

194 FERC ¶ 61,052
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Laura V. Swett, Chairman;
David Rosner, Lindsay S. See,
Judy W. Chang, and David LaCerte.

New England Power Generators Association

Docket No. EL25-106-000

v.

ISO New England Inc.

ORDER GRANTING COMPLAINT IN PART AND DENYING IN PART

(Issued January 22, 2026)

1. On July 25, 2025, pursuant to section 206 of the Federal Power Act (FPA),¹ the New England Power Generators Association (NEPGA) filed a complaint against ISO New England Inc. (ISO-NE). NEPGA argues that certain provisions of the ISO-NE Transmission, Markets and Services Tariff (Tariff) that provide for the Balancing Ratio² and the allocation of stop-losses in ISO-NE's pay for performance (Pay for Performance) design are unjust and unreasonable because they hold capacity resources to a performance standard greater than their Capacity Supply Obligation³ during critical emergency hours. In this order, we grant the complaint in part and deny in part.

¹ 16 U.S.C. § 824e.

² Capitalized terms used but not otherwise defined in this order have the meanings ascribed to them in the Tariff.

³ Capacity Supply Obligation is "an obligation to provide capacity from a resource, or a portion thereof, to satisfy a portion of the Installed Capacity Requirement that is acquired through a Forward Capacity Auction in accordance with Section III.13.2, a reconfiguration auction in accordance with Section III.13.4, or a Capacity Supply Obligation Bilateral in accordance with Section III.13.5.1 of Market Rule 1." Tariff, § I.2 (Rules of Construction; Definitions) (173.0.0).

I. Background

A. ISO-NE Pay for Performance Rules

2. ISO-NE's capacity market employs a two-settlement design whereby a resource's total capacity revenue is comprised of a Capacity Base Payment and a Capacity Performance Payment.⁴ The Capacity Base Payment is typically determined by the associated Forward Capacity Auction clearing price.⁵ The Capacity Performance Payment is determined by the resource's performance – in the form of delivery of energy and reserves in real time – during periods where there are reserve deficiencies known as Capacity Scarcity Conditions.⁶

3. Specifically, the Capacity Performance Payment is calculated as follows. For each resource, whether or not it has a Capacity Supply Obligation, ISO-NE calculates a Capacity Performance Payment for each five-minute interval in which a Capacity Scarcity Condition exists in the Capacity Zone in which the resource is located.⁷ A resource's Capacity Performance Payment for an interval equals the resource's Capacity Performance Score for the interval multiplied by the Capacity Performance Payment Rate, which is currently stated in the Tariff as \$9,337/MWh.⁸

4. A resource's Capacity Performance Score for the interval is equal to the resource's Actual Capacity Provided⁹ during the interval minus the product of the resource's Capacity Supply Obligation and the applicable Balancing Ratio.¹⁰ ISO-NE calculates the

⁴ Tariff, § III.13.7 (72.1.0).

⁵ The Capacity Base Payment can also be based on prices established in Reconfiguration Auctions, Capacity Supply Obligation Bilaterals, and Substitution Auctions. Tariff, § III.13.7 (72.1.0), § III.13.7.1.1. An exporting resource's payments may also be adjusted. *Id.* § III.13.7.1.3.

⁶ ISO-NE excludes Energy Efficiency resources from its Pay for Performance construct. *ISO New Eng. Inc.*, 174 FERC ¶ 61,252, at P 26 (2021).

⁷ *Id.* § III.13.7.2.6.

⁸ *Id.* § III.13.7.2.5 (“The ISO shall review the Capacity Performance Payment Rate in the stakeholder process as needed and shall file with the Commission a new Capacity Payment Rate if and as appropriate.”) The Commission accepted the current rate in *ISO New Eng. Inc.*, 175 FERC ¶ 61,172 (2021).

⁹ Tariff, § III.13.7 (72.1.0), § III.13.7.2.2.

¹⁰ *Id.* § III.13.7.2.4. The Tariff notes that for this calculation, the resource's

Balancing Ratio using the formula: (Load + Reserve Requirement) / Total Capacity Supply Obligation.¹¹ The Balancing Ratio generally reflects the total system needs during the Capacity Scarcity Condition (i.e., energy and reserves) relative to the aggregate Capacity Supply Obligations of all resources (i.e., the Total Capacity Supply Obligation).¹² A Balancing Ratio of less than 1.0 reflects that the total energy and reserves required during the Capacity Scarcity Condition were less than the sum of Capacity Supply Obligations. A Balancing Ratio of greater than 1.0 reflects that the total energy and reserves required during the Capacity Scarcity Condition were greater than the sum of Capacity Supply Obligations.

5. For a given interval, the product of the resource's Capacity Supply Obligation and the applicable Balancing Ratio is a resource's pro rata share (in MW) of the system needs – the MW quantity of energy and reserves the resource must supply to exactly physically cover its forward financial position for that interval.¹³ Thus, the Capacity Performance Score – which may be positive, zero, or negative – is the MW quantity by which the resource either underperformed, exactly met, or overperformed with respect to its pro rata share of the system's needs. Pursuant to the preceding equations, resources without a Capacity Supply Obligation are not required to provide any share of the system's needs but receive an "overperformance" payment for every MW they produce during a Capacity Scarcity Condition.

B. Monthly Capacity Payment, Stop-Loss Mechanism, and Allocation of Deficiencies and Excesses

6. Each resource's Monthly Capacity Payment, which may be positive or negative, is the sum of the resource's Capacity Base Payment for the month plus the sum of the resource's Capacity Performance Payments for all five-minute intervals in the month

Capacity Supply Obligation cannot be negative. The Tariff also explains how the Capacity Performance Score for certain demand resources may be adjusted further.

¹¹ *Id.* § III.13.7.2.3.

¹² *Id.* § III.13.7.2.3(b). The capacity associated with Energy Efficiency measures is excluded from both the Load and the Total Capacity Supply Obligation in the Balancing Ratio formula.

¹³ In other words, in order to have a Capacity Performance Payment of \$0, a resource is not obligated to provide 100% of its physical Capacity Supply Obligation during a Capacity Scarcity Condition but instead the fraction of its Capacity Supply Obligation that is determined by the value of the Balancing Ratio.

during any Capacity Scarcity Conditions.¹⁴ To limit suppliers' downside exposure, the Pay for Performance design includes a monthly stop-loss limit, which limits a capacity resource's net financial losses in each month of the Capacity Commitment Period, and an annual stop-loss limit, which limits a capacity resource's net financial losses over the entire annual Capacity Commitment Period.¹⁵

7. The Tariff also includes provisions for determining the allocation of excess or deficient Capacity Performance Payments.¹⁶ Excesses occur when negative payments exceed positive payments, meaning that ISO-NE collects more funds than needed. The Pay for Performance design results in a "net surplus" (i.e., an excess) (Scarcity-Related Excess) each time Capacity Scarcity Conditions occur because the total amount of resource underperformance (in MW) exceeds the total amount of resource overperformance (in MW) during any Capacity Scarcity Condition.¹⁷ This Scarcity-Related Excess is allocated to all Capacity Supply Obligation holders (i.e., all capacity resources) on a pro rata basis, in proportion to each such capacity resource's Capacity Supply Obligation, thereby increasing net payments to capacity resources, excluding capacity resources subject to the stop-loss mechanism.¹⁸

¹⁴ Tariff, § III.13.7 (72.1.0), § III.13.7.3.

¹⁵ The monthly stop-loss limit caps a resource's negative Capacity Performance Payment to an amount equal to the product of the applicable Forward Capacity Auction Starting Price multiplied by the resource's Capacity Supply Obligation for the month. Tariff, § III.13.7 (72.1.0), § III.13.7.3.1. Under the annual stop-loss limit, a capacity resource cannot be worse off due to its Capacity Supply Obligation, on an annual basis, than three times its maximum monthly potential net loss. *Id.* § III.13.7.3.2 .

¹⁶ *Id.* § III.13.7.4. Under this Tariff provision, load is not allocated deficient or excess deficient Capacity Performance Payments.

¹⁷ *ISO New England Inc.*, Transmittal, Docket No. ER14-1050-000, at 44-45 (filed Jan. 17, 2014). Because the underperformance and overperformance are settled at the same price (the Capacity Performance Payment Rate), for each Capacity Scarcity Condition, all else equal, slightly more will be collected from underperformers than is distributed to overperformers.

¹⁸ For a capacity resource subject to the stop-loss mechanism, such credits are reduced (though not to less than zero) by the amount not charged to the capacity resource due to the application of the stop-loss mechanism, and the remaining excess will be further allocated to other resources in the same manner. Tariff, § III.13.7 (72.1.0), § III.13.7.4(b).

8. While, all else equal, Pay for Performance results in a Scarcity-Related Excess, deficiencies of Capacity Performance Payments occur in cases where capacity resources underperform and meet their stop-loss limit and when positive payments exceed negative payments, meaning that ISO-NE lacks funds to make all the positive payments.¹⁹ To make up for such deficiencies, ISO-NE *charges* capacity resources for this shortfall in proportion to their Capacity Supply Obligations, excluding capacity resources subject to the stop-loss mechanism.²⁰ One result of ISO-NE allocating the cost of deficiencies of Capacity Performance Payments is that any use of the stop-loss mechanism decreases the net payments to all holders of Capacity Supply Obligations, excluding capacity resources subject to the stop-loss mechanism. ISO-NE justified this cost allocation by arguing that the stop-loss mechanism acts as mutual insurance for holders of Capacity Supply Obligations.²¹

II. Complaint

9. NEPGA's complaint is partly based on the events of June 24, 2025, when New England experienced a significant heat wave that resulted in three hours of Capacity Scarcity Conditions (June Event). NEPGA states that, as the day progressed, system demand unexpectedly increased, and "the system experienced numerous generator outages and reductions."²² NEPGA states that, "at peak heat, the system's 'integrated load' had reached 26,024 MW, exceeding the system's 26,006 MW Capacity Supply Obligation."²³ NEPGA states that, because ISO-NE was no longer able to maintain its reserve requirements, ISO-NE implemented its operating procedures for a capacity deficiency, and the system's suppliers delivered enough power to maintain reliability.²⁴ NEPGA states, however, that the Balancing Ratio exceeded 1.0 for about three hours in the late afternoon and early evening. NEPGA states that, consequently, even suppliers

¹⁹ *ISO New England Inc.*, Transmittal, Docket No. ER14-1050-000, at 45 (filed Jan. 17, 2014).

²⁰ If the charge causes a resource to reach the stop-loss limit, then the stop-loss cap will be applied to that resource, and the remaining deficiency will be further allocated to other resources in the same manner. Tariff, § III.13.7 (72.1.0), § III.13.7.4(a).

²¹ *ISO New England Inc.*, Transmittal, Docket No. ER14-1050-000, at 44 (filed Jan. 17, 2014).

²² Complaint at 21 (citing ISO-NE, *ISO-NE Memo from Jon Gravelin to NEPOOL Markets Committee*, at 1 (June 27, 2025)).

²³ *Id.*

²⁴ *Id.* at 5, 21-22.

that delivered 100% of their Capacity Supply Obligations faced charges under ISO-NE's rules, and many capacity resources reached their monthly stop-loss limit. NEPGA states that the Balancing Ratio being above 1.0 resulted in more than \$25 million of additional charges to capacity resources relative to if the Balancing Ratio had been capped at 1.0.²⁵ NEPGA states that, on top of these charges, capacity resources with Capacity Supply Obligations that did not reach their monthly stop-loss limit were charged an additional \$26 million to make up the associated deficiency of Capacity Performance Payments. NEPGA states that this \$51 million in total charges is "above and beyond the committed Capacity Supply Obligations of these performing resources" during the June Event.²⁶

10. As discussed further below, NEPGA argues that the June Event demonstrates that the ISO-NE Tariff unreasonably holds capacity resources to a performance standard greater than their Capacity Supply Obligations during scarcity events. NEPGA argues that both an uncapped Balancing Ratio that went above 1.0 and the methodology for allocating stop-loss under-collection obligations resulted in unjust and unreasonable rates during the June Event. More specifically, NEPGA contends that, at the end of the June Event, resources were assessed \$51 million in improper charges arising out of the two flawed rules: (1) the Balancing Ratio mechanism that went above 1.0, and (2) an allocation methodology associated with the stop-loss mechanism to cap the penalties of individual generators, which required other capacity resources to make up the balance. NEPGA argues that these outcomes do not serve the objectives of the market, have no reasonable basis, and are inconsistent with sound market design. Further, NEPGA contends that this practice fails to fulfill the intent of the market design, which is to create market signals to ensure that sufficient resources with Capacity Supply Obligations exist to preserve reliability.²⁷ For a replacement rate going forward, NEPGA states that one option is to adopt the model the Commission accepted on compliance from PJM Interconnection, L.L.C. (PJM): cap the Balancing Ratio at 1.0 and stop imposing charges on resources with Capacity Supply Obligations to make up for deficiencies of Capacity Performance Payments.²⁸

²⁵ *Id.* at 22.

²⁶ *Id.*

²⁷ *Id.* at 25.

²⁸ *Id.* at 2 (citing *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 (2015) (2015 PJM Order), *order on reh'g & compliance*, 155 FERC ¶ 61,157 (2016); PJM Tariff, attach. DD, § 10A(c) (16.0.0)).

III. Notice of Filing and Responsive Pleadings

11. Notice of the complaint was filed in the *Federal Register*, 90 Fed. Reg. 36032 (July 31, 2025), with interventions and protests due on or before August 14, 2025. On August 5, 2025, the Commission issued a notice of extension of time extending the comment deadline to and including August 21, 2025.

12. ISO-NE filed an answer to the complaint.

13. Timely motions to intervene were filed by Advanced Energy United; Brookfield Renewable Trading and Marketing LP; Calpine Corporation; CPV Towantic, LLC; Dominion Energy Services, Inc.; Enel X North America, Inc.; Energy New England, LLC; Eversource Energy Service Company; Maine Office of Public Advocate; Narragansett Electric Company; National Grid; National Hydropower Association; New Hampshire Office of the Public Advocate; NextEra Energy Resources, LLC; Public Citizen, Inc.; Shell Energy North America, LP and Rhode Island State Energy Center, LP; and Vistra Corp.

14. A notice of intervention was filed by Massachusetts Department of Public Utilities.

15. A motion to intervene out-of-time was filed by Avangrid, Inc. (Avangrid).

16. Timely motions to intervene and comments were filed by Braintree Electric Light Department and Taunton Municipal Lighting Plant (Braintree and Taunton); Electric Power Supply Association (EPSA); FirstLight Power, Inc. (FirstLight); the Internal Market Monitor for ISO-NE (IMM); Massachusetts Municipal Wholesale Electric Company (MMWEC); Massachusetts Office of the Attorney General; New England Power Pool Participants Committee (NEPOOL); New England States Committee on Electricity (NESCOE); RENEW Northeast, Inc. (RENEW); and LS Power Development, LLC.

17. A timely motion to intervene and protest was filed by Vitol Inc. and VC Renewables LLC (together, Vitol Companies).

18. New England Consumer Advocates²⁹ filed comments.

²⁹ New England Consumer Advocates consist of the Massachusetts Attorney General's Office, the Connecticut Office of Consumer Counsel, the Maine Office of the Public Advocate, the New Hampshire Office of the Consumer Advocate, and the Rhode Island Division of Public Utilities.

19. Answers to answers and comments were filed by NEPGA, RENEW, Vitol Companies, and ISO-NE.

IV. Discussion

A. Procedural Matters

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2025), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

21. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2025), we grant Avangrid's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

22. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2025), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We accept the answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

23. As discussed below, we grant the complaint in part, with respect to ISO-NE's uncapped Balancing Ratio, and deny in part, with respect to the allocation methodology for the stop-loss mechanism. We direct ISO-NE to submit a compliance filing within 180 days of the date of this order proposing Tariff revisions to cap the Balancing Ratio at 1.0 and to make any conforming changes that ISO-NE finds necessary to effectuate the Balancing Ratio cap.

1. Uncapped Balancing Ratio

a. Complaint

24. NEPGA argues that it is unjust and unreasonable to charge capacity resources for not performing above their Capacity Supply Obligations when the Balancing Ratio goes above 1.0.³⁰ NEPGA argues that charging capacity resources for not providing more than their Capacity Supply Obligations where the Balancing Ratio is above 1.0 unreasonably holds capacity resources to a standard that is physically impossible in most instances. NEPGA explains that most capacity resources (specifically dispatchable capacity resources) must offer their Seasonal Claimed Capability, which is equal to the median of

³⁰ *Id.* at 25.

the capacity resource's maximum output during a particular season from the most recent five years, as adjusted for physical and regulatory limitations. NEPGA explains that this quantity becomes a capacity resource's Capacity Supply Obligation.³¹ NEPGA adds that the current uncapped Balancing Ratio requires a capacity resource to provide more power than its maximum output, which NEPGA asserts is impossible. Thus, NEPGA argues that the current uncapped Balancing Ratio is unjust and unreasonable.

25. NEPGA adds that resources with Capacity Supply Obligations were never intended to be able to meet all energy and reserve requirements.³² NEPGA explains, however, that the Balancing Ratio includes only Capacity Supply Obligation resources in its denominator, thus increasing the odds that the Balancing Ratio's numerator will be greater than its denominator and yield a Balancing Ratio greater than 1.0 – even when the Capacity Supply Obligation resources perform as promised. NEPGA's witness explains that the current construct can hold capacity to a performance that exceeds its Capacity Supply Obligation because “[Capacity Supply Obligation] is procured to meet a peak load forecast that may underestimate actual real-time peak load and reserve requirements.”³³ NEPGA explains that Capacity Supply Obligation resources cannot predict actual future load and reserve needs or the potential material reduction in total Capacity Supply Obligations between the Forward Capacity Auction and the delivery period, and that they cannot “magically ... perform above [their] maximum capability.”³⁴ NEPGA adds that “Capacity Supply Obligation resources are not the cause of their inability to produce more than their maximum capability.”³⁵

26. NEPGA argues that the charges at issue here fail to provide incentives for capacity resources to perform – to deliver energy or reserves – during scarcity conditions, which NEPGA contends is the entire purpose of Pay for Performance.³⁶ NEPGA explains that ISO-NE intended for Pay for Performance to incentivize capacity resources to take reasonable actions to avoid charges, including preventative maintenance, winterization, and fuel supply arrangements. NEPGA contends that, however, “no amount of these

³¹ *Id.* at 26 (citing Ming Test. Ex. 1 at 24:7-8).

³² *Id.* at 27.

³³ *Id.* (citing Ming Test. Ex. 1 at 24:18-20).

³⁴ *Id.* at 27-28 (quoting Ming Test. Ex. 1 at 25:14-15).

³⁵ *Id.* at 28.

³⁶ *Id.* at 28.

actions can help a resource perform above its maximum capability.”³⁷ NEPGA adds that, if capacity resources perceive a material risk of being charged for not performing above their maximum capability, the “logical result ... is that fewer resources will be willing to take on a [Capacity Supply Obligation]” in the Forward Capacity Market, increasing reliability risks and prices.³⁸

27. NEPGA argues that “failure to find the Balancing Ratio unjust and unreasonable would effectively mean that the risk of charges for [100%] performance is an inherent risk that resources incur when accepting a Capacity Supply Obligation,” which NEPGA contends is nonsensical.³⁹ NEPGA states that while the Commission has found it just and reasonable to “penalize resources for non-performance [on their Capacity Supply Obligations] regardless of whether non-performance was beyond the resource’s control,” the Commission was contemplating resources that underperformed because of a temporary event beyond their control⁴⁰ or due to parameter limits that were the result of resource physical constraints, such as contractual limits.⁴¹ In contrast, NEPGA explains that resources performing at 100% are meeting their Capacity Supply Obligations, and “the inability to deliver more than maximum capability is not a temporary limitation.”⁴²

28. NEPGA states that, when ISO-NE proposed Pay for Performance in 2014, ISO-NE acknowledged the possibility that the Balancing Ratio could exceed 1.0 and that a resource performing at its Capacity Supply Obligation would receive a charge.⁴³ NEPGA contends that ISO-NE’s expert witness downplayed these concerns, stating that “[i]f a supplier views the likelihood of the Capacity Balancing Ratio exceeding 100 percent to be material, this possibility should be factored into its capacity offer price in the Forward Capacity Auction. ... The possibility of a negative Capacity Performance [P]ayment due to a Capacity Balancing Ratio in excess of 100 percent, if it is material, simply becomes part of that financial calculation to determine a resource’s capacity offer

³⁷ *Id.* at 29 (citing Ming Test. Ex. 1 at 27:4).

³⁸ *Id.* (citing Ming Test. Ex. 1 at 27:12-20).

³⁹ *Id.* at 30.

⁴⁰ *Id.* (citing *ISO New Eng. Inc.*, 147 FERC ¶ 61,172, at PP 63-64 (2014)).

⁴¹ *Id.* (citing *PJM Interconnection, L.L.C.*, 190 FERC ¶ 61,117, at P 63 & n.176 (2025)).

⁴² *Id.*

⁴³ *Id.* at 18.

price.”⁴⁴ NEPGA argues that, although the Commission did not address this aspect of ISO-NE’s proposal, even if a capacity resource could factor the risk of the Balancing Ratio going above 1.0 in its offer, there is no reason to impose this risk because it does nothing to increase incentives to perform and “would simply increase costs to loads.”⁴⁵

29. NEPGA cites Commission precedent regarding PJM’s balancing ratio being capped at 1.0.⁴⁶ NEPGA explains that, as originally proposed, PJM’s balancing ratio was uncapped, but entities objected that the proposed balancing ratio “could exceed [1.0], both in concept and in practice,” which would require “a resource delivering its contractually committed capacity during a compliance hour” to still pay a charge.⁴⁷ NEPGA notes that the Commission agreed with these objections, finding “that, as proposed, the [b]alancing [r]atio could exceed [1.0] and, thereby, cause capacity resources’ expected performance during a Performance Assessment Hour to exceed their full cleared [unforced capacity (UCAP)] quantity.”⁴⁸ NEPGA contends that such an outcome, the Commission determined, was “inconsistent with the capacity obligation within the Capacity Performance design,” and it therefore rejected the proposed balancing ratio and required PJM to either “clarify[] ... that a capacity resource’s expected performance for any Performance Assessment Hour shall not exceed 100 percent of its cleared UCAP quantity, or explain[] why the absence of such a statement is just and reasonable” – a directive that resulted in PJM capping its balancing ratio.⁴⁹ NEPGA argues that the Commission’s rationale for rejecting PJM’s balancing ratio applies here because the problem with ISO-NE’s Balancing Ratio is the same problem addressed in the PJM proceeding, the pay-for-performance designs employed by PJM and ISO-NE are substantially similar, and the differences in the two regions’ geographic size and location have no bearing in this proceeding.⁵⁰

⁴⁴ *Id.* (citing *ISO New England Inc.*, Filing (Pay for Performance Transmittal Letter), attach. I-1c (Testimony of Matthew White) at 159:17-160:2 (Pay for Performance White Test.), Docket No. ER14-1050-000 (filed Jan. 17, 2014)).

⁴⁵ *Id.* (citing Ming Test. Ex.1 at 29:3-4).

⁴⁶ *Id.* at 32 (citing 2015 PJM Order, 151 FERC ¶ 61,208; PJM Tariff, attach. DD, § 10A(c)).

⁴⁷ *Id.* at 32-33 (citing 2015 PJM Order, 151 FERC ¶ 61,208 at P 154).

⁴⁸ *Id.* at 33 (citing 2015 PJM Order, 151 FERC ¶ 61,208 at P 177).

⁴⁹ *Id.* (citing 2015 PJM Order, 151 FERC ¶ 61,208 at P 178).

⁵⁰ *Id.* at 33-34 (citing *New Eng. Power Generators Ass’n v. FERC*, 881 F.3d 202, 211 (holding that “FERC did not engage in the reasoned decision-making required by the

30. With regard to potential replacement rates, NEPGA contends that the optimal solution is to adopt the approach the Commission approved in PJM: cap the Balancing Ratio at 1.0.⁵¹ NEPGA contends that the Commission's PJM remedy still sends strong incentives to deliver energy and reserves during scarcity conditions.⁵² NEPGA explains that resources with Capacity Supply Obligations will merely not be charged for failing to do what NEPGA contends is impossible – delivering more electrons than their resources are capable of providing. NEPGA contends that, at the same time, reducing bonus payments resulting from Balancing Ratio-related under-collections will minimally, if at all, disincentivize resources from overperforming.⁵³ NEPGA adds that, as charges and bonuses are entirely exchanged between generation resources, NEPGA's replacement rate costs load nothing.⁵⁴

b. ISO-NE Response

31. ISO-NE contends that the current Balancing Ratio is functioning as intended. ISO-NE explains that the Balancing Ratio reflects the two-settlement Pay for Performance design as it was originally developed and accepted by the Commission.⁵⁵ ISO-NE contends that, under the two-settlement design, a capacity supplier receives the forward Capacity Clearing Price in the Forward Capacity Auction for its forward physical and financial capacity positions.⁵⁶ ISO-NE explains that, during a Capacity Scarcity Condition, a capacity supplier's performance is measured against its forward financial

Administrative Procedure Act" when it "failed to adequately explain" why it approved a tariff scheme proposed by ISO-NE after rejecting a similar scheme proposed by PJM); *Cent. Hudson Gas & Elec. Corp. v. FERC*, 138 F 4th 531, 539 (D.C. Cir. 2025) (stating the Commission has allowed "different regional transmission organizations to follow different rules, in recognition of regional variations including potential differences in 'geographic size and location'"); Ming Test. 16:15-17:13).

⁵¹ *Id.* at 35.

⁵² *Id.* at 36.

⁵³ *Id.* at 37.

⁵⁴ *Id.* at 38.

⁵⁵ ISO-NE August 21 Answer at 7 (citing Pay for Performance Transmittal Letter, Pay for Performance White Test., and attach. I-1e (Joint Testimony of David LaPlante and Seyed Parviz Gheblealiv and of the Internal Market Monitor) (Pay for Performance IMM Test.), Docket No. ER14-1050-000 (filed Jan. 17, 2014)).

⁵⁶ *Id.* (citing Pay for Performance White Test. 58-59).

position, resulting in a settlement for deviations, which is the performance payment (negative or positive) that the capacity supplier incurs or receives depending on how its resource performs.⁵⁷ ISO-NE states that this performance payment is based on the deviation between the resource's actual performance and its forward financial position, and these deviations are credited or charged at the fixed Capacity Performance Payment Rate.⁵⁸

32. ISO-NE emphasizes that under the current Balancing Ratio construct, a capacity supplier's forward financial position is not equal to its Capacity Supply Obligation, which is its forward physical position.⁵⁹ ISO-NE explains that, rather, that forward financial position is a "[pro rata] *share* of the system's energy and reserve requirements in scarcity conditions during the Capacity Commitment Period."⁶⁰ ISO-NE argues that when that pro rata share is less than the capacity supplier's Capacity Supply Obligation, a supplier can earn positive Capacity Performance Payments by delivering more energy or reserves during a Capacity Scarcity Condition than its pro rata share of the system's needs.⁶¹ ISO-NE explains that because, under such circumstances, the pro rata share of system requirements is less than its Capacity Supply Obligation, if the supplier performs to its Capacity Supply Obligation, it will receive positive Capacity Performance Payments for delivering a portion of that energy (i.e., for delivering the same energy for which it has received compensation on a forward basis for clearing in the Forward Capacity Auction).⁶² Likewise, ISO-NE continues, when scarcity conditions are more severe (as is less frequently the case), and a capacity supplier's share of total system requirements during the Capacity Scarcity Condition is greater than its Capacity Supply Obligation, it can incur negative Capacity Performance Payments even if it delivers its full (forward) physical Capacity Supply Obligation.⁶³ ISO-NE explains that a supplier can also avoid those negative Capacity Performance Payments by delivering energy and

⁵⁷ *Id.*

⁵⁸ *Id.* (citing Pay for Performance White Test. 58-59).

⁵⁹ *Id.*

⁶⁰ *Id.* (citing Pay for Performance White Test. 58-59 (emphasis in original)).

⁶¹ *Id.* at 7-8 (citing Pay for Performance Transmittal Letter at 23-24; Pay for Performance White Test. 71-75, 154-155).

⁶² *Id.* at 8.

⁶³ *Id.* (citing Pay for Performance Transmittal Letter at 23-24; Pay for Performance White Test. 75-76, 159).

reserves at or above its pro rata share of the system's real-time requirements, if it has capability above its Capacity Supply Obligation.

33. ISO-NE states that, during the June Event, the system's needs were greater than the aggregate quantity of forward positions held during the event, and the Balancing Ratio average of 1.031 during the event reflected this occurrence.⁶⁴ ISO-NE states that a capacity supplier that delivered energy only up to its Capacity Supply Obligation delivered less than its pro rata share of the system's needs during the event and, therefore, had a negative deviation.⁶⁵ ISO-NE states that such a negative deviation was settled at the Capacity Performance Payment Rate, and the supplier incurred a negative Capacity Performance Payment.⁶⁶

34. ISO-NE argues that NEPGA's primary concern is that, under the Pay for Performance rules, a capacity supplier that meets its physical Capacity Supply Obligation (i.e., provides energy and reserves equal to its Capacity Supply Obligation) during extreme scarcity events can nevertheless incur underperformance charges, a possibility that was only raised in theory by ISO-NE.⁶⁷ ISO-NE concedes this concern is understandable, especially in the context of the June Event. ISO-NE adds that, while such events are infrequent, certain other aspects of the Forward Capacity Market rules make it difficult for capacity suppliers to hedge the risk of incurring such charges when extreme loads produce system needs that are greater than the aggregate available capacity (as reflected in Capacity Supply Obligations). ISO-NE contends that the current rules for calculating resource Qualified Capacity values render it difficult for many resources to physically provide more energy than their Capacity Supply Obligation. ISO-NE notes that while suppliers can, in principle, hedge this risk by accounting for it in their capacity offers, the risk of the Balancing Ratio going above 1.0 was discussed only as a theoretical possibility, and that suppliers very well may not have accounted for it as a result.⁶⁸

35. ISO-NE, however, disagrees with the breadth of the conclusion NEPGA draws from its observation regarding the inability of suppliers to deliver more than their Capacity Supply Obligations. ISO-NE argues that NEPGA is technically incorrect when

⁶⁴ *Id.* at 10 (citing August 2025 ISO-NE COO Report at slide 31).

⁶⁵ *Id.* (citing August 2025 ISO-NE COO Report at slides 32-37 (providing details regarding resource performance, credits, and charges during the June Event)).

⁶⁶ *Id.* (citing August 2025 ISO-NE COO Report at slides 31, 33).

⁶⁷ *Id.* at 10-11 (citing Pay for Performance White Test. 159 (explaining that a Balancing Ratio above 1.0 is possible "in theory")).

⁶⁸ *Id.* at 11.

it contends that “[t]he current uncapped Balancing Ratio requires a capacity resource to provide more power than its output,” and that “it unreasonably holds resources to a standard that in most instances is physically impossible.”⁶⁹ ISO-NE contends that the Balancing Ratio reflects that, under the Pay for Performance design, a supplier is financially responsible for its pro rata share of system load, and a supplier can meet this obligation either through a financial payment or through physical delivery of energy or reserves. Thus, ISO-NE argues, the design does not mandate physical performance even when a supplier is incapable of performing, though it does (not unreasonably) incent resources to improve the capability of their resources so that they can meet their financial responsibility through physical delivery – which, contrary to the complaint’s assertion, could help to improve reliability for the entire system.⁷⁰ Nevertheless, ISO-NE acknowledges that the current expectation that resources will clear their full Qualified Capacity makes it less feasible to physically hedge this particular risk.

36. ISO-NE states that, given the infrequency of extreme Capacity Scarcity Conditions that produce a Balancing Ratio above 1.0, and the identified interactions with the current Forward Capacity Market rules, ISO-NE would not oppose a directive from the Commission to cap the Balancing Ratio at 1.0, as was done in PJM.⁷¹ ISO-NE contends that, while the current, uncapped Balancing Ratio meets the stated objectives of the two-settlement Pay for Performance design, and conforming with PJM’s capped Balancing Ratio is not necessary to ensure the design achieves its overall objectives, a Balancing Ratio capped at 1.0 should not materially undermine performance incentives under the current Pay for Performance rules and Forward Capacity Market construct.⁷² ISO-NE explains that, capping the Balancing Ratio at one, in the context of the June Event, would have reduced the effective Capacity Performance Payment Rate paid to overperformers from the ISO-NE Tariff-specified rate of \$9,337/MWh to \$7,243/MWh, a reduction of approximately \$2,094/MWh.⁷³

⁶⁹ *Id.* at 12 n.46 (quoting Complaint at 25-26).

⁷⁰ *Id.* (citing Complaint at 31-32).

⁷¹ *Id.* at 13. ISO-NE states that it would not oppose this directive as long as adequate time is provided for ISO-NE to evaluate and make other necessary changes to the Forward Capacity Market rules so that the capping does not create other problems, as summarized below. *Id.* at 5.

⁷² *See also id.* at 5 (stating that that while uncertainties remain, capping the Balancing Ratio at 1.0 “should be expected to continue to provide strong performance incentives”).

⁷³ *Id.* at 26 (citing attach. at 4 (Affidavit of Matthew White) (hereinafter, White

37. ISO-NE “underscore[s] the narrowness of this concession.”⁷⁴ ISO-NE argues that there is nothing inherently unjust or unreasonable about charging suppliers for deviations at the spot price when real-time system needs are greater than the supplier’s forward physical position, any more than it is unjust or unreasonable to pay them for deviations at the spot price when real-time system needs are less than the supplier’s forward physical position and they nevertheless deliver their full Capacity Supply Obligation.⁷⁵ ISO-NE contends that its concession reflects only that certain, discrete features of the current Forward Capacity Market may interfere with a capacity supplier’s ability to hedge the risks of underperformance payments when the Balancing Ratio goes above 1.0.⁷⁶

38. Lastly, ISO-NE requests that, if the Commission grants the complaint and directs ISO-NE to implement NEPGA’s requested replacement rate, it should provide ISO-NE 180 days to submit a compliance filing to assess impacts to other aspects of the existing ISO-NE Pay for Performance rules that would likely be affected by NEPGA’s requested replacement rate.⁷⁷ In particular, ISO-NE highlights four Pay for Performance design elements that would require further assessment and likely Tariff changes, related to Capacity Performance Bilaterals, Capacity Zones, market power mitigation, and the interval used to determine resource performance and calculate the effective Capacity Performance Payment Rate, although ISO-NE notes that other changes may be needed.

c. Comments

39. Braintree and Taunton, FirstLight, the IMM, LS Power, EPSA, New England Consumer Advocates, MMWEC, and RENEW filed comments supporting the complaint with respect to the Balancing Ratio and argue that the Commission should grant NEPGA’s requested relief and cap the Balancing Ratio at 1.0.

40. Braintree and Taunton argue that a failure to grant NEPGA’s requested relief could remove the incentive for resources to assume a Capacity Supply Obligation.

Aff.)).

⁷⁴ *Id.* at 13 n.50.

⁷⁵ *Id.* (citing Pay for Performance Transmittal Letter at 21-25; Pay for Performance White Test. 54-70).

⁷⁶ ISO-NE also acknowledges NEPGA’s concerns in the broader context of what ISO-NE calls the “increasing uncertainty with respect to the overall state of New England’s resource adequacy.” *Id.* at 4.

⁷⁷ *See* ISO-NE August 21 Answer at 32-37.

Further, Braintree and Taunton assert that capacity resources should not be penalized for failing to perform above their Capacity Supply Obligations.⁷⁸

41. FirstLight contends that when a resource performs to its full Capacity Supply Obligation, it should not receive lower monthly capacity revenues through Pay for Performance charges.⁷⁹ FirstLight argues that ISO-NE's practice of not recalling day-ahead-cleared economy energy exports to reduce a 30-minute operating reserve deficiency requires Capacity Supply Obligation holders to support a slice of neighboring system load under Pay for Performance events. FirstLight further argues that the ISO-NE Tariff provisions governing curtailment of such export transactions is permissive and does not require ISO-NE to implement curtailments to reduce the severity or duration of a 30-minute operating reserve deficiency or otherwise avoid the expansion of Pay for Performance charges to Capacity Supply Obligation holders.⁸⁰ FirstLight contends that, if the Commission declines to grant the relief requested by NEPGA or only grants relief in part, ISO-NE should be directed to immediately correct its flawed treatment of exports and amend its Tariff to allocate a portion of the Annual Reconfiguration Auction proceeds to remaining Capacity Supply Obligation holders to cover their increased Pay for Performance costs and risks related to those Capacity Supply Obligation releases.⁸¹

42. The IMM states that it is sympathetic to the concerns underlying the complaint and supports NEPGA's proposal to cap the Balancing Ratio at 1.0. The IMM argues that the Forward Capacity Auction qualification rules fundamentally are based on the physical capabilities of resources and that resources are not permitted to sell more than their physical Qualified Capacity. The IMM contends that creating a financial obligation at odds with this underlying physical premise, albeit even on rare occasions, creates a conflict that should be addressed.⁸²

43. The IMM states that while, in theory, resource owners should reflect the risk of a Balancing Ratio above 1.0 in their capacity auction bids, it may be challenging to quantifiably support such a risk factor in general. The IMM contends that, in its experience with reviewing De-List Bids for potential mitigation – including in the sixteenth Forward Capacity Auction corresponding to the current 2025-2026 Capacity Commitment Period – the risk and associated cost of the Balancing Ratio exceeding 1.0

⁷⁸ Braintree & Taunton Comments at 5.

⁷⁹ *Id.* at 7-8.

⁸⁰ FirstLight Comments at 10.

⁸¹ *Id.* at 16.

⁸² IMM Comments at 1-2.

was unlikely to have been a factor in those bids. The IMM contends that this is not surprising, given the surplus capacity conditions in the sixteenth Forward Capacity Auction and surrounding auctions.⁸³ The IMM argues that, because a Balancing Ratio above 1.0 might be a risk that cannot be well managed by suppliers, a reallocation of credits by capping the Balancing Ratio is a pragmatic solution that should not significantly compromise the underlying incentives.⁸⁴ The IMM contends that ISO-NE and its stakeholders will have to consider how to adjust the credit and allocation side of the Pay for Performance design to reflect the resulting shortfall in revenue collection due to the capped Balancing Ratio.⁸⁵ The IMM argues that capping the Balancing Ratio at 1.0 will result in an under-collection of funds to resources for providing energy and reserves during a scarcity event. The IMM contends that ISO-NE should be afforded time to work through the implementation details of any chosen methodology.⁸⁶

44. LS Power and EPSA argue that ISO-NE's Pay for Performance rules are unjust, unreasonable, and unduly discriminatory. LS Power asserts that even though its fleet of thermal and renewable generating assets generally performed well during the June Event, all were harmed.⁸⁷ LS Power states that the thermal units faced "an impossible 3.1 percent obligation surcharge" as a result of the 1.031 Balancing Ratio. For the wind and hydro units, LS Power argues that the Balancing Ratio "diluted recorded over-performance" by 3.1%, thereby reducing Pay for Performance bonuses for these resources. EPSA agrees with NEPGA that capping the Balancing Ratio at 1.0 would continue to send strong incentives to deliver energy and reserves during scarcity conditions while ensuring that resources will not be exposed to the risk that their performance score will be negative if they do not perform at greater than their capacity.⁸⁸

45. Similarly, New England Consumer Advocates argue that it is unfair and inefficient from a market design perspective to hold a capacity resource to a performance standard beyond its original commitment and, in some cases, past its physical capacity.⁸⁹ New England Consumer Advocates contend that the Commission, ISO-NE, and interested

⁸³ *Id.* at 2.

⁸⁴ *Id.*

⁸⁵ *Id.* at 3.

⁸⁶ *Id.* at 5.

⁸⁷ LS Power Comments at 4.

⁸⁸ EPSA Comments at 5 (citing Complaint at 36-39).

⁸⁹ New England Consumer Advocates Comments at 2-6.

stakeholders should design a solution that retains the existing system feature and that also insulates consumers from direct financial costs of a Capacity Scarcity Condition, in order to avoid an outcome wherein resources are permitted (or compelled) to build a risk premium for the possibility of the Balancing Ratio exceeding 1.0 into their capacity supply offers.⁹⁰ New England Consumer Advocates argue that, given that the likelihood of a Balancing Ratio exceeding 1.0 has evolved from a theoretical to a “material” possibility, ISO-NE should address the Balancing Ratio unfairness directly.⁹¹

46. NESCOE does not take a position on whether the Commission should grant the complaint.⁹² However, NESCOE states that, in general, it agrees with the premise that resources should not be held to a level of performance beyond their Capacity Supply Obligations.⁹³

47. In contrast, Vitol Companies argue that the Commission should reject the complaint because NEPGA has not demonstrated that the Pay for Performance design is unjust and unreasonable.⁹⁴ Vitol Companies argue that NEPGA’s core premise that a capacity resource should never incur Pay for Performance charges if it “fully” performs at its Capacity Supply Obligation during a scarcity event is misguided. Vitol Companies explain that, by design, a capacity resource’s performance obligation during a reserve deficiency is a forward financial position based on a share of system requirements. Vitol Companies explain that, in that way, it differs from the obligation of a capacity resource to offer into the Day-Ahead and Real-Time Energy Markets at levels that the Tariff expressly ties to the resource’s Capacity Supply Obligation.⁹⁵

48. Vitol Companies note that NEPGA claims that the Commission did not expect that the Balancing Ratio would exceed 1.0 when it approved the Pay for Performance design.⁹⁶ Vitol Companies contend, however, that even NEPGA concedes that it was

⁹⁰ *Id.* at 9.

⁹¹ *Id.* at 10.

⁹² NESCOE Comments at 3.

⁹³ *Id.* at 3-4.

⁹⁴ Vitol Companies Protest at 4, 11.

⁹⁵ *Id.* at 4-5, 12.

⁹⁶ *Id.* at 5

understood that a Balancing Ratio above 1.0 was “possible, in theory.”⁹⁷ Vitol Companies argue that, despite NEPGA’s efforts to downplay the understanding of this risk at the time the Pay for Performance program was approved in 2014, the record from that proceeding demonstrates that this outcome was expressly discussed as part of ISO-NE’s proposal.⁹⁸ Vitol Companies argue that, because it was known that the Balancing Ratio could exceed 1.0 and that parties could therefore price the risk into their offers, NEPGA cannot show that the charges incurred by its members were improper.⁹⁹ Vitol Companies contend that NEPGA’s proposed replacement rate should not be adopted and that NEPGA’s proposed replacement rate would undermine reliability by diluting price signals during scarcity events.¹⁰⁰

49. NEPOOL states that it cannot comment on the reasonableness of NEPGA’s proposed solutions because the complaint was filed without prior stakeholder review or input within NEPOOL participant processes.¹⁰¹

d. Answers

50. NEPGA argues that the most important capacity market incentive should be to take on a Capacity Supply Obligation, not to maximize the bonus pool to resources without Capacity Supply Obligations and other resources performing at levels greater than their Capacity Supply Obligations.¹⁰² NEPGA adds that suppliers’ factoring into their supply offers the risk of being charged for not performing above their Capacity Supply Obligations – even when at full output – would increase costs without any benefit aside from larger bonuses.¹⁰³

51. ISO-NE responds that FirstLight’s alternative requests for relief are outside the scope of this proceeding.¹⁰⁴ ISO-NE states that allocating a portion of the Annual

⁹⁷ *Id.* (citing, e.g., Complaint at 16).

⁹⁸ *Id.* at 3-5 (citing Pay for Performance White Test. 159).

⁹⁹ *Id.* at 5-6.

¹⁰⁰ *Id.* at 16-17.

¹⁰¹ NEPOOL Comments at 2, 6.

¹⁰² NEPGA September 5 Answer at 4.

¹⁰³ *Id.* at 5.

¹⁰⁴ ISO-NE September 19 Answer at 12-14.

Reconfiguration Auction proceeds to remaining Capacity Supply Obligation holders was not raised in the original complaint and that the issue needs significant further development before it can be addressed. ISO-NE notes that it plans to address the issue of export transactions in advance of the 2028-2029 Capacity Commitment Period and that the issue is appropriately addressed through an FPA section 205 filing that receives the benefit of the full stakeholder process.

52. Vitol Companies argue that the potentially significant shifts in Pay for Performance incentives that NEPGA seeks are better addressed through an ISO-NE stakeholder process.¹⁰⁵ Vitol Companies contend that NEPGA's complaint is focused on minimizing financial risk for Capacity Supply Obligation holders.¹⁰⁶

53. Vitol Companies argue that NEPGA tries to downplay the impact of the proposed changes on non-Capacity Supply Obligation holders by suggesting that such parties could stand to benefit from a higher effective Capacity Performance Payment Rate when there are under-collections associated with the stop-loss or Balancing Ratio. Vitol Companies contend that this assertion is flawed because, even if a non-Capacity Supply Obligation resource might earn a higher effective Capacity Performance Payment Rate under the revised rules NEPGA is proposing, changing from a fixed-rate bonus to a floating-rate bonus structure will act as a potential disincentive for non-Capacity Supply Obligation holders to provide supply during shortage events. Vitol Companies argue that, under NEPGA's approach, when a shortage event occurs, a potential supplier will not receive a clear price signal for providing energy into the ISO-NE market.¹⁰⁷ Vitol Companies add that NEPGA's claim that non-Capacity Supply Obligation overperformers might benefit from a higher effective Capacity Performance Payment Rate under the proposed replacement rate is both unexplained and unsupported.¹⁰⁸ Vitol Companies state that if the Commission does not reject the complaint, the complaint should be set for hearing so that the Commission can address these issues based on a more fully developed record.¹⁰⁹

e. Commission Determination

54. We grant the complaint with regard to ISO-NE's uncapped Balancing Ratio. We find that, given ISO-NE's current capacity accreditation method, under which a capacity

¹⁰⁵ Vitol Companies Answer at 2.

¹⁰⁶ *Id.* at 5.

¹⁰⁷ *Id.* at 5-6.

¹⁰⁸ *Id.* at 6.

¹⁰⁹ *Id.* at 7.

resource's Capacity Supply Obligation is often at or very near its maximum physical output,¹¹⁰ many capacity resources cannot physically produce enough energy and reserves to meet their pro rata share of total system needs (i.e., total needed energy and reserves) when the Balancing Ratio is above 1.0.¹¹¹ As such, we find that ISO-NE's failure to cap the Balancing Ratio at 1.0 under its existing Forward Capacity Market rules is unjust and unreasonable because, in the absence of such a cap, resources with Capacity Supply Obligations in ISO-NE may be subject to financial charges even when they are providing their maximum possible physical output during Capacity Scarcity Conditions.

55. As noted by NEPGA, many capacity resources hold Capacity Supply Obligations at or close to the level of their maximum capability, as measured during seasonal audits.¹¹² As a result, these resources are not physically capable of providing more (or significantly more) energy than their Capacity Supply Obligation during Capacity Scarcity Conditions, regardless of their operating parameters, fuel availability, contractual limits, etc. Specifically, under ISO-NE's current capacity accreditation method, for many capacity resources, their Qualified Capacity – the measure of capacity that is offered into each annual Forward Capacity Auction – is a function of their performance during participant-initiated Seasonal Claimed Capability audits, which determine the resource's maximum generating capability.¹¹³ While these capacity resources can make investments to help ensure they can perform at their full Capacity Supply Obligation – i.e., at 100% (or near 100%) of their maximum physical output – they are physically incapable of performing above their maximum capability. As a result, these capacity resources' inability to deliver more than their Capacity Supply Obligations under ISO-NE's current capacity accreditation method is not transitory, such as a weather-related event or temporary physical parameter limit. Accordingly, we find that assessing Pay for Performance charges associated with a Balancing Ratio above 1.0 is unjust and unreasonable because, under ISO-NE's existing Forward Capacity Market

¹¹⁰ ISO-NE August 21 Answer at 12-13. *See* ISO-NE Tariff provisions for the calculation of the seasonal Qualified Capacity values of Existing Generating Capacity Resources, Tariff, § III.13.1 (86.1.0), § III.13.1.2.2. Pursuant to these provisions, an Existing Generating Capacity Resource's seasonal Qualified Capacity is calculated as a function of its most recent Seasonal Claimed Capability ratings. *Id.* §§ III.13.1.2.2.1.1 13.1.2.2.1.2. These ratings are in turn calculated using participant-initiated Seasonal Claimed Capability audits. *Id.*, § III.1.6 (62.1.0), § III.1.5.1.3.

¹¹¹ ISO-NE August 21 Answer at 12-13.

¹¹² Complaint at 8-9, 25-26, 29-30.

¹¹³ ISO-NE August 21 Answer at 12-13 (citing ISO-NE Tariff, §§ III.13.1 (86.1.0), III.13.1.2.2, III.1.5.1.3).

rules, it is nearly impossible for a capacity resource to avoid these charges and these charges provide no incentive for a capacity resource to improve its performance.¹¹⁴

56. The evidence in the record indicates that resources with Capacity Supply Obligations were charged an extra approximately \$25 million during the June Event, when the Balancing Ratio exceeded 1.0, relative to what charges would have been if the Balancing Ratio had been capped at 1.0.¹¹⁵ Although the June Event was the first time the Balancing Ratio exceeded 1.0 in ISO-NE, we note that such events could happen again and be longer and more costly if capacity conditions continue to be tight.¹¹⁶ If so, many resources in ISO-NE with Capacity Supply Obligations could continue to face significant charges that they have no means of physically hedging against or avoiding because they cannot provide energy and reserves beyond their maximum physical output.

57. While capacity resources can in theory financially hedge the risk of a Balancing Ratio above 1.0 by pricing the risk into their offers in the capacity market auctions, as Vitol Companies indicate, the ability to financially hedge does not address our concern that it is unjust and unreasonable for capacity resources to face charges even when they are performing at their maximum physical output. Because NEPGA has met its burden in demonstrating that the Tariff is unjust and unreasonable with respect to ISO-NE's uncapped Balancing Ratio, we find there is no need for a hearing on this issue and, therefore, decline Vitol Companies' request for a hearing.

58. Moreover, we disagree with Vitol Companies' argument that capping the Balancing Ratio would harm reliability by diluting incentives for resources to deliver energy in scarcity conditions. The record indicates that significant performance incentives would remain even if the Balancing Ratio is capped at 1.0. Had the Balancing Ratio been capped at 1.0 during the June Event, overperforming resources would have been paid a Capacity Performance Payment Rate of \$7,243/MWh. Without the cap, they were paid a Capacity Performance Rate of \$9,337/MWh. We acknowledge that this difference shows that during the June Event there would have been a reduction in the Capacity Performance Rate of approximately \$2,094/MWh with a cap on the Balancing Ratio of 1.0 in place, but the fact remains that overperforming resources would still have received a Capacity Performance Payment Rate of over \$7,000/MWh.¹¹⁷ This rate is still

¹¹⁴ Complaint at 18.

¹¹⁵ Complaint at 7 (citing Ming Test. Ex. 1 at 19:10-12); ISO-NE August 21 Answer at 2-3.

¹¹⁶ *Id.* at 22-23.

¹¹⁷ ISO-NE August 21 Answer at 26 (citing White Aff. 4).

a high marginal incentive to encourage resources to perform.¹¹⁸ Accordingly, we are unpersuaded by Vitol Companies’ argument that the performance of resources without Capacity Supply Obligations will significantly suffer because these resources will no longer be guaranteed a \$9,337/MWh Capacity Performance Payment Rate. We find that these resources will continue to be paid a Capacity Performance Payment Rate that will provide a strong financial incentive for resources who can do so to supply energy during Capacity Scarcity Conditions.¹¹⁹

59. With regard to FirstLight’s request that the Commission direct ISO-NE to amend its Tariff to allocate a portion of the Annual Reconfiguration Auction proceeds to remaining Capacity Supply Obligation holders to cover their increased Pay for Performance costs and risks related to those Capacity Supply Obligation releases, we find that this request is outside the scope of this complaint proceeding.¹²⁰

60. With regard to the replacement rate, we find capping the Balancing Ratio at 1.0 to be a just and reasonable replacement rate because it prevents resources with Capacity Supply Obligations in ISO-NE from being required to provide more energy and reserves than their maximum physical output in order to avoid financial charges during Capacity Scarcity Conditions. We note that ISO-NE states that it does not object to a Commission order capping the Balancing Ratio at 1.0.¹²¹ Accordingly, we direct ISO-NE to submit a compliance filing within 180 days of the date of this order proposing Tariff revisions to

¹¹⁸ *Id.* at 26-27 (citing White Aff. 5).

¹¹⁹ We note that underperforming resources will still pay the full Capacity Performance Payment Rate, so their incentive to perform up to their Capacity Supply Obligation will be unaffected. *See, e.g.,* White Aff. 4. We also note that the Capacity Performance Payment Rate was \$5,455/MWh for the Capacity Commitment Period starting June 1, 2024 and ending May 31, 2025, just 24 days prior to the June Event. *See* Tariff, § III.13.7 (72.1.0), § III.13.7.2.5.

¹²⁰ *See, e.g., LS Power Dev., LLC v. PJM Interconnection, L.L.C.*, 192 FERC ¶ 61,149, at P 84 (2025) (“The Commission ‘often declines to address issues that were not raised in an original complaint and are, therefore, outside the scope of the proceeding.’”) (quoting *N. Ind. Pub. Serv. Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 158 FERC ¶ 61,049, at P 23 (2017); *Caithness Long Island II, LLC v. N.Y. Indep. Sys. Operator Corp.*, 154 FERC ¶ 61,218, at P 13 (2016) (denying rehearing where the requested action was not “necessary to grant proper relief on [the] complaint” and therefore outside the scope of that complaint).

¹²¹ ISO-NE August 21 Answer at 5.

cap the Balancing Ratio at 1.0 and to make any conforming changes that ISO-NE finds necessary to effectuate the Balancing Ratio cap.

61. Section 206(b) of the FPA provides that, upon the filing of a complaint, the Commission must establish a refund effective date that is no earlier than the date of the complaint and no later than five months subsequent to the date of the complaint.¹²² In such cases, in order to give the maximum protection to customers, and consistent with our precedent, the Commission has historically tended to establish the section 206 refund effective date as the earliest date allowed by section 206.¹²³ That date is July 25, 2025, as NEPGA requested. Because the Balancing Ratio has not risen above 1.0 since that date, we find that refunds are not warranted.

2. Allocation Methodology for the Stop-Loss Mechanism

a. Complaint

62. NEPGA contends that the allocation methodology for the stop-loss mechanism, i.e., allocating the payment deficiencies due to resources reaching their stop-loss limit to the pool of suppliers with Capacity Supply Obligations, is unjust and unreasonable¹²⁴ for the same reasons that the uncapped Balancing Ratio is unjust and unreasonable. Specifically, NEPGA argues that the allocation methodology for the stop-loss mechanism in the Tariff unreasonably holds resources to a standard greater than their Capacity Supply Obligation, which is sometimes physically impossible.¹²⁵ NEPGA also argues that the payment deficiency allocation mechanism requires resources to overperform to avoid charges.¹²⁶ NEPGA asserts that flawlessly performing resources may incur a negative Capacity Performance Payment despite performing at their Capacity Supply Obligation, while resources without a Capacity Supply Obligation only receive a bonus payment for the resource's actual performance. NEPGA argues that it is discriminatory to charge resources with a Capacity Supply Obligation based on performance greater than

¹²² 16 U.S.C. § 824e(b).

¹²³ See, e.g., *Idaho Power Co.*, 145 FERC ¶ 61,122 (2013); *Canal Elec. Co.*, 46 FERC ¶ 61,153, *order on reh'g*, 47 FERC ¶ 61,275 (1989).

¹²⁴ Complaint at 1. The complaint does not argue that the stop-loss mechanism itself is unjust and unreasonable. See Complaint at 35.

¹²⁵ *Id.* at 10, 25.

¹²⁶ *Id.* at 26.

their Capacity Supply Obligation, while resources with no Capacity Supply Obligation incur no such charges but are guaranteed maximum bonus payments.¹²⁷

63. NEPGA argues that failure to find the allocation methodology for the stop-loss mechanism unjust and unreasonable would effectively mean that the risk of charges for performance is an inherent risk that resources incur when accepting a Capacity Supply Obligation, which is nonsensical.¹²⁸

64. NEPGA contends that ISO-NE may argue that the stop-loss mechanism being triggered is distinct from the Balancing Ratio exceeding 1.0, as it was more predictable that the stop-loss mechanism might be hit, and that capacity resources agreed to the mutual self-insurance plan of the stop-loss mechanism.¹²⁹ NEPGA contends, however, that it cannot be just and reasonable under any circumstances to charge capacity resources based on performance above their commitment, particularly when it is impossible for them to do so. NEPGA contends that cost causation principles cannot impose the costs of a resource's non-performance on a separate resource. NEPGA asserts that, "[w]hile ISO-NE may argue that all capacity resources benefit from the stop-loss mechanism, and thus all capacity resources should pay for it, performing capacity resources should not incur charges based on a higher standard of performance than they committed to meet solely to guarantee maximum bonuses to others."¹³⁰

65. NEPGA also argues that the allocation methodology for the stop-loss mechanism and the uncapped Balancing Ratio issue are linked. NEPGA asserts that capping the Balancing Ratio while not addressing the allocation methodology for the stop-loss mechanism may not be workable because allocating stop-loss under-collections to Capacity Supply Obligation holders also has the impact of holding capacity to a performance standard that exceeds its Capacity Supply Obligation.¹³¹ As a remedy, NEPGA proposes that ISO-NE adopt PJM's cost allocation approach for its stop-loss mechanism, which splits the bonus pool (after adjustments) among overperforming resources, rather than among the pool of suppliers with Capacity Supply Obligations.

¹²⁷ *Id.* at 26-27.

¹²⁸ *Id.* at 30.

¹²⁹ *Id.* at 37.

¹³⁰ *Id.* at 37-38.

¹³¹ *Id.* at 3, 10, 38. *See also* Ming Test. Ex.1 at 34-42.

b. ISO-NE Response

66. ISO-NE disagrees with NEPGA’s statement that “[c]ost-causation principles cannot impose the costs of a resource’s non-performance on a separate resource,” and thus that resources with a Capacity Supply Obligation that perform in accordance with their capacity MW obligation during a Capacity Scarcity Condition should not be charged when other resources hit the stop-loss limit.¹³² According to ISO-NE, this logic does not support the argument that cost allocation under ISO-NE’s current stop-loss design is unjust and unreasonable. ISO-NE argues that in allocating the costs of one or more resources hitting the stop-loss limit to the other capacity resources that benefit from the mutual insurance system, ISO-NE’s stop-loss mechanism applies the beneficiary pays principle, which is “an extension” of the cost causation principle.¹³³ Moreover, ISO-NE argues, it is not possible to accomplish the financial objective of the stop-loss – to insulate the supplier from unbounded financial risk – while directly imposing the cost of the stop-loss on the entity that “causes” that cost, i.e., the very supplier whose performance-related charges are to be stopped.¹³⁴ ISO-NE argues that in this regard, NEPGA’s proposed replacement rate, which allocates costs of the stopped losses “among over-performing generators,” regardless of whether they have a Capacity Supply Obligation, is even less justifiable under cost causation principles as NEPGA applies them in this context.¹³⁵ ISO-NE contends that this approach would allocate costs among all overperforming resources, none of which caused any stopped-out resource’s non-performance.¹³⁶ In contrast, ISO-NE argues, “the mutual insurance pool logic of the ISO’s current stop-loss allocation is sound, allocating the costs to all (and only) capacity

¹³² ISO-NE August 21 Answer at 17 (citing Complaint at 37).

¹³³ *Id.* (citing *Midcontinent Indep. Sys. Operator, Inc.*, 191 FERC ¶ 61,231, at P 28 (2025) (“[T]he beneficiary pays principle is simply ‘another prism through which to view the question of cost causation.’”) (citing *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1302 (D.C. Cir. 1992)) (additional citations omitted)).

¹³⁴ *Id.*

¹³⁵ *Id.* at 17-18 (citing Complaint at 35).

¹³⁶ *Id.* at 18. ISO-NE states that using the data for the June Event, NEPGA’s proposal would allocate 41% of the \$17.2 million in costs associated with resources hitting their monthly stop-loss limit to resources that did not take on a Capacity Supply Obligation, and therefore are not receiving monthly Capacity Base Payments, for the 2025/2026 Capacity Commitment Period. ISO-NE states that this percentage reflects the pro rata share of overperformance by resources that did not hold Capacity Supply Obligations during the June Event. *Id.* at 18. n.71.

suppliers who can benefit from the mechanism, and thus cause such costs on a mutual basis.”¹³⁷

67. ISO-NE argues that if the Commission determines that NEPGA has not demonstrated that the stop-loss cost allocation mechanism is unjust and unreasonable, then the Commission is not required to reconcile the differences between ISO-NE’s and PJM’s stop-loss cost allocation mechanisms, any more than it is required to reconcile other differing features of those mechanisms.¹³⁸ ISO-NE notes that it is well established that there can be more than one just and reasonable rate. ISO-NE notes that there are numerous differences between the ISO-NE stop-loss mechanism and the PJM mechanism, such as the fact that ISO-NE has both monthly and annual stop-loss limits, while PJM has only an annual limit. ISO-NE contends that implementing the PJM stop-loss mechanism would require further evaluation to ensure that it functions properly and does not create concerns for other provisions of ISO-NE’s Pay for Performance rules.¹³⁹

68. ISO-NE disagrees with NEPGA’s assertion that it would be unworkable for ISO-NE to disentangle the Balancing Ratio from stop-loss mechanism. ISO-NE explains that, as a mechanical matter, it could implement a Balancing Ratio capped at 1.0 and allocate the resulting settlement imbalance to overperforming resources, while continuing to administer the allocation of stopped losses to resources with Capacity Supply Obligations.¹⁴⁰ ISO-NE contends that NEPGA does not support its claim by explaining the settlement calculations, but rather by asserting that it “produces anomalous results – such as negative performance payments for over-performing resources in some circumstances.”¹⁴¹

c. Comments

69. Several parties combined their comments regarding the allocation methodology for the stop-loss mechanism with their comments regarding the Balancing Ratio and likewise support the complaint with respect to the stop-loss mechanism. For example, Braintree and Taunton and New England Consumer Advocates note that stop-losses

¹³⁷ *Id.* at 18.

¹³⁸ *Id.* at 18.

¹³⁹ *Id.* at 21.

¹⁴⁰ *Id.* at 29.

¹⁴¹ *Id.* at 30-31 (citing Complaint at 10).

contributed to the pool-wide performance deficiency during the June Event.¹⁴² MMWEC argues that generators should not be required to fund a shortfall in the bonus payment pool when the shortfall is caused by certain generators reaching their stop-loss limitations.¹⁴³ FirstLight supports the complaint, arguing that ISO-NE's market design is flawed because it increases monthly stop-loss risk to resources with Capacity Supply Obligations.¹⁴⁴ EPSA also argues that ISO-NE's market design is flawed, contending that the outcome of the June Event was only possible due to flaws with the Balancing Ratio and stop-loss mechanism.¹⁴⁵ RENEW contends that NEPGA's requested relief is modest, reasonable, and consistent with the approach taken in PJM.¹⁴⁶

70. LS Power states that it continues to support the stop-loss mechanism, which it contends is necessary to prevent potentially catastrophic losses due to short-term performance issues. LS Power states that it also recognizes that there is no inherently right way to handle under-collections resulting from the application of the stop-loss mechanism.¹⁴⁷ LS Power contends that, nonetheless, there are pragmatic reasons to shift from the current approach to the PJM-style rules previously approved by the Commission. LS Power argues that, in particular, such a shift would allow ISO-NE to sidestep difficult, if not impossible, questions associated with trying to allocate collection shortfalls resulting from two different mechanisms: one for under-collections resulting from the stop-loss mechanism, and another for under-collections resulting from the Balancing Ratio. LS Power contends that, on balance, the PJM approach provides easy and clear rules for managing overperformance bonus payments, even though it could reduce bonus payments in some instances.¹⁴⁸

71. Regarding cost allocation for the stop-loss limit, the IMM states that it does not support changing the method for allocating the stop-loss revenue deficiency to include

¹⁴² Braintree & Taunton Comments at 3; New England Consumer Advocates at 8. NESCOE also makes this observation without taking a position on the complaint. NESCOE Comments at 2-3.

¹⁴³ MMWEC Comments at 5.

¹⁴⁴ FirstLight Comments at 13-14.

¹⁴⁵ EPSA Comments at 3-4.

¹⁴⁶ RENEW Comments at 1.

¹⁴⁷ LS Power Comments at 7.

¹⁴⁸ *Id.* at 8.

non-capacity resources.¹⁴⁹ The IMM contends that the stop-loss allocation issue is distinct from capping the Balancing Ratio at 1.0. The IMM explains that the stop-loss provision functions as a “mutual insurance fund” for capacity resources and that, by limiting individual losses (a benefit to all Capacity Supply Obligation holders) with shortfalls covered by other Capacity Supply Obligation holders, the stop-loss shortfall allocation is not a penalty for poor performance, but a premium paid by the group of capacity suppliers to fund the limit on extreme losses. The IMM argues that even a resource that performs “perfectly” during one scarcity event stands to benefit from the existence of loss caps during another event, so it is not unjust or unreasonable that it may pay a small share toward others’ capped losses as an insurance cost. The IMM argues that resources without Capacity Supply Obligations, by contrast, receive no benefit from the stop-loss mechanism and should not be forced to fund it. The IMM contends that keeping the stop-loss pool’s costs to those suppliers with Capacity Supply Obligations ensures that only beneficiaries pay for the protection they enjoy.¹⁵⁰

72. Vitol Companies argue that NEPGA seeks to shift the burden of mutualized capacity performance insurance provided according to its Capacity Performance Score by diluting performance bonus payments. Vitol Companies note that resources without a Capacity Supply Obligation receive no benefit from the stop-loss mechanism. Vitol Companies contend that NEPGA’s argument proceeds from the flawed premise that a capacity resource should not have a performance obligation that exceeds its Capacity Supply Obligation.¹⁵¹

73. In addition, Vitol Companies contend that NEPGA’s assertion of undue discrimination is unfounded. Vitol Companies explain that Capacity Supply Obligation resources are not similarly situated with non-Capacity Supply Obligation resources with respect to their role in the ISO-NE Pay for Performance program because Capacity Supply Obligation resources take on numerous obligations in exchange for the capacity payments they earn, while non-Capacity Supply Obligation resources do not receive capacity payments or incur the same obligations.¹⁵²

d. Answers

74. NEPGA argues that ISO-NE and the IMM fail to explain why the stop-loss mechanism does not present the same problems as an uncapped Balancing Ratio.

¹⁴⁹ IMM Comments at 5.

¹⁵⁰ *Id.* at 5-6.

¹⁵¹ Vitol Companies Protest at 15.

¹⁵² *Id.* at 15-16,

NEPGA argues that it is always unjust and unreasonable to hold a capacity resource to a standard greater than its obligation, no matter the reason.¹⁵³ NEPGA notes that ISO-NE and the IMM assert that the stop-loss issue is different and that “the only entities that should be responsible for the costs of the stopped losses are the entities that can *benefit* from the stop-loss mechanism – i.e., the capacity suppliers with Capacity Supply Obligations.”¹⁵⁴ NEPGA argues that the stop-loss mechanism is not a “benefit” so much as a component of the overall methodology to set the Pay for Performance charge and ensure that it is not excessive. NEPGA notes that, by comparison, the Commission’s manipulation penalty authority is limited to \$1 million per violation per day, but few would characterize this as a “benefit” to manipulators.¹⁵⁵

75. NEPGA contends that, even if the stop-loss provision were to be considered a “benefit,” the only beneficiaries would be load.¹⁵⁶ NEPGA notes that the stop-loss mechanism prevents suppliers from going bankrupt in a single day and being forced into early retirement. NEPGA’s witness adds that, like “all other aspects of the Pay-for-Performance design,” it is “structured to incentivize performance while protecting suppliers from undue risk. This risk mitigation incentivizes participation in the Forward Capacity Market at reasonable offer prices.”¹⁵⁷ Thus, NEPGA argues that the stop-loss mechanism ultimately benefits load in the form of improved reliability and lower prices.¹⁵⁸

76. Regarding comparisons between ISO-NE’s and PJM’s stop-loss mechanisms, NEPGA argues that the only relevant difference is that PJM does not guarantee maximum bonus payments to overperforming resources by forcing performing capacity resources to make up the bonus shortfall.¹⁵⁹ NEPGA argues that this is why PJM’s stop-loss allocation methodology is just and reasonable, and ISO-NE’s is not.

¹⁵³ NEPGA September 5 Answer at 6.

¹⁵⁴ *Id.* at 7-8 (citing ISO-NE August 21 Answer at 6 (emphasis added by NEPGA)).

¹⁵⁵ *Id.* at 8 (citing 16 U.S.C. § 825o-1).

¹⁵⁶ *Id.* at 9.

¹⁵⁷ *Id.* at 9 (citing Ming Rebuttal Test. Ex. 1, at 18-19).

¹⁵⁸ *Id.* (citing Ming Rebuttal Test. Ex. 1 at 19).

¹⁵⁹ *Id.* at 9-10.

77. ISO-NE contends that NEPGA's attempts to rebut the underlying logic of ISO-NE's stop-loss cost allocation approach are unsuccessful. ISO-NE argues that NEPGA's assertion that the stop-loss mechanism is not a benefit to Capacity Supply Obligation holders is incorrect. ISO-NE explains that the stop-loss mechanism provides each capacity supplier with insurance against the possibility of suffering net financial losses in excess of the stop-loss limit. ISO-NE explains that, in addition to limiting a resource's net financial losses, the stop-loss mechanism enables a supplier to know its maximum loss exposure prior to participating in the Forward Capacity Auction, and to communicate its maximum loss exposure to third parties with which it may do business, such as external entities providing financing. ISO-NE contends that, contrary to NEPGA's assertions, the stop-loss is therefore a direct benefit to capacity suppliers.¹⁶⁰

78. In addition, ISO-NE reiterates that it disagrees with NEPGA's assertion that it would not be possible to implement a replacement rate that caps the Balancing Ratio at 1.0 while continuing to allocate stopped losses to capacity resources.¹⁶¹ ISO-NE contends that, to the contrary, should the Commission find it necessary to cap the Balancing Ratio, it is feasible for ISO-NE to propose a replacement rate that accomplishes this capping while continuing to administer the allocation of stopped losses to resources with a Capacity Supply Obligation, and that the details of such a replacement rate could be worked out by direction of the Commission on compliance.¹⁶²

79. RENEW argues that NEPGA's proposed solution is straightforward and fair. RENEW explains that allocating the credits owed to overperforming resources at the level of charges actually collected on a pro rata basis among all overperforming resources, whether or not they hold a Capacity Supply Obligation, along with capping the Balancing Ratio, ensures that the system remains revenue-neutral and that Capacity Supply Obligation overperforming resources are not paid at a rate less than non-Capacity Supply Obligation overperforming resources. RENEW argues that it also aligns ISO-NE's treatment with that of PJM, where payments to overperforming resources are limited to the funds collected from underperforming resources.¹⁶³

e. Commission Determination

80. We deny the complaint with regard to the ISO-NE Tariff allocation methodology for the stop-loss mechanism, i.e., allocating the payment deficiencies due to capacity

¹⁶⁰ ISO-NE September 19 Answer at 5-7.

¹⁶¹ *Id.* at 9.

¹⁶² *Id.* at 12.

¹⁶³ RENEW Answer at 2.

resources reaching their stop-loss limit to the pool of suppliers with Capacity Supply Obligations. We find that NEPGA has failed to demonstrate that this methodology is unjust, unreasonable, or unduly discriminatory or preferential. ISO-NE's stop-loss mechanism benefits resources with Capacity Supply Obligations. As such, we find that the potential for resources with Capacity Supply Obligations to be "charged" even when they meet their Capacity Supply Obligation remains just and reasonable.

81. As an initial matter, we disagree with NEPGA's contention that the Balancing Ratio and stop-loss mechanism allocation issues are the same, such that there is no distinction between the charges associated with stopped losses and those associated with a Balancing Ratio that exceeds 1.0, or that one issue cannot be disentangled from the other. To the contrary, we find that the allocation methodology for the stop-loss mechanism is distinguishable from the uncapped Balancing Ratio because only the Balancing Ratio is a component of the performance standard by which resources are evaluated during a Capacity Scarcity Condition. Under the Pay for Performance design, the performance standard by which resources are evaluated is the share of the system's needs that the resource is obligated to provide. This share is the product of the resource's Capacity Supply Obligation and the applicable Balancing Ratio. In contrast, the stop-loss limit has no bearing on the evaluation of a capacity resource's performance during a Capacity Scarcity Condition, and instead serves a different function, i.e., to financially protect capacity resources against excessive Pay for Performance losses, rather than to evaluate their performance.¹⁶⁴ For these reasons, we find it appropriate that the Commission address the Balancing Ratio and stop-loss issues separately.

82. In its complaint, NEPGA contends that it does not challenge the stop-loss mechanism itself,¹⁶⁵ but only seeks to change the allocation of costs when the stop-loss mechanism is triggered.¹⁶⁶ However, we find that NEPGA has not demonstrated that the Tariff's allocation methodology for stop-loss costs is unjust and unreasonable. We acknowledge that, as NEPGA contends, there could be scenarios in which capacity resources that fulfill their Capacity Supply Obligations during Capacity Scarcity Conditions and would otherwise receive a bonus payment either receive a reduced

¹⁶⁴ As noted above, the monthly stop-loss limit caps a resource's negative Capacity Performance Payment to an amount equal to the product of the applicable Forward Capacity Auction Starting Price multiplied by the resource's Capacity Supply Obligation for the month. Tariff, § III.13.7 (72.1.0), § III.13.7.3.1. Under the annual stop-loss limit, a capacity resource cannot be worse off, on an annual basis, than three times its maximum monthly potential net loss. *Id.* § III.13.7.3.2.

¹⁶⁵ Complaint at 20.

¹⁶⁶ *Id.* at 35.

payment or are nonetheless effectively “charged” due to the allocation of payment deficiencies from Capacity Supply Obligation holders who have reached their stop-loss limit. Such a scenario could occur because the stop-loss mechanism creates payment deficiencies that are allocated to *all* Capacity Supply Obligation holders, including those capacity resources that have fulfilled their Capacity Supply Obligations.

83. We agree with ISO-NE’s explanation that this allocation methodology is consistent with the beneficiary pays principle,¹⁶⁷ and it is reasonable for capacity resources to bear the costs because all capacity resources benefit from the stop-loss mechanism. Specifically, the stop-loss mechanism limits a capacity resource’s exposure to financial losses due to negative Capacity Performance Payments. As ISO-NE explains, the stop-loss mechanism provides each capacity resource with insurance against the possibility of suffering net financial losses in excess of the stop-loss limit.¹⁶⁸ And because only resources with Capacity Supply Obligations enjoy these benefits (because only they are exposed to Pay for Performance losses), we find that NEPGA fails to explain why it is unreasonable for ISO-NE to allocate costs of the stopped losses to only these resources. As the IMM notes, even a capacity resource that performs at its Capacity Supply Obligation benefits from the stop-loss mechanism and should pay its share of the mechanism’s costs.¹⁶⁹ For these reasons, we find that NEPGA has failed to meet its burden under FPA section 206 to demonstrate that ISO-NE’s stop-loss mechanism is unjust and unreasonable.

84. We also disagree with NEPGA’s statement that it is discriminatory to “charge” resources with Capacity Supply Obligations through the stop-loss mechanism allocation when resources without Capacity Supply Obligations are paid at the tariff rate. As discussed above, only resources with Capacity Supply Obligations enjoy the benefits of the stop-loss mechanism and, as such, are not similarly situated to resources without Capacity Supply Obligations for purposes of the stop-loss mechanism.¹⁷⁰ Accordingly, NEPGA has not demonstrated that it is unduly discriminatory for ISO-NE to allocate the

¹⁶⁷ ISO-NE August 21 Answer at 16.

¹⁶⁸ ISO-NE September 19 Answer at 6.

¹⁶⁹ IMM Comments at 5.

¹⁷⁰ See *Mo. River Energy Servs. v. FERC*, 918 F.3d 954, 958 (D.C. Cir. 2019) (“A mere difference in the treatment of two entities does not violate [[the FPA’s prohibition against undue discrimination]; instead, undue discrimination occurs only if the entities are similarly situated, such that there is no reason for the difference[,],” (internal quotations omitted)); see also *Tri-State Generation & Transmission Ass’n*, 184 FERC ¶ 61,099, at P 298 (2023); *ISO New Eng. Inc.*, 170 FERC ¶ 61,011, at P 14 (2020).

costs of the stopped losses (i.e., the “premiums” for this insurance) to only capacity resources.

85. We are not persuaded by NEPGA’s argument that ISO-NE’s allocation methodology for its stop-loss mechanism is unjust and unreasonable because it differs from PJM’s. There can be more than one just and reasonable rate,¹⁷¹ and the fact that ISO-NE has chosen a different approach than PJM to allocating the costs of its stop-loss mechanism does not in itself render ISO-NE’s approach unjust and unreasonable. As the Commission has previously found, “RTOs may take somewhat different approaches to similar problems.”¹⁷²

The Commission orders:

(A) The complaint is hereby granted in part and denied in part, as discussed in the body of this order.

(B) ISO-NE is hereby directed to submit a compliance filing within 180 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Carlos D. Clay,
Deputy Secretary.

¹⁷¹ See, e.g., *Cal. Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,282, at P 31 (2009) (having found the independent system operator’s proposal just and reasonable, the Commission was not required to assess the justness and reasonableness of an alternative proposal); *ISO New Eng. Inc.*, 153 FERC ¶ 61,223, at P 90 (2015) (finding that it is well established that there can be more than one just and reasonable rate).

¹⁷² *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,157, at P 84 (2015).