

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

**ISO-New England Inc.**

**and**

**New England Power Pool  
Participants Committee**

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**Docket No. ER13-2313-000**

**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”), 18 C.F.R. §§ 385.212, 213, the New England Power Generators Association, Inc. (“NEPGA”)<sup>1</sup> seeks leave to file this Answer and Answers ISO New England’s (“ISO-NE”) Answer filed on September 25, 2013 (“ISO-NE Answer”). ISO-NE devotes much of its Answer to irrelevant pleadings from prior proceedings and asserts that Commission precedent supports its proposal to make the Shortage Event definition effective immediately when the Commission precedent ISO-NE cites to instead supports the New England Power Pool Participant Committee’s (“NEPOOL”) proposed Shortage Event definition effective date of June 1, 2017.

**I. Motion for Leave to Answer**

Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure generally prohibits answers to protests.<sup>2</sup> The Commission has accepted answers that are otherwise prohibited if they

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<sup>1</sup> The comments expressed herein represent those of NEPGA as an organization, but not necessarily those of any particular member.

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

clarify the issues in dispute and assist the Commission in its decision-making.<sup>3</sup> This NEPGA Answer rebuts arguments ISO-NE did not raise in its original joint filing with NEPOOL in this proceeding,<sup>4</sup> but instead raised for the first time in its Answer. NEPGA, therefore, has not had an opportunity to respond to those arguments. NEPGA's Answer rebuts ISO-NE's interpretations of Commission precedent and ISO-NE's assertions about the relevance of NEPOOL and generator pleadings in prior proceedings, and therefore assists the Commission in its decision-making. NEPGA respectfully requests that the Commission accept this Answer.

## **II. Answer**

### **A. NEPOOL and Generator Pleadings in Prior Proceedings Are Not Relevant to the Question Before the Commission in This Proceeding**

According to ISO-NE, “[h]istory dooms” NEPOOL and generator arguments in this proceeding because, as ISO-NE asserts, NEPOOL and generators took contrary positions in prior proceedings, specifically, in the Commission proceeding concerning changes to the Peak Energy Rent (“PER”) deduction.<sup>5</sup> The pleadings in that proceeding, however, have no relevance to the equitable and legal considerations in the present proceeding. ISO-NE is apparently raising something akin to an estoppel argument, but cites to no precedent, nor can it, that arguments raised in a prior proceeding bear on the arguments raised in a subsequent proceeding concerning proposed changes to a different Market Rule. What is relevant, and what weighs against ISO-NE's arguments in this proceeding, is Commission precedent. ISO-NE understandably attempts to divert the Commission's attention from the Commission's prior findings by discussing at great length pleadings in other dockets because, as discussed *infra*, the Commission has found that

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<sup>3</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>4</sup> ISO New England, Inc., and New England Power Pool; Filings of Market Rule Changes to Modify Shortage Event Definition, Docket No. ER13-2313-000 (filed September 4, 2013) (“September 4 Filing”).

<sup>5</sup> ISO New England Inc. and New England Power Pool, Market Rule 1 Revisions Relating to the Peak Energy Rent Feature of the Forward Capacity Market, Docket No. ER11-2427-000 (filed December 21, 2010).

where a Market Participant has reasonably relied on a Market Rule in its commercial transactions, its commercial interests and settled expectations should not be upset by an immediate change to the Market Rule.

**B. The PER Order Establishes That Commercial Interests Based on a Reasonable Reliance on Market Rules Should Not Be Upset By An Immediate Change to the Market Rules**

In its PER Order<sup>6</sup>, the Commission considered two proposed changes to the PER value calculation: (1) to use the higher of, rather than the lower of, the oil or gas fuel price (the “Higher Of Change”); and (2) to base the Average Monthly PER value on the 6 prior months Monthly PER values, rather than the 12 prior months Monthly PER values (the “Historical Data Change”).<sup>7</sup> In rejecting the Historical Data Change, the Commission explained that Load Serving Entities (“LSEs”) had reasonably based the pricing of their fixed-priced contracts, in part, on the 12-month average, and that an immediate change to the Average Monthly PER calculation before the LSEs had an opportunity to price their contracts based on a 6-month average would fail to properly account for the LSEs commercial interests.<sup>8</sup> Significantly, the Commission rejected the rule change without prejudice, finding that an alternative rule change that properly accounted for the LSEs interests would likely be acceptable to the Commission. In so doing, the Commission confirmed that it is reasonable for Market Participants to rely on the continued effect of Market Rules that have a material effect on their commercial interests, and that such interests weigh heavily on the justness and reasonableness of a Market Rule change that will have the effect of retroactively upsetting those interests.

ISO-NE’s proposal to immediately change the Shortage Event definition is a mirror image of the Historical Data Change rejected by the Commission in its PER Order. In both

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<sup>6</sup> *ISO New England, Inc.*, 134 FERC ¶ 61,128 (2011).

<sup>7</sup> PER Order at P 40.

<sup>8</sup> *Id.* at PP 39-40.

cases: (1) Market Participants widely agreed to, or did not oppose,<sup>9</sup> a proposed Market Rule change (*i.e.*, the Higher Of Change and the Shortage Event definition change), notwithstanding disagreements as to their respective effective dates; (2) making the Market Rule change effective immediately would undermine commercial transactions Market Participants executed based on their reasonable belief that the then-existing Market Rule would stay in effect throughout the period of time relevant to the pricing terms of their transactions; (3) the Market Rule change materially alters a price variable central to the affected commercial interest; and (4) the Market Rule change could go into effect on a date so as to give Market Participants a reasonable opportunity to price the new Market Rule into their commercial transactions.

In its PER Order, the Commission rejected an effective date that did not properly account for commercial interests based on a reasonable reliance on the continued operation of the then-existing Market Rule under these circumstances.<sup>10</sup> ISO-NE asserts a Commission distinction between market design changes and a “balancing of interests,” suggesting that the former may trump Market Participants’ reasonable reliance on Market Rules, and that under the later the Commission may more fairly account for such reliance. The Commission did not draw this distinction in its PER Order nor did it establish it as a principle upon which the Commission will evaluate a Market Rule change. In seeking to establish this principle, the ISO states that “the Commission specifically noted that the [PER] change was ‘more an issue of balancing interests than it is a market design issue.’”<sup>11</sup> The ISO’s citation is misleading, in that it was “the Filing Parties”, *i.e.*, ISO-NE and NEPOOL, not the Commission, that characterized the PER changes as

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<sup>9</sup> The LSEs did not oppose the Higher Of Rule Change, only the Historical Data Change. *See, e.g.*, Motion to Intervene and Protest of Constellation Energy Commodities Group, Inc., Hess Corporation, Macquarie Energy Group, LLC, and BP Energy Company, at p. 30, Docket No. ER11-2427-000 ( January 11, 2011).

<sup>10</sup> PER Order at PP 39-40.

<sup>11</sup> ISO-NE Answer at p. 9, *citing* PER Order at P 28 (citations omitted).

a “balancing of interests.”<sup>12</sup> In any event, the Commission did not create a *de facto* rule or principle in its PER Order that when a market design change is necessary it may take effect immediately regardless of the commercial interests that rely on it, whereas commercial interests may be taken into account to a greater degree when considering a non-market design change.

ISO-NE also suggests that because the Commission approved the Higher of Change to take effect before the Capacity Commitment Period (“CCP”) associated with the relevant Forward Capacity Auction, it is likewise just and reasonable to apply the Shortage Event definition change prior to the CCPs associated with the three FCAs in which capacity resources made offers based on the existing Shortage Event definition. This argument, however, fails to properly consider the differences in the time periods relevant to the commercial interests of the LSEs in the PER Order proceeding and capacity resources in the instant proceeding. For the LSEs, their settled expectations and commercial interests concerned the length of their fixed contracts (generally a shorter duration than the three years between an FCA and its CCP), not the three-year forward CCP. As the LSEs explained, making the Higher Of Change effective immediately and maintaining a 12-month averaging period, *i.e.*, rejecting the Historical Data Change, allowed the LSEs to manage the combined changes because they could price the gradual changes into their fixed-price contracts over time.<sup>13</sup> Once the fixed-contracts under which the LSEs relied on the 12-month averaging period expired, any harm to their settled expectations due to the Historical Data Change likewise expired. The analogous period of time for capacity resources and the Shortage Event definition change is the three-year forward CCP. The harm to a capacity resource’s settled expectations will not expire until the conclusion of the CCP

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<sup>12</sup> PER Order at P 28 (“*The Filing Parties state that shortening the rolling average ‘is more an issue of balancing interests than it is a market design issue.’*”) (emphasis added).

<sup>13</sup> See, e.g., Answer to Motions, Motion For Leave to Answer, and Answer to Answer of the Indicated Suppliers, at p. 6, Docket No. ER11-2427-000 ( February 1, 2011).

associated with the FCA in which the capacity resource made an offer based on the Shortage Event definition in effect when it made its offer. This reality is the basis for NEPOOL's proposal to make the Shortage Event definition change effective June 1, 2017, *i.e.*, the beginning of the CCP for FCA 9 which will take place in February 2014, well after Market Participants are put on notice of the Shortage Event definition change.<sup>14</sup>

The PER Order establishes that the effective date of a Market Rule change should be set so as to not upset the settled expectations of Market Participants who reasonably relied on the effectiveness of the then-existing Market Rule to continue through the period of time relevant to the obligations assumed by the Market Participant. NEPOOL's proposed effective date of the Shortage Event definition change is consistent with this Commission precedent and the PER Order cited by ISO-NE and should therefore be approved.

### **C. Generators Will Not Enjoy a “Windfall” Under the NEPOOL Proposal**

ISO-NE asserts that capacity resources “have enjoyed a windfall” due to a lack of Shortage Events, and object to an immediate change in the Shortage Event definition not on principled legal grounds, but in order to continue to benefit from unearned and unjustified excessive capacity revenues.<sup>15</sup> This is simply not true, and serves only as an attempt to cast capacity resources in an unfavorable light.

Capacity resources offer into the FCAs in part based on their assessment of the likelihood of a Shortage Event occurring and of the resource not being available during a Shortage Event. For each FCA, the clearing price should reflect in part the cost of those risks for the marginal resource. The Shortage Event trigger is the mechanism by which capacity resources are penalized when they are unavailable during a Shortage Event, and is a significant part of the

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<sup>14</sup> See September 4 Filing, Attachment N-1a, NEPOOL Transmittal Letter at pp. 11-17.

<sup>15</sup> ISO-NE Answer at p. 13.

definition of a CSO. The FCA revenues capacity resources realize, and the costs load incur, are intended to reflect the costs necessarily incurred by capacity resources to meet their CSOs. Capacity resources, therefore, will receive capacity revenues for the CCPs associated with FCAs 4-7 commensurate with the risks of the existing Shortage Event definition. These revenues do not represent a “windfall,” but instead a *quid pro quo*. Capacity resources would enjoy a windfall only if they were allowed by the Internal Market Monitor to offer into the FCA based on a greater risk factor, *e.g.*, based on the Shortage Event definition proposed by ISO-NE and NEPOOL in this proceeding, an allowance the IMM undoubtedly has not and did not allow in the bidding into the past FCAs since the increased risk of that Shortage Event definition was not in existence at the time of such de-list bid submittals. While ISO-NE erroneously equates a lack of Shortage Events as a windfall for generators, the simple matter is that the capacity resources, in aggregate, have delivered the contracted capacity such that there have been no sustained shortages of Ten Minute reserves. Buyers got what they have purchased and sellers have delivered what they sold. ISO-NE’s assertions otherwise are therefore meritless.

### **III. Conclusion**

Wherefore, NEPGA respectfully requests that the Commission grant its Motion for Leave to Answer and Answer in this proceeding, reject ISO-NE's proposed effective date for the Shortage Event definition, and accept NEPOOL's proposed effective date.

Respectfully Submitted,

/s/ Bruce Anderson\_\_\_\_\_

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**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, October 10, 2013.

/s/ Bruce Anderson

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