

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

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ISO New England Inc.	)	Docket Nos. ER15-117-002
	)	EL14-99-001
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**REQUEST 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”),<sup>1</sup> the New England Power Generators Association, Inc. (“NEPGA”)<sup>2</sup> hereby submits this Request for Leave to Answer and Answer (“Answer”) to the Request for Rehearing and Order Setting Rates for Hearing filed by Public Citizen, Inc. on January 14, 2015, in the above-captioned proceedings (“Rehearing Request”). Public Citizen seeks rehearing of the Commission’s December 15, 2014, order pursuant to which the Commission, *inter alia*, found that Public Citizen’s requests for relief<sup>3</sup> were outside the scope of this proceeding.<sup>4</sup> In its Rehearing Request, Public Citizen seeks the same relief based on the same lack of evidentiary or legal support for its claims. Public Citizen’s Rehearing Request is procedurally and substantively deficient and should be rejected by the Commission.

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<sup>1</sup> 18 C.F.R. §§ 385.212, 385.213 (2014).

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

<sup>3</sup> Motion to Intervene, Comment and Protest of Public Citizen, Inc., Docket No. EL14-99 (filed October 7, 2014).

<sup>4</sup> *ISO New England Inc.*, 149 FERC ¶ 61,227, at PP 67-68 (2014) (“Order”).

## I. Request for Leave to Answer

Rule 713(d) of the Commission's Rules of Practice and Procedure generally prohibits answers to rehearing requests.<sup>5</sup> The Commission has accepted answers that are otherwise prohibited if they clarify the issues in dispute and assist the Commission in its decision-making.<sup>6</sup> In this Answer, NEPGA responds to requests for rehearing not previously raised by Public Citizen, and explain why those requests should be denied. In addition, this NEPGA Answer provides the Commission with information directly relevant to issues raised by Public Citizen, and therefore will assist the Commission in its decision-making. NEPGA respectfully requests that the Commission accept this Answer.

## II. Answer

Public Citizen asserts that the Commission erred in finding that the FCA 8 rates are not subject to further review.<sup>7</sup> Public Citizen cites to no precedent, statute, or Tariff provision in support of its argument. Instead, Public Citizen makes a cursory assertion that the purpose of a Section 206 proceeding is to address the justness and reasonableness of rates in effect.<sup>8</sup> Without more, Public Citizen's showing is deficient, as Public Citizen fails to cite to any representative Commission or court precedent in support of its apparent assertion that the FCA 8 rates are subject to review in this proceeding.<sup>9</sup> Pursuant to Commission rule, Public Citizen's arguments

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<sup>5</sup> 18 C.F.R. § 385.213(a)(2) (2012).

<sup>6</sup> *See, e.g., Florida Gas Transmission Co., LLC*, 141 FERC ¶ 61,161 at P 7 (2012); *California Indep. Sys. Operator Corp.*, 139 FERC ¶ 61,207 at P 13 (2012).

<sup>7</sup> Rehearing Request at p. 3.

<sup>8</sup> *Id.*

<sup>9</sup> The Commission's Rules of Practice and Procedure require a party seeking rehearing to include in its request a separate section listing each issue "in a separately enumerated paragraph that include representative Commission and court precedent on which the party is relying; any issue not so listed will be deemed waived." 18 C.F.R. § 385.713 (2014) (emphasis added).

are therefore deemed waived.<sup>10</sup> Public Citizen’s failure to cite to any precedent or authority for its assertion of legal error also leaves its Rehearing Request substantively void. Public Citizen simply provides no legal basis upon which it asks the Commission to find that it committed legal error in its Order. Public Citizen also fails to recognize that it and other parties have already sought rehearing of the eighth Forward Capacity Auction results taking effect, which requests the Commission dismissed.<sup>11</sup>

Public Citizen appears to make a vague assertion that unanswered “factual questions” compel the Commission to open a Section 206 proceeding to determine the “impact on the actual rates” of a unit retirement.<sup>12</sup> Public Citizen’s apparent claim of legal error is that the Office of Enforcement’s findings that Brayton Point had “credible justifications” for permanently retiring “does not excuse” the Commission for not opening a Section 206 proceeding.<sup>13</sup> Again, Public Citizen fails to offer any Commission or court precedent for its claim of legal error. Public Citizen as well fails to recognize that the Commission made its own evidentiary finding, separate and distinct from that of the Office of Enforcement, that there is “no evidence that the owners of Brayton Point engaged in any inappropriate behavior in the eighth FCA.”<sup>14</sup> The Commission’s reference to the Office of Enforcement’s findings do not render its own evidentiary findings an error of law subject to rehearing.

Public Citizen’s failure to cite to any legal precedent or provide any substantive legal argument supporting its assertions renders its Rehearing Request procedurally and substantively

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<sup>10</sup> *Id.*

<sup>11</sup> See Notice of Filing Taking Effect by Operation of Law, Docket No. ER14-1409-000, September 16, 2014, and Notice of Dismissal of Pleadings, Docket No. ER14-1409-000, October 24, 2014 (*appeal pending sub nom. Public Citizen, Inc., and George Jepsen, Attorney General of Conn. v. FERC*, D.C. Cir. Nos. 14-1244 and 14-1246).

<sup>12</sup> Rehearing Request at p. 3.

<sup>13</sup> *Id.*

<sup>14</sup> Order at P 67.

deficient.<sup>15</sup> Cursory assertions from one party with nothing more should not form the basis for a Commission finding that it committed legal error. Public Citizen's Rehearing Request should therefore be rejected.

### **III. Conclusion**

Wherefore, NEPGA respectfully requests that the Commission accept this Answer and deny Public Citizen's Request for Rehearing.

Respectfully Submitted,

/s/ Bruce Anderson

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<sup>15</sup> See Note 8, *supra*.

**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, January 26, 2015.

*/s/ Bruce Anderson*

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