

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

|                                     |   |                               |
|-------------------------------------|---|-------------------------------|
| <b>New England Power</b>            | ) |                               |
| <b>Generators Association, Inc.</b> | ) |                               |
|                                     | ) | <b>Docket No. EL21-26-000</b> |
| v.                                  | ) |                               |
|                                     | ) |                               |
| <b>ISO-New England, Inc.</b>        | ) |                               |

**COMMENTS OF THE  
NEW ENGLAND POWER POOL PARTICIPANTS COMMITTEE**

(December 31, 2020)

Pursuant to Rule 206(f) of the Federal Energy Regulatory Commission’s (“FERC” or “the Commission”) Rules of Practice and Procedure,<sup>1</sup> the New England Power Pool<sup>2</sup> (“NEPOOL”) Participants Committee<sup>3</sup> hereby files these comments (“Comments”) in response to the Complaint filed by the New England Power Generators Association, Inc. (“NEPGA”) on December 11, 2020 in the above-captioned docket (the “NEPGA Complaint”).<sup>4</sup> The NEPGA Complaint alleges that ISO New England Inc. (“ISO-NE” or the “ISO”) violated its Tariff and

---

<sup>1</sup> 18 C.F.R. 385.206(f) (2020).

<sup>2</sup> Capitalized terms not defined herein have the meaning 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”).

<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 510 members. The members, which are also referred to as “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. Its members include NEPGA members. 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.

<sup>4</sup> NEPOOL timely moved to intervene in the above-captioned docket by a doc-less intervention on December 17, 2020.

the filed rate doctrine. Specifically, NEPGA claims that the ISO’s recalculation of the Net Cost of New Entry (“Net CONE”) in advance of the sixteenth Forward Capacity Auction (“FCA”) is “wholly inconsistent with the [ISO-NE] Tariff requirements.”<sup>5</sup> The Complaint seeks an order from the Commission directing ISO-NE to recalculate Net CONE, to review the new value with NEPOOL stakeholders, and to file a Net CONE value consistent with NEPGA’s interpretation of the existing Tariff definition.<sup>6</sup> Finally, the Complaint asks the Commission to preemptively find that ISO-NE’s proposed Net CONE value for FCAs 16–18 is unjust and unreasonable, even before the ISO has filed that value and its support for it.<sup>7</sup>

As explained in more detail below, the Commission should reject the Complaint, which offers a premature, unilateral characterization of a future ISO-NE filing outside of the review procedures of Section 205 of the Federal Power Act (“FPA”).<sup>8</sup> Any subsequent ruling on the ISO’s upcoming tariff filing must be based on Commission review of the record following notice and comment procedures contemplated by both the FPA and the Commission’s Rules of Practice and Procedure. Rather than having no recourse, even if its Complaint is dismissed, NEPGA will still have a full and fair opportunity to raise its objections to the ISO’s FPA Section 205 filing of the updated CONE, Net CONE and Capacity Performance Payment Rate values for FCA 16 (“ISO’s Updated CONE Values Filing”).

---

<sup>5</sup> NEPGA Complaint at 2.

<sup>6</sup> NEPGA Complaint at 4. Further, recognizing that its requested relief would likely leave the region with little to no time to recalculate the Net CONE value accepted prior to the beginning of the FCA 16 calendar, the Complaint asks the Commission 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.

<sup>7</sup> NEPGA Complaint at 5, 29.

<sup>8</sup> 16 U.S.C. § 824d (2012).

However, if the Commission is unwilling to summarily reject the Complaint, NEPOOL alternatively requests that the Commission hold the Complaint in abeyance pending the action on the ISO's Updated CONE Values Filing.

In support hereof, NEPOOL respectfully states as follows:

## **I. BACKGROUND**

New England's Tariff requires that the values for CONE and Net CONE be recalculated at minimum every three years.<sup>9</sup> The ISO previously calculated Net CONE for FCAs 9–11 in 2014 and for FCAs 12–14 in 2017.<sup>10</sup> This year, the ISO recalculated the Net CONE and other FCM parameters for the upcoming FCAs 16–18. The process to recalculate these values requires stakeholder input from the NEPOOL Markets Committee and, ultimately, the NEPOOL Participants Committee. The complete NEPOOL Participant Processes,<sup>11</sup> requiring extensive stakeholder input to the ISO from NEPOOL members and State representatives, took place throughout the past year.

In early 2020, ISO-NE and NEPOOL, along with State officials, began the collaborative process to develop and review proposed updates to certain FCM parameters. Over the course of numerous meetings of the NEPOOL Markets Committee, the region reviewed and discussed,

---

<sup>9</sup> ISO-NE Tariff § III.13.2.4 (“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.”).

<sup>10</sup> The Commission accepted the joint request of NEPOOL and ISO-NE to delay for one year the triennial review update from FCA 15 to FCA 16. *See* Letter Order Accepting ISO-New England Inc.'s et al. November 14 Filing of the Consolidation of Forward Capacity Market Parameter Review under ER19-335 (Issued Dec. 19, 2019).

<sup>11</sup> As has been approved by the Commission in *ISO New England Inc., et al.*, 109 FERC ¶ 61,147 (2004), *see supra* note 3.

among other things, the ISO's proposed recalculation of the Net CONE value for FCA 16.<sup>12</sup> At the November 2020 Markets Committee meeting, NEPGA offered for stakeholder consideration an amendment to the ISO's FCM parameters proposal related to the subject of this Complaint.<sup>13</sup> The NEPOOL Markets Committee failed to support this generator-sponsored amendment, with a 49.95% Vote in favor.<sup>14</sup> At its December 3, 2020 annual meeting, the NEPOOL Participants Committee considered a larger package of Markets Committee-recommended FCM parameters, including proposed recalculated values for CONE and Net CONE. NEPOOL ultimately approved that Markets Committee-recommended proposal,<sup>15</sup> which reflects ISO-NE's proposed updated CONE and Net CONE values for FCA 16, but with an alternative set of updated Offer Review Trigger Price (ORTP) values than those proposed by the ISO.<sup>16</sup>

The changes to Net CONE for FCA 16 cannot be made without a filing under Section 205 of the FPA. In its Updated CONE Values Filing, the ISO included under Section 205 the proposed Net CONE value that is the subject of the NEPGA Complaint.

---

<sup>12</sup> All of the meeting materials presented to and reviewed with stakeholders through the NEPOOL Markets Committee process were posted publicly throughout the process and are accessible at: <https://www.iso-ne.com/committees/markets/markets-committee/>.

<sup>13</sup> See NEPGA (Jericho-sponsored) Amendment to the System Model for Energy and Ancillary Services Offset, (Nov. 9, 2020), [https://www.iso-ne.com/static-assets/documents/2020/11/a4\\_b\\_iii\\_nepga\\_presentation\\_amendment\\_system\\_model\\_eas.pdf](https://www.iso-ne.com/static-assets/documents/2020/11/a4_b_iii_nepga_presentation_amendment_system_model_eas.pdf).

<sup>14</sup> The individual NEPOOL Sector votes for this NEPOOL Markets Committee vote were as follows: Generation (16.683% in favor, 0% opposed, 1 abstention); Transmission (0% in favor, 16.683% opposed, 0 abstentions); Supplier (16.683% in favor, 0% opposed, 6 abstentions); Publicly Owned Entity (0% in favor, 16.683% opposed, 0 abstentions); Alternative Resources (16.5% in favor, 0% opposed, 3 abstentions); and End User (0% in favor, 16.683% opposed, 5 abstentions). In addition, the votes from Provisional Members were 0.083% in favor, 0% opposed, and 0 abstentions.

<sup>15</sup> The NEPOOL Participants Committee approved this FCM parameters proposal, with a 71.84% Vote in favor (Generation Sector – 4.17% in favor; Transmission Sector – 16.67% in favor; Supplier Sector – 5.12% in favor; Publicly Owned Entity Sector – 16.67% in favor; Alternative Resources Sector – 12.37% in favor; End User Sector – 16.67% in favor); and Provisional Members – 0.17% in favor).

<sup>16</sup> Further information about NEPOOL's consideration and approval of an alternative set of FCM values to the ISO's proposal will be provided to the Commission in the upcoming Section 205 proceeding(s).

## **II. ARGUMENT**

### **A. NEPGA's Complaint is Premature**

In its Complaint, NEPGA alleges that ISO-NE violated the filed rate doctrine by not following the current CONE and Net CONE methodology set forth in the Tariff when it developed its proposed updated values for FCA 16. However, NEPGA's Complaint is premature as the Commission will fully address ISO-NE's proposed FCA 16 CONE and Net CONE values in the separate, but related Section 205 proceeding. In this latter proceeding, NEPGA will have ample opportunity to object to the ISO-NE's justification for its updated CONE/Net CONE values.

NEPGA concedes throughout its Complaint that the Net CONE Tariff provisions at issue will be the subject of the ISO's filing of updated CONE/Net CONE values.<sup>17</sup> NEPGA's acknowledgement of this fact reinforces the conclusion that its Complaint is premature. NEPGA, in effect, seeks a Commission finding that the upcoming Section 205 filing, not yet before the Commission at the time of the filing of the Complaint, is unlawful based on NEPGA's own interpretation of the ISO Tariff. In short, the injunctive relief NEPGA seeks in this Section 206 proceeding is a "front run" of the FPA's 60-day notice and comment period under Section 205.<sup>18</sup> NEPGA's attempt to avoid the temporal limitations of Section 205 of the FPA is not supported by law or by precedent.

---

<sup>17</sup> NEPGA Complaint at 3, 10, 30.

<sup>18</sup> See Section 205(d) of Federal Power Act, 16 U.S.C. § 824d (2012) (requiring 60 days' notice for filings to change rates, charges, classifications, or service, or related rules, regulations, or contracts unless ordered otherwise by the Commission). See also 18 C.F.R. § 35.3 (same)).

The Commission has routinely rejected premature complaints, and should do the same here.<sup>19</sup> For example, the Commission has previously:

- 1) Dismissed a complaint as “not ripe for consideration” as the complainants sought an ISO-NE tariff change to mitigate a claimed impact of certain *future* state regulatory measures not yet presented to the Commission;<sup>20</sup>
- 2) Dismissed a complaint against an RTO in which the proposed remedies raised by the complainant were directly related to market design issues that were the subject of a *future* proposal to be filed by the RTO;<sup>21</sup>
- 3) Dismissed a series of related complaints alleging that an oil pipeline’s existing rate ceiling levels could allow for *future* unjustified increases as being “premature and not ripe for review;”<sup>22</sup>
- 4) Affirmed on rehearing an order dismissing a complaint to an interstate pipeline’s *future* expansion efforts on the basis that administrative efficiency would not be served by pre-determining the route for a pipeline expansion project before an application is even filed;<sup>23</sup> and

---

<sup>19</sup> It is a common practice for the Commission to dismiss a filing that is “not ripe for consideration or is otherwise premature.” *See, e.g., S. Maryland Elec. Coop., Inc. Choptank Elec. Coop., Inc.*, 162 FERC ¶ 61,048 at P 13 (2018). As the Supreme Court instructed over half a century ago, the ripeness doctrine is intended to “prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements.” *See Abbott Laboratories v. Gardner*, 387 U.S. 136, 148 (1967) *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99, 105 (1977).

<sup>20</sup> *NextEra Energy Resources LLC and PSEG Companies v. ISO New England Inc.*, 156 FERC ¶ 61,150 at P 16 (2016) (dismissing complaint without prejudice as “[c]omplainants’ allegations [we]re speculative and the complaint lack[ed] sufficient evidence of harm”).

<sup>21</sup> *California Independent System Operator Corp., et al. v. Williams Energy Services Corp. et al.*, 98 FERC ¶ 61,327 at 62,382 (2002) (dismissing complaint “[i]t is premature and a potential waste of resources at this time to engage in piecemeal adjusting the current market design when a revised design is imminent”).

<sup>22</sup> *Chevron Products Co., et al. v. SFPP L.P.*, 138 FERC ¶ 61,115 at P 19 (2012) (dismissing complaint as “[t]he justness and reasonableness of a possible, future index-based rate increase is not ripe for Commission review until [the respondent] actually submits a tariff filing proposing to charge such rates”).

<sup>23</sup> *ConocoPhillips Co. v. Texas Eastern Transmission LP*, 142 FERC ¶ 61,123 at P 10 (2013) (dismissing complaint as Commission not persuaded by complainant’s argument that administrative efficiency would be somehow served by pre-determining the route for a pipeline expansion project before an application is even filed).

- 5) Dismissed a complaint as “not ripe for consideration” due to uncertainty as to whether the complainant would even own the disputed transmission facilities in the *future* that were the subject of the complaint.<sup>24</sup>

In sum, the Commission will not grant complaints “based on the perceived inchoate ‘threat[s]’ raised [by them].”<sup>25</sup> Otherwise, its dockets would be flooded with requests for injunctive relief and advisory opinions. Given that NEPGA is essentially asking the Commission for similar premature relief, the same result should obtain here.<sup>26</sup>

### **B. If the Complaint is Not Dismissed, It Should be Held in Abeyance Pending the Outcome of the CONE Update Filing**

Alternatively, if the Complaint is not dismissed outright, NEPOOL respectfully urges the Commission to hold its consideration of the Complaint in abeyance pending the outcome of the Section 205 CONE Update Filing.<sup>27</sup> The Commission has discretion to determine the most appropriate procedures to address the issues before it.<sup>28</sup> In exercising that discretion, the

---

<sup>24</sup> *Michigan Electric Transmission Co. LLC v. Midcontinent Independent System Operator Inc.*, 156 FERC ¶ 61,025 at P 16 (2016) (dismissing complaint due to “the speculative nature of [complainant’s] allegations and the lack of sufficient evidence of harm”).

<sup>25</sup> *CSOLAR IV South LLC, et al. v. California Independent System Operator Corp.*, 142 FERC ¶ 61,250 at P 47 (2013) (dismissing complaint filed against the CAISO alleging that its interpretation of its generator interconnection rules would place complainant’s interconnection request at risk as not ripe because no affirmative steps had been taken in that regard).

<sup>26</sup> NEPGA is essentially seeking an advisory opinion from the Commission that prejudices the merits of the upcoming filing of updated CONE/Net CONE values outside of the separate Section 205 CONE proceeding.

<sup>27</sup> *See 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)) (noting Commission will not entertain FPA Section 206 challenges to tariff provisions when the same provisions are pending in another docket).

<sup>28</sup> *See, e.g., Tennessee Gas Pipeline Co. v. FERC*, 972 F.2d 376, 381 (D.C. Cir. 1992) (“[A]gency is entitled to make reasonable decisions about when and in what type of proceeding it will deal with an actual problem”); *Nader v. FCC*, 520 F.2d 182, 195 (D.C. Cir. 1975) (“[T]his court has upheld in the strongest terms the discretion of regulatory agencies to control the disposition of their caseload.”); *see also ISO New England, Inc.*, 130 FERC ¶ 61,236, at P 12 n.9 (2010) (citing *Vermont Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.*, 435 U.S. 519, 524-25 (1978) (agencies have broad discretion over the formulation of their procedures)).

Commission should defer current consideration of the issues raised by the NEPGA Complaint on the basis that the same (or similar issues) will be considered and adjudicated in Commission's determination of the Section 205 CONE Update.<sup>29</sup>

As noted above, NEPGA (and all other interested parties) will have ample opportunity to express their concerns on the record in response to the ISO's CONE Update Filing. The ISO will bear the burden of demonstrating the lawfulness of the CONE Update Filing with reliable and persuasive record evidence in support, and NEPGA will be able to respond in kind. Contrary to NEPGA's position that it would be "administratively efficient" for the Commission to pre-emptively rule on the ISO-NE's CONE Update Filing even before the Commission has a full record before it,<sup>30</sup> such an outcome would be the exact opposite. The Commission and interested parties would be compelled to spend scarce resources litigating the same issues raised by both the NEPGA Complaint, and the Section 205 filing of proposed FCM values for FCA 16.

---

<sup>29</sup> *Louisiana Public Service Commission v. Entergy Corp., et al.*, 138 FERC ¶ 61,031 at P 29 (2012) (holding complaint in abeyance as respondent agreed to make an FPA Section 205 filing, and "[s]ince that filing... will also address the subject matter of the complaint, the Commission will hold the complaint in abeyance pending further Commission action, which will allow the Commission to take the anticipated section 205 filing into consideration in addressing the complaints"); *Northern Indiana Public Service Co. v. Midcontinent Independent System Operator Inc. and PJM Interconnection L.L.C.*, 145 FERC ¶ 61,256 at P 21 (2013) (holding complaint in abeyance as it "raise[d] issues that overlap with [respondents'] compliance filings, which are currently pending before the Commission. . . [and] . . . the complaint raises issues that are under consideration by the Commission in other proceedings").

<sup>30</sup> NEPGA Complaint at 4.

### III. CONCLUSION

For the reasons stated herein, NEPOOL respectfully requests that the Commission consider these Comments in its evaluation of NEPGA's Complaint and summarily reject the Complaint, or, in the alternative, hold the Complaint in abeyance pending the outcome of the proceeding to consider the ISO's Section 205 filing of proposed updates to the CONE/Net CONE values.

Respectfully submitted,

NEPOOL Participants Committee

By: /s/ Sebastian Lombardi

Sebastian Lombardi

Joseph H. Fagan

Sophia Browning

Day Pitney LLP

242 Trumbull Street

Hartford CT 06103-1212

Tel: (860) 275-0102

[slombardi@daypitney.com](mailto:slombardi@daypitney.com)

[jfagan@dyapitney.com](mailto:jfagan@dyapitney.com)

[sbrowning@daypitney.com](mailto:sbrowning@daypitney.com)

Its Attorneys

Dated: December 31, 2020

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document on all persons on the Federal Energy Regulatory Commission's service list in the above-captioned proceeding.

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

/s/ Margaret G. Czepiel  
Margaret G. Czepiel  
Day Pitney, LLP  
555 11<sup>th</sup> Street NW  
Washington, DC, 20004  
(202) 218-3906