

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

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

**MOTION FOR LEAVE TO ANSWER AND ANSWER OF THE  
NEW ENGLAND POWER POOL PARTICIPANTS COMMITTEE**

(December 8, 2014)

Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure,<sup>1</sup> the New England Power Pool (“NEPOOL”)<sup>2</sup> Participants Committee<sup>3</sup> hereby submits this Motion for Leave to Answer and Answer to the pleading submitted by the New England Power Generators Association (“NEPGA”) on November 21, 2014 (the “NEPGA Pleading”) in the above-captioned docket. NEPGA opposes the joint filing of NEPOOL and ISO New England Inc. (“ISO-NE”), which was submitted on October 31, 2014 (the “Joint Filing”). That Joint Filing proposes Market Rule changes identifying how price-responsive demand will be fully

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

<sup>2</sup> Capitalized terms not defined herein have the meanings ascribed thereto in the Second Restated NEPOOL Agreement, Participants Agreement, or the ISO New England Inc. Transmission, Markets and Services Tariff (“ISO-NE Tariff” or the “Tariff”). Section III of the Tariff is referred to as “Market Rule 1”.

<sup>3</sup> NEPOOL is a voluntary association organized in 1971 pursuant to the New England Power Pool Agreement, and it has grown to include more than 430 members. The Participants include all of the electric utilities rendering or receiving services under the ISO-NE Tariff, as well as independent power generators, marketers, load aggregators, brokers, consumer-owned utility systems, demand response providers, developers, end users and a merchant transmission provider. Pursuant to revised governance provisions accepted by the Commission in *ISO New England Inc. et al.*, 109 FERC ¶ 61,147 (2004), the Participants act through the NEPOOL Participants Committee. The NEPOOL Participants Committee is authorized by Section 6.1 of the Second Restated NEPOOL Agreement and Section 8.1.3(c) of the Participants Agreement to represent NEPOOL in proceedings before the Commission. NEPOOL is the principal stakeholder organization for the New England RTO.

integrated into the energy and reserves markets if FERC Order No. 745 is permitted to proceed (the “PRD Reserves Changes”).<sup>4</sup> NEPGA argues that PRD Resources<sup>5</sup> are ineligible to participate as supply-side resources in the Forward Reserve Market and to provide Operating Reserves,<sup>6</sup> citing *Electric Power Supply Association v. FERC* (“EPSA”)<sup>7</sup> and NEPGA’s pending complaint in Docket No. EL15-21 (the “NEPGA Complaint”).<sup>8</sup> NEPGA asks that the Commission reject the PRD Reserves Changes for that reason. NEPGA goes on to ask that the Commission not rule on the Joint Filing before ruling on its earlier complaint.<sup>9</sup> Lastly, in the alternative, NEPGA argues that, if PRD Resources are permitted to participate in the reserves markets as supply-side resources, the Commission should reject a component of the PRD Reserves Changes because in its view, it would result in “unduly discriminatory compensation.”<sup>10</sup>

NEPOOL urges the Commission to reject NEPGA’s requests and accept the PRD Reserves Changes as filed by the requested effective date of January 12, 2015. When NEPOOL voted to support these Changes, it was with the understanding that they are appropriate for implementation only if the requirements of Order No. 745 are upheld. If it is ultimately

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<sup>4</sup> See ISO New England Inc. and New England Power Pool, *Market Rule 1 Changes to Integrate Price-Responsive Demand into Reserve Markets*, Docket No. ER15-257-000 (Oct. 31, 2014).

<sup>5</sup> As NEPGA notes in its filing, the filing submitted on October 31 uses the term “price-responsive demand resources” to refer to Demand Response Resources. NEPGA Pleading at n 3. For consistency, NEPOOL will continue to use the term “price-responsive demand resources” or “PRD Resources” for this Answer.

<sup>6</sup> NEPGA Pleading at 3-5.

<sup>7</sup> 753 F.3d (D.C. Cir. 2014) (“EPSA”) (finding, in a divided three-judge panel, that Order No. 745 must be vacated).

<sup>8</sup> *Complaint Requesting Fast Track Processing of the New England Power Generators Association, Inc.*, Docket No. EL15-21-000 (Nov. 14, 2014). NEPOOL filed comments in response to the NEPGA Complaint on Nov. 26, 2014.

<sup>9</sup> NEPGA Pleading at 5.

<sup>10</sup> NEPGA Pleading at 5-7.

determined that PRD Resources cannot participate in the co-optimized energy and reserves markets in New England, NEPOOL acknowledges the possibility that PRD changes may be needed to the Market Rules. Unless or until such a determination is made, however, it is appropriate for the Market Rules to include the PRD Reserves Changes to inform PRD Resources how they will be treated if the requirements of Order No. 745 remain binding. If Order No. 745 is vacated, so too is NEPOOL's support for the PRD Reserves Changes.

#### **I. MOTION FOR LEAVE TO ANSWER**

NEPOOL submits that it is entitled to respond to the NEPGA Pleading, notwithstanding NEPGA's decision to label it a "protest." NEPGA seeks in its Pleading to modify the PRD Reserves Changes and, under the Commission's Rules, such a request is a motion to which responses are permitted, regardless of how the pleading is labeled.<sup>11</sup>

To the extent the Commission concludes that the NEPGA Pleading is properly styled as a protest and leave of the Commission to answer that pleading is required, NEPOOL moves pursuant to Rules 212<sup>12</sup> and 213,<sup>13</sup> for such leave to answer. Pursuant to Rule 213(a)(2) of the Commission's Rules, the Commission may accept the filing of an answer to a protest for good cause shown when it leads to a more accurate and complete record, helps the Commission understand the issues, clarifies matters in dispute or errors, responds to new issues raised, or

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<sup>11</sup> See, e.g., *Iroquois Gas Transmission Sys., L.P.*, 61 FERC ¶ 61,341, at 62,341 n.9 (Dec. 21, 1992) (party is entitled to respond to affirmative request in a pleading regardless of how that pleading is captioned); *Seminole Electric Cooperative, Inc. v. Florida Power & Light Company*, 53 FERC ¶ 61,026, 61,101 (1990) (answer accepted to the extent it responded to a party's requests for affirmative relief).

<sup>12</sup> 18 C.F.R. § 385.212.

<sup>13</sup> 18 C.F.R. § 385.213(a)(2) ("An answer may not be made to a protest, an answer, a motion for oral argument, or a request for rehearing, *unless otherwise ordered by the decisional authority*") (emphasis added).

provides information that will assist the Commission in its decision-making process.<sup>14</sup> This Answer will assure a more complete record and will otherwise assist the Commission in reviewing the issues sought to be raised in this proceeding. Accordingly, good cause exists for the Commission to grant this motion for leave to file this Answer.

## **II. BACKGROUND**

The PRD Reserves Changes are another in a series of Market Rule modifications that have been worked out in New England to accomplish the integration of price-responsive demand into the wholesale electricity markets as required by the Commission's Order No. 745.<sup>15</sup> As described and explained more fully in the Joint Filing, the PRD Reserves Changes will (1) permit PRD Resources to provide Operating Reserves and participate in the Forward Reserve Market, (2) simplify how PRD Resources that can inject energy onto the grid from behind-the-meter generators participate in the markets, and (3) make a number of ancillary and conforming changes to further integrate price-responsive demand into the energy and reserves markets.

At the end of its detailed and collaborative stakeholder process, NEPOOL voted overwhelmingly in support of the PRD Reserves Changes.<sup>16</sup> During the Participant Processes,

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<sup>14</sup> The Commission permits replies that would otherwise be prohibited where the reply would assure a complete record in the proceeding; *See, e.g., Las Vegas Cogeneration LP*, 117 FERC ¶ 61,309 at P 20 (2006); *S. Natural Gas Co.*, 121 FERC ¶ 61,118, at P 5 (2007); or assists the Commission in its decision-making process; *see Virginia Elec. and Power Co.*, 124 FERC ¶ 61,207 at P 22 (2008); *Pepco Holdings, Inc.* 125 FERC ¶ 61,130 at P 24 (2008); *Potomac-Appalachian Transmission Highline, LLC*, 122 FERC ¶ 61,188 at P 23 (2008); *S. Cal. Edison Co.*, 122 FERC ¶ 61,187 at P 19 (2008); *N.Y. Indep. Sys. Operator, Inc.*, 121 FERC ¶ 61,112 at P 4 (2007); *PJM Interconnection, L.L.C.*, 116 FERC ¶ 61,179 at P 19 (2006); provide information helpful to the disposition of an issue; *see CNG Transmission Corp.*, 89 FERC ¶ 61,100 at 61,287 n.11 (1999); or permit the issues to be narrowed or clarified; *PJM Interconnection LLC*, 84 FERC ¶ 61,224 at 62,078 (1998); *New Energy Ventures, Inc. v. S. Cal. Edison Co.*, 82 FERC ¶ 61,335 at 61,323 n.1 (1998).

<sup>15</sup> *See* Joint Filing at 2-3.

<sup>16</sup> At its October 3, 2014 meeting, the Participants Committee approved a resolution to support the PRD Reserves Changes, with oppositions noted by: GDF SUEZ Energy Marketing NA, Inc., NextEra Energy Resources, LLC, and PPL EnergyPlus LLC; and abstentions noted by: Brookfield Energy Marketing Inc./Cross-Sound Cable Company, Calpine Energy Services, Consolidated Edison Energy,

some NEPOOL members raised concerns that, should the D.C. Court of Appeals remand Order No. 745 back to the Commission, the proposed changes may no longer be appropriate. To assuage those concerns, at the October 3, 2014 Participants Committee meeting, NEPOOL members voted with the following expressed understandings:

Given the current status of the DC Circuit decision vacating Order No. 745, NEPOOL's record of the meeting will make clear that a vote in favor of this resolution is with the understanding that the Demand Response changes proposed here would be appropriate only if Order No. 745 proceeds as lawful, and without prejudice to any position taken or that may be taken by any Participant(s) in the court proceeding(s) on Order No. 745.<sup>17</sup>

As noted in the Joint Filing, the motion to support the PRD Reserve Changes passed with only three oppositions and several abstentions registered.<sup>18</sup> Accordingly, NEPOOL joined ISO-NE in the Joint Filing, but with the understanding that the proposed changes presupposed that the requirements of Order No. 745 are to be implemented.<sup>19</sup>

### **III. THE COMMISSION SHOULD APPROVE THE PRD RESERVES CHANGES AS FILED**

#### **a. Until There Is A Final Ruling on Order No. 745, The Market Rules Properly Include the PRD Reserves Changes**

There is little question that *EPSA* has created considerable market uncertainty, but the markets must continue to be settled notwithstanding that uncertainty. Furthermore, it is not

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Inc., Dominion Energy Marketing, Inc, Dynegy Marketing and Trade, LLC, EquiPower Resources Management, LLC, Entergy Nuclear Power Marketing LLC, Essential Power, LLC, Exelon Generation Company, Granite Ridge, LIPA, Millennium Power Partners, PSEG Energy Resources & Trade LLC, Noble Americas Gas & Power Corp., and the Alternative Resource Sector's Small Renewable Generation Group Member

<sup>17</sup> See October 3, 2014 NEPOOL Participants Committee meeting materials, at 374, available at: [http://www.nepool.com/uploads/NPC\\_20141003\\_Composite4.pdf](http://www.nepool.com/uploads/NPC_20141003_Composite4.pdf); see also Joint Filing at 18-19.

<sup>18</sup> See *supra* note 16.

<sup>19</sup> See Joint Filing at 19.

known when and whether a mandate consistent with *EPSA* will be issued.<sup>20</sup> In the face of that uncertainty, ISO-NE has recognized its legal obligation to follow the filed rate and, unless or until changes to its Market Rules are required by the Commission, the Market Rules continue to reflect the requirements of Order No. 745. Given those facts, NEPOOL and ISO-NE reasonably determined that it was proper and appropriate to provide clarity as to how PRD Resources would be treated in the future if the requirements of Order No. 745 remain in effect. The PRD Reserves Changes provide that clarity. As noted in the Joint Filing, proceeding with the PRD Reserves Changes does not preclude NEPOOL and ISO-NE from engaging stakeholders in contingency planning should Order No. 745 be vacated.<sup>21</sup> If the Commission determines either pursuant to a mandate from the Courts or otherwise to preclude PRD Resources from participating in the wholesale power markets, there would be numerous Market Rule changes required to address such circumstances.<sup>22</sup> Unless or until that occurs, though, it is just and reasonable to define clearly how PRD Resources will be treated in the wholesale power markets. NEPOOL would not oppose the Commission reflecting in its order the same understandings of NEPOOL members that the PRD Reserves Changes are approved as appropriate details for the implementation of Order No. 745.

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<sup>20</sup> Pursuant to a per curiam order issued October 20, 2014, the D.C. Circuit granted the Commission's request to stay the issuance of the *EPSA* mandate until December 16, 2014, or later, pending the Supreme Court's final disposition. *Electric Power Supply Ass'n v. FERC*, Nos. 11-1486, slip op. This past Friday, December 5, 2014, the Solicitor General for the United States filed for an extension of time for filing a petition for a writ of certiorari to the Supreme Court.

<sup>21</sup> Joint Filing at n.5.

<sup>22</sup> The PRD Reserves Changes are just one of many Tariff provisions that seek to implement Order No. 745. A mandate vacating Order No. 745 would necessitate substantial Tariff revisions.

**b. The Commission Should Reject NEPGA’s Request To Defer Action on the Joint Filing**

The Commission should reject NEPGA’s request that the Commission “not render a decision in this proceeding until it has rendered a decision on NEPGA’s Complaint.”<sup>23</sup> The Joint Filing is a Section 205 filing with a requested effective date of January 12, 2015.<sup>24</sup> Unless the Commission acts on the Joint Filing by that time, the PRD Reserves Changes will become effective by operation of law.<sup>25</sup> There is no similar statutory requirement for the Commission to act on the NEPGA Complaint, which, as detailed in NEPOOL’s Comments in that docket, were not filed for nearly six months after *EPSA*. NEPOOL acknowledges the possibility that an order on the NEPGA Complaint, which is to address the role of demand resources in the Forward Capacity Market, might signal how the Commission views the roles of PRD Resources in other wholesale power markets. This proceeding, though, relates specifically to how PRD Resources will be handled in the reserves and energy markets. The Commission should separately consider the PRD Reserves Changes and act on them within the statutorily required period, without regard to the timing of its action on the NEPGA Complaint.

**c. NEPGA’s Argument Regarding Compensation for Avoided Line Losses Does not Render the PRD Reserves Changes Unjust and Unreasonable.**

According to NEPGA, a “key fault” with the PRD Reserve Changes is that they proposed to compensate PRD Resources for avoided line losses, which is a compensation that is not provided to other Resources. NEPGA argues that such treatment is unreasonable and unduly discriminatory.<sup>26</sup>

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<sup>23</sup> NEPGA Pleading at 5.

<sup>24</sup> Which is more than 60 days from when NEPOOL and ISO-NE made the Joint Filing.

<sup>25</sup> Filings made pursuant to Section 205 of the Federal Power Act become effective in the absence of Commission action on those filings. *See* 16 U.S.C. § 824d (2012).

<sup>26</sup> NEPGA Pleading at 5-7.

The PRD Reserve Changes are well within the range of reasonable treatment. The practice of crediting load reductions for average avoided peak distribution losses was proposed by ISO-NE in response to Order No. 745, was previously approved by the Commission, and was reasonably incorporated into the PRD Reserves Changes.<sup>27</sup> This issue was fully discussed and addressed during the NEPOOL stakeholder process.<sup>28</sup> The only requirement under the Federal Power Act is that the Joint Filing demonstrate that the PRD Reserves Changes are just and reasonable, not that other changes that could be submitted might be *more* just and *more* reasonable or even preferred.<sup>29</sup> The Commission and the Courts have long recognized that there is a range of just and reasonable outcomes.<sup>30</sup> Prior Commission consideration of this issue and the Joint Filing and accompanying testimony provide sufficient information for the Commission to determine that the PRD Reserves Changes satisfy the requirements of Section 205 of the Federal Power Act.

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<sup>27</sup> This practice was approved by the Commission in *ISO New England*, 138 FERC ¶ 61,042 (2012); *ISO New England*, 142 FERC ¶ 61,027 (2013) at PP 12, 52, 56-57; *ISO New England*, 144 FERC ¶ 61,140 (2013) at P 18; *ISO New England*, 146 FERC ¶ 61,175 (2014) at PP 2, 8, 29. See Joint Filing at 15.

<sup>28</sup> This issue was specifically discussed at both the Aug. 5-6 and the Sep. 3-4, 2014 NEPOOL Markets Committee meetings and at the Oct. 3, 2014 NEPOOL Participants Committee meeting.

<sup>29</sup> See, e.g., *Southern California Edison Co., et al*, 73 FERC ¶ 61,219 at 61,608 n.73 (1995) (“Having found the Plan to be just and reasonable, there is no need to consider in any detail the alternative plans proposed by the Joint Protesters.” (*citing City of Bethany v. FERC*, 727 F.2d 1131) (D.C. Cir. 1984)).

<sup>30</sup> See *Louisville Gas & Electric Co.*, 114 FERC ¶ 61,282, at P 29 (2006) (finding that “the just and reasonable standard under the Federal Power Act is not so rigid as to limit rates to a ‘best rate’ or ‘most efficient rate’ standard. Rather, a range of alternative approaches often may be just and reasonable).



**IV. CONCLUSION**

WHEREFORE, for the foregoing reasons NEPOOL respectfully requests that the Commission find that the PRD Reserves Changes are just and reasonable as jointly filed by NEPOOL and ISO-NE.

Respectfully submitted,

NEPOOL Participants Committee

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Its Attorneys

Dated: December 8, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a copy of the foregoing document to be served electronically upon each person designated on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission.

Dated at Washington, D.C. this 8<sup>th</sup> day of December 2014.

/s/ James B. Blackburn IV

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