use in this Protest.

Supply Association v. FERC.⁴ The Commission should therefore find that PRD Resources are ineligible to participate as supply-side resources in the Forward Reserve Market and are ineligible to provide Operating Reserves. In addition, ISO-NE proposes to compensate PRD Resources at a rate reflecting a MW value of avoided line losses, line losses that ISO-NE does not account for in planning its real-time operating reserve quantities. In the event the Commission finds that PRD Resources may participate in the Forward Reserve Market or provide Operating Reserves, the Commission should therefore also find that ISO-NE's and NEPOOL's proposal to compensate PRD Resources for avoided line losses is unjust and unreasonable and unduly discriminatory.

I. Motion to Intervene and Communications

NEPGA is a private, non-profit trade association advocating for the business interests of competitive electric power generators in New England. NEPGA's member companies represent approximately 26,000 megawatts of installed capacity throughout the New England region. NEPGA's mission is to promote sound energy policies which will further economic development, jobs, and balanced environmental policy. 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 capacity and 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.

⁴ 753 F.3d 216 (D.C. Cir. 2014) ("*EPSA*").

All correspondence and communications related to this proceeding should be addressed to the following individual:

Bruce Anderson
Vice President of Market and Regulatory Affairs
New England Power Generators Association, Inc.
141 Tremont Street, Floor 5
Boston, MA 02111
Tel: 617-902-2347
Fax: 617-902-2349
Email: banderson@nepga.org

II. PROTEST

A. Price-Responsive Demand Resources Cannot Participate as Supply-Side Resources in the Forward Reserve Market

On November 14, 2014, NEPGA filed a complaint asking the Commission to direct ISO-NE to disqualify supply-side demand response capacity resources from participating in the Forward Capacity Auction for the 2018/2019 Capacity Commitment period associated with FCA 9, and to revise its Tariff to exclude such resources from participating as supply in the Forward Capacity Market going forward.⁵ As explained by NEPGA in its Complaint, the U.S. Court of Appeals for the District of Columbia Circuit (the “D.C. Circuit”) recently held in *EPSA*⁶ that the Commission lacks jurisdiction under the Federal Power Act to regulate rates for supply-side demand response resources.⁷

Though in *EPSA* the D.C. Circuit was asked to address the Commission’s Order No. 745 and the integration of demand response resources into Commission-jurisdictional energy

⁵ *Complaint Requesting Fast Track Processing of New England Power Generators Association, Inc.*, Docket No. EL15-21 (filed November 14, 2014) (“Complaint”).

⁶ 753 F.3d 216 (D.C. Cir. 2014) (“*EPSA*”).

⁷ *See id.* at 220-24.

markets, its holding applies equally to the participation of PRD Resources in the Forward Reserve Market and their provision of Operating Reserves.⁸ As NEPGA explained in its Complaint, the Commission's lack of jurisdiction over demand response applies equally to all Commission-jurisdictional markets including the Forward Capacity Market.⁹ *EPSA* applies equally to the Forward Reserve Market simply because it is a Commission-jurisdictional wholesale market where resources that clear receive wholesale rates.¹⁰

Even assuming, *arguendo*, that *EPSA* could reasonably be read to not apply to the Forward Reserve Market *per se*, like with the Forward Capacity Market the inability of a demand response resource to offer into the energy markets renders it unable to satisfy the obligations that come with clearing the Forward Reserve Market. The PRD Filing includes several Market Rule 1 changes intended to integrate PRD Resources into the Forward Reserve Market and, necessarily, to allow PRD Resources to provide Operating Reserves. A resource that clears in the Forward Reserve Market assumes a Forward Reserve Obligation, which in turn requires the resource to offer at least its cleared reserve MW capability into the Real-Time Energy Market.¹¹ In order to provide Operating Reserves, a resource likewise must offer into the Real-Time Energy Market. As NEPGA explained in its Complaint, in *EPSA* the D.C. Circuit held that demand response resources cannot be compensated at wholesale rates through Commission-jurisdictional energy markets because demand response is a retail market transaction outside of the Commission's jurisdiction.¹²

⁸ Operating Reserves are purchases on behalf of firm load customers to access energy under defined activation performance parameters (*e.g.*, delivery of energy within 10 or 30 minutes of the dispatch request).

⁹ Complaint at pp. 8-10.

¹⁰ *See, e.g., Order Accepting Forward Reserve Market Filing*, 105 FERC ¶ 61,204, at P 3 (approving the Forward Reserve Market in New England as a competitive auction of forward commitments to offer reserve capabilities in the ISO-NE energy markets).

¹¹ Market Rule 1, § III.9.6.1.

¹² Complaint at p. 5.

By direct application of *EPSA*, and because PRD Resources cannot offer into and clear in the Real-Time Energy Market as supply-side resources and, therefore cannot fulfill the Forward Reserve obligation or the Operating Reserve requirements, supply-side demand response resources cannot participate in the Forward Reserve Market or provide Operating Reserves. For these reasons, NEPGA asks the Commission to reject ISO-NE's and NEPOOL's proposed changes to Market Rule 1 to integrate PRD Resources into the Forward Reserve Market and Operating Reserves. NEPGA further asks the Commission to not render a decision in this proceeding until it has rendered a decision on NEPGA's Complaint. NEPGA's Complaint raises and more fully presents the same question of the applicability of *EPSA* to Commission-jurisdictional wholesale markets as is presented by the proposal to allow supply-side demand response resources to participate in the Forward Reserve Market.

B. Demand Response Resources Should Not be Compensated For Avoided Line Losses When the System Cannot Count on Operating Reserve to Supply the Compensated Quantity

In the event the Commission finds that supply-side demand response resources can be compensated in the Forward Reserve Market, there is a key fault in the proposal before the Commission. ISO-NE and NEPOOL propose to compensate demand response resources for both the quantity of operating reserve MW the ISO-NE can rely on as deliverable from the demand resource in its dispatch system, plus a distribution and transmission loss gross-up.¹³ This latter compensation component, for avoided line losses, reveals a disconnect between the MWs ISO-NE can rely upon in its real-time dispatch to provide operating reserves and the quantity of demand response operating reserves that it compensates, and creates undue

¹³ PRD Filing, Testimony of Henry Y. Yoshimura, at pp. 26-27 (“Yoshimura Testimony”).

discriminatory compensation between demand response resources and generation resources in real-time.

ISO-NE and NEPOOL propose to compensate demand response resources for a presumed quantity of avoided line losses in the settlement process, despite their acknowledgement that ISO-NE cannot reflect this operating reserve supply at these higher levels in the reserve designation process, because to do so would “over-estimat[e] the amount of reserves that are available in real time at a specific location.”¹⁴ ISO-NE explains that it is “reluctant to rely upon avoided distribution losses to meet NERC requirements given that such avoided losses may not materialize when a specific set of resources are dispatched in real time.”¹⁵ While this treatment does not directly distort the Forward Reserve Market and Real Time Operating Reserve Market supply-demand balance used to establish the respective clearing prices, it nonetheless introduces distortions in the operating reserve market by paying more compensation per unit of DR operating reserve than ISO can actually employ as supply in its system dispatch.¹⁶ It also creates unduly discriminatory treatment of demand response resources and generation resources, in that under the ISO-NE/NEPOOL proposal demand response resources are compensated for avoided line losses even though ISO-NE does not rely on those avoided line losses in its real-time dispatch and reserves because they may not actually materialize in an amount equal to the compensation level. Generation resources that provide operating reserves are compensated only for the actual, reliable provision of operating reserves.¹⁷

¹⁴ PRD Filing, Transmittal Letter at p. 15, n. 53.

¹⁵ Yoshimura Testimony at pp. 26-27.

¹⁶ While on average (across time and location), a reduction in end-use load may reduce average distribution or system losses, time and location matter. For example, reducing losses on the export side of a constraint can actually be counter-productive, and increase losses. ISO cannot generically gross-up operating reserve supplied from demand response resources by 8% because it would be inconsistent with the actual impact on system losses at any given point in time or location.

¹⁷ Offline, fast start resources are subject to stringent performance auditing that adjusts their offline operating reserve credit down for inconsistent performance.

All operating reserve providers should be subject to the same amount of compensation for the same amount of operating reserve ISO-NE can actually use as supply in its reserve accounting. To the extent supply-side demand response resources may lawfully participate in the Real-Time Energy Markets, demand response resources should not receive operating reserve compensation beyond the level of operating reserve the ISO can actually use in its reserve accounting (*i.e.*, the compensation should not be grossed up for average avoided line losses).

III. CONCLUSION

Wherefore, NEPGA respectfully requests that the Commission grant its motion for leave to intervene, reject the PRD Filing in its entirety, and, in the event the Commission finds that supply-side demand response resources can participate in the Forward Reserve Market, order ISO-NE to amend Market Rule 1 to provide that price-responsive demand resources are not compensated for avoided line losses.

Respectfully Submitted,

/s/ Bruce Anderson

Bruce Anderson
Vice President of Market and Regulatory Affairs
New England Power Generators Association, Inc.
141 Tremont Street, Floor 5
Boston, MA 02111
Tel: 617-902-2347
Fax: 617-902-2349
Email: banderson@nepga.org

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the comments by via email upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Boston, Massachusetts, November 21, 2014.

/s/ Bruce Anderson _____

Bruce Anderson
Vice President of Market and Regulatory Affairs
New England Power Generators Association, Inc.
141 Tremont Street, Floor 5
Boston, MA 02111
Tel: 617-902-2347
Fax: 617-902-2349
Email: banderson@nepga.org