

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

New England Power Generators)	
Association, Inc.)	
)	
v.)	Docket No. EL21-26-000
)	
ISO New England Inc.)	

**PROTEST OF THE
CONNECTICUT STATE AGENCIES**

Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”), 18 C.F.R. § 385.211 (2020), and the Commission’s December 15, 2020 Notice of Complaint, the Connecticut Department of Energy and Environmental Protection (“CT DEEP”), William Tong, Attorney General for the State of Connecticut (“CTAGO”), the Connecticut Public Utilities Regulatory Authority (“PURA”) and the Connecticut Office of Consumer Counsel (“OCC”, together with CT DEEP, CTAGO and CT PURA, the “Connecticut State Agencies”) file this protest in response to the complaint that the New England Power Generators Association, Inc. (“NEPGA”) filed against ISO-NE on December 11, 2020 (the “Complaint”).¹

I. The Connecticut State Agencies

The Connecticut Department of Energy and Environmental Protection has statutory authority over the state's energy and environmental policies and for ensuring that the state has

¹ Complaint and Request for Fast-Track Processing of the New England Power Generators, Inc., Docket No. EL21-26-000 (filed Dec. 11, 2020). Capitalized terms not defined in this filing are intended to have the meaning given to such terms in the ISO-NE Transmission, Markets and Services Tariff (“Tariff”).

adequate and reliable energy resources.² The Department of Energy and Environmental Protection is tasked with interacting with the regional transmission operator in response to state and regional energy needs and policies.

The Connecticut Attorney General is an elected Constitutional official and the chief legal officer of the State of Connecticut. The Connecticut Attorney General's responsibilities include intervening in various judicial and administrative proceedings to protect the interests of the citizens and natural resources of the State of Connecticut and in ensuring the enforcement of a variety of laws of the State of Connecticut, including Connecticut's Unfair Trade Practices Act and Antitrust Act, so as to promote the benefits of competition and to assure the protection of Connecticut's consumers from anti-competitive abuses.

The Connecticut PURA is the state commission charged with regulating electric companies and setting retail electricity rates for all electricity used within Connecticut.

The Connecticut Office of Consumer Counsel is the statutorily designated ratepayer advocate in all utility matters concerning the provision of electric, natural gas, water, and telecommunications services. The Office of Consumer Counsel is authorized by statute to intervene and appear in any federal or state judicial and administrative proceedings where the interests of utility ratepayers are implicated.

² Conn. Gen. Stat. §§ 22a-2d; 16a-3a.

II. BACKGROUND

Section III.13.2.4 of the Tariff requires ISO-NE to recalculate the Cost of New Entry (“CONE”)³ and Net CONE⁴ every three years.⁵ In between these recalculations, ISO-NE is required to adjust CONE and Net CONE for each Forward Capacity Auction (“FCA”) using a list of indices contained in Section III.A.21.1.2(e) of the Tariff.⁶

NEPGA has filed a Complaint asserting that ISO-NE violated both the Tariff and the filed-rate doctrine in its recalculation of Net CONE and its review of that calculation with New England Power Pool (“NEPOOL”) stakeholders.⁷ As a preliminary matter, it is important to note that NEPGA filed its Complaint at the Commission before ISO-NE filed its updated Net CONE calculations. NEPGA states that it is “compelled to file this complaint in advance of ISO-NE’s filing, rather than raise these specific concerns as objections to ISO-NE’s filing.”⁸ NEPGA asks the Commission to “reject ISO-NE’s proposed Net CONE value for FCAs 16-18 that will be filed later this month” and to “direct ISO-NE to apply the Tariff-defined annual adjustment factors to the [FCA] 15 Net CONE value to be used for the FCA 16 Net CONE value.”⁹

The Connecticut State Agencies understand that ISO-NE will file very shortly the recalculated values for CONE, Net CONE, and other parameters for the Forward Capacity Market (“FCM”) beginning with FCA 16 (“CONE Update Filing”).¹⁰

³ CONE represents the annual capital costs to support the construction of a new electric generation facility.

⁴ Net Cone is CONE less any expected additional revenues from energy and ancillary services markets.

⁵ Section III.13.2.4.

⁶ *Id.*

⁷ Complaint at 1.

⁸ *Id.* at 3.

⁹ Complaint at 4-5 (footnote omitted).

¹⁰ See NEPOOL Participants Committee, Dec. 3, 2020 Annual Meeting, Composite Materials, Item 9, Att. B, ISO-NE Proposal Tariff Redlines (“ISO-NE Proposal”), available at

I. PROTEST

As an initial matter, the Connecticut State Agencies support and adopt by reference the arguments raised in the Protest of the New England States Committee on Electricity (“NESCOE”) filed in this docket. Beyond this, the Connecticut State Agencies intend to participate in the CONE Update Proceeding and will specifically address the Net CONE issues that are the subject of NEPGA’s instant Complaint. The Connecticut State Agencies, therefore, respectfully ask the Commission to refrain from any action on the NEPGA Complaint until that CONE Update Filing record has been developed in the substantive proceeding.¹¹ The NEPGA Complaint is premature and simply not ripe. Furthermore, there is nothing to review because there is no record as yet.

Beyond this, the Connecticut State Agencies object to the relief that NEPGA seeks in the Complaint, a directive to ISO-NE “to apply the Tariff-defined annual adjustment factors to the [FCA] 15 Net CONE value to be used for the FCA 16 Net CONE value.”¹² Specifically, the Commission has already granted a request from ISO-NE and NEPOOL for a single-year delay in the recalculation of CONE, Net CONE, and other values for FCA 15 given unique regional circumstances.¹³ In making the request, ISO-NE and NEPOOL stated that the values would be

http://nepool.com/uploads/NPC_20201203_Composite6.pdf (ISO-NE’s proposed change to the Net CONE definition is at PDF p. 176); Complaint at 10.

¹¹ For example, the Commission has stated that it will not consider section 206 challenges to tariff provisions when the same provisions are pending in a separate proceeding. *New England States Comm. on Elec. v. ISO New England Inc.*, 142 FERC ¶ 61,108 at P 31 (2013) (citing *BP West Coast Products, LLC v. SFPP, L.P.*, 120 FERC ¶ 61,014 at P 5 (2007)).

¹² *Id.* at 4; *see id.* at 29.

¹³ *ISO New England Inc. and New England Power Pool Participants Comm.*, Delegated Letter Order, Docket No. ER19-335-000 (December 19, 2018).

updated for FCA 16.¹⁴ If the Commission approves NEPGA's proposal, this would result in a five year hiatus in updating these values.

There is good reason why ISO-NE is required to update the values and not just rely in the indices for the FCM parameters. The full recalculation in an open and transparent process that ISO-NE undertakes to review these parameters ensures that it accounts for changes in market conditions and technologies. That process was conducted here and it allowed for a full and transparent discussion of all relevant evaluations and assumptions. To the extent that the current FCM design remains a useful tool, the periodic full review and analysis is essential to its administration. Annual updates are not intended to or capable of replacing the needed full analysis.

Additionally, there are potentially significant adverse impacts to ratepayers if NEPGA's suggestion is adopted. ISO-NE has calculated the Net CONE value corresponding with FCA 15 as \$8.707/kW-month.¹⁵ The proposed Net CONE value for FAC 16 is \$7.024/kW-month.¹⁶ Using the methodology NEPGA is advocating provides a range of potential outcomes for an FCA 16 value from a low-end the Net CONE of \$8.740/kW-month to the high-end value would be \$9.260/kW-month and an average of \$8.943/kW month. All of these values are substantially higher than the \$7.024/kW-month calculation that ISO-NE has proposed for FCA 16,¹⁷ a value derived from a current, fundamental review of FCM parameters. Indeed, all of these values

¹⁴ ISO New England Inc. and New England Power Pool Participants Committee, Filing re Consolidation of FCM Parameter Review, Docket No. ER19-335-000 (Nov. 14, 2018) ("2018 Filing"), at 4.

¹⁵ See ISO New England, FCM Parameters by Capacity Commitment Period, available at <https://www.iso-ne.com/markets-operations/markets/forward-capacity-market> (link labeled "Quick view of parameters").

¹⁶ ISO-NE Proposal at Section III.13.2.4. (available at PDF p. 177).

¹⁷ Indeed, NEPGA fails to explain why it seeks a remedy that could translate to whole dollar increases to Net CONE when it estimates that the impact of the asserted Tariff violation is \$0.82/kW-month. Complaint at 28 ("Taken together, ISO-NE's proposed Tariff change improperly reduces the calculated Net CONE value, conservatively by at least 12%, or \$0.82/kW-month.").

increase the proposed Net CONE by more than double the amount NEPGA itself has calculated the proposed Net CONE should be increased.¹⁸

Finally, NEPGA's Complaint should be rejected because it is both a collateral attack on the Commission's ruling in ER19-335 and is unripe. It is a collateral attack on the Commission's December 19, 2018 ruling in ER19-335, where the Commission approved a joint filing by ISO-NE and NEPOOL requesting, *inter alia*, approval of:

[A] consolidated schedule [which] would result in all of the parameters being updated for use in the FCA 16 auction process, which generally begins in early 2021 and culminates in the Forward Capacity Auction to be held in February 2022. In order for the updated parameters to be ready for use in FCA 16, the ISO expects that stakeholder review and filing of the updated parameters would occur in 2020.¹⁹

Where NEPGA attacks ISO-NE for following a stakeholder review process to develop Net CONE parameters, ISO-NE is merely following the process it said it would follow, and which this Commission approved over two years ago.

The Complaint is unripe because it objects to a tariff that is not yet on file with the Commission. Indeed, the tariff has neither been proposed nor approved by the Commission. Section 206 provides: "Any person may file a complaint seeking Commission action against any other person alleged to be in contravention or violation of any statute, rule, order, or other law administered by the Commission, or for any other alleged wrong over which the Commission

¹⁸ NEPGA Complaint at p. 3. The Connecticut Parties also note that a new natural gas unit cleared FCA 13 at \$3.80/kW-month to which many NEPGA members objected to as "inconsistent with a 'like-unit' information and as well as prevailing market conditions." *See* Motion to Intervene and Protest of The Capacity Suppliers, Docket No. ER19-166-000. A majority of the Commissioners would have rejected the protest and found that "ISO-NE demonstrated that its review was not focused solely on whether Killingly received out-of-market revenues but rather that the IMM scrutinized all aspects of Killingly's offer to ensure they were consistent with prevailing market conditions, including all relevant cost components and revenue assumptions that support Killingly's offer." *See* Joint Statement of Chairman Neil Chatterjee and Commissioner Bernard L. McNamee on ISO New England Inc., To Comply with the Fair Rates Act of 2018.

¹⁹ ISO New England Inc. and New England Power Pool Participants Committee; Filing re Consolidation of FCM Parameter Review (Accession No. 20181114-5036), p. 4.

may have jurisdiction.” 18 CFR 385.206. Contemplated actions do not fall under the statute’s ambit. Indeed, NEPGA’s Complaint asks a regulator to reject an application sight unseen. The Commission should reject NEPGA’s Complaint.

II. CONCLUSION

For the reasons stated herein, the Connecticut State Agencies respectfully request that the Commission reject NEPGA’s Complaint, including its request to derive an FCA 16 Net CONE value by applying pre-existing annual adjustment factors to the FCA 15 Net CONE value.

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Date: December 31, 2020

CERTIFICATE OF SERVICE

In accordance with Rule 2010 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day served by electronic mail a copy of the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Hartford, Connecticut this 31st day of December, 2020.

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