

164 FERC ¶ 61,190
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;
Cheryl A. LaFleur, Neil Chatterjee,
and Richard Glick.

New England Power Generators Association, Inc. Docket Nos. EL16-120-002

v.

ISO New England Inc.

ISO New England Inc. ER17-2153-002

ISO New England Inc. ER18-1153-000

ORDER DENYING MOTION FOR CLARIFICATION AND ACCEPTING
COMPLIANCE FILING

(Issued September 20, 2018)

1. On February 20, 2018, the Commission approved a settlement agreement (Settlement) related to ISO New England’s (ISO-NE) Peak Energy Rent (PER) provisions in its Transmission, Markets and Services Tariff (ISO-NE Tariff).¹ In approving the Settlement, the Commission directed ISO-NE to submit tariff revisions to the methodology for calculating PER Adjustments contained in ISO-NE Tariff section III.13.7.2.7.1.1.1 for the time period identified in the Settlement (i.e., September 30, 2016 through May 31, 2018). On March 22, 2018, ISO-NE submitted the required compliance filing. For the reasons discussed below, we deny a request for clarification of the Settlement Order. We also accept the compliance filing.

¹ See *New England Power Generators Ass’n, Inc.*, 162 FERC ¶ 61,144 (2018) (Settlement Order). The parties to the Settlement include: NEPGA; New England States Committee on Electricity (NESCOE); Retail Energy Supply Association; New England Power Pool Participants Committee (NEPOOL); Exelon Corporation; H.Q. Energy Services Inc.; Eversource Energy Service Company; Dominion Resources Services, Inc.; Entergy Nuclear Power Marketing, LLC; Cogentrix Energy Power Management, LLC; and NRG Power Marketing LLC.

I. Background

A. Order on Complaint (EL16-120-000)

2. On September 30, 2016, the New England Power Generators Association, Inc. (NEPGA) filed a complaint against ISO-NE under section 206 of the Federal Power Act (FPA),² alleging that the PER Adjustment provisions of the ISO-NE Tariff had become unjust and unreasonable.

3. In brief, the PER Adjustment is intended to act as a hedge for load against price spikes in the energy market as well as to help mitigate incentives for capacity suppliers to create price spikes in the real-time energy market through economic or physical withholding. The PER Adjustment requires capacity suppliers to return Peak Energy Rents (the revenues earned in the energy market when real-time clearing prices exceed an administratively-determined PER Strike Price) to load. Capacity suppliers will do so by providing monthly credits against capacity suppliers' capacity payments.³ Specifically, in any one month, the credit is equal to the average of the Monthly PER Values (which are derived from the PER amounts calculated for each month using the PER Strike Price) over the previous 12 months. On January 19, 2017, the Commission granted the complaint in part and set it for hearing and settlement judge procedures in part. The Commission found that NEPGA had demonstrated that, for the period from September 30, 2016 through May 31, 2018, the PER mechanism had become unjust and unreasonable⁴ as a result of its interaction with the increased Reserve Constraint Penalty Factors (the caps on the prices that ISO-NE may pay to procure reserves). The Commission required ISO-NE to revise the method by which it calculates the PER Strike Price but set the question of the appropriate method for doing so for hearing and settlement judge procedures.⁵

4. The method by which ISO-NE calculates the PER Strike Price was set forth in ISO-NE Tariff section III.13.7.2.7.1.1.1. The PER Strike Price is one input into the calculation of the PER Adjustment, which includes the 12-month averaging process noted above and was governed by ISO-NE Tariff section III.13.7.2.7.1.1.2. The Commission noted in the Complaint Order that the question that it was setting for hearing and settlement judge procedures "concerns how the PER Strike Price [would be] calculated pursuant to ISO-NE

² 16 U.S.C. § 824e (2012).

³ *New England Power Generators Ass'n, Inc. v. FERC*, 158 FERC ¶ 61,034, at P 3 (2017) (Complaint Order).

⁴ *Id.* P 48.

⁵ *Id.* P 57.

Tariff section III.13.7.2.7.1.1.1 and not the monthly application of the PER Adjustment for settlement purposes as governed by ISO-NE Tariff section III.13.7.2.7.1.1.2.”⁶ In other words, the Commission did not set for hearing the method for crediting PER amounts to load during Forward Capacity Market (FCM) settlements, as governed by ISO-NE Tariff section III.13.7.2.7.1.1.2.

5. In a subsequent order on clarification and rehearing, the Commission clarified that it intended its findings to address only the September 30, 2016 through May 31, 2018 period.⁷ On rehearing, NEPGA had asked the Commission to find that, in calculating any PER Adjustment to be invoiced from September 30, 2016 through May 31, 2018, ISO-NE must recalculate all prior monthly PER values using the new PER Strike Price that it would develop in response to the Complaint Order, which would require recalculation of the monthly PER values for the months prior to September 30, 2016. The Commission denied this request, stating that it intended ISO-NE to use the existing PER Strike Price to determine the PER Adjustment for any PER events that occurred prior to September 30, 2016 and use the new PER Strike Price to determine the PER Adjustment for PER events that occur after September 30, 2016.⁸

B. Settlement (Docket No. ER17-2153-000)

6. On February 20, 2018, the Commission approved the Settlement. The Settlement revised ISO-NE’s method for calculating the PER Strike Price, requiring ISO-NE to increase the PER Strike Price for each hour.⁹ The Settlement provided that the applicability

⁶ *Id.* P 61.

⁷ *New England Power Generators Ass’n, Inc. v. ISO New England Inc.*, 161 FERC ¶ 61,193 (2017) (Rehearing Order).

⁸ *Id.* PP 11-12. We note that, in 2015, the Commission accepted a proposal to remove the PER mechanism from the ISO-NE Tariff so that the capacity market payment adjustments associated with the PER mechanism will end with the capacity commitment period that begins on June 1, 2019. *See ISO New England Inc.*, Docket No. ER15-1184-000 (May 5, 2015) (delegated order).

⁹ This proceeding refers to the PER Strike Price and the Adjusted PER Strike Price. The PER Strike Price refers to the calculation of the PER Strike Price as calculated by the method originally in the ISO-NE Tariff. The Adjusted PER Strike Price refers to the calculation of the PER Strike Price to which the parties agreed in the Settlement and that ISO-NE implemented after the Commission found that the original method of calculating the PER Strike Price was unjust and unreasonable for the period of September 30, 2016 through May 31, 2018.

of the new Adjusted PER Strike Price to any PER events that occur after May 31, 2018 was beyond the scope of the proceeding.¹⁰

C. Request for Clarification (Docket Nos. EL16-120-002 and ER17-2153-002)

7. On March 1, 2018, in Docket Nos. EL16-120-002 and ER17-2153-002, NESCOE submitted a request for clarification of the Settlement Order because, according to NESCOE, the Settlement Order did not specifically address the circumstances when a PER event occurs prior to May 31, 2018, but because of the 12-month rolling average used in the PER calculation, that event implicates ISO-NE's calculation of the PER credit against the monthly payment that load must make to capacity resources in months after May 31, 2018.¹¹ NESCOE stated that, in the Settlement Order, the Commission reiterated that the applicability of the Adjusted PER Strike Price to events that occur after May 31, 2018 (i.e., during the FCA 9 capacity commitment period¹²) is beyond the scope of that proceeding.¹³ Given NESCOE's belief that the matter remains unaddressed, NESCOE requests that the Commission now clarify that ISO-NE must submit tariff language that specifies that, beginning on June 1, 2018, it will apply the method that it used to calculate the PER Strike Price that was in effect *prior* to the Settlement, even with respect to PER events that occurred prior to May 31, 2018, that are captured in the 12-month rolling average process.¹⁴

8. According to NESCOE, the Commission found in the Complaint Order that, for the period from September 30, 2016 through May 31, 2018, the PER mechanism had become

¹⁰ See Settlement Order, 162 FERC ¶ 61,144 at P 3 (“the applicability of the Adjusted Hourly PER Strike Price to any events that occur [after May 31, 2018] is beyond the scope of this proceeding”).

¹¹ NESCOE Request for Clarification at 5.

¹² The capacity commitment period is a one-year period from June 1 through May 31 of the following year. When a resource clears the three-year ahead Forward Capacity Auction (FCA), it is obligated to provide capacity for the capacity commitment period associated with that FCA. FCA 8 was conducted in February 2014 to procure capacity for the commitment period of June 1, 2017 through May 31, 2018. FCA 9 was conducted in February 2015 to procure capacity for the commitment period of June 1, 2018 through May 31, 2019.

¹³ NESCOE Request for Clarification at 5 (citing Settlement Order, 162 FERC ¶ 61,144 at P 3).

¹⁴ *Id.* at 6.

unjust and unreasonable as a result of its interaction with the higher Reserve Constraint Penalty Factors. NESCOE explains that capacity resources were unable to anticipate a future increase in the Reserve Constraint Penalty Factors and were unable to reflect the increase in their capacity offers for FCA 7 and FCA 8 and the corresponding capacity commitment periods spanning June 1, 2016 through May 31, 2018.¹⁵ However, NESCOE claims that resources seeking to provide capacity for the period after May 31, 2018 (i.e., during the FCA 9 capacity commitment period) were aware of the Reserve Constraint Penalty Factor increases prior to participating in FCA 9 and, therefore, “had the opportunity to reflect in their supply offers an increase for the monthly application of the PER mechanism based on the *existing* [PER] Strike Price and its interaction with the higher Reserve Constraint Penalty Factors.”¹⁶ Therefore, NESCOE concludes that there is no reasonable justification to allow resources providing capacity a more advantageous PER Adjustment after May 31, 2018. NESCOE therefore asks the Commission to clarify that the Adjusted PER Strike Price should have no effect on FCM settlements beginning June 1, 2018 (i.e., during the FCA 9 capacity commitment period).¹⁷

9. NEPGA filed an answer to NESCOE’s request for clarification, stating that the Adjusted PER Strike Price should apply to all PER event hours from September 30, 2016 through May 31, 2018. According to NEPGA, the Commission did not intend Monthly PER Values calculated using the Adjusted PER Strike Price to be subject to a retroactive change for the purpose of determining the Peak Energy Rents that ISO-NE will return to load. NEPGA states that the relief that NESCOE requests (i.e., the retroactive recalculation of Monthly PER Values) would require a change to the ISO-NE Tariff under FPA section 206.¹⁸

D. ISO-NE Compliance Filing (Docket No. ER18-1153-000)

10. On March 22, 2018, ISO-NE submitted its compliance filing, which it states changes ISO-NE Tariff section III.13.7.2.7.1.1.1, as the Commission directed. ISO-NE states that these changes reflect the Adjusted PER Strike Price for the period specified in the Settlement (i.e., September 30, 2016 through May 31, 2018). However, in its compliance

¹⁵ *Id.* at 6 (citing Complaint Order at P 51). While the FCA 7 capacity commitment period began June 1, 2016, the refund effective date is September 30, 2016, the date NEPGA filed its complaint.

¹⁶ *Id.* at 6 (citing New Eng. States Comm. on Elec. Aug. 28, 2017 Reply Comments, Docket No. ER17-2153-000 at 4 (emphasis added)).

¹⁷ *Id.* at 7.

¹⁸ NEPGA Answer to Request for Clarification at 2.

filing, ISO-NE notes that it has not revised ISO-NE Tariff section III.13.7.2.7.1.1.2, the ISO-NE Tariff section used to calculate the credit against the monthly payment that load must make to capacity resources (which relies on the average of the Peak Energy Rents over the previous 12 months).¹⁹ ISO-NE further states that, pursuant to ISO-NE Tariff section III.13.7.2.7.1.1.2, and absent contrary direction from the Commission, it intends to calculate the credit against the monthly payment that load must make to capacity resources (including for months that occur after May 31, 2018) to include, where applicable, monthly PER values that may be affected by the Adjusted PER Strike Prices.²⁰

II. Notice of Filing and Responsive Pleadings

11. Notice of ISO-NE's compliance filing in Docket No. ER18-1153-000 was published in the *Federal Register*, 83 Fed. Reg. 13,976-02 (2018), with interventions, comments, and protests due on or before April 12, 2018. Timely motions for intervention were filed by Consolidated Edison Energy; Dominion Energy Services; Eversource Energy Service Company; GenOn Energy Management, LLC; National Grid; NESCOE; NEPOOL; and NRG Power Marketing LLC. Exelon Corporation (Exelon) and NEPGA filed motions to intervene out of time.

12. NEPOOL filed comments in support, stating that the proposed ISO-NE Tariff revisions effectuate the Settlement regarding the appropriate method for calculating the PER Strike Price for the period between September 30, 2016 through May 31, 2018.²¹ NEPOOL further notes that, prior to ISO-NE submitting the filing, the NEPOOL Markets Committee and NEPOOL Participants Committee unanimously supported the ISO-NE Tariff revisions (with some members abstaining on the votes in both committees).²²

13. NESCOE filed a protest, noting that the Settlement Order directed ISO-NE to file ISO-NE Tariff changes revising the methodology for calculating the PER Strike Price for a specific time period beginning on September 30, 2016 and ending on May 31, 2018. NESCOE supports the Adjusted PER Strike Price but protests the application of the methodology beyond May 31, 2018.²³ According to NESCOE, ISO-NE's compliance filing, if accepted, would use the Adjusted PER Strike Price to calculate the credit against

¹⁹ ISO-NE Compliance Filing at 2.

²⁰ ISO-NE Compliance Filing Transmittal at 2.

²¹ NEPOOL Comments at 1.

²² *Id.* at 1, 3.

²³ NESCOE Protest at 1-2.

the monthly payment that load must make to capacity resources subsequent to May 31, 2018, which would be inconsistent with the Settlement Order.²⁴

14. NESCOE states that, on March 1, 2018, it filed a request for clarification of the Settlement Order to confirm that ISO-NE's compliance filing should appropriately limit the application of the Adjusted PER Strike Price to the credit against the monthly payment that load must make to capacity resources through May 31, 2018.²⁵ NESCOE states that ISO-NE has taken no position regarding that clarification request but noted in a March 6, 2018 NEPOOL Markets Committee meeting that there were no technical impediments to implementing ISO-NE Tariff changes consistent with the view that NESCOE expressed in the clarification request and this its protest here.²⁶

15. NEPGA filed an answer to NESCOE's protest on April 24, 2018. NEPOOL filed an answer to NESCOE's protest on April 27, 2018.

III. Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the timely-filed unopposed motions to intervene in Docket No. ER18-1153-000 serve to make the entities filing them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d), we grant Exelon's and NEPGA's motions to intervene out of time in Docket No. ER18-1153-000, given their interest in the proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept NEPGA's and NEPOOL's answers to NESCOE's protest in Docket No. ER18-1153-000 and therefore reject them.

18. Rule 213(a)(3) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(3), permits an answer to pleadings unless otherwise prohibited by Rule 213(a)(2). We therefore accept NEPGA's answer to NESCOE's request for clarification in Docket No. ER17-2153-002.

²⁴ *Id.* at 2.

²⁵ *Id.* at 3.

²⁶ *Id.* at 3.

B. Substantive Matters

19. We deny NESCOE's request for clarification of the Settlement Order and accept ISO-NE's compliance filing, as discussed below.

1. Request for Clarification

20. We deny NESCOE's request that the Commission clarify that ISO-NE must submit tariff language that specifies that, beginning on June 1, 2018, ISO-NE will apply the method for calculating the PER Strike Price that was in effect prior to the Settlement, even with respect to PER events that occurred prior to May 31, 2018 that are captured in the 12-month rolling average. NESCOE's request would, in effect, mean that the PER payments to load (i.e., the credit against the monthly payment that load must make to capacity resources that is associated with PER events) starting on June 1, 2018 would be calculated as if each Monthly PER amount for the 12-month averaging process were calculated using the original PER Strike Price for the September 30, 2016 to May 31, 2018 period. We find that NESCOE's request would require changes to the calculation of the PER Adjustment for settlement purposes that was governed by former ISO-NE Tariff section III.13.7.2.7.1.1.2, now ISO-NE Tariff section III.13.7.1.2.2, and is beyond the scope of this proceeding. The Complaint Order was clear that, with respect to the matter set for hearing and the Commission's granted relief, the Commission only directed ISO-NE to revise the method by which it calculated the PER Strike Price as set forth in former ISO-NE Tariff section III.13.7.2.7.1.1.1,²⁷ now ISO-NE Tariff section III.13.7.1.2.1. Any change to former ISO-NE Tariff section III.13.7.2.7.1.1.2, now ISO-NE Tariff section III.13.7.1.2.2, which governs the method by which ISO-NE calculates the credit against the monthly payment that load must make to capacity resources (which relies on the average of the Monthly PER Values over the previous 12 months) in its FCM settlement process, would require new action under either FPA section 205 or section 206. Accordingly, we decline to require ISO-NE to make the additional changes that NESCOE requests.

2. Compliance Filing

21. We accept ISO-NE's revisions implementing the Settlement because ISO-NE has made the revisions to the methodology for calculating PER Adjustments contained in Tariff section III.13.7.2.7.1.1.1, as directed by the Commission. We reject NESCOE's protest for

²⁷ Complaint Order, 158 FERC ¶ 61,034 at P 57 ("We will, therefore, require ISO-NE to revise the method by which it calculates the PER Strike Prices as set forth in ISO-NE Tariff section III.13.7.2.7.1.1.1") and 61 ("We note that the question that we are placing before the [Administrative Law Judge] concerns how the PER Strike Price is calculated pursuant to ISO-NE Tariff section III.13.7.2.7.1.1.1., and not the monthly application of the PER Adjustment for settlement purposes as governed by ISO-NE Tariff section III.13.7.2.7.1.1.2").

the reasons that we provide above for denying its request for clarification on this issue. We direct ISO-NE to submit a refund report within 30 days from the date of this order.

The Commission orders:

(A) NEPGA's request for clarification is hereby denied, as discussed in the body of this order.

(B) ISO-NE's proposed Tariff revisions are hereby accepted, effective September 30, 2016, as discussed in the body of this order.

(C) We hereby direct ISO-NE to submit a refund report within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.