

represent a drastic change, without regional discussion, to the process set forth in the Tariff for identifying new zones. At minimum, as the Commission has encouraged, any such change should first be the subject of discussion among ISO-NE, states, market participants and other stakeholders.

I. MOTION FOR LEAVE TO ANSWER

Answers to protests are generally prohibited under Rule 213(a)(2) of the Commission's Rules of Practice and Procedure.³ However, the Commission has exercised discretion in accepting such answers if they assisted the Commission in its decision-making process.⁴ NESCOE's Answer meets this standard. The Answer will assist the Commission in evaluating requests for FERC directives reflected in various protests. As discussed below, these requests are effectively late-filed requests for rehearing of the Capacity Zone Order and are collateral attacks on a prior Commission order. Accordingly, the Answer provides the Commission with a more complete record upon which to base its determination in this proceeding. For these reasons, NESCOE respectfully requests that the Commission accept this Answer.

II. ANSWER

Protests and comments filed in the current proceeding primarily focused on concerns regarding the lack of opportunity for market participant and other stakeholder input into ISO-NE's identification of potential new Capacity Zone boundaries, as well as the timing of ISO-NE's presentation of information.⁵ The NEPOOL Comments, for example, recounted

³ 18 C.F.R. § 385.213(a) (2014).

⁴ See, e.g., *Valley Electric Ass'n, Inc.*, 150 FERC ¶ 61,146 at P 9 (2009); *ISO New England Inc.*, 147 FERC ¶ 61,071 at P 10 (2014) (the "Capacity Zone Order").

⁵ See generally Comments of the New England Power Pool Participants Committee ("NEPOOL"), Docket No. ER15-1462 (filed April 21, 2015) ("NEPOOL Comments"); Motion to Intervene and Protest of the New England Power Generators Association, Inc. ("NEPGA"), Docket No. ER15-1462 (filed April 27, 2015) ("NEPGA Protest"); Protest and Comments of the NRG Companies, Docket No. ER15-1462 (filed April 27, 2015); Motion to Intervene and Protest of the PSEG Companies, Docket No. ER15-1462 (filed April 27, 2015) ("PSEG

stakeholder concerns in a number of areas, including the timing of ISO-NE's identification of potential new zones after the show-of-interest window closed and, in general, the lack of meaningful engagement between ISO-NE and NEPOOL members despite ISO-NE's assurance that there would be opportunities for market participants, states, and stakeholders "to provide meaningful input very early in the process" into zonal identification.⁶ The NEPOOL Comments welcomed the Commission's guidance on improvements to the process to prevent similar issues from arising in association with future FCAs.⁷

NESCOE shares some of the process-related concerns raised in the NEPOOL Comments and echoed by generators' and suppliers' filings in this proceeding.⁸ NESCOE voiced similar concerns in technical committee stakeholder discussions. The timing and process that ISO-NE employed regarding the presentation of potential new boundaries for Capacity Zones to be used for FCA 10, to be held in February 2016, reflects the need for significant improvement in future years. There is clearly a lack of shared understanding relative to the level of ISO-NE's interaction with market participants, states, and stakeholders on the identification of potential new zones.

NESCOE supports prospective changes to ensure that the issues identified in the FCA 10 planning cycle are not repeated. In the Capacity Zone Order, the Commission encouraged parties "to work through the stakeholder process to develop ongoing improvements to ISO-NE's

Protest"); Protest of the New England Suppliers, Docket No. ER15-1462 (filed April 27, 2015) ("N.E. Suppliers' Protest"); Motion to Intervene and Protest of Dominion Resource Services, Inc., Docket No. ER15-1462 (filed April 27, 2015); Comments of Calpine Corp., Docket No. ER15-1462 (filed April 27, 2015) ("Calpine Comments").

⁶ NEPOOL Comments at 3, 6, 8, quoting Motion for Leave to Answer and Answer of ISO New England Inc., Docket No. ER12-953-004, at 14 (filed Mar. 10, 2014).

⁷ *Id.* at 8.

⁸ *See, e.g.*, NEPGA Comments at 6 (noting concerns about a lack of coordination with stakeholders and early input opportunities); Calpine Comments at 3-4 (setting forth deficiencies in the timing and stakeholder interaction regarding the presentation of potential new zones).

market rules, as they believe necessary.”⁹ Consistent with that message, ISO-NE should commit to initiate discussions in the near-term regarding appropriate changes and an associated timeline for filing any needed Tariff revisions in advance of the eleventh FCA. Absent such commitment, NESCOE supports NEPOOL’s request that the Commission take an active role in directing discussion of the process-related concerns that market participants and stakeholders have identified in this proceeding.

Notwithstanding valid process-related concerns, however, some protests leap from describing these concerns to requesting that the Commission direct prescriptive changes defining zonal boundaries for FCA 10 and other revisions that would alter the criteria applied in evaluating the modeling of zones. For example, in addition to requesting changes around stakeholder participation, the NEPGA Protest asks the Commission to direct Tariff changes to “(1) identify and evaluate a relatively static set of transmission interfaces in the Step One process; (2) model as an import-constrained Capacity Zone any Capacity Zone that has in a recent Forward Capacity Auction signaled a need for new resources; [and] (3) make any other changes the Commission deems necessary to provide greater predictability to the transmission interfaces that will be evaluated as potential Capacity Zone boundaries”¹⁰

The PSEG Protest asks the Commission to reject the Zonal Filing and “direct the ISO to model all of the existing load zones as capacity zones in the upcoming FCA 10.”¹¹ The protest later notes:

The PSEG Companies have consistently espoused a solution, which originally had also been endorsed by FERC, ISO-NE and the external market monitor for ISO-NE that would ensure that price discovery is achieved when it is appropriate – capacity

⁹ Capacity Zone Order at P 42.

¹⁰ NEPGA Protest at 10.

¹¹ PSEG Protest at 3-4.

market rules that permit all zones to be modeled all the time. The ISO-NE Filing highlights the need to consider again the wisdom of that original direction.^[12]

The PSEG Protest again underscores this point pages later, stating that: “While we acknowledge that the PSEG Companies have raised this argument in the past, we have yet to hear a reasoned explanation as to why this principle should not be implemented in light of the fact that it provides certainty to the market regarding the ISO’s zonal modeling methodology as well as clear price and reliability benefits.”¹³ The N.E. Suppliers’ Protest also asks the Commission to direct the continuation of the current zones for FCA 10.¹⁴

The Commission should reject these requests. Under Section 313 of the Federal Power Act (“FPA”), 16 U.S.C. § 825I (2006), applicants have 30 days after the issuance of a FERC order to request rehearing. This statutory requirement is embedded in Rule 713 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.713 (2014). The Capacity Zone Order was issued on April 28, 2014. In that order, the Commission accepted ISO-NE’s proposed standards for determining the creation of new zones.¹⁵ The Commission did not adopt proposed changes by NEPGA and others regarding ISO-NE’s evaluation criteria.¹⁶ The Commission also declined to require that ISO-NE model all zones all of the time, finding that ISO-NE’s filing reflected “appropriate objective criteria that account for relevant changes in system conditions[.]”¹⁷ No entity filed a request for rehearing of the Capacity Zone Order.

¹² *Id.* at 5.

¹³ *Id.* at 7.

¹⁴ N.E. Suppliers’ Protest at 3, 12.

¹⁵ Capacity Zone Order at P 38.

¹⁶ *Id.* at PP 39, 41.

¹⁷ *Id.* at P 40.

The current proceeding cannot be used as a vehicle to re-litigate issues previously raised in a separate, and final, proceeding. Nor can it be used to impose changes not previously offered in the earlier zonal proceeding that would alter the substantive outcome of the Capacity Zone Order. Approximately one year ago, the Commission accepted the criteria to identify and evaluate potential new zonal boundaries, rejecting alternative approaches, including the so-called “hardwiring” of zones in the Tariff.¹⁸ Any request in the current proceeding for the Commission to establish the boundaries to be used in FCA 10, or otherwise direct changes in the Tariff relative to the evaluation or creation of new zones, is effectively a late-filed rehearing request that must be rejected as a matter of law.¹⁹

Attempts to re-litigate issues related to the Capacity Zone Order also represents an impermissible collateral attack on the Commission’s final order in that proceeding. The Commission routinely rejects such attacks, particularly when parties were active in the earlier proceeding, because they “impede the finality and repose in agency decisions that are essential to administrative efficiency, and are therefore strongly discouraged.”²⁰ Further, the Commission has observed that the failure to seek rehearing of issues that are then raised in a subsequent challenge is “essentially a collateral attack[.]”²¹ NEPGA and PESG were active in the earlier proceeding that culminated in the Capacity Zone Order. For the Commission to re-open that decision one year later is contrary to its long-standing prohibition of collateral attacks and, perhaps signaling a change in FERC policy, could serve to invite a rush of re-litigation in other proceedings.

¹⁸ See *id.* at PP 38-41; Zonal Filing at 4-5.

¹⁹ Parties are, of course, entitled to file a complaint with respect to these changes under Section 206 of the FPA.

²⁰ *Southern Company Services, Inc.*, 129 FERC ¶ 61,253 at P 37 (2009), citing *Entergy Nuclear Operations, Inc. v. Consolidated Edison Co. of New York, Inc.*, 112 FERC ¶ 61,117 at P 12 (2005) and *NSTAR Electric Co.*, 120 FERC ¶ 61,261 (2007).

²¹ *Northeast Utilities Service Co.*, 105 FERC ¶ 61,122 at n. 44 (2003).

Moreover, the actions requested of the Commission would represent a drastic departure from the process accepted only one year ago. As described above, these changes, if adopted, would designate zones for FCA 10 and, through NEPGA's request regarding import constrained zones, potentially all future auctions. NEPGA also seeks to impose other new criteria with respect to transmission interfaces that would be applied in the process of identification and evaluation. Such significant changes should, at minimum, and as encouraged by the Commission, be the subject of meaningful regional discussion of ongoing improvements to the process.²² To the extent the Commission does not view such requests as out-of-time rehearing requests, it should repeat its encouragement that these issues be addressed in the course of discussions about improvements to the process.

²² See Capacity Zone Order at P 42.

III. CONCLUSION

For the reasons stated herein, NESCOE respectfully requests that the Commission (i) grant its Motion for Leave to Answer, and (ii) consider its Answer in this proceeding.

Respectfully submitted,

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Date: May 7, 2015

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 Cambridge, Massachusetts this 7th day of May, 2015.

/s/ Jason Marshall _____

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