

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

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

**MOTION TO DISMISS AND ANSWER TO COMPLAINT  
OF ISO NEW ENGLAND INC.**

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),<sup>1</sup> ISO New England Inc. (“ISO” or “ISO-NE”) moves for dismissal with prejudice of the complaint<sup>2</sup> filed by the New England Power Generators Association, Inc. (“NEPGA”) in this docket on December 11, 2020. In the alternative, should the Commission decline to dismiss, the ISO submits its Answer to the Complaint.

At bottom, the Complaint alleges that the ISO has violated its Tariff<sup>3</sup> and the filed rate doctrine by doing precisely what the Tariff unambiguously requires the ISO to do: fully update its calculation of Net Cost of New Entry (“Net CONE”) for Forward Capacity

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

<sup>2</sup> Complaint and Request for Fast-Track Processing of the New England Power Generators Association, Inc., Docket No. EL21-26-000 (Dec. 11, 2020) (“Complaint”).

<sup>3</sup> ISO New England Inc. Transmission, Markets and Services Tariff (“Tariff”). Capitalized terms not defined herein have the meaning set forth in the Tariff.

Auction (“FCA”) 16, review that recalculation with stakeholders, and file the results with the Commission. NEPGA is able to support its position only by creating a new and inaccurate interpretation of the applicable Tariff provisions; but even its misinterpretation of the Tariff does not support NEPGA’s assertions of retroactive ratemaking and violation of the filed rate doctrine.

Furthermore, NEPGA’s Complaint is unripe, and its concerns are properly addressed in the proceeding under section 205 of the Federal Power Act (“FPA”)<sup>4</sup> that the ISO is initiating today with its submission of the updated Net CONE value. NEPGA actively participated in the lengthy stakeholder process to review the ISO’s recalculation of Net CONE, and NEPGA was aware that it would have the opportunity to fully air its concerns before the Commission in the FPA section 205 proceeding, on an equal footing and in the same manner as other Market Participants. NEPGA nevertheless chose to challenge, through its Complaint, a filing that the ISO had not even made yet, and has failed to state a claim under FPA section 206<sup>5</sup> for which the Commission can grant relief. For these and other reasons explained in more detail below, the Commission should dismiss the Complaint. Alternatively, should the Commission decline to dismiss the Complaint, it should deny the Complaint in its entirety for the reasons the ISO explains in its Answer below.

Concurrent with this Motion to Dismiss and Answer, the ISO is submitting separately, pursuant to FPA section 205, its update to the Net CONE value, along with

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<sup>4</sup> 16 U.S.C. § 824d.

<sup>5</sup> 16 U.S.C. § 824e.

other values used in the administration of the Forward Capacity Market (“FCM”) in advance of FCA 16.<sup>6</sup> While this Motion to Dismiss and Answer addresses the legal and procedural flaws of the Complaint, many of the substantive issues are addressed in full in the FCA 16 Section 205 Filing, the relevant portion of which is attached hereto as Attachment 1, and also summarized here. In both filings, the ISO explains that the Net CONE calculation has always been based on the system under long-term equilibrium conditions (“at criterion”), that the market design requires the Net CONE calculation to be based on the system at criterion, and that NEPGA’s requested relief—that the Commission direct the continued use of the Net CONE applied in FCA 15 for FCA 16—would result in an inappropriate increase in consumer payments on the order of tens of millions, and possibly over a hundred million, dollars in FCA 16.

**I. MOTION TO DISMISS ON THE GROUNDS THAT THE COMPLAINT IS NOT RIPE FOR COMMISSION REVIEW**

The Commission should dismiss the Complaint because NEPGA fails to state a claim that is ripe for the Commission to grant relief. NEPGA states no cause of action pursuant to any of the provisions under which the Complaint is filed.<sup>7</sup> When NEPGA filed

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<sup>6</sup> Updates to CONE, Net CONE, and Capacity Performance Payment Rate of ISO New England Inc., Docket No. ER21-787-000 (Dec. 31, 2020) (“FCA 16 Section 205 Filing”).

<sup>7</sup> FPA section 206 states that in response to a complaint, the Commission may revise “any rate, charge, or classification, demanded, observed, charged, or collected by any public utility” for transmission or sales subject to Commission jurisdiction, if the Commission finds such rate, charge, or classification unjust or unreasonable. 16 U.S.C. § 824e(a). FPA section 306 provides that a complaint may be filed regarding “anything done or omitted to be done by any . . . public utility in contravention of the provisions of the [FPA].” 16 U.S.C. § 825e. The implementing provisions of the Commission’s regulations, in turn, provide that “[a]ny 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

the Complaint, the ISO had not presented a revised Net CONE value to the Commission, so there had been no action by the ISO that the Commission could correct, even if warranted.

FPA section 205 is, at its heart, a notice provision allowing affected parties the opportunity to contest prospective Tariff changes. The changes NEPGA challenges in its Complaint are entirely prospective, and had not even been filed or implemented at the time of the Complaint. Thus, the statutory notice period had not even begun.

NEPGA attempts to sidestep this fatal flaw by arguing, erroneously, that, at the time the Complaint was filed, the ISO had *already* violated its Tariff, simply by reviewing the Net CONE recalculation with stakeholders.<sup>8</sup> Of course, the Tariff explicitly requires the ISO to perform this review, and so NEPGA contends that the violation occurred because the ISO did not review with stakeholders the exact Net CONE calculation that NEPGA supports and asserts is required by the Tariff. As explained below and in the FCA 16 Section 205 Filing, NEPGA is flatly incorrect on these substantive issues, and these incorrect assertions cannot in any manner cure the Complaint's ripeness problem.

On the same day it is submitting this pleading, the ISO is making a separate filing under FPA section 205 to present the Commission with the ISO's updated calculation of Net CONE for FCA 16, as required by the Tariff. The same filing also includes revisions to clarify the Tariff's definition of Net CONE. That proceeding is the proper venue for a full airing of NEPGA's concerns; NEPGA can and should (if it chooses to pursue its

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by the Commission, or for any other alleged wrong over which the Commission may have jurisdiction.” 18 C.F.R. § 385.206(a).

<sup>8</sup> Complaint at 3.

contentions) present its arguments in a protest of that filing.

If the Commission declines to dismiss the Complaint, it should deny NEPGA any relief. For the reasons the ISO explains in its following Answer to the Complaint and in the FCA 16 Section 205 Filing, NEPGA fails to establish any ground for the Commission to find that the ISO has violated its Tariff with respect to determining the updated Net CONE value for FCA 16.

## **II. ANSWER TO COMPLAINT**

### **A. NEPGA's Premise that the Tariff States a "Recalculation Methodology" for Net CONE Is Erroneous.**

Contrary to NEPGA's suggestion, the Tariff does not prescribe a methodology for the ISO's periodic recalculation of Net CONE. Therefore, even if the ISO changed its methodology for deriving Net CONE, that would not be a violation of the Tariff or, accordingly, of the filed rate doctrine.

Section III.13.2.4 of the Tariff provides that:

CONE and Net CONE shall be recalculated for the Capacity Commitment Period beginning on June 1, 2025 and no less often than once every three years thereafter. Whenever these values are recalculated, the ISO will review the results of the recalculation with stakeholders and the new values will be filed with the Commission prior to the Forward Capacity Auction in which the new value is to apply.

The Tariff provides a definition of Net CONE, but it does not require a specific methodology for calculating that value. The definition reads:

Net CONE is an estimate of the Cost of New Entry, net of the first-year non-capacity market revenues, for a reference technology resource type and is intended to equal the amount of capacity revenue the reference technology resource would require, in its first year of operation, to be economically viable given reasonable expectations of the

first year energy and ancillary services revenues, and projected revenue for subsequent years.<sup>9</sup>

Despite the Tariff's general definition, NEPGA conflates the ISO's upcoming proposal to modify the definition of Net CONE with a change to a purportedly prescribed calculation methodology. *But the Tariff states no such methodology.*

The Tariff obligates the ISO to update the Net CONE value triennially, and then to review the new value with stakeholders before filing it with the Commission.<sup>10</sup> These requirements are set forth in the Tariff precisely because the Tariff does not prescribe a methodology for performing the calculation. Thus, each time the ISO performs the triennial update, it must determine how it will perform the calculation, then must review the selected methodology and its results with stakeholders, and, finally, must file the resulting Net CONE value with the Commission.<sup>11</sup> The ISO therefore cannot violate its Tariff or the filed rate doctrine, or employ a rate retroactively, when it develops a Net CONE methodology and files the resulting value with the Commission, because there is no such methodology on file from which the ISO could deviate.

To be sure, the substantive provisions in the Net CONE definition have weight, and the methodology that the ISO does ultimately develop cannot violate the definition. But

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<sup>9</sup> Tariff § I – General Terms and Conditions (Net CONE).

<sup>10</sup> See Tariff § III.13.2.4. The last full recalculation was filed with the Commission in 2017 to be effective for FCA 12. See Filing of CONE and ORTP Updates of ISO New England Inc., Docket No. ER17-795-000 (Jan. 13, 2017). The full recalculation that would have occurred for FCA 15 was delayed until FCA 16 pursuant to a filing made jointly by the ISO and New England Power Pool (“NEPOOL”) in 2018 to consolidate the review of the various FCM parameters. See *ISO New England Inc.*, Letter Order, Docket No. ER19-335-000 (Dec. 19, 2018).

<sup>11</sup> See Tariff § III.13.2.4.

NEPGA fails to substantiate its repeated assertions that the existing high-level definition constitutes a prescriptive methodology. As the ISO explains in exhaustive detail in Section V.F of the FCA 16 Section 205 Filing, NEPGA is incorrect when it asserts that the “plain meaning” of the existing definition requires Net CONE to be calculated based on a system “as expected.” To the contrary, by design and as implemented, Net CONE has since its inception been based on long-term equilibrium conditions (or “at criterion”).

In fully recalculating Net CONE for FCA 16, the ISO has done exactly what the Tariff requires of it: it determined how to derive Net CONE, reviewed the result of the selected methodology with stakeholders, and is filing that result with the Commission concurrent with the submission of this pleading. All of this is entirely in accordance with the Tariff. NEPGA therefore has established no foundation for its Complaint.

**B. NEPGA’s Filed Rate Doctrine Argument Is Unfounded and Leads to Useless and Unnecessary Inefficiencies.**

Even if the Tariff did prescribe a methodology for the periodic updates to Net CONE—which it does not—nothing prevents the ISO from changing its Tariff pursuant to FPA section 205, and employing such changes in the same FPA section 205 filing in which it updates the Net CONE value. The ISO is free to develop an entirely different approach to updating Net CONE by, for example, adding a specific calculation methodology to the Tariff and filing it with the Commission for approval. In other words, the Tariff’s process for triennial review and filing does not preclude the ISO from proposing to change that process.

If the Commission were to adopt NEPGA’s argument—which it should not—it is important to consider the consequences for all New England stakeholders and, of equal (if not more) importance, New England’s consumers. The triennial update to the Net CONE

value is a significant undertaking, one that requires the ISO to employ multiple consultants to collect and evaluate vast amounts of data on a range of market conditions; the stakeholder process is long and often contentious, which is not surprising, given the complexity of the matters and the financial impacts that changes to Net CONE can have. Those discussions can, and should, lead to useful conversations about the methodology employed to develop Net CONE, and about related aspects of the Tariff that affect the Net CONE update process. Indeed, given the depth and breadth of discussions that take place, it is an ideal forum in which discussions on potentially useful updates to the Tariff can be had.

NEPGA would read into the Tariff a requirement that any Tariff changes contemplated in those discussions be saved for another day, *even if* those changes can improve the soundness of the process that the ISO and stakeholders are employing to update the Net CONE values. According to NEPGA's logic, even if a particular Net CONE value were inconsistent with fundamental capacity market principles, and would cost consumers hundreds of millions of dollars, the ISO and stakeholders should be unable to develop updates to the Tariff to correct that value, review and apply those updates with stakeholders in the very forum in which they arose, and file them with the Commission. This limitation and drastic consequence is clearly not contemplated by the FPA or the Tariff, and would undoubtedly be a disservice to New England consumers.

More specifically, NEPGA's main assertion—that the ISO cannot, without violating the filed rate doctrine and the rule against retroactive ratemaking, employ its FPA section 205 rights to propose to modify the Tariff in the same filing with an update



to the Net CONE value.<sup>12</sup> This argument is flawed for several reasons.

*First*, NEPGA unjustifiably attempts to read into the Tariff a prohibition that simply is not there. The relevant provision of the Tariff states only that the ISO: (1) must update the Net CONE value triennially; (2) must review the update with stakeholders; and (3) must file the updated value with the Commission.<sup>13</sup> NEPGA invites the Commission to interpret this provision to preclude the ISO from exercising its FPA section 205 filing rights to propose updates, clarifications, improvements, or enhancements of any sort to related Tariff language when the ISO performs the prescribed update. But no such prohibition appears anywhere in the Tariff. The Commission should not permit NEPGA to read into the Tariff a provision that would entirely hamstring the ISO's ability to propose just and reasonable revisions to the triennial Net CONE update requirements. As explained above, the lengthy stakeholder review of the updated Net CONE value is the very period when during which stakeholder discussion is most likely to bring to light the value of Tariff improvements, and when such improvements would naturally be of greatest consequence in helping to ensure the fundamental soundness of the wholesale markets.

*Second*, NEPGA's argument, taken to its logical conclusion, would create unnecessary and useless inefficiencies. NEPGA contends, in effect, that the ISO cannot include changes to related Tariff provisions when it files an update to the Net CONE value. In other words, according to NEPGA, the ISO must develop, review with stakeholders, and

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<sup>12</sup> Complaint at 23.

<sup>13</sup> Tariff § III.13.2.4.

file an updated Net CONE value without proposing any changes to related Tariff language in the same filing.<sup>14</sup> By NEPGA's reasoning, should the ISO wish to propose to modify the Tariff's terms regarding Net CONE, it must make a second filing under FPA section 205 for that purpose. NEPGA offers no reason why the Tariff's Net CONE review requirement would dictate such a cumbersome limitation on the ISO's FPA section 205 rights.

Indeed, NEPGA's assertions ignore entirely that the ISO has been working with stakeholders on *another* set of Tariff changes that do *exactly* what NEPGA claims the ISO cannot do under its Tariff or the FPA, changes that the ISO and NEPOOL (with near-unanimous support) are filing on the same day as this pleading. Specifically, the ISO is filing changes to the Tariff provisions pertaining to the Dynamic De-List Bid Threshold in the Forward Capacity Market.<sup>15</sup> Those Tariff changes strike and replace a provision that is virtually identical to the Tariff's procedures related to changes in the Net CONE value; as with Net CONE, the Tariff requires the ISO to: (1) update the Dynamic De-List Bid Threshold on a triennial basis; (2) review the update with stakeholders; and (3) file the results with the Commission.<sup>16</sup> Instead of following that process for the latest triennial update, the ISO is proposing to *strike that language entirely* and to replace it with a formula rate for the Dynamic De-List Bid Threshold calculation, to be employed starting with the FCA 16 calculation. Nevertheless, NEPGA is apparently unconcerned about the ISO's use

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<sup>14</sup> FCA 15 Section 205 Filing at 34.

<sup>15</sup> *ISO New England Inc.*, Market Rule 1 Change to Implement New Methodology for Calculating Forward Capacity Market Dynamic De-List Bid Threshold, Docket No. ER21-782-000 (Dec. 31, 2020).

<sup>16</sup> Tariff Section III.13.1.2.3.1.A.

of the same, single-filing approach for the Dynamic De-List Bid Threshold that NEPGA claims to be impermissible regarding the Net CONE update. NEPGA's inconsistency in this regard underscores the fact that the ISO's approach in both filings is reasonable, permitted under the Tariff, and consistent with the FPA and, in particular, with the filed rate doctrine.

The ISO is not venturing into new territory in the two FPA section 205 filings it is submitting today. The Commission has never imposed a limitation to require the ISO to make a separate filing to effectuate each of multiple changes to the Tariff. Instead, it has expressly permitted the ISO to use a single filing both to propose a change to a Tariff-based methodology, and to employ that change in the application of the methodology.

A good example of this is the ISO's 2010 update to the Installed Capacity Requirement ("ICR") values for the reconfiguration auction for the 2010/2011 Capability Year, which the Tariff requires the ISO to file with the Commission. The Commission accepted the ISO's single, FPA section 205 filing by the ISO that included both the annual update to the ICR for the FCA, as well as a change to the Tariff's terms regarding the determination of tie benefits, which were used in establishing the updated ICR value.<sup>17</sup> Notably, as with the Net CONE update provisions in the Tariff, the Tariff provisions that address the annual update to the ICR values expressly require the ISO to review the updated ICR values with stakeholders before filing them with the Commission,<sup>18</sup> leaving no doubt that this stakeholder review requirement does not create an implied bar to combining Tariff updates on a methodology with the application of that methodology.

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<sup>17</sup> *ISO New England Inc.*, 130 FERC ¶ 61,105, at PP 1, 81 (2010).

<sup>18</sup> Tariff § III.12.3.

**C. NEPGA’s Assertion that the ISO Is Violating the Retroactive Ratemaking Doctrine Misconstrues the Legal Effect of the ISO’s Stakeholder Review Requirement and Is Without Merit.**

NEPGA’s assertion that the ISO has violated the retroactive ratemaking doctrine by planning to “seek approval of a proposed Tariff change that describes the methodology that would retroactively govern recalculation of Net CONE” is without merit.<sup>19</sup> In the first instance, calculating Net CONE and reviewing that calculation with stakeholders cannot implement a change to the Net CONE value. Instead, the revised value will become effective only prospectively, after the statutorily required notice.<sup>20</sup>

The Commission has found that it is not retroactive ratemaking when a tariff revision is applied prospectively from the time when that revision is *implemented*.<sup>21</sup> In this instance, the updated Net CONE value the ISO will file concurrently with the submission of this pleading will be applied only when it becomes the filed rate. That will happen only after the new value is submitted to and accepted by the Commission.

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<sup>19</sup> Complaint at 26.

<sup>20</sup> This is evident from past Net CONE recalculations. As the Commission noted in its order approving the ISO’s 2017 filing to update Net CONE, even though the ISO developed and reviewed the new value with stakeholders, NEPOOL did not vote to support the ISO’s new value. *See ISO New England Inc.*, 161 FERC ¶ 61,035, at P 5 (2017), *reh’g denied*, 170 FERC ¶ 61,052 (2020). But NEPOOL’s failure to support the ISO’s new value was of no legal effect; it was the Commission’s approval, not the ISO’s calculation or stakeholder review, that implemented the updated value. The 2020 Net CONE update and the ISO’s proposed clarification of the Tariff’s definition likewise will become effective, and will apply, only prospectively upon their acceptance by the Commission.

<sup>21</sup> *See PJM Interconnection, L.L.C.*, 172 FERC ¶ 61,054, at P 56 (2020) (“Changing to the 12 [month coincident peak] method is not a violation of the filed rate doctrine because Dominion is not collecting a rate other than the rate on file with the Commission when Dominion began *applying* the 12 [month coincident peak] allocation method *prospectively*.” (emphasis added)).

Finally, contrary to NEPGA’s suggestion, the retroactive ratemaking principles discussed in *VEPCO*<sup>22</sup> do not support NEPGA’s claims. *VEPCO* dealt with a request to waive the application of a provision of the PJM Interconnection, L.L.C. Open Access Transmission Tariff, which identified specific inputs for calculating the forced-outage rate of capacity resources. NEPGA explains that in *VEPCO*, “the Commission authorized a waiver to allow PJM to deviate from its methodology for calculating a resource’s forced outage rate.”<sup>23</sup>

But this observation is not relevant here because, unlike in *VEPCO*, the ISO’s Tariff contains no “methodology for calculating” Net CONE from which the ISO can deviate. Therefore, even a change to a previously used calculation method could not, of itself, be a departure from the filed rate. In any event, the ISO’s latest update to Net CONE is based upon the same approach the ISO always has used. Accordingly, there are no filed rate or retroactive ratemaking implications in the ISO’s 2020 Net CONE update.

**D. The ISO Has Not Changed Its Methodological Basis for Calculating Net CONE.**

NEPGA’s Complaint also fails because it disregards the fact that the ISO’s methodological basis for calculating Net CONE has not changed from previous years. Specifically, contends that the Tariff’s definition of Net CONE requires calculating Net CONE based on a system modeled as it is expected to be during the relevant time frame, or “as expected,” rather than modeled under long-term equilibrium conditions, or “at

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<sup>22</sup> *Va. Elec. and Power Co.*, 173 FERC ¶ 61,129, at P 29 (2020) (“*VEPCO*”).

<sup>23</sup> Complaint at 26.

criterion.”<sup>24</sup> This premise is mistaken, and that fundamental error is fatal to NEPGA’s claim.

The definition of Net CONE quoted above was first established in 2014 as one of the parameters to implement a system-wide, sloped demand curve in the FCM,<sup>25</sup> and remains unchanged in the Tariff today.<sup>26</sup> At that time, the ISO presented expert testimony to explain in considerable detail the methodology and assumptions it employed to calculate the CONE and Net CONE values. Most importantly to the present context, the ISO explained in 2014, at the very inception of use of a Net CONE value, that it calculated, and should calculate, Net CONE based on *equilibrium conditions*.<sup>27</sup> Accordingly, contrary to the critical premise of NEPGA’s Complaint, there can be no doubt that, since the inception of Net CONE in the FCM, the ISO always has based its Net CONE calculations on a system based on long-term, equilibrium (or “at criterion”) conditions. The Commission accepted the ISO’s initial Net CONE value without modification.<sup>28</sup>

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<sup>24</sup> Complaint at 9, 13-16.

<sup>25</sup> See Demand Curve Changes of ISO New England Inc., Docket No. ER14-1639-000 (Apr. 1, 2014) (“2014 Demand Curve Changes”).

<sup>26</sup> Tariff § I – General Terms and Conditions (Net CONE).

<sup>27</sup> 2014 Demand Curve Changes at 8 (“The capacity market demand curve is designed to procure sufficient capacity to maintain resource adequacy. *Premised on the assumption that new entrants will set prices at true Net CONE in a long-term equilibrium state*, the curve’s prices are indexed to an estimated Net CONE value.”) (emphasis added).

<sup>28</sup> *ISO New England Inc.*, 147 FERC ¶ 61,173, at P 40 (2014), *reh’g denied*, 150 FERC ¶ 61,065 (2015).

The ISO likewise employed a long-term equilibrium approach to the determination of Net CONE when it updated the value in 2017. Like the 2014 Demand Curve Changes, the ISO’s update filing in Docket No. ER17-795-000 included an expert report, which explained that “[t]he CONE/Net CONE values must reflect the price needed to attract sufficient new capacity under *long-term equilibrium conditions*.”<sup>29</sup> In its order accepting the 2017 Net CONE update, the Commission expressly acknowledged that the ISO intended the Net CONE value “to approximate the compensation a new entrant would need from the capacity market in the first year of operation to recover its capital and fixed costs under *long-term equilibrium conditions*.”<sup>30</sup>

The Tariff’s definition of Net CONE today is the same as when the term was initially added in 2014. Thus, NEPGA now argues that the very same definition that was in effect when the Commission accepted the ISO’s 2014 and 2017 Net CONE values that were intended to model long-run equilibrium conditions (and which NEPGA supported in 2014),<sup>31</sup> now purportedly requires the system to be modeled “as expected”—that is,

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<sup>29</sup> Filing of CONE and ORTP Updates of ISO New England, Inc., Docket No. ER17-795-000, Attachment 1 (ISO-NE CONE and ORTP Analysis), at 9 (Jan. 13, 2017) (emphasis added); *see also id.*, Attachment 1, at 12 (“In order to determine whether the reference technology is likely to be economic as part of the long-term equilibrium, . . . the resource must have an estimated Net CONE that is not so high that the technology is unlikely to be part of *the long-term equilibrium*.” (emphasis added)).

<sup>30</sup> *ISO New England Inc.*, 161 FERC ¶ 61,035, at P 15 (2017) (emphasis added). The Commission’s rehearing order reconfirmed its understanding that the ISO’s Net CONE methodology is based on “long-term equilibrium conditions.” *ISO New England*, 170 FERC ¶ 61,052, at P 3 (footnote omitted).

<sup>31</sup> In responding to the 2014 Demand Curve Filing, NEPGA stated that: “[t]he price cap in any downward sloping demand curve needs to be robust enough to incent new entrants that are looking to invest over the long-term, *with a demand curve*

assuming expected future surplus levels of supply. NEPGA's turnabout on the interpretation of Net CONE since 2014 undermines its current assertion that the definition has a "plain meaning" that requires an "as expected" calculation.

Moreover, sound market design requires the Net CONE calculation to be based on the system "at criterion." The history of the Net CONE definition described above reflects an "at criterion" calculation because that is an important feature of a market design that avoids procuring unnecessary capacity at excessive cost to consumers. The FCA is intended to clear at the net ICR when the system is in equilibrium. By design, the FCA should induce new entry (at a price of Net CONE) if system capacity is less than the net ICR, and should not induce new entry otherwise. This design objective ensures that the FCM will induce competitive new entry only when it is needed to meet the system's resource adequacy goal. NEPGA's re-interpretation of the Tariff's Net CONE definition would expressly upset this central design objective of the FCM. It also would institutionalize the procurement of excess capacity for a system that, by NEPGA's own characterization,<sup>32</sup> is expected to face excess supply conditions.

In sum, it is *NEPGA* that now seeks a radical departure from that long-standing design intent and practice for the Net CONE calculation. As the ISO has consistently maintained, and repeatedly explained, calculating Net CONE based on the system "as expected," as NEPGA desires, would inefficiently incent unneeded new entry when the

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*designed to ensure that long-run average prices equal Net CONE.*" NEPGA 2014 Demand Curve Filing at 31 (emphasis added).

<sup>32</sup> Complaint at 14.



system's resources exceed the ICR, which is neither cost effective nor consistent with the stated 1-in-10 resource adequacy objective.

The specific relief that NEPGA seeks in its Complaint is also problematic. NEPGA is aware of the tight timing considerations at issue here, and that a recalculation based on its new interpretation of Net CONE would be impossible to accomplish in time for use in FCA 16.<sup>33</sup> NEPGA therefore suggests, should the Commission grant the Complaint, “that the Commission 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.”<sup>34</sup> The upshot of that action would be that instead of running FCA 16 with the updated Net CONE value (filed here) of \$7.024/kW-month, it would be run using the then-stale FCA 15 value of \$8.707/kW-month,<sup>35</sup> escalated still further pursuant to the Tariff's annual adjustment provisions. This outcome would result in an inappropriate increase in consumer payments on the order of tens of millions, and possibly over a hundred million, dollars in FCA 16.<sup>36</sup>

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<sup>33</sup> See Complaint at 29 (“NEPGA recognizes that this relief may not allow time for ISO-NE to review its recalculated Net CONE value with NEPOOL stakeholders prior to the beginning of the FCA 16 calendar.”).

<sup>34</sup> Complaint at 29.

<sup>35</sup> The FCA 15 Net CONE value is not merely one auction old; it was last fully recalculated four years ago for FCA 11, with only annual index-based adjustments since.

<sup>36</sup> See FCA 16 Section 205 Filing at 35 n.128.

## CONCLUSION

For the foregoing reasons, the ISO respectfully requests that the Commission dismiss the NEPGA Complaint with prejudice. Alternatively, should the Commission decline to dismiss NEPGA's claims, it should deny the Complaint in its entirety on the merits.

Respectfully submitted,

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**ATTACHMENT 1**

**EXCERPT FROM**  
**FCA 16 SECTION 205 FILING**

2017 Net CONE Study. These updated values are reflected in revisions to Tariff Section III.13.2.4.<sup>80</sup>

**F. Response to NEPGA Complaint Regarding the Calculation of Net CONE Based on the System Modeled “As Expected” Versus “At Criterion” and Revisions to Net CONE Definition**

Early in the 2020 stakeholder process to recalculate the parameters filed here, representatives of the New England Power Generators Association (“NEPGA”) took issue with the ISO calculating Net CONE based on a system modeled under long-term equilibrium conditions, or “at criterion.” NEPGA argues that the system should instead be modeled “as expected” – that is, reflecting expectations of continued excess supply conditions for FCA 16.<sup>81</sup> Although the specifics of NEPGA’s position evolved over the course of the stakeholder process,<sup>82</sup> its core objection remained, and has now been codified in a separate complaint to the Commission.<sup>83</sup> The significant legal and procedural infirmities of that complaint are being addressed in the ISO’s Motion to Dismiss and Answer, being filed with the Commission in the complaint docket on the same day as the instant filing. Those arguments need not be reiterated here. The ISO will, however, fully address here the substantive issue raised in NEPGA’s complaint.

The substantive issue presented by NEPGA in its complaint boils down to one argument: that the “plain meaning” of the existing definition of Net CONE *requires* the ISO to model the system “as expected” (and not at criterion).<sup>84</sup> As discussed in detail below, not only is NEPGA incorrect about that “plain meaning,” but the record demonstrates that NEPGA itself understood and supported the ISO’s intended implementation of the Net CONE parameter. Furthermore,

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<sup>80</sup> Also in revised Section III.13.2.4, the ISO has simplified language regarding the timing for full recalculations of CONE and Net CONE. This is not a substantive change – those values must still be fully recalculated no less often than once every three years. But redundant language that would otherwise needlessly have to be revised each time is being deleted.

<sup>81</sup> Importantly, if the ISO were required to calculate Net CONE based on a system “as expected,” considerable analysis and market design work may be required to determine how best to estimate the likely conditions in the future.

<sup>82</sup> When NEPGA raised this issue early in the 2020 stakeholder process, its position was *not* that the Tariff requires Net CONE to be calculated “as expected.” Rather, NEPGA at that point seemed to acknowledge the history of Net CONE being calculated at criterion and argued merely that such precedent was not binding. *See Resource Balance for Net CONE Calculation*, at slide 9 (July 15, 2020), presentation to NEPOOL Markets Committee by Robert Stoddard of Berkeley Research Group on behalf of NEPGA, available at [https://www.iso-ne.com/static-assets/documents/2020/07/a5\\_b\\_iii\\_nepga\\_resource\\_balance\\_for\\_net\\_cone\\_calculation.pdf](https://www.iso-ne.com/static-assets/documents/2020/07/a5_b_iii_nepga_resource_balance_for_net_cone_calculation.pdf).

<sup>83</sup> *See* Complaint and Request for Fast-Track Processing of the New England Power Generators Association, Inc., FERC Docket No. EL21-26-000 (filed December 11, 2020) (“NEPGA Net CONE Complaint”).

<sup>84</sup> *See* NEPGA Net CONE Complaint at 13-16.

NEPGA all but ignores the ISO's repeated explanations of the market design principles that require an at criterion calculation. NEPGA's preferred approach would instead inefficiently incent unneeded new capacity, which is neither cost effective nor consistent with the Forward Capacity Market's overall 1-in-10 resource adequacy objective.

Furthermore, if NEPGA's arguments delay the appropriate application of the fully updated Net CONE value filed here, *even if those arguments subsequently fail on their merits*, it may result in excessive consumer capacity payments in FCA 16 – a direct consequence of NEPGA's requested relief to continue to apply the (larger) FCA 15 Net CONE value, with further adjustments, in lieu of the updated Net CONE value for FCA 16 filed herein.

### **1. The Net CONE Calculation Has Always Been Based on the System Under Long-Term Equilibrium Conditions (“At Criterion”)**

In its complaint, NEPGA considers it significant that the existing definition of Net CONE does not “refer at all to ‘equilibrium’ or ‘long-term’ . . .”<sup>85</sup> A review of the history of the Net CONE definition demonstrates that those concepts were well understood as part and parcel of the definition. Net CONE was first introduced into the Tariff in 2014, as a parameter needed to implement the first system-wide sloped demand curve in the Forward Capacity Market.<sup>86</sup> In that filing, supported and joined by the NEPOOL Participants Committee, and accepted by the Commission,<sup>87</sup> the ISO explained that “[t]he capacity market demand curve is designed to procure sufficient capacity to maintain resource adequacy. *Premised on the assumption that new entrants will set prices at true Net CONE in a long-term equilibrium state*, the curve's prices are indexed to an estimated Net CONE value . . .”<sup>88</sup> The ISO's expert witnesses further explained that:

[t]he prices and quantities of the proposed curve are premised on the assumption that, in a long-term economic equilibrium, new entrants will set average capacity market prices at Net CONE – *where Net CONE is the first-year capacity revenue a new generation resource would need (in combination with expected energy and ancillary services margins) to recover its capital and fixed costs, given*

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<sup>85</sup> NEPGA Net CONE Complaint at 13.

<sup>86</sup> See Demand Curve Changes, FERC Docket No. ER14-1639-000 (filed April 1, 2014) (“2014 Demand Curve Filing”). The Testimony of Dr. Samuel A. Newell and Mr. Christopher D. Ungate prepared on behalf of the ISO regarding the Net Cost of New Entry for the Forward Capacity Market Demand Curve, submitted as part of that filing, is referred to herein as the “2014 Net CONE Study.”

<sup>87</sup> See Order Accepting Tariff Revisions, 147 FERC ¶ 61,173 (issued May 30, 2014).

<sup>88</sup> 2014 Demand Curve Filing at 8 (emphasis added).

*reasonable expectations about future cost recovery under continued equilibrium conditions.*<sup>89</sup>

The 2014 Demand Curve Filing also plainly stated that:

[w]e also assume economically rational new entry, with new supply added infra-marginally until the long-term average price equals Net CONE, neither more nor less. As such, our simulations reflect long-term conditions at economic equilibrium on average, *and do not reflect a forecast of outcomes over the next several years or any other particular year.*<sup>90</sup>

These explanations – contemporaneous with the implementation of Net CONE – drive a stake through NEPGA’s core contention that references in the Net CONE definition to “reasonable expectations of the first-year energy and ancillary services revenues” can only mean a system modeled “as expected.” In fact, the 2014 explanations above make it perfectly clear that even the first-year capacity revenue is intended to be calculated “given reasonable expectations about future cost recovery under continued equilibrium conditions.” The changes to the definition of Net CONE filed here merely bring that definition, which the ISO concedes is not as well worded as it could be, into harmony with the original, and unchanged, market design intent.

In 2016, the ISO – again joined by NEPOOL – filed improvements to the demand curve design.<sup>91</sup> In that proceeding, the ISO’s expert witnesses were asked whether one component of the revised design, a scaling factor, is “consistent with expected offer behavior and the ISO’s calculation of Net CONE more generally.” Their response explained that:

[c]alculating the scaling factor in this manner assumes that, on average, new resources can expect to earn Net CONE from the capacity market over the projected service life of the resource (though not necessarily in every year). *This is consistent with the capacity market’s intended equilibrium property that the marginal resource is offered at Net CONE.*<sup>92</sup>

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<sup>89</sup> 2014 Net CONE Study at 5 (emphasis added).

<sup>90</sup> See, e.g., 2014 Demand Curve Filing, Testimony of Dr. Samuel A. Newell and Dr. Kathleen Spees, at 14 (emphasis added).

<sup>91</sup> See Demand Curve Design Improvements, FERC Docket No. ER16-1434-000 (filed April 15, 2016) (“2016 Demand Curve Improvements Filing”).

<sup>92</sup> 2016 Demand Curve Improvements Filing, Testimony of Dr. Christopher Geissler and Dr. Matthew White, at 46 (emphasis added).

The 2016 Demand Curve Improvements Filing was also accepted by the Commission.<sup>93</sup>

And in early 2017, the ISO filed the most recent full recalculation of Net CONE.<sup>94</sup> In its order accepting that filing, the Commission stated (in describing the ISO's proposal that was being accepted) that "Net CONE is intended to approximate the compensation a new entrant would need from the capacity market in the first year of operation to recover its capital and fixed costs *under long-term equilibrium conditions*."<sup>95</sup>

In short, there can be no doubt that the ISO, NEPOOL, and the Commission understood that, since its inception, the intention has always been to calculate Net CONE based on long-term equilibrium conditions. And importantly, despite these many clear statements across these various stakeholder processes and Commission proceedings, not once did NEPGA assert or argue that Net CONE must be calculated based on the system "as expected," as it now contends.

## **2. NEPGA Is on Record Acknowledging and Supporting the Net CONE Calculation Based on the System Under Long-Term Equilibrium Conditions ("At Criterion")**

In fact, NEPGA is on record expressly *supporting* the ISO's intended implementation of Net CONE. In responding to the 2014 Demand Curve Filing, NEPGA stated that:

[t]he Filing Parties' proposed curve . . . will reduce price volatility and provide Market Participants with greater confidence in the *FCA's likelihood of producing clearing prices that, on average over time, equal Net CONE*. The curve is likewise calibrated to procure capacity, on average and over time, in an amount equal to the 1-in-10 year loss of load expectancy, an appropriate resource adequacy goal.<sup>96</sup>

Later in that filing, in discussing the minimum price cap included in the demand curve design, NEPGA stated that "[t]he price cap in any downward sloping demand curve needs to be robust

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<sup>93</sup> See Order Accepting Filing, 155 FERC ¶ 61,319 (issued June 28, 2016).

<sup>94</sup> See ISO New England Inc. Filing of CONE and ORTP Updates, FERC Docket No. ER17-795-000 (filed January 13, 2017).

<sup>95</sup> Order Accepting Filing, 161 FERC ¶ 61,035 at P 15 (issued October 6, 2017).

<sup>96</sup> Motion to Intervene and Protest of the New England Power Generators Association and Electric Power Supply Association, FERC Docket No. ER14-1639-000 (filed April 22, 2014) at 8 ("NEPGA 2014 Demand Curve Filing").

enough to incent new entrants that are looking to invest over the long-term, *with a demand curve designed to ensure that long-run average prices equal Net CONE.*<sup>97</sup>

NEPGA's 2014 filing was styled as a protest, and NEPGA was careful to say that even the portions of the demand curve filing it supported were "not in every detail without fault,"<sup>98</sup> but NEPGA specifically described the Net CONE as one of the core design components that, in total:

represent a reasonable application of sound economic principles that should, together with the relief NEPGA and EPSA seek elsewhere in this Protest, create an FCM that strikes an appropriate balance between allowing for price signals sufficient to incent new entry when needed, and to retain appropriate existing resources or incent retirements when economic. These elements constitute the 'bones' of the demand curve and provide a reasonable framework to deliver clear, consistent and fair competitive market outcomes that the Commission has strived for in capacity markets.<sup>99</sup>

None of the issues that NEPGA protested in the 2014 Demand Curve Filing proceeding had anything to do with, let alone object to, the calculation of Net CONE based on long-term equilibrium conditions – a method amply explained in the joint filing and echoed by NEPGA in response. Given this record, NEPGA's observation that the existing definition of Net CONE "fails to refer at all to 'equilibrium' or 'long term'" may be factual, but it is disingenuous.<sup>100</sup> The ISO and NEPOOL expressly used those terms repeatedly in explaining the function and role of Net CONE over many years, the Commission has used them in accepting Net CONE, and NEPGA itself has used them in supporting it.

Importantly, the definition of Net CONE has never (yet) changed since it was initially filed in 2014. That is, the exact same definition that NEPGA supported in 2014 – and that was expressly based on the system modeled at criterion – NEPGA now argues requires the system to be modeled "as expected" (that is, assuming continued excess supply conditions).

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<sup>97</sup> NEPGA 2014 Demand Curve Filing at 31.

<sup>98</sup> NEPGA 2014 Demand Curve Filing at 8.

<sup>99</sup> NEPGA 2014 Demand Curve Filing at 8-9.

<sup>100</sup> NEPGA Net CONE Complaint at 13.



### **3. The Market Design Requires the Net CONE Calculation to Be Based on the System “At Criterion”**

There is an excellent reason that the history of the Net CONE definition, described above, so clearly reflects an “at criterion” calculation – it is an essential feature of the market design that avoids procuring unnecessary capacity at excessive cost to consumers. In New England’s Forward Capacity Market, the Forward Capacity Auction is intended to clear at the net Installed Capacity Requirement when the system is at equilibrium. The Installed Capacity Requirement is determined based on the “1-day-in-10” Loss of Load Expectation resource adequacy objective. By design, the Forward Capacity Auction should induce new entry (at a price of Net CONE) if capacity is less than the net Installed Capacity Requirement, and should not induce new entry otherwise. This design objective ensures that the Forward Capacity Market will induce competitive new entry only when it is needed to meet the system’s resource adequacy goal.

This design objective is further expressly incorporated into the Forward Capacity Market’s MRI-based capacity demand curves, which are structured to pass through the point of Net CONE at the net Installed Capacity Requirement. The capacity demand curves are scaled in a manner “such that, at the quantity specified by the System-Wide Capacity Demand Curve at a price of Net CONE, the Loss of Load Expectation is 0.1 days per year.”<sup>101</sup>

NEPGA’s re-interpretation of the Net CONE definition would expressly upset this central design objective of the Forward Capacity Market, institutionalizing the procurement of excess capacity. Worse yet, and contrary to sound market design, it would do so for a system that, by NEPGA’s own characterization, is presently expected to face excess supply conditions.<sup>102</sup> If Net CONE were to be based on market conditions consistent with a capacity level that exceeds the Installed Capacity Requirement (such as under the current excess supply conditions), then the E&AS revenue offsets would be smaller (in dollar terms) than if calculated for a system at criterion. The smaller revenue offsets would increase the value of Net CONE and, in doing so, produce an excessive value of Net CONE that would incent new entry even when the system does not need additional capacity. This would be neither cost effective, nor consistent with the Forward Capacity Market’s stated 1-in-10 resource adequacy objective.

These concepts were explained and discussed in the 2014 proceeding that introduced Net CONE to the Tariff,<sup>103</sup> and in the 2016 proceeding that improved the demand curve

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<sup>101</sup> Tariff Section III.13.2.2.4.

<sup>102</sup> See NEPGA Net CONE Complaint at 14.

<sup>103</sup> See, e.g., 2014 Demand Curve Filing at 7 (“A demand curve should be compatible with system planning criteria, such as the NPCC’s ‘1 day in 10’ design criterion regarding the probability of disconnecting firm load due to a

mechanism.<sup>104</sup> For example, in its 2016 filing supporting the (present) MRI-based capacity demand curve design, the ISO's expert witnesses explained that New England's demand curves are intrinsically based on the region's "at criterion" approach to modeling Net CONE:

[T]he [demand curve] assumption that the equilibrium capacity price reflects Net CONE is also consistent with the cash-flow and pricing calculations actually employed in the ISO's discounted cash-flow models used to estimate Net CONE for the New England system.<sup>105</sup>

Furthermore, in response to NEPGA's assertions, in the 2020 stakeholder process to update the parameters filed here, the ISO provided numerical examples to stakeholders demonstrating the adverse consequences of NEPGA's interpretation of the definition of Net CONE. Specifically, those examples explained that NEPGA's proposed "as expected" Net CONE calculation would incent new entry when no entry is needed to satisfy the Installed Capacity Requirement.<sup>106</sup>

Indeed, these principles are well-established enough that, in the many pages of its complaint, NEPGA barely suggests that basing the Net CONE calculation on a system modeled "as expected" would be appropriate, let alone preferable, from a market design standpoint. Again, NEPGA rests its entire argument on its assertions about what the Net CONE definition must mean, thoroughly debunked above.

#### **4. Contrary to NEPGA's Claims, Previous Net CONE Calculations Were Based on the System "At Criterion"**

As should be abundantly clear at this point, NEPGA is incorrect that the revisions here to the Net CONE definition "starkly diverge[]" from the ISO-NE's prior approaches to Net

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resource deficiency. The sloped demand curve submitted by the Filing Parties is targeted at achieving the 0.1 days/year LOLE target over the long term...").

<sup>104</sup> See, e.g., 2016 Demand Curve Improvements Filing at 7-8; 2016 Demand Curve Improvements Filing, Testimony of Dr. Christopher Geissler and Dr. Matthew White, at 18-22, 43 (the latter explaining that capacity demand curves should "be set at the level (just) high enough to produce outcomes consistent with the resource adequacy planning objective and to induce new entry when needed."), and at 44 ("the system demand curve will specify a price of Net CONE when the level of capacity procured is (just) enough to meet the region's "1-day-in-10" Loss of Load Expectation resource adequacy objective."). NEPGA's interpretation would violate this latter design property of the Forward Capacity Market's capacity demand curves.

<sup>105</sup> *Id.* at 47.

<sup>106</sup> See *Cost of New Entry and Offer Review Trigger Prices (Modeling the system at equilibrium for the Net Cost of New Entry)* at slides 4-18 (August 11-13, 2020), presentation to NEPOOL Markets Committee by Deborah Cooke on behalf of the ISO, available at [https://www.iso-ne.com/static-assets/documents/2020/08/a4\\_a\\_i\\_modeling\\_system\\_at\\_equilibrium\\_and\\_estimated\\_revenue\\_offsets.pptx](https://www.iso-ne.com/static-assets/documents/2020/08/a4_a_i_modeling_system_at_equilibrium_and_estimated_revenue_offsets.pptx).

CONE.”<sup>107</sup> As discussed above, the ISO has consistently explained – and the Commission has expressly interpreted – that Net CONE is intended to estimate the compensation a new entrant would require from the capacity market under long-term equilibrium conditions (*i.e.*, at criterion).<sup>108</sup> Nevertheless, in its complaint, NEPGA points to certain detailed elements of past Net CONE studies that, it asserts, are not consistent with that interpretation. NEPGA mischaracterizes those past studies. And, more generally, differences between the previous and present modeling techniques do not in any way render the present methods unreasonable, as NEPGA avers.<sup>109</sup>

As discussed in Part V.D.2.a above, in the 2017 Net CONE Study, the ISO’s consultant used a multi-year production cost model of the New England system to estimate future energy prices. Those prices were then input into a unit-specific dispatch model to calculate the E&AS revenue offsets. Importantly, the production cost model was run to maintain a target 15% capacity planning margin in the system, a simplified means to reflect a system at the 1-in-10 resource adequacy criterion.<sup>110</sup> In that way, the resulting 2017 E&AS revenue offset calculations approximated a system in capacity balance (*i.e.*, at criterion) over the twenty-year lifetime of the Net CONE facility. Properly understood, then, NEPGA’s witness’s assertion that the production cost model in the 2017 study started with “a capacity surplus and gradually converg[ed] to a capacity balance” is substantively misleading.<sup>111</sup> Because of pending retirements, the production cost model assumed new generation would be developed beginning in the very first year of its simulations (for 2021) and in various subsequent years in order to approximate (within the limits of that modeling tool) an “at criterion” system with a 15% capacity reserve margin over the modeling horizon.<sup>112</sup>

Importantly, that observation highlights a broader point: While the 2017 Net CONE Study’s modeling approach for energy prices differs from the present study (as noted previously in Part V.D.2.a), neither is unreasonable, nor implies fault in the other. Rather, they reflect the reality that there are multiple different modeling techniques that can be applied to estimate E&AS revenue offsets consistent with a system in long-run equilibrium.

NEPGA’s misplaced assertions concerning “at criterion” modeling continue in its discussion of the estimate of annual scarcity hours used to estimate the Net CONE facility’s

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<sup>107</sup> NEPGA Net CONE Complaint at 17.

<sup>108</sup> *See, e.g.*, Order Accepting Filing, 161 FERC ¶ 61,035 at P 15 (issued October 6, 2017).

<sup>109</sup> *See* NEPGA Net CONE Complaint at 20-22.

<sup>110</sup> *See* 2017 Net CONE Study at 56.

<sup>111</sup> NEPGA Net CONE Complaint, Affidavit of Robert B. Stoddard, at Paragraph 19.

<sup>112</sup> *See* 2017 Net CONE Study at 54-56.

Capacity Performance Payment revenue offsets.<sup>113</sup> As NEPGA correctly describes, for years 4 through 20 of that revenue component’s calculation in the 2017 Net CONE Study, the ISO’s consultant assumed 11.3 hours of scarcity conditions annually.<sup>114</sup> That value was the “at criterion” estimate of annual scarcity hours from the most recent ISO study available at the time, performed using the ISO’s (stakeholder-vetted) reliability planning model.<sup>115</sup>

Yet, in discussing this very parameter estimate from that 2017 study, NEPGA now asserts that “[c]ompletely absent [from] ISO-NE’s discussion of its methodology, benchmarking and results for the 2017 Net CONE recalculation is any mention of equilibrium or a system at criterion.”<sup>116</sup> At best, that assertion is plainly mistaken; at worst, it is an effort to further mischaracterize prior Net CONE studies as not reflecting a system in long-run equilibrium. In fact, the 2017 Net CONE Study expressly summarized the rationale for its 11.3 annual scarcity hours estimate as “consistent with our stated assumption of calculating CONE/Net CONE under long-term equilibrium conditions.”<sup>117</sup> In sum, it is evident that these detailed modeling elements – which NEPGA alleges show the ISO’s present and past Net CONE methodologies “starkly diverge” – are both expressly and firmly grounded on a long-run equilibrium approach to Net CONE.<sup>118</sup>

NEPGA’s complaint harkens even further back, flagging certain elements of the 2014 Net CONE Study that it finds inconsistent with a long-run equilibrium approach to Net CONE. In particular, while the 2014 Net CONE Study (performed by a different consultancy) estimated E&AS revenue offsets starting from a three-year historical data period for energy prices – a similar methodological starting point to the present Net CONE study – the 2014 study did not make similar adjustments to account for the excess supply conditions at the time. Those differences reflect the modeling technique variations of different expert consultancies, and do not, as NEPGA inaccurately claims, “reflect a thorough-going revision ... to the underlying

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<sup>113</sup> NEPGA Net CONE Complaint at 19-20.

<sup>114</sup> See NEPGA Net CONE Complaint at 19-20.

<sup>115</sup> See 2017 Net CONE Study at 56, note 51, referencing *Estimated Hours of System Operating Reserve Deficiency – Final Results* (October 13, 2016), presentation to NEPOOL Power Supply Planning Committee by Fei Zeng of the ISO, available at [https://www.iso-ne.com/static-assets/documents/2016/10/PSPC10132016\\_A2\\_2020-21\\_Reserve\\_Deficiencies\\_Hours\\_Final.pdf](https://www.iso-ne.com/static-assets/documents/2016/10/PSPC10132016_A2_2020-21_Reserve_Deficiencies_Hours_Final.pdf).

<sup>116</sup> NEPGA Net CONE Complaint at 20.

<sup>117</sup> 2017 Net CONE Study at 64.

<sup>118</sup> The 2017 Net CONE Study also notes that, for the first three years of the 2017 study, they assumed a lower estimate of annual scarcity hours (at 6 hours annually) than the criterion value. This transitory difference (from the value of 11.3 hours at criterion) does not imperil the reasonableness of modeling the system at long-term equilibrium generally, or – as NEPGA presently purports – give rise to “entirely different methodologies” for modeling expected scarcity hours. NEPGA Net CONE Complaint at 22.

philosophy ISO used to compute Net CONE.”<sup>119</sup> Indeed, much like the present Net CONE analysis, the 2014 Net CONE Study sought to model a reference technology “economic for merchant entry under long-term equilibrium market conditions” and to calculate Net CONE based on the capacity revenue that resource would need “under continued equilibrium conditions.”<sup>120</sup> The 2014 Net CONE Study expressly stated as its underlying philosophy for its estimate of Net CONE, “we assume the entrant has a generic cost structure and a fairly well-behaved, *long-term equilibrium view of the capital recovery trajectory* it can expect.”<sup>121</sup>

Most importantly to the instant filing, the difference in methodological techniques between the ISO’s past and present Net CONE studies do not undermine the reasonableness of the present methodology. The ISO has established beyond doubt that Net CONE is intended to reflect a system in long-run equilibrium and has been implemented in that manner. Even if NEPGA could establish – which it has not – that discrete sub-elements of past Net CONE studies were not optimally in keeping with that goal, it would not invalidate the goal. In fact, it would be all the more reason to support the continued refinement of the methodology to achieve it. Instead, NEPGA is trying to use any apparent inconsistency in past practices to completely overturn a well-established and thoroughly-vetted market design.

It bears emphasis, again, that the substantive issue is no academic matter for the capacity rates that consumers will pay. To model Net CONE “considering the system as it actually sits today,” as NEPGA advocates<sup>122</sup> – that is, in conditions of excess supply – would institutionalize the procurement of excess capacity in the Forward Capacity Market. As explained in Part V.F.3 above, basing the Net CONE calculation on market conditions featuring supply in excess of the Installed Capacity Requirement would produce an excessive value of Net CONE that, when inserted into the region’s capacity demand curves, would incent new entry even when the system does not need additional capacity to satisfy the Installed Capacity Requirement. That perverse outcome is indefensible under the ISO’s overarching Tariff-based obligation to create and sustain markets that are economically efficient.<sup>123</sup>

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<sup>119</sup> NEPGA Net CONE Complaint, Affidavit of Robert B. Stoddard, at Paragraph 37.

<sup>120</sup> 2014 Net CONE Study at 5.

<sup>121</sup> 2014 Net CONE Study at 40 (emphasis added).

<sup>122</sup> NEPGA Net CONE Complaint, Affidavit of Robert B. Stoddard, at Paragraph 38.

<sup>123</sup> See Tariff Section I.1.3(b).

## **5. Nonetheless, It Is Now Clear that the Net CONE Definition Should Be Clarified**

The ISO acknowledges (and did during discussions with NEPGA in the stakeholder process) that the existing Tariff definition of Net CONE is not as well worded as it could be. And in the instant filing, the ISO is including changes to the definition to more clearly reflect the intent, design, and practice as described in detail above. In its complaint, NEPGA alleges that these changes to the Net CONE definition can only be interpreted as evidence of a significant change to the underlying Net CONE methodology – “a fact ISO implicitly acknowledged by its proposal late in the stakeholder processes to rewrite the definition.”<sup>124</sup> NEPGA overlooks a far simpler explanation.

The reason that the changes to the Net CONE definition came “late in the stakeholder process” is that at the outset of the stakeholder process – which itself occurs well after the ISO began its internal assessment, analysis, and planning – the ISO had no intention of revising the Net CONE definition. It was not considered a necessary element of the changes being filed here. The ISO was entirely comfortable that the Net CONE calculation being performed for the instant update was consistent with the definition, the design intent, and past practice, for the many reasons discussed throughout this Part V.F. *It was primarily in response to NEPGA’s new assertion, in the stakeholder process, that the current definition requires a Net CONE calculated “as expected” that the ISO decided that the definition should be clarified.*

But as the explanations provided throughout this Part V.F amply demonstrate, the changes to the definition being filed here do not represent a substantive change from “as expected” to “at criterion.” The existing definition, worded exactly as it is today, has always existed in support of the ISO’s long-standing (and well-documented) design intent to calculate Net CONE based on a system at criterion. It is *NEPGA* that now seeks a radical departure from that long-standing design intent and practice. As the ISO has consistently maintained, and repeatedly explained, calculating Net CONE based on the system “as expected,” as NEPGA desires, would inefficiently incent unneeded new entry when the system’s resources exceed the Installed Capacity Requirement, which is neither cost effective nor consistent with the stated 1-in-10 resource adequacy objective.

The specific relief that NEPGA seeks in its complaint is also problematic. NEPGA is aware of the tight timing considerations at issue here, and that a recalculation based on its new

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<sup>124</sup> See NEPGA Net CONE Complaint, Affidavit of Robert B. Stoddard, at Paragraph 6.

interpretation of Net CONE would be impossible to accomplish in time for use in FCA 16.<sup>125</sup> In that case, NEPGA suggests “that the Commission 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.”<sup>126</sup> The upshot of that action would be that instead of running FCA 16 with the fully updated Net CONE value (filed here) of \$7.024/kW-month, it would be run using the then-stale FCA 15 value of \$8.707/kW-month,<sup>127</sup> escalated still further pursuant to the Tariff’s annual adjustment provisions. This outcome would result in an inappropriate increase in consumer payments on the order of tens of millions, and possibly over a hundred million, dollars in FCA 16.<sup>128</sup>

If clarifying the definition of Net CONE, in a manner fully consistent with the long-established design intent, will prevent that perverse outcome, the ISO is (now) eager to do so. The revisions to the definition filed here will remove all doubt that Net CONE must be calculated based on a system modeled under long-term equilibrium conditions. This is accomplished by simplifying the definition so that it no longer refers separately to “first year”

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<sup>125</sup> See NEPGA Net CONE Complaint at 29 (“NEPGA recognizes that this relief may not allow time for ISO-NE to review its recalculated Net CONE value with NEPOOL stakeholders prior to the beginning of the FCA 16 calendar.”).

<sup>126</sup> NEPGA Net CONE Complaint at 29.

<sup>127</sup> As to staleness, this FCA 15 Net CONE value is not merely one auction old; it was last fully recalculated for FCA 12 four years ago, with only annual index-based adjustments since.

<sup>128</sup> The precise number is impossible to quantify, as it depends on the slope of the future supply curve (at the margin) for FCA 16, the Net CONE value, and the specific clearing conditions of upcoming FCA 16. As context, however, rough measures are informative. NEPGA’s requested relief, which is to use the FCA 15 Net CONE value of \$8.707/kW-month plus an (undetermined) additional annual adjustment for FCA 16, would increase the FCA 16 Net CONE value by at least 24% over the fully recalculated \$7.024/kW-month Net CONE value filed herein (i.e.,  $(\$8.707 - \$7.024) / \$7.024 = 24\%$ ). Under the MRI-based capacity demand curve design, if NEPGA’s requested relief is granted, it would automatically ‘scale up’ the FCA 16 system-wide demand curve by at least 24% (at all quantities below the FCA Starting Price), relative to the FCA 16 system-wide demand curve using the recalculated \$7.024/kw-month Net CONE value filed herein. In general, every \$1.000/kw-month increase in the FCA’s clearing price increases consumers’ annual capacity payments by approximately \$400 million. Therefore, as a rough measure of the impact of NEPGA’s requested relief, *if* a 24% higher Net CONE value increases the FCA 16 clearing price by even ½ that much (recognizing that the FCA’s supply curve slope will attenuate, to some degree, how much of the full 24% increase in Net CONE would flow through to the auction clearing price) from the FCA 15 clearing price (which was \$2.000/kw-month), then NEPGA’s requested relief would increase the FCA 16 clearing price by  $(\frac{1}{2} \times 24\%)$  of \$2.000/kw-month = \$0.24/kw-month. In turn, that price increase would raise consumers’ annual capacity payments by approximately  $0.24 \times \$400$  million = \$96 million. These impacts are illustrative, but by no means implausible; the actual impact of NEPGA’s requested relief (i.e., a 24% increase in the Net CONE value for FCA 16, relative to the fully recalculated Net CONE value in the instant filing) could be more or less than the \$0.24/kw-month change in the FCA 16 auction clearing price assumed here (due to, e.g., the elasticity of supply). Nevertheless, these illustrative calculations reveal that the impact of NEPGA’s requested relief for FCA 16 may well increase consumers’ capacity payments by many tens of millions, and possibly over a hundred million, dollars for FCA 16.

and “subsequent years” revenues, and instead expressly refers to “reasonable expectations of the energy and ancillary services revenues under long-term equilibrium conditions.”<sup>129</sup>

### **G. Capacity Performance Payment Rate**

The Capacity Performance Payment Rate is the Tariff-prescribed settlement rate for resource performance (during Capacity Scarcity Conditions) under Pay for Performance, the common name for New England’s two-settlement capacity market design. As noted earlier, with this filing, the Capacity Performance Payment Rate is being updated for the Capacity Commitment Period that begins on June 1, 2025 and in advance of the corresponding Forward Capacity Auction, to be conducted in February of 2022 (FCA 16).

The Tariff does not specify a schedule for reviewing and updating the Capacity Performance Payment Rate, stating that “[t]he ISO shall review the Capacity Performance Payment Rate in the stakeholder process as needed and shall file with the Commission a new Capacity Performance Payment Rate if and as appropriate.”<sup>130</sup> In the 2018 proceeding to consolidate the review process for the various FCM parameters, however, the ISO indicated its intention “to review and update, if appropriate, the Capacity Payment Performance Rate for FCA 16 in conjunction with the review of the other FCM parameters.”<sup>131</sup>

Updating the Capacity Performance Payment Rate was not within the scope of work assigned to CEA, and hence is not addressed in the CEA Report. Thus, we provide a brief overview of the role and derivation of this rate, and then turn to the instant update and the associated Tariff revisions. Importantly, the Capacity Performance Payment Rate is based on a formula set forth in the ISO’s original two-settlement capacity market design filing in 2014,<sup>132</sup> and that formula is not at issue in the instant proceeding. That formula, including its derivation and rationale, was fully vetted and approved by the Commission in the implementation of the two-settlement capacity market design,<sup>133</sup> and is not being modified here. The revised rate being filed here simply reflects updated inputs to the formula (which is dependent on several of the same inputs to Net CONE that have been recalculated for this proceeding).

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<sup>129</sup> See revised Tariff Section I.2.2 (definition of “Net CONE”).

<sup>130</sup> Tariff Section III.13.7.2.5.

<sup>131</sup> ISO New England Inc. and New England Power Pool Participants Committee Filing re Consolidation of FCM Parameter Review, Docket No. ER19-335-000 (filed November 14, 2018) at 6.

<sup>132</sup> See Filings of Performance Incentives Market Rule Changes, FERC Docket Nos. ER14-1050-000 and ER14-1050-001 (filed January 17, 2014), attachment I-1a (Transmittal Letter on Behalf of the ISO) at 5, 23-25, 41-43 and attachment I-1c (Testimony of Matthew White on behalf of the ISO) at 86-116.

<sup>133</sup> See Order on Compliance Filing, 149 FERC ¶ 61,009 at P 24 (issued October 2, 2014).



## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 31st day of December 2020.

/s/ Uju Okasi

Uju Okasi

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