

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

New England Power Generators)
Association, Inc.,)
Complainant,)
v.)
ISO New England Inc.,)
Respondent.)

Docket No. EL15-25-000

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

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”) hereby submits this answer (the “Answer”) to the pleadings filed in response to NEPGA’s December 3, 2014 complaint in the above-captioned proceeding (the “Complaint”). The Complaint demonstrates that ISO New England Inc.’s (“ISO-NE”) Transmission, Markets, and Services Tariff (“Tariff”) provisions governing the Peak Energy Rent (“PER”) Adjustment are unjust and unreasonable.² The Complaint requests that the Commission direct ISO-NE to adjust the PER Strike Price³ by \$250/MWh for Capacity Commitment Periods 5 through 8.⁴ It further requests that the Commission direct ISO-NE to eliminate the PER

¹ 18 C.F.R. §§ 385.212, 385.213 (2014).

² Complaint at 11-24.

³ Note that capitalized terms not otherwise defined will have the meaning ascribed in the Tariff.

⁴ Complaint at 2, 11-21.

Adjustment mechanism beginning with Forward Capacity Auction (“FCA”) 9 or, alternatively, to continue the \$250/MWh increase in the PER Strike Price for Capacity Commitment Period 9.⁵

In its answer, ISO-NE does not oppose adding \$250/MWh to the PER Strike Price for Capacity Commitment Periods 5 through 8 or for FCA 9.⁶ ISO-NE further supports the eventual elimination of the PER Adjustment for FCA 10, but asks the Commission to afford the NEPOOL stakeholder process an opportunity to consider the issue.⁷ Three protests to the Complaint were filed by the New England States Committee of Electricity (“NESCOE”); the Connecticut Public Utilities Regulatory Authority, the Connecticut Office of Consumer Counsel, the Attorney General for the State of Connecticut, and the Connecticut Department of Energy and Environmental Protection (the “Connecticut Parties”); and the New England Power Pool Participants Committee (“NEPOOL”). ISO-NE’s answer and the protests primarily argue that (i) NEPGA failed to meet its burden under Section 206;⁸ (2) changes to Reserve Constraint Penalty Factors (“RCPFs”) have been made in the past without the Commission directing a corresponding change to the PER Adjustment;⁹ (3) the Commission must completely defer to the outcome of the stakeholder process;¹⁰ (4) the capacity suppliers agreed to the combination of Pay-For-Performance, increased RCPFs, and retention of the existing PER Adjustment in last

⁵ *Id.* 28.

⁶ ISO New England Inc. Dec. 23, 2014 Answer at 2 (“ISO-NE Answer”).

⁷ *See id.* 14 (“Currently, ISO-NE anticipates proposing the complete elimination of the PER Adjustment for FCA 10 and beyond.”).

⁸ *Id.* 8-9; New England States Committee on Electricity Dec. 23, 2014 Protest at 4, 9-10 (“NESCOE Protest”); New England Power Pool Participants Committee Dec. 23, 2014 Protest at 3, 9-11 (“NEPOOL Protest”).

⁹ ISO-NE Answer at 9-10.

¹⁰ NEPOOL Protest at 5-9; NESCOE Protest at 9-14.

year's stakeholder process;¹¹ and (5) the \$250/MWh adder is actually a prohibited increase to the heat rate of the Proxy PER Unit in disguise.¹²

Importantly, none of the protests provides any compelling evidence to rebut NEPGA's assertion that the current Tariff provisions will result in substantial harm to capacity suppliers. Protestors similarly fail to indicate that load interests had a reasonable, settled expectation of the windfall that they will receive under the current Tariff. This windfall is now more than hypothetical. Only a day after NEPGA's Complaint was filed, ISO-NE experienced an Operating Procedure ("OP") 4 event that drove real-time prices to over \$1,100/MWh and triggered an aggregate transfer from capacity suppliers to load via the PER Adjustment of nearly \$15 million.¹³ According to ISO-NE, internal generators performed admirably in the face of over 2,000 MWs of import curtailments.¹⁴

NEPGA addresses each of the main arguments of the protestors and ISO-NE in turn and explains why their arguments are factually incorrect or erroneous as a matter of law. NEPGA also renews its request for a refund effective date of December 3, 2014,¹⁵ and Commission action by January 30, 2015.¹⁶

¹¹ NESCOE Protest at 9, 12.

¹² Connecticut Public Utilities Regulatory Authority, et al. Dec. 23, 2014 Protest at 6 ("Connecticut Parties Protest"); NESCOE Protest at 10.

¹³ Supplemental Affidavit of Dr. David Hunger in Support of the Answer of the New England Power Generators Association, Inc. ¶¶ 7, 9 ("Supplemental Hunger Aff."). An "OP 4" event is an action taken by ISO-NE during a capacity deficiency. ISO New England Inc., *ISO New England Operating Procedure No. 4 – Action During a Capacity Deficiency* (2014), available at http://www.iso-ne.com/rules_proceeds/operating/isone/op4/op4_rto_final.pdf.

¹⁴ Supplemental Hunger Aff. ¶ 7.

¹⁵ The refund effective date of December 3, 2014, is especially important given the OP4 event that occurred on December 4, 2014.

¹⁶ Complaint at 3.

I. MOTION FOR LEAVE TO ANSWER

Although the Commission's rules generally do not permit answers to answers,¹⁷ the Commission will permit such answers for good cause shown, such as when the response will facilitate the development of the record or aid in the explanation of issues.¹⁸ NEPGA's response in this Answer provides the Commission with important information that will assist the Commission in its decision-making process. Accordingly, NEPGA respectfully requests the acceptance of this Answer.

II. ANSWER

A. NEPGA Has Met Its Burden Under Section 206 to Show that the Tariff is Unjust and Unreasonable.

Contrary to the assertions of ISO-NE and protestors, NEPGA has met its statutory burden under Section 206 to show that the existing Tariff is unjust and unreasonable. The Complaint demonstrates the inequity of maintaining the current PER Adjustment in light of the increased RCPFs and quantifies the financial harm to capacity suppliers.¹⁹ Given that the PER Adjustment is wholly unrelated to capacity suppliers' incentive to perform in real-time,²⁰ NEPGA explained that this revenue transfer is unrelated to economic efficiency and reliability and would simply result in a windfall to load.²¹

¹⁷ 18 C.F.R. § 385.213(a)(2).

¹⁸ See, e.g., *Morgan Stanley Capital Grp., Inc. v. New York Indep. Sys. Operator, Inc.*, 93 FERC ¶ 61,017, at 61,036 (2000).

¹⁹ Complaint at 14-16.

²⁰ See *ISO New England Inc.*, 147 FERC ¶ 61,172, at P 110 (2014) (concluding that revisions to the PER Adjustment were outside the scope of the Pay-for-Performance proceeding because the PER deduction "does not affect the incremental incentives to produce energy."); *ISO New England Inc.*, Filing, Docket No. ER14-2419-001, at 5 (filed July 14, 2014) ("The Commission correctly noted, however, that the Peak Energy Rent deduction does not affect competitive suppliers' incremental incentives to produce Energy . . .").

²¹ Complaint at 14, 18, 22-23.

1. Capacity Suppliers Will Incur Substantial Financial Harm Under the Status Quo, Which Will Result in an Unjust and Unreasonable Windfall for Load.

To demonstrate the significance of the financial harm that suppliers will suffer if the current Tariff rules persist unchanged, NEPGA included in the Complaint ISO-NE's simulated back-cast of the market impact of the RCPF increases for past Capacity Commitment Periods.²² NEPGA explained that the real-time impact of higher RCPFs (with an unchanged PER Adjustment) would have been an estimated net payment from capacity suppliers to load of \$67 million in Capacity Commitment Period 4.²³ Supported by an affidavit from Dr. Hunger, NEPGA explained that this net transfer of revenue does not result in an increase in economic efficiency or reliability, but rather is, quite simply, a windfall for load.²⁴ Such a windfall is clearly unjust and unreasonable.²⁵

This windfall to load is exacerbated by the fact that the RCPF changes occurred "intra-cycle," and, therefore, Capacity Suppliers did not have the opportunity to reflect this net revenue loss in Forward Capacity Market ("FCM") de-list offers.²⁶ NESCOE argues in its Protest that NEPGA fails to demonstrate financial harm because NEPGA does not show how RCPF changes would have resulted in a different auction price outcome, given that FCAs 5 through 8 were set by administrative pricing rules.²⁷ This argument is without merit. As the Commission knows, there is no feasible way to determine with any kind of precision how the auction results for FCAs 5 through 8 would have differed had capacity suppliers known about the increased RCPFs.

²² *Id.* 15-16.

²³ *Id.* 15.

²⁴ *Id.* 22-23.

²⁵ *Cf. PJM Interconnection, L.L.C.*, 149 FERC ¶ 61,091, at P 30 (2014) (finding PJM's then-existing tariff rules governing Frequently Mitigated Unit ("FMU") adders unjust and unreasonable because they resulted in a windfall for FMUs).

²⁶ Complaint at 16-17.

²⁷ NESCOE Protest at 15.

There can be no question, though – as ISO-NE itself acknowledges – that capacity sellers had no opportunity to reflect the increased RCPFs and correspondingly higher PER Adjustment in their de-list offers.²⁸ In any event, administrative pricing rules should not serve to insulate the PER Adjustment or other aspects of the market rules from challenge under the Federal Power Act (“FPA”).

2. Recent Events Further Illustrate the Inequitable Harm the Current Tariff Causes to Capacity Suppliers.

A recent ISO-NE event provides further illustration of this inequity. On December 4, 2014, the ISO-NE region experienced an OP4 event as a result of unplanned transmission outages in Quebec. These outages caused curtailments of over 2,000 MWs of imports, which led to reserve deficiencies and the triggering of RCPFs in real-time. In the attached Supplemental Affidavit, Dr. Hunger explains that hours 17 through 19 on December 4 experienced clearing prices that exceeded the PER Strike Price, thus triggering the PER Adjustment mechanism.²⁹ Dr. Hunger calculates that the total PER Adjustment as a result of this OP4 event, based on the demand clearing the day-ahead market, was over \$13.6 million.³⁰ To put that number into context, Dr. Hunger explains that for a “500 MW generator clearing in the day-ahead market for hours 17 through 19, the day-ahead energy payment of \$102,184 for those hours would be offset by a \$441,884 PER Adjustment, resulting in a *loss* of \$339,700 (\$-226.47/MWh) during hours in which prices spiked to over \$1,100/MWh, with individual five-minute LMP intervals exceeding \$2,700/MWh.”³¹ Dr. Hunger notes that, “[b]y contrast, if the PER Strike Price were increased by

²⁸ See ISO-NE Answer at 7.

²⁹ Supplemental Hunger Aff. ¶¶ 7, 9.

³⁰ *Id.* ¶ 11.

³¹ *Id.* ¶ 9.

\$250/MWh, as advocated by NEPGA in its complaint, the PER Adjustment rebate to load would have been a significant, but lower, \$220,000.”³²

As established in the Complaint, the PER Adjustment is based on real-time clearing prices, but, because all capacity resources must offer into the day-ahead market, the vast majority of capacity suppliers clear in the day-ahead market and do not receive real-time clearing prices.³³ NESCOE argues that capacity suppliers clearing the day-ahead energy market will eventually receive higher day-ahead revenues due to real-time and day-ahead price convergence.³⁴ As Dr. Hunger explains, however:

[I]n ISO-NE there are structural impediments that prevent day-ahead prices from converging with real-time prices during the timeframes when the PER Strike Price is triggered. First, given the lead time for scheduling in the day-ahead market, ISO-NE has access to virtually every resource. This effectively means they cannot (and certainly do not) schedule themselves into a reserve deficiency in the day-ahead market. Thus, as a practical matter, the RCPFs do not apply in the day-ahead market. Second, all supply offers, including virtual “INC” offers, are capped at \$1,000 MWh, but real-time prices can go over \$3,000/Mwh. Thus without the impacts of the RCPFs in the day-ahead market, the day-ahead prices cannot converge with the real-time prices during these PER events.³⁵

The Commission has recognized that price convergence is unlikely to occur when the day-ahead offer cap is well below the real-time limit.³⁶

3. Past RCPF Changes Did Not Trigger Similar Financial Harm to Capacity Suppliers.

ISO-NE takes issue with NEPGA’s assertion that the change in RCPFs in this case compels a change to the PER Strike Price.³⁷ ISO-NE states that the Commission has approved changes to the RCPFs in the past without any accompanying change to the PER Adjustment

³² *Id.*

³³ Complaint at 14-15.

³⁴ NESCOE Protest at 18.

³⁵ Supplemental Hunger Aff. ¶ 19.

³⁶ *PJM Interconnection, L.L.C.*, 139 FERC ¶ 61,057, at PP 123-43 (2012).

³⁷ ISO-NE Answer at 9.

mechanism.³⁸ For example, ISO-NE explains that, in 2009, the Commission approved an increase to the RCPF for Thirty-Minute Operating Reserves (“TMOR”) that applies to import-constrained reserve zones from \$50/MWh to \$250/MWh (“2009 RCPF increase”).³⁹ In 2012, the Commission again approved an increase to system-wide RCPF for TMOR from \$100/MWh to \$500/MWh (“2012 RCPF increase”).⁴⁰

As explained in the Supplemental Hunger Affidavit, these two adjustments to RCPFs were of a much smaller magnitude and were significantly less likely to result in clearing prices that would trigger a PER rebate.⁴¹ For example, the 2009 RCPF increase occurred prior to the first Capacity Commitment Period, was local in nature, and was small in magnitude (\$250/MWh). The 2012 RCPF increase, although more substantial and system-wide, was not relevant for PER purposes because the PER Strike Price at that time averaged over \$500/MWh.⁴² The fact that the Commission did not order a modification of the PER Strike Price in those instances therefore is not dispositive here. No party requested a change in those past instances because, quite simply, the increased RCPFs were not viewed as likely to have an effect on the PER Adjustment. The magnitude of the RCPF increases directed by the Commission in 2014 is altogether a different matter. They will push real-time prices significantly above the current PER Strike Price of approximately \$500/MWh and, as demonstrated above, will result in substantial payments from suppliers to load.

NEPGA does not contend that all intra-cycle changes to energy market rules require a corresponding adjustment in FCM or to other market rules. However, the magnitude of the

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Supplemental Hunger Aff. ¶¶ 13-15.

⁴² *Id.* ¶ 14.

increases in the RCPFs and their direct relationship to the PER Strike Price render the current PER Strike Price unjust and unreasonable.⁴³ The fact that the Commission did not order a PER Adjustment in other instances of RCPF increases that were unlikely to have an effect on the PER Adjustment is not probative of the merits of NEPGA's Complaint.

B. NEPGA's Proposed Remedy Strikes an Equitable Balance and Is Just and Reasonable.

As explained in the Complaint, the Commission engages in a "balancing of equities" to determine whether an intra-cycle rule change compels further action to restore parties' settled expectations.⁴⁴ The Commission has indicated a greater willingness to act to restore expectations when an intra-cycle market rule proposal involves "large cost shifts" or other major changes, as occurred here.⁴⁵ The proposal to adjust the PER Strike Price by \$250/MWh – a proposal originally developed and brought through the stakeholder process by ISO-NE and then adopted by NEPGA in the Complaint – is warranted in light of the significant change in energy market rules applicable to Capacity Commitment Periods 5-8 and 9. Capacity suppliers still would be obligated to make PER payments under this proposal (e.g., rebating approximately half the revenues earned in Dr. Hunger's hypothetical), but these payments would be more consistent with the historic PER Adjustments that were reflected in all of the de-list offers in FCAs 5-8, the likely majority of de-list offers for FCA 9, and the Net Cost of New Entry ("Net CONE") value used in FCA 9. In other words, adding \$250/MWh to the PER Strike Price effectively would

⁴³ Indeed, the PER Adjustment is explicitly factored into capacity suppliers' de-list offer calculation in FCM. Tariff, Market Rule 1 § III.13.1.2.3.2.1.2.

⁴⁴ See, e.g., *Cal. Indep. Sys. Operator Corp.*, 91 FERC ¶ 61,205, at 61,725 (2000) (noting that adjustments may be appropriate to mitigate extreme cost shifts), *order on reh'g*, 104 FERC ¶ 61,062 (2003).

⁴⁵ *Id.*; see also *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,108 (2011).

maintain the status quo with respect to the PER Adjustment and would restore the settled expectations of all market participants.⁴⁶

NEPGA demonstrated in the Complaint that the consequence of this particular intra-cycle market rule change is significant financial harm to suppliers and a windfall to load.⁴⁷ Unlike the previous proceeding involving an adjustment to the PER Strike Price in 2010, load interests have made no demonstration that they have entered into contracts or other obligations in reliance on windfall levels for the PER Adjustment.⁴⁸ Here, the balance of equities clearly tips in capacity suppliers' favor, and the Commission should act to restore the proper level of PER Adjustment by adding \$250/MWh to the PER Strike Price for Capacity Commitment Periods 5-8 and 9 (if the Commission decides not to eliminate the PER Adjustment for FCA 9 entirely).

C. Regardless of the Outcome of the Stakeholder Process, the Commission Has an Independent Obligation to Ensure Just and Reasonable Rates.

NEPOOL and NESCOE repeat at length in their protests the history of the stakeholder process on the PER issue, urging the Commission to defer to that process.⁴⁹ NESCOE in fact appears to suggest that the Commission should deny *all* requests for relief with respect to market rule issues that do not attract a consensus in the stakeholder process.⁵⁰ These procedural protests have no merit and should be rejected.

NEPGA values the role of the stakeholder process in crafting carefully-considered market rules in ISO-NE, but the Commission has no obligation to await a consensus vote before taking

⁴⁶ See Complaint at 24 (citing Catherine McDonough, *Peak Energy Rent (PER) Adjustment Mechanism, Summary of ISO Proposal & Response to GDF Suez Proposals* 17 (Sept. 3-4, 2014), available at http://www.iso-ne.com/static-assets/documents/2014/08/a09_iso_presentation_per.pptx).

⁴⁷ *Id.* 15-23.

⁴⁸ See *ISO New England Inc.*, 134 FERC ¶ 61,128, at PP 35-40 (2011).

⁴⁹ See NEPOOL Protest at 5-9; NESCOE Protest at 9-14.

⁵⁰ NESCOE Protest at 14.

action under its Section 206 authority.⁵¹ The Commission has a statutory duty to ensure just and reasonable rates, not a duty to consider tariff filings only after such proposals have received majority (or supermajority) stakeholder support.⁵² The fact that ISO-NE's proposal to increase the PER Strike Price garnered "only" a 57% vote in favor in the Markets Committee should not compel the Commission to decline consideration of NEPGA's Complaint.⁵³ NESCOE's suggestion, taken to its logical conclusion, would strip market participants of their Section 206 right to challenge unjust, unreasonable, or unduly discriminatory market rules.

Moreover, the Pay-for-Performance stakeholder process does not indicate acquiescence on the part of capacity suppliers to the retention of the existing PER Adjustment. NESCOE states that the package of reforms recently approved by the Commission in the Pay-for-Performance proceeding reflects what "New England market participants asked for with overwhelming support"⁵⁴ and suggests that NEPGA's "buyer's remorse" should be dismissed.⁵⁵ While the NEPOOL alternative to ISO-NE's Pay-for-Performance proposal did garner widespread support, that alternative proposal was certainly not the package of reforms that the Commission eventually ordered, i.e., Pay-for-Performance *plus* RCPF increases.⁵⁶ On the issue of the PER Adjustment, the Commission ruled that the matter was outside the scope of the proceeding.⁵⁷

⁵¹ See *PJM Interconnection, L.L.C.*, 103 FERC ¶ 61,167, at P 31 (2003) ("Thus, even if the Commission's determination were at odds with the stakeholder process, we find that the stakeholder process cannot impede the larger goal of ensuring nondiscriminatory terms and conditions. . . .").

⁵² *Id.*; see also 16 U.S.C. §§ 824d, 824e (2012).

⁵³ Minutes of the Sept. 3-4 Markets Committee Meeting at 11, available at http://www.iso-ne.com/static-assets/documents/2014/09/a01_draft_mc_minutes_14090304.doc. NEPGA further notes that in the Pay-for-Performance order, the Commission rejected the preference of the vast majority of NEPOOL stakeholders. See *ISO New England Inc.*, 147 FERC 61,172 (2014).

⁵⁴ NESCOE Protest at 9; see also *id.* 12.

⁵⁵ *Id.* 14.

⁵⁶ *ISO New England Inc.*, 147 FERC 61,172 at P 1.

⁵⁷ *Id.* P 110.

The NEPOOL proposal reflected an imperfect compromise offered as an alternative to the Pay-for-Performance proposal from ISO-NE.⁵⁸ Many capacity suppliers supported the elimination of the PER Adjustment, but nevertheless viewed the NEPOOL proposal as preferable to the Pay-for-Performance proposal from ISO-NE. Indeed, generators unanimously voted in favor of an unsuccessful amendment to the NEPOOL proposal at the December 6, 2013 Participants Committee meeting to eliminate the PER Adjustment.⁵⁹ Last year's stakeholder process therefore does not indicate that capacity suppliers agreed with the status quo on the PER issue and, in any event, the Commission should not abdicate its responsibility to ensure that rates are just and reasonable.

D. The \$250/MWh Adjustment to the Strike Price Proposed in the Complaint Does Not Constitute an Adjustment to the PER Proxy Unit's Heat Rate.

The Connecticut Parties and NESCOE allege that the proposal to add \$250/MWh to the PER Strike Price is, in effect, an increase to the heat rate of the PER Proxy Unit.⁶⁰ These parties then contend that the Commission must reject the Complaint because the Tariff states that changes to the PER Proxy Unit heat rate shall be filed only pursuant to Section 205 of the FPA and only on a prospective basis.⁶¹ This argument is without merit.

The \$250/MWh adder proposed by ISO-NE in the stakeholder process and by NEPGA in the Complaint cannot plausibly be considered to be the same as a prohibited adjustment to the heat rate of the PER Proxy Unit. NEPGA's proposal would cause the Hourly PER Adjustment to be calculated according to the formula: Hourly PER (\$/kW) = [LMP- (Strike Price +

⁵⁸ See Complaint at 17-18.

⁵⁹ Final Minutes of December 6, 2013 Participants Committee Meeting at 2907-08, *available at* http://www.iso-ne.com/static-assets/documents/committees/comm_wkgrps/prtcpnts_comm/prtcpnts/mins/2013/minutes_npc_2013_1206.pdf; *see also id.*, Attachment 2 (showing unanimous votes in favor of the amendment in the generation sector).

⁶⁰ Connecticut Parties Protest at 6; NESCOE Protest at 10.

⁶¹ Connecticut Parties Protest at 6 (citing Tariff, Market Rule 1 § III.13.7.2.7.1.1.1(b)(iii)).

\$250/MWh)] *[Scaling Factor]*[Availability Factor]. The Strike Price is the product of the Proxy PER Unit heat rate and fuel price. The plain terms of this formula make clear that, under NEPGA’s proposal, the \$250/MWh adder does not change the heat rate value but instead is an adder applied to the product of heat rate and fuel price. In addition, NESCOE’s and the Connecticut Parties’ theory collapses on its own logic. The PER Proxy Unit heat rate is a *fixed value* established in the Tariff.⁶² If one accepts the logic of the protestors and considers the \$250/MWh adder as a change to the heat rate, the adder would actually yield a different heat rate every time the fuel price changes – which is not the same as creating a new fixed value heat rate for the Proxy PER Unit.⁶³

Furthermore, and perhaps more important, the protestors ignore the other variable in the Strike Price formula. The Strike Price is determined based on the PER Proxy Unit heat rate and the proxy fuel cost.⁶⁴ A \$250/MWh adder to the overall Strike Price could just as easily constitute an adjustment to the fuel price rather than an adjustment to the heat rate, as NESCOE and the Connecticut Parties argue. The Commission has approved adjustments to the manner in which the PER Proxy Unit fuel cost is calculated, and NESCOE and the Connecticut Parties have not argued that adjustments to the fuel price are similarly prohibited.⁶⁵

⁶² Tariff, Market Rule 1 § 13.7.2.7.1.1.1(b)(iii).

⁶³ ISO-NE calculates the Strike Price by multiplying the PER Proxy Unit’s heat rate (currently fixed at 22,000 Btu/kWh) by a proxy fuel cost. Using the protestors’ logic, the \$250/MWh adder equates to a heat rate of 31,861 Btu/kWh assuming, for example, a \$25.36 fuel price, but equates to a heat rate of 26,933 Btu/kWh at a fuel cost of \$30.

⁶⁴ Tariff, Market Rule 1 § 13.7.2.7.1.1.1.

⁶⁵ See *ISO New England Inc.*, 134 FERC ¶ 61,128 (2011). Even if the Commission did view the Complaint as a proposed change to the PER Proxy Unit heat rate, which it should not, ISO-NE’s Tariff cannot preclude the Commission from reforming, pursuant to Section 206 of the FPA, an unjust and unreasonable rate. Moreover, absent an unequivocal relinquishment, a party cannot waive its Section 206 filing rights. See *Sithe/Independence Power Partners, L.P. v. Niagra Mohawk Power Corp.*, 76 FERC ¶ 61,285, at 62,458 (1996) (“Relinquishment of a known claim or right must be clearly established and will not be inferred from doubtful or equivocal acts or language. Waivers of rights under section 206 of the FPA, as voluntary relinquishments of statutory benefits, must be stated explicitly.”).

These arguments from NESCOE and the Connecticut Parties are an attempt to convert the Tariff's restrictions on changing the heat rate for the PER Proxy Unit into a restriction on adders to the PER Strike Price or changes to the Hourly PER Adjustment formula more generally. If the parties had intended to apply such a broad restriction to the PER Strike Price or the Hourly PER Adjustment formula, surely they would have included Tariff language to that effect. Absent such language, the Tariff cannot be read to restrict changes to either the PER Strike Price or the Hourly PER Adjustment Formula.⁶⁶

E. The PER Adjustment Should be Eliminated for FCAs 9 and Beyond.

With the implementation of Pay-for-Performance and the recently-approved sloped demand curve,⁶⁷ the PER Adjustment will become improperly duplicative and therefore unjust and unreasonable. The Commission should direct ISO-NE to remove the PER adjustment entirely beginning with FCA 9, which coincides with these new rule changes. Any further delay would be unjust and unreasonable.

ISO-NE acknowledges in its Answer that the PER Adjustment should be eliminated beginning with Capacity Commitment Period 10.⁶⁸ ISO-NE opposes NEPGA's proposal to eliminate the PER Adjustment for FCA 9, however, principally because, according to ISO-NE, NEPGA has failed to account for the fact that suppliers had the opportunity to factor higher RCPFs into their offers for FCA 9 and because a PER Adjustment (albeit based on historic levels) has been factored into the Net CONE value for FCA 9.⁶⁹

⁶⁶ Such a reading would violate the basic canon of contract construction that the *expressio unius est exclusio alterius*, i.e., the expression of one thing is the exclusion of the other. See *Cleveland Pub. Power v. Cleveland Elec. Illuminating Co.*, 82 FERC ¶ 61,254, at n.9 (1998) ("Under this principle, when certain matters (such as limitations on a contractual duty) are mentioned, other matters not mentioned are excluded.").

⁶⁷ *ISO New England Inc.*, 147 FERC ¶ 61,173 (2014).

⁶⁸ ISO-NE Answer at 3, 14.

⁶⁹ *Id.* 10.

Other than administrative convenience, there is no reason to delay the elimination of the PER Adjustment. The same rationale justifying its elimination for FCA 10 applies to FCA 9, as the structure of the two auctions will be identical.⁷⁰ NEPGA agrees with ISO-NE that any elimination of the PER Adjustment should be accompanied by other necessary modifications to ensure that FCA results are fair and accurate. NEPGA therefore supports (1) requiring ISO-NE to allow suppliers to adjust their de-list offers to account for the PER Adjustment's removal, a process that could be completed in time for FCA 9 and (2) requiring ISO-NE to update the Net CONE value for the upcoming auction. The administrative inconvenience associated with making these changes in time for FCA 9 does not justify continuing with an unjust and unreasonable market rule.

III. CONCLUSION

WHEREFORE, for the reasons stated in the Complaint and in this Answer, the Commission should direct ISO-NE to add \$250/MWh to the PER Strike Price for Capacity Commitment Periods 5 through 8. The Commission should also direct ISO-NE to eliminate the PER Adjustment mechanism beginning with FCA 9 or, alternatively, add \$250/MWh to the Strike Price for FCA 9.

Respectfully submitted,

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⁷⁰ See Complaint at 25.

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Dated: January 7, 2015

Counsel for *NEPGA*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the service list compiled by the Secretary in this proceeding by either U.S. Mail or electronic service, as appropriate.

Dated this 7th day of January 2015 at Washington, D.C.

/s/ Carrie Hill Allen

Carrie Hill Allen
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Washington, D.C. 20036-1564

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Docket No. EL15-25-000

**Supplemental Affidavit of Dr. David Hunger
In Support of the Answer of the New England Power Generators Association, Inc.**

1. My name is David Hunger. I am Vice President of the Energy Practice of Charles River Associates (“CRA”). My business address is 1201 F Street, NW, Suite 700, Washington, DC 20004-1229. I have extensive experience in energy market analysis, and was formerly a senior economist and Deputy Division Director in the Office of Energy Market Regulation at the Federal Energy Regulatory Commission (the “Commission”).
2. I filed an affidavit in support of the New England Power Generators Association, Inc. (“NEPGA”) complaint in this proceeding on December 3, 2014 (“December 3 Affidavit”). A summary of my background and relevant experience is provided in Exhibit DH-1 to that December 3 Affidavit.
3. I have been asked by counsel for NEPGA to review the comments and protests in this proceeding and to provide responses to issues that relate to my December 3 Affidavit.
4. *Please briefly explain the nature of your supplemental affidavit.*
5. This supplemental affidavit addresses several issues that have been raised in the protests to NEPGA’s complaint and includes: (1) a quantification of the financial harm to capacity suppliers resulting from the change in the Reserve Constraint Penalty Factors

(“RCPFs”) without an accompanying change in the Peak Energy Rent (“PER”) Strike Price as illustrated by the Operating Procedure 4 event on December 4, 2014; (2) additional information concerning the previous RCPF increases cited by ISO-NE; and (3) an explanation of why price convergence between the day-ahead and real-time markets is unlikely when the price cap in the day-ahead market remains at \$1,000/MWh, but real-time prices can rise to over \$3,000/MWh.

6. *Can you provide an actual example of the financial harm to capacity resources resulting from the change in RCPFs without an accompanying change in the PER Strike Price?*
7. Yes. On December 4, 2014, there was an event that clearly illustrates the point NEPGA made in the complaint – that capacity suppliers will be financially harmed in a significant way by the combination of the existing PER Strike Price and the new RCPFs. This event, which was caused by curtailment of over 2,000 MW Canadian imports, occurred despite excellent performance by the internal generation fleet.¹ Due to the curtailment of imports, which triggered a shortfall in reserves, ISO-NE experienced an Operating Procedure 4 event in hours 17 through 19. Thus, the newly-effective RCPFs were triggered for these hours in the real-time energy market.
8. *Have you estimated the PER Adjustment for hours 17 through 19 on December 4, 2014?*
9. Yes. Based on the data published by ISO-NE, I have estimated the PER Adjustment using the \$386/MWh PER Strike Price for hours 17 through 19, i.e., the hours when RCPFs were triggered on December 4, 2014.² The PER Adjustment for these three hours totals \$883/MWh (approximately \$294/MWh on average). This is the amount that will be rebated to load by capacity suppliers. During the same hours day-ahead energy prices averaged \$68.12/MWh. Thus, for a hypothetical 500 MW generator clearing in the day-ahead market in hours 17 through 19, the day-ahead energy payment of \$102,184 for those hours would be offset by a \$441,884 PER Adjustment, resulting in a *loss* of \$339,700 (-\$226.47/MWh) during hours in which prices spiked to over \$1,100/MWh, with individual five-minute LMP intervals exceeding \$2,700/MWh.³ By contrast, if the PER Strike Price were increased by \$250/MWh, as advocated by NEPGA in its

¹ See Memorandum from ISO-NE to NEPOOL Market and Reliability Committees (Dec. 4, 2014), available at http://www.iso-ne.com/static-assets/documents/2014/12/Implementation_of_ISO_New_England_Operating_Procedure4_on_Thursday_December_4_2014.pdf.

² ISO-NE, Auctions Reports, Hourly Peak Energy Rent December 2014 Report, <http://www.iso-ne.com/transform/csv/hourlyper?month=201412> (last visited Jan. 6, 2015).

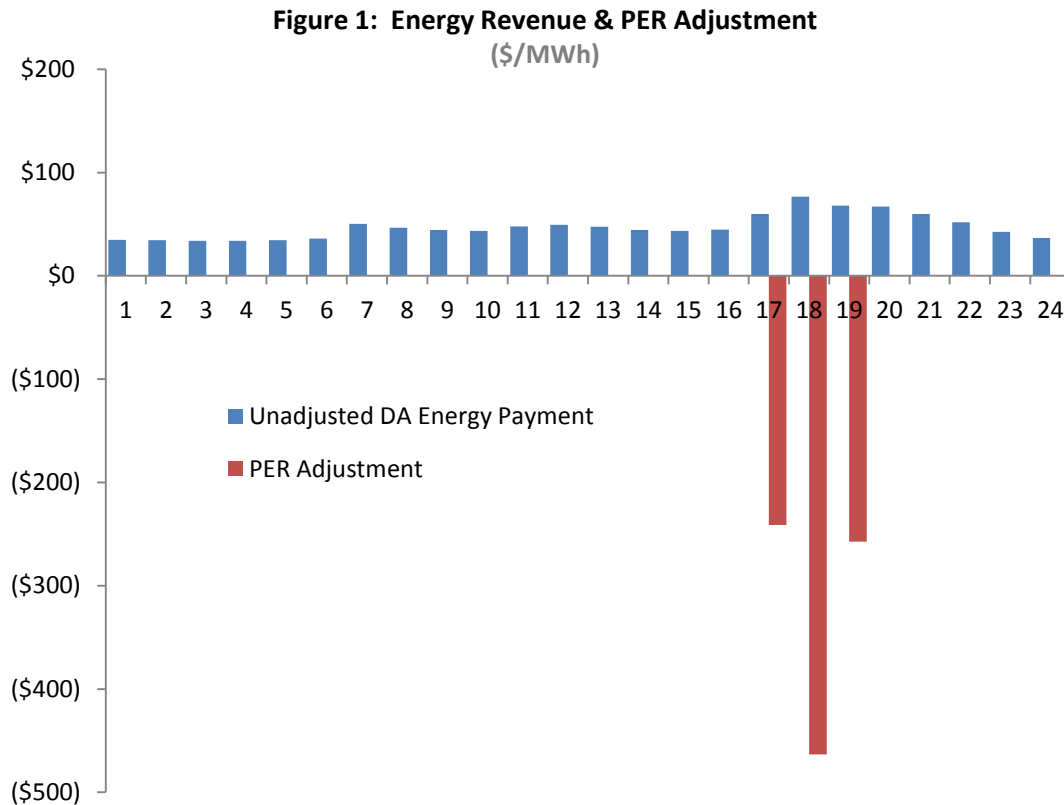
³ The hourly average price for hour 18 was \$1,103.82/MWh.

complaint, the PER Adjustment rebate to load would have been a significant, but lower, \$220,000.⁴

10. *Please compare the day-ahead market revenues that the vast majority of capacity resources received compared to the PER adjustment that they were required to pay on December 4, 2014.*
11. Because capacity suppliers have a must-offer obligation into the day-ahead energy market, most capacity resources receive the day-ahead energy price and most load serving entities pay the day-ahead price, which averaged \$68/MWh. Thus, the PER Adjustment is over 4.3 times greater than the unadjusted day-ahead energy payment for those hours. This results in net negative revenue for day ahead generation sales during the PER event hours. The three hours of PER Adjustment actually offset 78% of the *entire day's* day-ahead energy revenue. The magnitude of the rebate is illustrated in Figure 1. Based on the demand cleared in the day-ahead market for hours 17-19 on December 4, 2014, the PER Adjustment totaled \$13,682,860.⁵ The extreme peaks in the real-time market (a result of much less capacity clearing at that price) can quickly offset energy revenues earned by the majority of generators that clear in the day-ahead market.

⁴ If the PER Strike Price were increased by \$250/MWh, as advocated by NEPGA in its complaint, the PER Adjustment would be \$440/MWh, offsetting 39% of the day's energy revenue.

⁵ I calculated this figure based on the PER strike price of \$386/MWh for December 4, 2014. See ISO-NE December 2014 Hourly Peak Energy Rent Report, *supra* note 2.



12. *ISO-NE states that there have been increases to the RCPFs in the past without increases to PER. What, if anything, is different in this instance?*

13. ISO-NE argues that Commission precedent to date contradicts NEPGA’s assertion that the increase in the RCPFs “compels” a change to the PER Adjustment mechanism. ISO-NE states that it has filed Tariff changes in the past to increase the RCPFs, and in doing so has not proposed any change to the PER Adjustment mechanism nor has the Commission ordered one. ISO-NE notes that it filed to increase the RCPF for Thirty-Minute Operating Reserves (“TMOR”) that applies to import-constrained reserve zones from \$50/MWh to \$250/MWh in 2009 (a change that went into effect in 2010). ISO-NE further states that in 2012 it filed to increase the system-wide RCPF for TMOR from \$100/MWh to \$500/MWh. ISO-NE concludes that Commission precedent indicates that RCPFs can be increased without any corresponding change to the PER Adjustment mechanism.⁶

14. However, ISO-NE misses key differences between the latest increase in the RCPFs and the previous increases it cites. In the first instance in 2009, the RCPF for TMOR for

⁶ ISO-NE Dec. 23, 2014 Answer at 9-10.

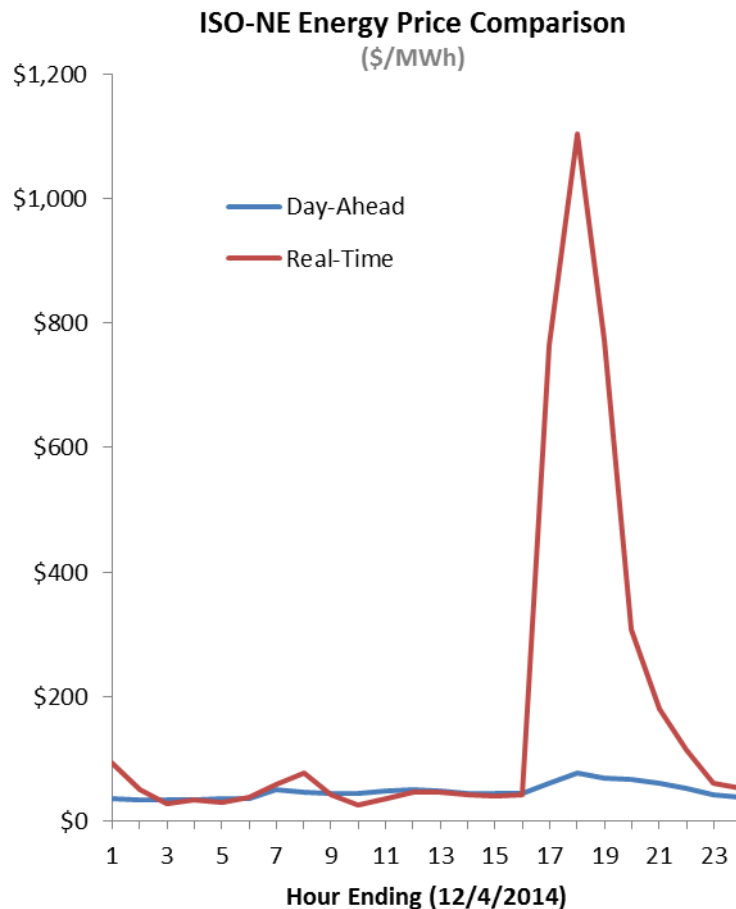
import-constrained reserve zones was increased from \$50/MWh to \$250/MWh, prior to the start of the first FCM Capacity Commitment Period. In 2012, when the system-wide RCPF for TMOR was raised from \$100/MWh to \$500/MWh, the PER Strike Price was at or above \$500/MWh for almost all hours of the year, rendering the possible effect nearly zero as related to the PER Adjustment calculation.⁷

15. Perhaps most importantly, the context of the previous changes was completely different from the 2014 increase in the RCPFs. In both of the previous cases, the lower RCPF values were restricting redispatch, forcing ISO-NE to manually redispatch around pricing limits and risking greater frequency of deficiencies. In the instant case, the additional RCPFs are not needed to facilitate normal economic dispatch and only serve as incremental scarcity pricing at levels far above the PER Strike Price.
16. *Shouldn't price convergence between the day-ahead and real-time eliminate the financial inequities raised in the NEPGA complaint?*
17. Price convergence would help, but there are inherent obstacles to price convergence in the ISO-NE market design. As shown in Figure 3 below, the simple fact is that during the periods when the PER Strike Price is triggered, there is a huge difference between the day-ahead price that most capacity resources are receiving and the real-time price that is deducted from their capacity payments.

⁷ See ISO-NE December 2014 Hourly Peak Energy Rent Report, *supra* note 2.

Figure 3: Day-Ahead and Real-Time Price Convergence (day-ahead and real-time prices for 12/4/2014 are shown in Figure 3)

HE	DA Price (\$/MWh)	RT Price (\$/MWh)	% Difference
1	\$34.73	\$93.67	170%
2	\$34.42	\$49.67	44%
3	\$33.92	\$27.07	-20%
4	\$33.91	\$33.08	-2%
5	\$34.59	\$29.99	-13%
6	\$36.08	\$37.36	4%
7	\$50.24	\$57.29	14%
8	\$46.70	\$77.68	66%
9	\$44.55	\$42.69	-4%
10	\$43.51	\$25.58	-41%
11	\$47.70	\$36.48	-24%
12	\$49.29	\$45.51	-8%
13	\$47.51	\$45.75	-4%
14	\$44.30	\$42.60	-4%
15	\$43.54	\$38.98	-10%
16	\$44.69	\$42.64	-5%
17	\$59.88	\$765.32	1178%
18	\$76.62	\$1,103.82	1341%
19	\$67.87	\$772.17	1038%
20	\$66.97	\$306.46	358%
21	\$59.92	\$180.15	201%
22	\$51.76	\$114.74	122%
23	\$42.69	\$59.44	39%
24	\$36.62	\$53.02	45%



18. Presuming that scarcity events can be sufficiently predicted, one factor that could mitigate this difference would be virtual bidding. As the Commission has recognized in a number of settings, virtual bidding can aid in price convergence between day-ahead and real-time prices by virtue of traders taking advantage of arbitrage opportunities until the differences are eliminated or at least significantly reduced.
19. However, in ISO-NE there are structural impediments that prevent day-ahead prices from converging with real-time prices during the timeframes when the PER Strike Price is triggered. First, given the lead time for scheduling in the day-ahead market, ISO-NE has access to virtually every resource. This effectively means they cannot (and certainly do not) schedule themselves into a reserve deficiency in the day-ahead market. Thus, as a practical matter, the RCPFs do not apply in the day-ahead market. Second, all supply

offers, including virtual “INC” offers, are capped at \$1,000/MWh, but real-time prices can go over \$3,000/MWh.⁸ Thus, without the impacts of the RCPFs in the day-ahead market, the day-ahead prices cannot converge with the real-time prices during these PER events. The Commission specifically recognized that price convergence will be impaired when the day-ahead offer cap is well below the real-time limit in a recent PJM order.⁹ In sum, there are major obstacles to day-ahead and real-time price convergence in ISO-NE, which puts the financial burden of the PER Adjustment squarely on capacity resources.

20. This concludes my affidavit.

⁸ See, e.g., Potomac Economics, Motion to Intervene Out-of-Time and Comments, Docket Nos. ER14-1050, *et al.*, at 10 (filed Feb. 14, 2014).

⁹ *PJM Interconnection, L.L.C.*, 139 FERC ¶ 61,057, at PP 123-43 (2012).

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

**New England Power Generators
Association, Inc.,**

Complainant,

v.

ISO New England Inc.,

Respondent.

Docket No. EL15-25-000

SUPPLEMENTAL AFFIDAVIT OF DAVID HUNGER, Ph.D.
ON BEHALF OF THE NEW ENGLAND POWER GENERATORS ASSOCIATION, INC.

I, David Hunger, Ph.D., being duly sworn, depose and state that the foregoing Affidavit on behalf of the New England Power Generators, Inc. is true, correct, accurate, and complete to the best of my knowledge, information, and belief.



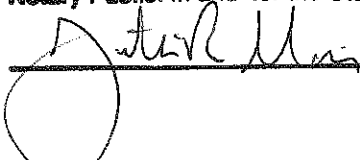
David Hunger, Ph.D.

SUBSCRIBED AND SWORN to
before me this 6th day of January, 2014



JUSTIN R. MARVIN
Notary Public
Commonwealth of Virginia
My Commission Expires August 31, 2018
Registration 7283364

Sworn to and subscribed before me, in my presence
this 6th day of January, 2015. A Virginia
Notary Public. In and for the State at Large.



Notary Public