

150 FERC ¶ 61,053
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
Norman C. Bay, and Colette D. Honorable.

New England Power Generators Association, Inc.

Docket No. EL15-25-000

v.

ISO New England Inc.

ORDER DENYING COMPLAINT

(Issued January 30, 2015)

1. In this order, the Commission denies a complaint filed by the New England Power Generators Association, Inc. (NEPGA) seeking the modification or elimination of the Peak Energy Rent (PER) Adjustment mechanism contained in ISO New England Inc.'s (ISO-NE's) rules governing the Forward Capacity Market (FCM).

I. Background

A. FCM and PER

2. ISO-NE administers the FCM, in which resources compete in annual Forward Capacity Auctions (FCAs) to provide capacity three years in advance of an associated one-year Capacity Commitment Period (CCP).¹ A resource whose capacity clears the FCA receives monthly capacity payments (during the relevant CCP), in return for which it must meet its Capacity Supply Obligation by offering its capacity into the day-ahead and real-time energy markets every day during the CCP. In addition, a capacity resource is required to be available to operate during shortage events.

3. The FCM was developed pursuant to a settlement among stakeholders in 2006 (FCM Settlement). As relevant here, the FCM Settlement also provided for the PER

¹ ISO-NE has held eight FCAs to procure capacity for eight associated CCPs. Currently ISO-NE is in the middle of CCP 5 (June 1, 2014 – May 31, 2015), for which capacity was procured in FCA 5. In February 2015, ISO-NE will hold FCA 9, to procure capacity for CCP 9 (June 1, 2018 – May 31, 2019).

Adjustment, which is intended to act as a hedge for load against price spikes in the energy market. The PER Adjustment is also intended to help mitigate incentives to create price spikes in the energy market through economic or physical withholding by removing any profits gained from the rise in energy prices above a designated level.² The PER Adjustment is designed to accomplish these purposes by requiring suppliers to return “peak energy rents” (i.e., those revenues earned when real-time clearing prices exceed an administratively-determined strike price) earned in the energy market to load through rebates made by suppliers from their capacity payments.

4. The PER Adjustment is designed to approximate the additional revenues that a hypothetical proxy peaking unit would earn in the real-time energy market during the highest-priced hours reflecting scarcity, and to return those revenues to load. To develop the PER Adjustment, each day ISO-NE calculates a PER strike price that is slightly higher than the marginal running cost of the most expensive resource in New England, i.e., the hypothetical proxy peaking unit. For each hour in which the real-time Locational Marginal Price (LMP) exceeds that strike price, ISO-NE calculates an hourly PER value equal to the difference between the real-time LMP and the PER strike price, adjusted by a scaling factor and an availability factor. In each month, the capacity payment each capacity supplier receives is then reduced by a rolling average of the monthly PER values for the previous 12 months.³

B. The Two-Settlement Capacity Market Design and Sloped Demand Curve

5. In 2014, ISO-NE implemented a new two-settlement capacity market design, which will become effective beginning with FCA 9 and its associated CCP (2018-19). Under these provisions, a capacity resource will receive two separate capacity payments, a Capacity Base Payment and a Capacity Performance Payment. First, each resource that receives a Capacity Supply Obligation through the FCA will receive a Capacity Base Payment, in return for taking on both a physical obligation to offer its capacity into the energy market, and a financial obligation to cover its share of the system’s total energy and reserve requirements during scarcity conditions. Second, each resource will receive a Capacity Performance Payment that is determined after a scarcity condition arises by measuring the resource’s performance against its forward position (i.e., its share of the system’s requirements at the time of the scarcity condition). If a resource provides more than its share of energy and reserves, it will receive a positive Capacity Performance

² *Devon Power LLC*, 115 FERC ¶ 61,340, at PP 24, 29 (2006).

³ See ISO-NE Transmission, Markets and Services Tariff (Tariff), sections III.13.7.2.7.1.1.1 and III.13.7.2.7.1.1.2 (38.0.0).

Payment; if it provides less than its share, it will receive a negative Capacity Performance Payment.⁴

6. A scarcity condition is triggered whenever the real-time energy price includes the Reserve Constraint Penalty Factor (a rate used within the real-time dispatch and pricing algorithm, which serves as a cap on the price that ISO-NE may pay to procure additional reserves). In order to provide additional incentives for performance, the Reserve Constraint Penalty Factors were increased (from \$500/MWh to \$1,000/MWh for 30-Minute Operating Reserves, and from \$850/MWh to \$1,500/MWh for 10-Minute Non-Spinning Reserves), thus increasing the price that ISO-NE may pay to procure energy and reserves in real-time.⁵

7. At the time the Commission was considering the two-settlement capacity market design proposal, a generator, GDF SUEZ Energy Marketing (GDF SUEZ) asserted that even under existing scarcity pricing provisions, capacity resources' revenues could sometimes net out as negative for scarcity hours after deducting the PER Adjustment – in other words, good performers would effectively be punished.⁶ GDF SUEZ argued that increasing the Reserve Constraint Penalty Factors would make this situation worse and would exaggerate the inefficiency of the existing PER Adjustment mechanism.

8. In ruling on the two-settlement capacity market design proposal, the Commission acknowledged that the increased Reserve Constraint Penalty Factors might impact specific elements of ISO-NE's proposal, and directed further compliance filings. However, the Commission found that this specific concern as to the interaction of the increased Reserve Constraint Penalty Factors and the PER Adjustment mechanism was beyond the scope of the proceeding. The Commission further stated that:

The potential inefficiency . . . exists independent of, and is not impacted by, the increase to the Reserve Constraint Penalty Factors. The purpose of increasing the Reserve

⁴ *ISO New England Inc.*, 147 FERC ¶ 61,172 (2014) (May 30, 2014 Order).

⁵ May 30, 2014 Order, 147 FERC ¶ 61,172 at PP 12, 25.

⁶ GDF SUEZ comments filed February 12, 2014 in *ISO New England Inc.*, Docket No. ER15-1050-000 at 19 (“Most generation is sold at day-ahead energy prices and, particularly in scarcity pricing hours, day-ahead energy prices are significantly lower than real-time energy prices. As a result, a capacity resource providing energy in real-time to cover its marginal day ahead energy sale will just barely recover its fuel and other variable costs by supporting reliability in the stressed system hours, but then will be net negative for the hour after booking the [Reserve Constraint Penalty Factor]-driven PER deduction,” footnote omitted).

Constraint Penalty Factors is to increase performance incentives, which can be provided in the form of either rewards or penalties, depending on whether the resource has been scheduled in the day-ahead market. However, the Peak Energy Rent deduction does not affect the incremental incentives to produce energy, because a resource's Peak Energy Rent deduction will be the same whether or not it produces energy.⁷

9. Subsequently, in ruling on ISO-NE's compliance filing, the Commission noted that ISO-NE had determined that the PER Adjustment mechanism would be potentially impacted by the increased Reserve Constraint Penalty Factors, but that this issue was outside the scope of that compliance proceeding and thus should be appropriately addressed elsewhere.⁸ The Commission also noted that ISO-NE had already commenced a separate stakeholder process for that purpose.⁹

10. In a separate proceeding, the Commission also required ISO-NE to establish a system-wide sloped demand curve and related parameters for the FCM, also beginning with FCA 9. These demand curve changes defined the shape of the system-wide sloped demand curve; extended from five to seven years the period that a new resource may elect to receive its initial clearing price; established a limited exemption for certain renewable resources; and eliminated the system-wide administrative pricing rules. The Commission found that implementation of the sloped demand curve would also reduce price volatility, susceptibility to the exercise of market power, frequency of low reliability events, and the possibility of falling below reliability targets in any individual time period.¹⁰

C. NEPGA's Complaint

11. On December 3, 2014, pursuant to section 206 of the Federal Power Act¹¹ and Rule 206 of the Rules of Practice and Procedure of the Commission,¹² NEPGA filed a

⁷ May 30, 2014 Order, 147 FERC ¶ 61,172 at P 110.

⁸ *ISO New England Inc.*, 149 FERC ¶ 61,009, at P 14 (2014) (October 2, 2014 Order).

⁹ October 2, 2014 Order, 149 FERC ¶ 61,009 at P 25 n.39.

¹⁰ *ISO New England Inc.*, 147 FERC ¶ 61,173, at P 29 (2014).

¹¹ 16 U.S.C. § 824e (2012).

¹² 18 C.F.R. § 385.206 (2014).

complaint requesting that the Commission require ISO-NE to increase the PER daily strike price by \$250/MWh for CCPs 5 through 8 and eliminate or modify the PER Adjustment mechanism for CCPs 9 and beyond.

12. NEPGA alleges that the current PER Adjustment is unjust and unreasonable in light of the increases in the Reserve Constraint Penalty Factors in ISO-NE's energy market put in place in 2014. NEPGA states that beginning December 3, 2014, the new Reserve Constraint Penalty Factors have the potential to substantially increase real-time energy prices, and will therefore also increase the PER Adjustment amount that is returned to load. NEPGA seeks fast-track treatment for this complaint, and asks for Commission action by January 30, 2015 (three days before the commencement of FCA 9 on February 2, 2015).

13. NEPGA seeks the following relief:

- a) CCPs 5 through 8: NEPGA asks the Commission to direct ISO-NE to adjust the PER strike price, which determines the magnitude of the PER Adjustment, for CCPs 5 through 8 to account for the increased Reserve Constraint Penalty Factors. NEPGA states that the increases occurred after sellers incurred capacity supply obligations, and asserts that increasing the PER strike price by \$250/MWh, so that the PER Adjustment mechanism will trigger less frequently and lower PER amounts will be deducted from generators' monthly capacity payments, would be a just and reasonable modification. NEPGA states that this change was proposed recently by ISO-NE in its stakeholder process.
- b) CCP 9: NEPGA also asks the Commission to direct ISO-NE to eliminate the PER Adjustment altogether beginning with FCA 9, which coincides with the implementation of the two-settlement capacity market design and sloped demand curve. NEPGA asserts that these changes to the FCM will render the PER Adjustment unnecessary and improperly duplicative. NEPGA argues that the two-settlement capacity market design closely links capacity payments to real-time energy market performance and imposes significant penalties for the failure to deliver in real-time, and that, therefore, this new incentive structure replicates the purpose of the PER Adjustment, which was designed in part to discourage the exercise of market power through withholding. NEPGA further argues that the PER Adjustment was also intended to provide a hedge to load against high real-time prices, but that now that ISO-NE will be using a sloped demand curve, the value of the PER Adjustment is now outweighed by its likely cost. NEPGA states that, if the Commission does not grant this request, it should require ISO-NE to continue the \$250/MWh increase in the daily PER strike price (discussed above) for CCP 9.
- c) CCP 10: For similar reasons, NEPGA asks the Commission to eliminate or modify the PER Adjustment for FCA 10 and beyond.

14. NEPGA alleges that, due to the obligation to offer into the day-ahead energy market, the majority of capacity resources earn energy revenues based on the day-ahead energy market clearing prices, which do not include Reserve Constraint Penalty Factors. NEPGA notes that “[t]he vast majority of these resources clear in the day-ahead market and receive the day-ahead clearing price,” but that Reserve Constraint Penalty Factors, which reflect an operating reserve shortage, are included in real-time clearing prices only, and not in day-ahead clearing prices.¹³ NEPGA states that the PER Adjustment, however, applies to every MW of capacity that load did not self-supply in the FCM (based on real-time prices) regardless of whether a resource actually receives the real-time energy price. NEPGA asserts that “load pays real-time energy/scarcity prices to a small fraction of capacity resources, but all generation capacity resources pay a PER Adjustment to load based on real-time prices.”¹⁴ NEPGA therefore argues that the increase in Reserve Constraint Penalty Factors, without any adjustment to or elimination of the PER Adjustment mechanism, will further reduce capacity payments.¹⁵

15. NEPGA states that, in 2014, ISO-NE presented a proposal to the New England Power Pool (NEPOOL) stakeholders to increase the daily PER strike price by \$250/MWh for the remainder of CCPs 5 through 8 to reduce the impact of the increase in Reserve Constraint Penalty Factors on the PER Adjustment. NEPGA states that ISO-NE determined that adjusting the daily PER strike price by \$250/MWh would essentially maintain the historical level of PER Adjustments. In addition, NEPGA states that ISO-NE demonstrated how the increase in Reserve Constraint Penalty Factors could result in suppliers paying PER Adjustments that were more than double any potential increase in revenue from the reserves and energy markets and that were annually nearly 400 percent higher than the historical levels of PER Adjustments.¹⁶ NEPGA claims that, according to ISO-NE simulations, the increased levels of PER Adjustments would have resulted in an annual net loss to suppliers equivalent to approximately six percent of total annual revenues from FCA 4.¹⁷ However, according to NEPGA, because ISO-NE took the position that it would file the proposal to increase the PER strike price with the

¹³ NEPGA Complaint at 14-15.

¹⁴ NEPGA Complaint at 15 (footnote omitted).

¹⁵ NEPGA Complaint at 6-7.

¹⁶ NEPGA Complaint at 9-10.

¹⁷ NEPGA Complaint at 18-19, citing Attachment A, Testimony of David Hunger (Hunger Testimony) at ¶ 21.

Commission only if it obtained 60 percent support from stakeholders, which did not occur, ISO-NE did not file this proposal with the Commission.¹⁸

16. NEPGA also states that, separately from issues relating to CCPs 5 through 8, ISO-NE initiated a stakeholder discussion to review the PER Adjustment for FCA 10 and beyond. NEPGA notes that, in this discussion, ISO-NE has stated that (a) the PER Adjustment will have a greater impact on future FCM clearing prices than in years past due to the implementation of a downward-sloping demand curve; (b) the PER Adjustment is a poor hedge for load; and (c) the PER Adjustment may no longer be needed to address market power concerns. However, NEPGA states that ISO-NE is not considering any changes to the PER Adjustment for FCA 9, which starts on February 2, 2015, and that the earliest that ISO-NE contemplates making changes is FCA 10.¹⁹

17. NEPGA asserts that the current PER Adjustment is inequitable and threatens reliability, and is therefore unjust and unreasonable. NEPGA further states that a balancing of equities, involving a judgment as to whether the benefit of the market rule change outweighs the settled expectations of market participants, requires the Commission to act here, in that the interaction of the increased Reserve Constraint Penalty Factors with the existing PER Adjustment creates a “lopsided and inequitable obligation” for suppliers to rebate annually over \$100 million to load, despite suppliers’ reasonable prior expectations that the PER Adjustment would remain small.²⁰ NEPGA argues that, at the time that capacity suppliers submitted their de-list bids into FCAs 5 through 8, they could not have anticipated that the Commission would change the market rules so as to significantly change the impact of the PER Adjustment mechanism, and that the establishment of a transitional mechanism is appropriate when significant changes to settled expectations occur after the fact. NEPGA further argues that the Commission has previously accepted revisions to the PER strike price to restore the original intent of the PER Adjustment.²¹

18. With regard to reliability, NEPGA acknowledges that there will be no adverse reliability impacts associated with adjusting the PER strike price during CCPs 5 through 8, but “the reduction in FCA payments resulting from the current PER Adjustment could

¹⁸ ISO-NE’s proposed increase of \$250/MWh to the PER strike price received a 57.74 percent vote in favor at the NEPOOL Markets Committee and a 47.14 percent vote in favor at the NEPOOL Participants Committee (NEPGA Complaint at 9-10).

¹⁹ NEPGA Complaint at 10-11.

²⁰ NEPGA Complaint at 12.

²¹ NEPGA Complaint at 12 (citing *ISO New England Inc.*, 134 FERC ¶ 61,128 (2011) (the PER Revisions Order).

jeopardize reliability . . . by undermining the financial viability of a number of capacity resources in the region that rely on their FCA payments to cover costs.”²² NEPGA urges the Commission to accept ISO-NE’s assertion that raising the PER strike price by \$250/MWh for the remainder of CCPs 5 through 8 would be just and reasonable, and to eliminate the PER Adjustment altogether beginning in CCP 9.

II. Notice of Filing, Interventions, Comments, Protests, and Answers

19. Notice of the complaint was published in the *Federal Register*, 79 Fed. Reg. 73,572 (2014), with interventions and protests due on or before December 23, 2014.

20. Calpine Corporation, Dominion Resources Services, Inc., Brookfield Energy Marketing LP, PSEG Companies,²³ Emera Energy Services, Inc., the United Illuminating Company, Exelon Corporation, ISO-NE, Northeast Utilities Service Company, NEPOOL Participants Committee, NRG Companies,²⁴ Electric Power Supply Association (EPSA), Entergy Nuclear Power Marketing LLC (Entergy), the Attorney General for the State of Connecticut, the Connecticut Office of Consumer Counsel, the Connecticut Department of Energy and Environmental Protection, the New England States Committee on Electricity (NESCOE), and GDF SUEZ filed timely motions to intervene. The Connecticut Public Utilities Regulatory Authority (CT PURA) filed a notice of intervention. CT PURA and NESCOE also filed protests and Entergy, EPSA, GDF SUEZ, and NEPOOL each filed comments. ISO-NE filed an answer to NEPGA’s complaint, NEPGA filed an answer to ISO-NE’s answer and the protests, and NEPOOL filed an answer to NEPGA’s answer.

III. Answers, Protests and Comments

21. In its answer, ISO-NE first states that it takes no position on NEPGA’s request for relief for CCPs 5 through 8, as this involves equitable issues of revenue allocation among market participants and has no impact on reliability or economic efficiency. However, ISO-NE asserts that NEPGA mischaracterizes several issues with respect to a change to the PER strike price for CCPs 5 through 8:²⁵ (1) ISO-NE anticipates no negative impact

²² NEPGA Complaint at 22.

²³ PSEG Companies include PSEG Power LLC, PSEG Energy Resources & Trade LLC and PSEG Power Connecticut LLC.

²⁴ NRG Companies include NRG Power Marketing LLC and GenOn Energy Management, LLC.

²⁵ ISO-NE Answer at 6.

on reliability if the PER strike price is not increased;²⁶ (2) this case differs from the PER Revisions Order on which NEPGA relies because, in that case, ISO-NE exercised its section 205 rights to make the change without having to show that the existing PER provisions were unjust and unreasonable, while here NEPGA must meet its burden under section 206 to demonstrate that the existing provisions are unjust and unreasonable;²⁷ and (3) NEPGA's assertion that the increase in the Reserve Constraint Penalty Factors compels a change to the PER Adjustment mechanism is inconsistent with Commission precedent because, in the past, ISO-NE has filed Tariff changes to increase the Reserve Constraint Penalty Factors and in doing so has not proposed any change to the PER Adjustment mechanism.²⁸

22. ISO-NE also clarifies that its proposal to adjust the PER strike price was “premised on addressing perceived equity issues by reallocating revenue between capacity suppliers and Load Serving Entities, rather than addressing either reliability or economic efficiency concerns.”²⁹ ISO-NE emphasizes that it was inclined to file the proposed PER strike price modification with the Commission only if the proposal received significant (at least 60 percent) support from stakeholders.

23. With regard to the relief that NEPGA seeks for CCP 9, ISO-NE states that granting such relief would produce unjust and unreasonable results in FCA 9, because: (1) capacity suppliers have had the opportunity to factor the higher Reserve Constraint Penalty Factors into their de-list bids for FCA 9; and (2) the PER Adjustment has already been accounted for in the price parameters of the demand curve for FCA 9. ISO-NE states that the FCM rules contemplate that a capacity supplier will include in the de-list bid an estimate of the PER Adjustment to which the resource will be subject during the CCP, which would increase the overall de-list bid. ISO-NE notes that its review of de-list bids for FCA 9 was completed in October 2014, and that removing the PER Adjustment from CCP 9 at this juncture would result in the de-list bid values calculated

²⁶ ISO-NE explains that the PER Adjustment is triggered when real-time energy prices reach the PER strike price, and a capacity supplier is subject to the adjustment – which is taken from the capacity payment – whether or not its resource is scheduled day-ahead or provides energy in real-time. Thus, ISO-NE asserts that the PER Adjustment does not impact the supplier's incentive to operate its resource. ISO-NE Answer at 8.

²⁷ ISO-NE Answer at 8-9.

²⁸ ISO-NE notes that it has previously altered the Reserve Constraint Penalty Factors without also adjusting the PER mechanism in 2009 and 2012. ISO-NE Answer at 9, citing proceedings accepted by Commission letter order (in which no protests were filed requesting relief similar to NEPGA's current request).

²⁹ ISO-NE Answer at 6-8.

for use in the auction overstating the actual net going forward costs that the supplier will incur during the CCP. ISO-NE states that a capacity supplier would, in effect, be requesting to earn more in the FCM to make up for costs (i.e., the PER Adjustment) that it would in fact not incur during the CCP. Thus, ISO-NE argues, if a capacity supplier with such a de-list bid set the clearing price, removing the PER Adjustment for FCA 9 would result in over-paying for capacity.³⁰

24. With regard to the relief that NEPGA seeks for CCPs 10 and beyond, ISO-NE states that NEPGA is seeking to circumvent the stakeholder process, which is already addressing this question, and ISO-NE urges the Commission not to permit such an end run. It further states that NEPGA's proposal – simply to remove the PER Adjustment as an offset against capacity supplier revenues for future FCAs – is one-sided and incomplete, and fails entirely to contemplate other necessary modifications that must accompany the removal of or modification to the PER Adjustment.³¹ Thus, ISO-NE urges the Commission to allow the stakeholder process to proceed, so that new tariff provisions may be filed in time for the FCA 10 qualification process.

25. NEPOOL, NESCOE and CT PURA filed comments opposing the complaint. NEPOOL urges the Commission to deny the complaint on the basis that NEPGA has failed to demonstrate that the existing PER Adjustment mechanism is unjust and unreasonable. CT PURA and NESCOE argue that NEPGA's request for a \$250/MWh adder is equivalent to increasing the PER proxy unit's heat rate, and therefore runs afoul of a provision in the Tariff requiring changes to the heat rate to be filed under section 205 after consultation with state commissions.³² NESCOE argues that NEPGA is seeking to undo consumer protections that have been in place since the inception of the FCM, and it should not be permitted to pre-empt the stakeholder process and compel hasty Commission action on this complex issue by filing a complaint so shortly before FCA 9. NESCOE primarily argues that, with regard to the relief NEPGA seeks for CCPs 5 through 8, the clearing price resulting from each of the auctions associated with those CCPs was set through administrative pricing, and thus NEPGA has failed to show how the Reserve Constraint Penalty Factor changes would have driven a different auction

³⁰ ISO-NE Answer at 10-11.

³¹ ISO-NE Answer at 14-15.

³² CT PURA Supplemental Protest at 5 n.12, citing ISO-NE Tariff, Market Rule 1, § III.13.7.2.7.1.1.1(b)(iii) (“Any changes to the heat rate of the PER Proxy Unit shall be considered in the stakeholder process in consultation with the state utility regulatory agencies, shall be filed pursuant to Section 205 of the [FPA], and shall be applied prospectively to the settlement of future Forward Capacity Auctions”); NESCOE Protest at 10-11.

price outcome.³³ NESCOE further argues that, in addition to failing to show that the existing PER Adjustment mechanism is unjust and unreasonable, NEPGA has failed to show that its proposed alternatives are just and reasonable, in that by providing the potential for revenue reductions during scarcity events, the PER Adjustment complements the Reserve Constraint Penalty Factor changes by discouraging the exercise of market power through withholding.³⁴

26. EPSA, GDF SUEZ and Entergy all filed comments supporting NEPGA's complaint. GDF SUEZ argues that the PER Adjustment is an inefficient and ineffective means of preventing energy price spikes. GDF SUEZ further gives a recent example of what it asserts are the consequences of the interaction of the PER mechanism and the two-settlement capacity market design. GDF SUEZ states that on December 4, 2014 (one day into implementation of the Commission-directed increase in Reserve Constraint Penalty Factors), approximately 95-98 percent of energy sales occurred through the day-ahead energy market, with clearing prices ranging from \$60/MWh to \$77/MWh in hours ending 1700 through 1900. On that day, because of system problems in Quebec, there was an almost 2,500MW swing in supply needs in New England, leading to energy price increases to \$765/MWh and \$1,104/MWh for hours ending 1700 through 1900. GDF SUEZ states that the PER Adjustment will require capacity sellers to rebate PER Adjustment amounts of almost \$1,000/MW across those three hours, i.e., almost five times the level of day-ahead energy payments they received.³⁵ Entergy also references this event, and states that it will pay an additional \$1.2 million to load for this brief period.³⁶

27. NEPGA filed an answer to ISO-NE's answer and the protests. It states that it has met its burden under section 206 to show that the Tariff is unjust and unreasonable. Specifically, NEPGA argues that the complaint demonstrates the inequity of maintaining the current PER Adjustment in light of the increased Reserve Constraint Penalty Factors and quantifies the financial harm to capacity suppliers.³⁷ NEPGA contends, given that the PER Adjustment is wholly unrelated to capacity suppliers' incentive to perform in real-time, the revenue transfer is unrelated to economic efficiency and reliability and would simply result in a windfall to load. NEPGA reiterates that the real-time impact of higher Reserve Constraint Penalty Factors would have been an estimated net payment

³³ NESCOE Protest at 15-16.

³⁴ NESCOE Protest at 4, 16-18.

³⁵ GDF SUEZ Comments at 5-6.

³⁶ Entergy Comments at 5-6.

³⁷ NEPGA Answer at 4 citing Complaint at 14-16.

from capacity suppliers to load of \$67 million in CCP 4. NEPGA also argues that the windfall to load is exacerbated by the fact that the Reserve Constraint Penalty Factor changes occurred “intra-cycle,” and, therefore, capacity suppliers did not have the opportunity to reflect this net revenue loss in FCM de-list bids.³⁸

28. NEPGA states that it does not contend that all intra-cycle changes to energy market rules require a corresponding adjustment in FCM or to other market rules. However, NEPGA argues that the magnitude of the increases of the Reserve Constraint Penalty Factors and their direct relationship to the PER strike price render the current PER strike price unjust and unreasonable. The fact that the Commission did not order a PER Adjustment in other instances of Reserve Constraint Penalty Factor increases that were unlikely to have an effect on the PER Adjustment, NEPGA argues, is not probative of the merits of its complaint.³⁹

29. NEPGA states that the Commission engages in a “balancing of equities” to determine whether an intra-cycle rule change compels further action to restore parties’ settled expectations.⁴⁰ NEPGA also states that 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.⁴¹ NEPGA contends that its proposal to adjust the PER strike price by \$250/MWh is warranted in light of the significant change in energy market rules applicable to CCPs 5 through 8 and 9. NEPGA notes that capacity suppliers still would be obligated to make PER payments under the proposal, but these payments would be more consistent with the historical PER Adjustments that were reflected in all of the de-list bids in FCAs 5 through 8, the likely majority of de-list bids for FCA 9, and the Net Cost of New Entry value used in FCA 9.

30. NEPGA argues that the \$250/MWh adjustment to the strike price does not constitute an adjustment to the PER proxy unit’s heat rate. NEPGA states that 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, NEPGA argues that the PER proxy unit heat rate is a fixed value established in the Tariff.⁴² Further, NEPGA contends that

³⁸ NEPGA Answer at 4-5.

³⁹ NEPGA Answer at 7-9.

⁴⁰ NEPGA Answer at 9 (citing *California Indep. Sys. Operator Corp.*, 91 FERC ¶ 61,205, at 61,725 (2000), *order on reh’g*, 104 FERC ¶ 61,062 (2003)).

⁴¹ NEPGA Answer at 9 (citing *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,108 (2011)).

⁴² NEPGA Answer at 12-13 (citing Tariff Market Rule 1 § 13.7.2.7.1.1.1(b)(iii)).

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. NEPGA argues that the Commission has approved adjustments to the manner in which the PER proxy unit fuel cost is calculated.⁴³

31. NEPGA argues that the PER Adjustment should be eliminated for FCAs 9 and beyond. 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 bids 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 Cost of New Entry value for the upcoming auction.⁴⁴

32. NEPOOL, in its answer to NEPGA's answer, seeks to clarify that, contrary to NEPGA's representation, NEPOOL has not taken the position that the Commission must defer to the outcome of the stakeholder process (so that rejection of the complaint is required); rather, NEPOOL states, it urged the Commission to deny the NEPGA complaint without prejudice, so that it might be refiled if further changes are not implemented in connection with the ongoing stakeholder process.⁴⁵ NEPOOL further seeks to correct the impression that, as NEPGA suggests, there was a proposed change to the ISO-NE Tariff that was unable to move through the stakeholder process (and therefore could not be filed by ISO-NE under section 205). Rather, NEPOOL states that ISO-NE could have proposed changes to the PER Adjustment under section 205, but did not do so because it made clear that it did not view such changes as necessary for the market rules to remain just and reasonable.⁴⁶ NEPOOL urges the Commission to allow NEPOOL stakeholders the benefit of continuing discussion as to the proposed elimination of the PER mechanism.⁴⁷

⁴³ NEPGA Answer at 13 citing *ISO New England Inc.*, 134 FERC ¶ 61,128 (2011).

⁴⁴ NEPGA Answer at 14-15

⁴⁵ NEPOOL Answer at 4, 4 n.19 (citing NEPOOL Comments at 4).

⁴⁶ NEPOOL Answer at 5.

⁴⁷ NEPOOL Answer at 6.

IV. Discussion

A. Procedural Issues

33. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motions to intervene and notice of intervention serve to make the entities that filed them parties to this proceeding.

34. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We accept NEPGA's and NEPOOL's answers filed here, because they have provided information that assisted us in our decision-making process.

B. Analysis

35. We deny NEPGA's complaint. As discussed below, NEPGA has failed to meet its burden under section 206 to demonstrate that ISO-NE's existing tariff provisions governing the PER Adjustment are unjust and unreasonable. Accordingly, we need not address whether NEPGA's proposed alternative is just and reasonable.⁴⁸

1. CCPs 5 through 8

36. As to CCPs 5 through 8, NEPGA bases its contention that the combination of the change in Reserve Constraint Penalty Factors and the existing PER Adjustment mechanism will result in unjust and unreasonable results for those CCPs on a single year of data, and it fails to place that information in the larger context of the overall revenue picture for capacity suppliers for those four CCPs. NEPGA points to ISO-NE's presentation suggesting that, if the new Reserve Constraint Penalty Factors had been in place for CCP 4, the result would have been an increase in the net payment to load of

⁴⁸ Nor has NEPGA adequately supported its proposed alternative to the existing PER Adjustment tariff provisions (i.e., raising the PER strike price by \$250/MWh). We also note that NEPGA does not address the goals of the PER Adjustment – namely, to provide load with a hedge against high energy prices and to discourage market manipulation in the energy market – and set forth how its proposed alternative will continue to accomplish those goals.

\$67 million.⁴⁹ NEPGA does not demonstrate why a similar result would necessarily occur in CCPs 5 and beyond.

37. Moreover, a price floor existed in FCAs 5-7, and all resources selected in those auctions, except those in the Northeastern Massachusetts/Boston area in FCA 7, received the floor price. The floor price was higher than the price that would have cleared the market, potentially resulting in above-market capacity revenue. The higher PER deduction resulting from the higher Reserve Constraint Penalty Factors could reduce the net capacity revenue received by capacity resources. But NEPGA fails to discuss whether the increased PER deduction would be greater than the amount of above-market revenues due to the price floor, and thus whether the net revenues received by capacity resources after accounting for the PER deduction would fall below market-clearing levels.

38. Similarly, NEPGA does not address the possibility that, if higher PER Adjustment payments occur, they may be offset by higher day-ahead LMPs in hours where Reserve Constraint Penalty Factors in the real-time market and the associated PER deduction could be expected in the day-ahead time frame. Resource owners and virtual bidders may want to reflect the possibility of high real-time LMPs in their day-ahead offers during hours when Reserve Constraint Penalty Factors may be triggered, including during hours when Reserve Constraint Penalty Factors are not triggered in real-time. These higher offers may increase day-ahead LMPs not only during hours when the real-time price reflects Reserve Constraint Penalty Factors, but also in other hours when Reserve Constraint Penalty Factors are not triggered. Thus, resource offers into the day-ahead markets during CCPs 5 through 8 (and the resulting day-ahead clearing prices) may rise to take into account the potential for higher real-time prices and associated desire to be

⁴⁹ NEPGA Complaint at 15 (footnotes omitted):

ISO-NE conducted a simulated back-cast of the market impact of the Commission-ordered increase in [Reserve Constraint Penalty Factors] for Capacity Commitment Periods 3 and 4 (June 2012 – May 2014). ISO-NE concluded that, had the higher [Reserve Constraint Penalty Factors]s been in place, reserve market revenue would have been \$25 million greater in Capacity Commitment Period 4, and real-time peak energy rents would have been \$7 million higher, but the PER Adjustment would have credited \$99 million more back to load. Thus, the real-time impact of the higher [Reserve Constraint Penalty Factors] to capacity resource owners net of the PER Adjustment in Capacity Commitment Period 4 would have been an increase in the net payment to load of \$67 million.

taken in real-time rather than in the day-ahead market. Both the higher day-ahead offers from resources and the participation of virtual bidders could reduce the gap between the day-ahead and real-time market clearing prices, on average, thus eliminating the basis for NEPGA's concern.

39. In its answer, NEPGA argues that, contrary to NESCOE's protest, real-time and day-ahead price convergence will not occur, on the basis of a supplemental affidavit by Dr. Hunger.⁵⁰ Dr. Hunger's statements, however, are directed to the possibility of price convergence specifically during the timeframes when the PER strike price is triggered, i.e., the hours when the real-time LMP actually exceeds the strike price. This does not address the likelihood that convergence will occur on average over a longer period, namely, the hours when, in the day-ahead time frame, there is some probability that the real-time LMP might exceed the strike price. That is, the average day-ahead LMP over this broader set of hours will tend to approach the average real-time LMP over the same hours. Since this broader set of hours may include hours when a Reserve Constraint Penalty Factor is not actually triggered, the average real-time LMP over these hours may not exceed the \$1,000 offer cap. Thus, the \$1,000 offer cap may not impede price convergence between day-ahead and real-time LMPs over these hours, contrary to the assertion of Dr. Hunger. These latter hours will typically occur during the seasons of high demand – i.e., mainly in the middle of the summer and the middle of the winter, although stressful weather occasionally occurs at other times.

40. While, in examples such as the December 4, 2014 events referenced by GDF SUEZ, generators may have to make significant PER Adjustment payments to load, no party has provided information as to how often such events might occur, or the magnitude of revenue impacts that might result from them. If, at a future point in time, NEPGA or any other party is able to provide specific evidence that the interaction between the new Reserve Constraint Penalty Factors and the existing PER Adjustment mechanism has rendered the capacity rates for CCPs 5 through 8 unjust and unreasonable, the Commission will consider any such complaints at that time.⁵¹ At this point, however, the overall result of that interaction is a matter of speculation, and the

⁵⁰ NEPGA Answer at 7 (citing Supplemental Affidavit of Dr. David Hunger, Attachment to Answer (Hunger Supplemental Affidavit) at ¶ 19) (“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 . . . [so that] the day-ahead prices cannot converge with the real-time prices during these PER events,” footnotes omitted).

⁵¹ As noted above, NEPOOL has urged the Commission to reject the NEPGA Complaint without prejudice to refile, and thereby permit possible resolution of the PER Adjustment mechanism in the on-going stakeholder process (NEPOOL Answer at 7).

Commission will not grant relief on that basis. We note that the Commission has previously encouraged ISO-NE's stakeholders to consider whether changes to the PER mechanism are necessary going forward, and that process is ongoing.⁵²

41. Moreover, as ISO-NE explains, the PER Adjustment is unrelated to capacity suppliers' incentive to perform in real-time, and the revenue transfer is unrelated to economic efficiency and reliability,⁵³ but simply involves a transfer of revenues among market participants. A supplier still has the obligation and the incentive to operate its resource, and therefore not changing the PER strike price will not create a disincentive for suppliers to provide energy, as NEPGA suggests, and is thus unlikely to cause reliability problems of insufficient resources to meet load demand.

2. CCP 9

42. As to CCP 9, we reject NEPGA's request that we require ISO-NE to modify or eliminate the PER Adjustment mechanism. NEPGA's argument in support of eliminating the PER Adjustment for CCP 9 largely rests on the "uncertain impact" the PER Adjustment might have on FCA clearing prices,⁵⁴ an argument that fails to satisfy its 206 burden of showing that the existing tariff is unjust and unreasonable. In any case, the argument is unavailing, because capacity suppliers were afforded the opportunity to factor the impacts of the higher Reserve Constraint Penalty Factors on the PER Adjustment into their capacity auction de-list bids. Those de-list bids are now final (since ISO-NE completed its review of them in October 2014). Additionally, the PER Adjustment has been accounted for in calculating the Net Cost of New Entry value used to establish the price parameters of the demand curve for FCA 9.⁵⁵ Because the interaction of the higher Reserve Constraint Penalty Factors and the existing PER Adjustment mechanism has been taken into consideration for purposes of FCA 9, NEPGA has not met its burden of showing that retention of the existing PER Adjustment mechanism for CCP 9 is unjust and unreasonable.

⁵² See October 2, 2014 Order, 149 FERC ¶ 61,009 at P 25 n.39 ("we agree with ISO-NE that reconsideration of the Peak Energy Rent mechanism would be more appropriately conducted separate from the instant proceeding, and we note that ISO-NE has already commenced a separate stakeholder process for that purpose").

⁵³ ISO-NE Answer at 8.

⁵⁴ NEPGA Complaint at 27.

⁵⁵ ISO-NE Answer at 10-11.

3. CCP 10 and Beyond

43. As to CCP 10 and beyond, as noted above, ISO-NE and its stakeholders are continuing to negotiate possible changes to the PER mechanism. NEPGA has not demonstrated that timing considerations would make it impossible for NEPGA to obtain the relief it seeks for CCPs 10 and beyond through the stakeholder process, and we therefore deny NEPGA's request that we pre-empt the orderly unfolding of that process.

The Commission orders:

NEPGA's complaint is hereby denied, as discussed in the body of this order.

By the Commission. Commissioners Clark and Moeller are concurring with a joint separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

New England Power Generators Association, Inc.

Docket No. EL15-25-000

v.

ISO New England Inc.

(Issued January 30, 2014)

CLARK, MOELLER, Commissioners, *concurring*:

As discussed in today's order, NEPGA has not satisfied its burden under section 206 of the Federal Power Act to demonstrate that ISO-NE's existing tariff provisions governing the Peak Energy Rent (PER) Adjustment are unjust and unreasonable. Nonetheless, NEPGA and other parties have raised valid concerns regarding the continued application of the existing PER Adjustment in light of the increases in the Reserve Constraint Penalty Factors in ISO-NE's energy market put in place in 2014.

We encourage ISO-NE and its stakeholders to continue to consider potential changes to the PER Adjustment mechanism. Also, as noted in today's order, if NEPGA or any other party is able to provide specific evidence that the interaction between the new Reserve Constraint Penalty Factors and the existing PER Adjustment mechanism has rendered unjust and unreasonable ISO-NE's capacity rates for Capacity Commitment Periods 5 through 8, the Commission will consider any such complaints at that time.

Tony Clark
Commissioner

Philip D. Moeller
Commissioner