

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

Wholesale Competition in Regions)	Docket Nos. RM07-19-000 and
with Organized Electric Markets)	AD07-7-000
)	
)	

**COMMENTS OF
THE NEW ENGLAND CONFERENCE OF PUBLIC UTILITIES COMMISSIONERS,
THE CONNECTICUT DEPARTMENT OF PUBLIC UTILITY CONTROL,
THE MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES,
THE MASSACHUSETTS DIVISION OF ENERGY RESOURCES,
THE NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION,
THE RHODE ISLAND PUBLIC UTILITIES COMMISSION,
THE VERMONT DEPARTMENT OF PUBLIC SERVICE, AND
THE VERMONT PUBLIC SERVICE BOARD**

I. INTRODUCTION

Pursuant to the Advanced Notice of Proposed Rulemaking issued by the Federal Energy Regulatory Commission (the “Commission”) on June 22, 2007 (the “ANOPR”),¹ the New England Conference of Public Utilities Commissioners, the Connecticut Department of Public Utility Control, the Massachusetts Department of Public Utilities, the Massachusetts Department of Energy Resources (“MDOER”), the New Hampshire Public Utilities Commission, the Rhode Island Public Utilities Commission, the Vermont Department of Public Service (“VTDPS”), and the Vermont Public Service Board (collectively, “NECPUC”) hereby submit the comments contained herein.²

¹ Wholesale Competition in Regions with Organized Electric Markets, 119 FERC ¶ 61,306 (2007).

² The Maine Public Utilities Commission abstains from taking a position on this NECPUC filing.

II. DESCRIPTIONS OF THE COMMENTERS

NECPUC is a not-for-profit corporation comprising all of the public utilities commissioners of the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. Formed over sixty years ago and funded by the New England states, NECPUC's mission is the promotion of regional cooperation and effective communication on all public utility matters within New England.

MDOER is the Massachusetts executive agency responsible for establishing and implementing the Commonwealth's energy policies and programs, generally.³ Pursuant to M.G.L. c. 25A, § 6, MDOER is authorized and directed to: (1) plan, develop, oversee, and operate programs to help consumers understand, evaluate, and select retail energy supplies and related services offered as a consequence of electricity and gas utility restructuring; (2) develop and administer programs relating to energy conservation, demand-side management, alternative energy development, non-renewable energy supply and resources development, energy bond authority, energy information and energy emergencies; (3) advise, assist, and cooperate with other state, local, regional, and federal agencies in developing appropriate programs and policies relating to energy planning and regulation in the Commonwealth; (4) develop energy data and information management capabilities to aid energy planning and decision-making; and (5) promote the development of sound energy education programs.

VTDPS is charged, through the Director for Public Advocacy, to represent the interests of the public in utility matters before the Vermont Public Service Board as well as before the Commission.⁴ As the State of Vermont's public advocate, VTDPS has an affirmative duty to protect the interests of Vermont consumers of electricity in securing reliable, safe, reasonably

³ M.G.L. c. 25A, § 6.

⁴ See Vt. Stat. Ann. tit. 30, § 2(b) (1997).

priced power. VTDPSC has participated in Commission proceedings on behalf of Vermont ratepayers in numerous dockets.

The other named commenters are the public utility commissions of the respective New England states and are each a “state commission” as defined by 16 U.S.C. § 796(15) and 18 C.F.R. § 1.101(k).

III. COMMUNICATIONS

NECPUC requests that the individuals identified below be placed on the Commission’s official service list in this proceeding and that all communications concerning this filing and future filings in this proceeding should be directed to:

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IV. SUMMARY

In the ANOPR the Commission identifies specific concerns and presents preliminary views on proposed reforms in four areas:

- The role of demand response in organized markets;
- Increasing opportunities for long-term power contracts;
- Strengthening market monitoring; and
- The responsiveness of Regional Transmission Organizations (“RTOs”) and Independent System Operators (“ISOs”) to customers and other stakeholders.⁵

The Commission seeks comments on the proposed reforms.⁶

As explained more fully below, NECPUC comments on each of the topics. NECPUC applauds the Commission for raising these important issues in this ANOPR. Although as noted below NECPUC supports some specific proposals, generally, NECPUC wants to ensure the

⁵ ANOPR at PP 1-2.

⁶ ANOPR at P 2.

Commission does not impose a “one size fits all” solution to any of the issues addressed in this ANOPR. There are substantial differences between the various ISO/RTO regions and imposing a single compliance method would not result in optimal solutions. NECPUC recommends that the Commission allow the different ISOs/RTOs to apply different methods based on their unique characteristics while still complying with the overall intent of the Commission’s rulemaking.

V. DEMAND RESPONSE AND PRICING DURING POWER SHORTAGES IN ORGANIZED MARKETS

A. Participation of Demand Resources in Organized Markets

The ANOPR states that the Commission “is considering a proposal to require RTOs and ISOs to amend their market rules to permit aggregators of retail customers (‘ARCs’) to bid a demand reduction on behalf of retail customers directly in the RTO’s or ISO’s organized markets. This proposal is intended to remove a barrier to demand response in some RTO or ISO energy markets by allowing an ARC to act as an intermediary for many small retail loads that cannot individually participate in the organized markets because they lack standing as a Load Serving Entity (‘LSE’) or because they individually cannot meet a requirement that a demand response bid be of minimum size.”⁷

NECPUC fully agrees with the Commission regarding the importance of allowing entities to aggregate the demand reductions of smaller retail customers for the purpose of participating in the organized wholesale markets. However, NECPUC respectfully submits that a more fundamental issue for the Commission to address in this proceeding is the optimal manner in which demand resources can participate in these markets in order to achieve the Commission’s objective of fully tapping the potential of demand response capabilities.⁸

⁷ ANOPR at P 69.

⁸ See ANOPR at P 35.

In New England, demand resources currently can participate in the capacity, reserves, and energy markets. In the capacity and reserve markets, participating demand resources are integrated directly into the markets (through the Forward Capacity Market (“FCM”) and Demand Response Reserve Pilot Program, respectively), while in the energy market, the participation of demand resources is accommodated through the ISO-NE price response programs. Notwithstanding this difference, demand resources are directly compensated in all three wholesale markets for the services they provide. However, the FCM filing recently approved by the Commission calls for the termination of the price response programs on June 1, 2010 (the date on which the FCM becomes fully operational), subject to further discussion among the stakeholders.⁹ NECPUC is concerned that, absent these programs, demand resources would no longer be compensated through the wholesale energy markets which we believe may present a significant barrier to the continued development of demand response in New England.

At the current stage of the restructuring of the electricity industry, it is not unusual for demand resource services to be provided to customers separately from supply resource services. That is, a customer may have a competitive power supplier or LSE to manage its supply activities and a separate demand resource service provider (“DSP”) to manage its demand activities. In these instances, absent the ability of demand resources to receive direct compensation through the wholesale markets, the wholesale benefits provided by demand resources flow solely to consumers’ LSEs, through reduction in their wholesale costs, who then pass some (or all) of these savings on to their customers through their retail supply prices. This approach creates an unfavorable environment for “stand-alone” DSPs in that, although they provide the wholesale services that create these benefits, they must rely on LSEs to flow the benefits through to their customers. NECPUC notes that ISO-NE has successfully addressed this

⁹ See ISO New England Inc., 119 FERC ¶ 61,239 at PP 46-50 (2007).

issue in the FCM, which provides direct compensation to DSPs, for the capacity services their demand resources provide.

In the ANOPR, the Commission distinguishes between two ways in which demand resources may be allowed to participate in energy markets by submitting (i) demand bids, which are offers by market participants to buy a certain amount of energy at a given market price, and (ii) demand reduction bids which are offers by market participants to reduce their “normal” purchase by a given amount in return for compensation.¹⁰ The importance of this distinction is that, under a demand bid approach, demand resources are not directly compensated through the energy market for the services they provide while under the demand reduction bid approach (the approach used in ISO-NE’s price response programs) demand resources are directly compensated through the market.

NECPUC believes that availability of the ISO-NE price response programs has been an important factor in the development of demand resources to date in New England, primarily because it has allowed for demand resources (and DSPs) to be directly compensated through the wholesale energy market. We are concerned that the termination of these programs may impede the ability of DSPs to operate efficiently, thus having a deleterious effect on the continued development of these resources. As such, we urge the Commission to fully explore in this proceeding the optimal manner in which demand resources can participate in energy markets.

B. “Double Compensation” of Demand Resources

Related to its proposal on ARCs, the Commission requests comment on “whether aggregation of retail customers allows inappropriate compensation when a retail customer is paid for wholesale demand reduction and also saves in its retail bill from the same demand

¹⁰ See ANOPR at P 78, n.68.

reduction.”¹¹ The ANOPR presents the position of some parties that, in these instances, the wholesale payments to customers “represent subsidies that are not justified or a form of double payment.”¹² The ANOPR adds that “[o]thers disagree with this criticism, arguing that the [retail] price reduction does not fully reflect the social benefits produced by the demand reduction.”¹³ The Commission seeks comment on whether there is any inappropriate double compensation, or whether “providing an additional payment is appropriate to compensate for the value of the demand response.”¹⁴

NECPUC believes that characterizing this as a “double payment” is incorrect because it ignores the energy system and societal benefits gained from demand reductions. “Additional” wholesale payments to demand resources are appropriate, because they compensate the resources for the “external” benefits they provide to other electricity consumers. Payments to individual providers should be large enough (and no larger) to “incent” the desired demand response, ensuring that payments in the aggregate do not exceed the benefits realized across the system.

In the ANOPR, the Commission identifies three such benefits. First, demand resources can help reduce wholesale prices and wholesale price volatility.¹⁵ This effect provides system-wide benefit from both a short-term perspective – lower clearing prices during a relatively small number of peak hours – and a long term perspective – reducing the number and magnitude of price spikes will reduce the price of long term contracts. Indeed, experience in New England demonstrates that investment in demand resources provides net benefits to consumers.¹⁶ In

¹¹ ANOPR at P 73.

¹² ANOPR at P 73.

¹³ ANOPR at P 73.

¹⁴ ANOPR at P 74.

¹⁵ ANOPR at P 37.

¹⁶ *In An Evaluation of the Performance of the Demand Response Programs Implemented by ISO-NE in 2005*, prepared for ISO New England, Inc. by RLW Analytics, LLC and Neenan Associates, LLC at Section 3.2 (December 30, 2005) and filed with the Commission in Docket No. ER02-2330-040 (available on the ISO-NE

addition, demand response tends to flatten an area's load profile, thus shifting generation toward lower-cost base load generation and away from higher-cost peaking generation.¹⁷ Finally, demand response can help reduce the potential for market manipulation by reducing generator market power, thus placing downward pressure on generator bidding strategies.¹⁸

To this list, NECPUC adds the equally important environmental and social benefits that are provided by demand resources through (i) the reduction of power plant emissions, and (ii) the opportunity to avoid or defer new transmission and distribution costs (which are based upon serving peak load). In NECPUC's view, all of these societal and external benefits provide an imperative to advance, not hinder, the market changes currently underway that will bring the promise of demand response to a marketplace that historically has been disproportionately oriented toward supply-side solutions. In making decisions regarding the level of investment they choose to make in demand resources, consumers (and their DSPs) will of course seek to strike an appropriate balance between costs and benefits. However, if demand resources are not appropriately compensated for the system-wide benefits that they provide to other electricity consumers, we should expect that the level of investment customers make in these resources would be less than optimal, an outcome NECPUC cannot support.

In the ANOPR, the Commission also requests comments on whether or not it is appropriate to alter the payment to a Demand Response provider by subtracting its retail contract price from the LMP.¹⁹ This method is used in the PJM Interconnection region when real-time prices are below a trigger-point of \$75/MWh, and is often called a generation offset. It is

website. www.iso-ne.com/genrtion_resrcs/dr/rpts/index.html), RLW Analytics and Neenan Associates find that during the twelve month period from September 2004 through August 2005, New England's Price Response program "produced benefits (\$9,278,185) that exceeded its costs (\$5,156,534) by 80%."

¹⁷ ANOPR at P 38.

¹⁸ ANOPR at P 39.

¹⁹ ANOPR at P 74.

intended to induce more demand response at prices above this point. As the level of demand response grows it will become increasingly burdensome, and perhaps inappropriate, for the RTO/ISO to keep track of each responder's retail contract so that it can provide the correct payment amount. Therefore, consistent with our belief that we must continue to foster the development of demand resources and remove any barriers that might weaken their participation in the market, NECPUC believes that because of the potential burden associated with a generation offset approach, it is not an appropriate method to foster demand response during times of high prices.

C. Participation of Demand Resources in the Regional System Planning Process

In the ANOPR, the Commission focuses on market design changes that would “ensure the treatment of supply and demand resources on a comparable basis to the extent each is technically capable of providing the service,” in order to help tap the “potential demand response capability available in the United States.”²⁰ NECPUC respectfully submits that the Commission should also consider in this proceeding the optimal manner in which demand resources can participate in RTO/ISO regional system planning processes, again, in order to fully tap the potential of demand resource capabilities.²¹

In simple terms, the current regional system planning process in New England begins with ISO-NE, working within the stakeholder process, to identify areas within the region for which the existing generation and transmission infrastructure (adjusted for known, new investment that is not yet operational) is not sufficient to meet the projected demand requirements of the area, either from a reliability or market efficiency perspective. Merchant investors in supply, demand, or transmission resources are then provided the opportunity to

²⁰ ANOPR at P 35.

²¹ NECPUC recognizes that Order 890 addressed the role of the regional planning process. These comments are in addition to any that NECPUC may offer in response to the RTO-NE compliance filing in that docket.

propose projects that would resolve the identified “imbalance” in an area. If the response by merchant providers sufficiently resolves the identified imbalance, then ISO-NE need take no further action. However, if the merchant response is insufficient, then ISO-NE turns to regulated (i.e., ratepayer-funded) options, which currently are limited to investments in transmission upgrades undertaken by the region’s transmission owners.

NECPUC believes that reforms are needed in the New England regional system planning process to ensure that ISO-NE fully considers investments in demand resources as a viable option where they can resolve a system “imbalance” at lower cost than transmission. NECPUC asks the Commission to include in its proposed rule a requirement that regional planning activities be expanded to identify areas where demand resources could achieve regional system goals at a lower cost than transmission upgrades. Once the planning process identifies a potential demand resource alternative to a transmission upgrade, the plan should identify targeted demand resource additions that could be developed to meet the reliability objectives specified in the plan.²² In the absence of an examination into whether investments in strategically-deployed demand resources such as energy efficiency and distributed generation could resolve an identified problem at lower cost than a transmission solution, state regulators cannot be assured that our ratepayers are benefiting from the least cost solution.²³ This is of particular importance today in New England, in light of the significant increases in transmission costs that are projected for the region over the upcoming years.

NECPUC believes that, at a minimum, RTOs/ISOs should provide the same technical support regarding demand resource solutions as they do for transmission solutions in the

²² In addition, if an alternate lower cost solution to a transmission upgrade is found, then the Commission should consider the appropriateness of applying the current cost recovery treatment to the lower cost resource.

²³ Some NECPUC states have statutes that require this test be met. See e.g., Vt. Stat. Ann. tit. 30, § 248(b)(2), 2007 R.I. Pub. Laws 006.

development of their regional system plans. NECPUC asks the Commission to include in its proposed rule a requirement that RTOs undertake a more comprehensive analysis in the regional system planning process to identify and incorporate the benefits of demand resources in transmission system operations, reliability, and relief of regional and sub-regional operational constraints. Such analyses might help identify solutions to meet system reliability and economic challenges that otherwise would go uncovered. Rethinking the planning process to use regional (RTO) resources to gather information and engage in planning for deployment of all resources, not just transmission, could help the development of alternatives to transmission as the only solution. NECPUC submits that aggressive pursuit via regional planning and state policy to develop a pool of large and reliable demand resources represents the single most effective tool we have for mitigating our exposure – from system reliability, price, and political perspectives – to the price levels and volatility that derive from New England’s unique fuel supply circumstances. Because ratepayer-funded investments in demand resources have historically been under the jurisdiction of state regulators, states must be full participants in this expanded regional planning process, and must have full access to the technical expertise that resides within RTOs/ISOs.

VI. LONG-TERM POWER CONTRACTING IN ORGANIZED MARKETS

The Commission's support of long-term contracting in organized markets is beneficial because it encourages suppliers to consider using long-term contracts when such contracts meet state policy objectives. NECPUC agrees that long-term contracting has the potential to improve system reliability and result in lower costs. Long-term contracting could provide benefits both to consumers and suppliers of electricity. However, NECPUC believes that these issues should continue to be driven by individual or collective state policy objectives. Further, as these issues may impact areas that overlap FERC and state jurisdiction, it will be important for the Commission and the states to work collaboratively to ensure efficient markets. NECPUC recognizes that the availability of long-term power contracts can provide buyers with a hedge against volatile spot markets and may be a tool for regulators to mitigate market power. Additionally, to the extent that long-term power contracts provide a predictable revenue stream to suppliers, and thus encourage and support investment in new supply and demand resources, consumers may benefit from lower costs.

The region's efforts to develop long-term transmission rights can support this objective, but only if they are carefully crafted and balance the rights of suppliers and consumers. NECPUC recognizes that the development of the FCM was designed to encourage both generation and transmission investment. However, NECPUC considers the issues relating to Reliability-Must-Run agreements and overlapping interconnections as critical to the success of the FCM, and therefore, by extension, long-term contracts.

NECPUC agrees with the Commission that the purchasing practices of LSEs in New England are often now dictated by state policies, and that this should remain so in the future. NECPUC believes that the continued study of standardized forward products is a useful exercise.

However, these products should not be mandated for development. NECPUC strongly urges the Commission not to prescribe additional mandates standardizing forward products when so many other critical issues are being addressed. Further, as state policies are likely to be a driving force in the use of long-term contracts it will be critical for ISOs/RTOs and industry stakeholders to collaborate with the states. This will enable the interested parties together to determine what products are desired and the best means by which such products can be developed.

NECPUC supports a voluntary approach to creating opportunities for market participants to post long-term offers to buy or sell power. To that end, NECPUC would support creation of regional working groups to examine measures to create or otherwise increase opportunities for market participants to post long-term offers to buy or sell power including, as an example, the development of an electronic platform or “meeting place” where, on a voluntary basis, suppliers can post the availability of long-term products and buyers can state their interest in purchasing long-term products in a manner that protects confidentiality and business sensitive information.

VII. MARKET MONITORING POLICIES

A. Market Monitoring Policies

1. Introduction

As the Commission states in the ANOPR, market monitors “play an integral role in the organized electric markets . . . , providing valuable reporting and analysis services not only to the Commission, but also to the RTOs and ISOs, to market participants, and to state commissions.”²⁴ NECPUC relies heavily on the work of market monitoring units (“MMUs”) to assure that the prices that result from the organized wholesale electricity markets reflect competitive conditions, thus ensuring that electricity consumers reap the benefits that competitive forces can bring to bear.

²⁴ ANOPR at P 95.

As the commodity prices that arise from the wholesale markets comprise an increasingly greater percentage of retail consumers' monthly electric bills, the value that state regulators place on the work performed by MMUs increases correspondingly. Thus, NECPUC applauds the Commission's timely initiative to undertake a "comprehensive review" of its market monitoring policies and to seek comments on ways to improve the work done by MMUs.

ISO-NE fulfills its market monitoring and market power mitigation functions through an internal MMU ("INTMMU") and an independent external MMU ("EXTMMU").²⁵ The framework within which these units work, and their respective functions, are established in Section 9 of the Participants Agreement among the New England Power Pool ("NEPOOL") and ISO New England ("Participants Agreement"). NECPUC's comments regarding the proposals included in the ANOPR are specific to the manner in which ISO-NE discharges its market monitoring functions but should generally be transferable to organized wholesale markets in other parts of the country.

2. Independence and Function

a. MMU Access to Data/Oversight Structure

The ANOPR includes proposals that would require each RTO and ISO to (i) provide its MMU with sufficient access to market data, resources, and personnel sufficient for it to carry out its functions, with the MMU reporting directly to the Commission any concerns regarding inadequate access, and (ii) have its MMU report directly to the RTO's or ISO's board of directors, in order to avoid the "inherent tension in a structure that requires MMUs to report to

²⁵ The Participants Agreement memorializes the internal market monitor as the INTMMU and independent external market monitor as the IMMU. For further clarity we use EXTMMU to refer to the external market monitor.

RTO/ISO management yet, at the same time, perform evaluations and issue reports that may be critical of that management.”²⁶

The Participants Agreement addresses the access issue by requiring that ISO-NE’s contract with the EXTMMU (i) provide for “reasonable access by the [EXTMMU] to ISO data and personnel, including ISO management responsible for market monitoring, operations and billing and settlement functions,” and (ii) be filed with the Commission, with any proposed termination of the contract with the EXTMMU or modification of, or other limitation on, the EXTMMU’s scope of work subject to prior Commission approval.²⁷ The Participants Agreement also addresses the reporting issue, stating that (i) the EXTMMU will be selected by and will report to the ISO Board, and (ii) the INTMMU will report to the ISO Chief Executive Officer and the ISO Board.²⁸ The Markets Committee of the ISO-NE Board of Directors is assigned responsibility for overseeing issues related to market monitoring.

NECPUC posits that, while the provisions proposed by the Commission in the ANOPR and those currently included in the Participants Agreement are necessary ingredients of an effective and efficient set of market monitoring policies, they may not be sufficient. ISO-NE’s market monitoring function is different from most (if not all) of the other functions it performs in that, while its other functions are subject to the light of the stakeholder process, its market monitoring function takes place in relative darkness, subject primarily to the review of the Board. Thus, for NECPUC (and others) to have sufficient confidence in the work being done by the MMUs (both internal and external), we must have sufficient confidence in the oversight role being performed by the ISO-NE Board. More specifically, we rely on the Board (through its

²⁶ ANOPR at P 112.

²⁷ Participants Agreement at 9.4.5.

²⁸ Participants Agreement at 9.4.2.

Markets Committee) to ensure that the MMUs (i) are qualified to perform their functions competently, and (ii) can perform their specified functions unfettered from, and unconstrained by, inappropriate influence from ISO-NE's senior management.

NECPUC sets forth additional steps the Commission could take to better ensure the integrity and quality of work of the MMUs. First, NECPUC believes that it would be helpful if the Commission were to require RTOs/ISOs to establish a specific position(s) on their board of directors for which the qualifications would include a strong background in market monitoring-related issues. A specified function of this position would be to serve as the primary liaison between the board and the MMUs (in the case of ISO-NE, the person filling this position would be designated to serve as the Chair of the Board of Directors Markets Committee). Secondly, the Commission should require RTOs/ISOs to provide state regulators and energy offices with full and direct access to the MMUs, in a manner equal to the access afforded to the Commission and the RTO's/ISO's board of directors (in regions that use both internal and external MMUs, as in New England, this would apply to both internal and external market monitors).

Moreover the Commission should consider a special role for state regulators in (i) the selection of the director of the MMUs (again, in regions with both internal and external MMUs, this would apply at a minimum to the EXTMMU), and (ii) regular interaction with both internal and external MMUs. NECPUC believes it would be particularly helpful for the MMUs to have regular meetings (such as quarterly or every six months) jointly with the state and federal regulators. In order to ensure open and frank discussion among the regulators and the MMUs, the Commission should consider whether these meetings should be limited to the MMUs, RTO board members, and federal and state regulators only. Lastly, NECPUC would welcome an opportunity to work with the board of directors on market monitoring-related issues.

b. The Role of MMUs in Market Mitigation

The ANOPR includes a proposal that would require each RTO/ISO to refrain from having its MMU (i) assist the RTO or ISO in tariff administration, (ii) participate in RTO/ISO market operations, and (iii) take direct action to influence the market.²⁹ Rather the Commission proposes that the MMU concentrate on its role of providing market evaluation, reports, and advice.³⁰ The Commission states its concern that an MMU's performance of mitigation functions can compromise its independence in evaluating and reporting on market performance.³¹ FERC posits that "[t]he operations and mitigation functions performed by MMUs directly affect market outcomes and performance. Because of this, there is an inherent conflict between an MMU reporting on market outcomes that the MMUs itself has influenced."³²

NECPUC has some concerns about this proposal. First, the Commission's proposal on this matter is in direct contrast with the ISO-NE/NEPOOL Participants Agreement, which states that the INTMMU shall conduct day-to-day, real time review of market behavior, and implement its functions as delineated in the Market Monitoring and Mitigation Plan.³³ In addition, a number of provisions in the ISO-NE tariff require the INTMMU to review participant bids and review them for potential mitigation under certain proscribed conditions. Some of these tariff provisions (such as rules for bidding in the FCM) were negotiated with multiple parties and were important to NECPUC support. Others were prescribed by the Commission.³⁴ The changes contemplated in the ANOPR would reverse the Commission's previous directives and could jeopardize the support of regional stakeholders for existing tariff provisions. The Commission

²⁹ ANOPR at P 119.

³⁰ ANOPR at P 119.

³¹ ANOPR at P 118.

³² ANOPR at P 118.

³³ Participants Agreement at 9.4.4(b).

³⁴ See e.g., ISO New England, Inc., 119 FERC ¶ 61,045 at P 120 (2007).

should not require changes to existing tariffs that incorporate a role for the INTMMU in mitigation.

If the Commission nonetheless finds sufficient merit to warrant further consideration of its proposal to limit the role of MMUs in mitigation, NECPUC urges the Commission to hold a technical conference on this matter, in order to better understand the nature of this relationship.

In addition, NECPUC believes that any contractual arrangements between an RTO/ISO and its EXTMMU should be between its Board and the EXTMMU and that the Board should supervise and determine the budget of the INTMMU.

c. MMU Reporting to State Commissions and Other Entities

The ANOPR includes three proposals that address the manner in which MMUs provide information to the Commission, state commissions and other interested entities. One proposal would require MMUs to advise these parties of any recommendations it makes to the RTO or ISO regarding rule or tariff changes that promote wholesale competition and efficient market behavior.³⁵ A second proposal would require MMUs to report comprehensively on aggregate market and RTO/ISO performance on a regular basis, no less frequently than quarterly to the Commission staff, to staff of interested state commissions, and to the management and board of directors of the RTOs and ISOs.³⁶ The third proposal would allow state commissions to make requests for additional “tailored” information from the MMUs regarding general market trends and performance.³⁷

NECPUC supports all of these proposals, subject to the confidentiality issues regarding certain market data raised by the Commission. In New England, requiring both the internal and

³⁵ ANOPR at P 115.

³⁶ ANOPR at P 125.

³⁷ ANOPR at PP 128-129.

external MMUs to advise the state commissions and energy offices of recommendations they make to ISO-NE regarding rule or tariff changes that promote wholesale competition and efficient market behavior would represent an improvement in the lines of communications between the MMUs and the state commissions and energy offices. In addition, allowing the state commissions to request certain information from the MMUs is consistent with the options presented above regarding enhanced interactions between the MMUs and the state commissions and energy offices.

VIII. RESPONSIVENESS OF RTOs AND ISOs

A. Proposed Commission Action To Improve RTO and ISO Responsiveness

In the ANOPR, the Commission proposes that each RTO or ISO would be required to develop and implement a means to ensure that customers and other stakeholders have effective direct access to its board of directors.³⁸ NECPUC agrees that effective communication with the ISO/RTO and its board is critical to cultivate and maintain the trust of all parties – industry, regulators, and the consuming public. New England has a well defined process for achieving this goal and all parties have regular access to the ISO/RTO and its Board. NECPUC will work to ensure continued adherence to these principles. However, NECPUC believes that the Commission should not at this time prescribe more detailed rules for RTO/ISO board interaction with either stakeholders or state regulators.

As the Commission has accurately noted, “state commissions are not stakeholders, but a separate class from market participants” that have a legitimate interest in the performance of wholesale power markets, given the integral relationship between wholesale and retail rates.³⁹ The New England state commissions – as regulators – have their own jurisdictional

³⁸ ANOPR at P 148.

³⁹ ANOPR at P 123.

responsibilities that frequently intersect with the interests and concerns of the Commission. For that reason, we carefully follow issues in regional forums, work hard to develop consistent positions, contribute substance to the regional structure, and strive to be clear in protecting the public interest. NECPUC firmly believes that RTO/ISO responsiveness requires that State regulators have direct Board access. While in New England, NECPUC has had direct access to the ISO-NE Board at regular intervals, NECPUC recommends that the Commission acknowledge this requirement so this practice can be institutionalized. In practice, the New England state regulators and ISO-NE's Board will continue to meet face-to-face as needed throughout the year.

In this section of the ANOPR, the Commission also asks whether responsiveness could be improved through a hybrid structure for an RTO board of directors.⁴⁰ While NECPUC supports the goal of a responsive RTO, the New England Commissions worked vigorously to ensure a fully independent Board when RTO-New England was being established. NECPUC urges the FERC to take no action now that would lead to representatives of stakeholders being elected to the Board of Directors at the New England RTO. NECPUC believes strongly that ISO/RTO boards must include only those members that are free of any direct personal interest in the decisions made by the ISO/RTO. In selecting its members, the ISO/RTO's board should continue to take special care to avoid any potential taint of self interest.

In regional discussions regarding the ANOPR, some in New England have suggested that it would be appropriate to have public utility executives from other regions of the country on an ISO/RTO Board. Any move to appoint a member to an ISO/RTO board that is a senior official or director of a stakeholder company, whether within the region or not, that may constitute an

⁴⁰ ANOPR at PP 148, 150-152.

interlocking directorate position under Section 305 of the Federal Power Act,⁴¹ could threaten the state regulators' confidence in the decisions of the RTO. Such appointments could also undermine public confidence and erode political support for the current structure.

While continuing to prohibit utility executives from serving on ISO/RTO boards may make the board member search and selection process more arduous, NECPUC believes that the board should search for qualified members not currently serving as executives with utilities or other electricity-industry companies with current or possible interests in the New England market.

The Commission also suggests that a second way to ensure the responsiveness of an ISO/RTO would be to institute a board advisory committee.⁴² Effectively, New England already has a board advisory committee comprising executives of the various stakeholder groups. NEPOOL leadership, through the NEPOOL Participants Committee ("NPC"), often serves as an expert panel by informing the Board of stakeholder views. The NPC has shown no reluctance to make recommendations directly to the Board on matters before the Board and on matters it believes the Board should address. NECPUC meetings with the ISO-NE Board also provide an additional opportunity for those charged with protecting the public interest to offer advice to the Board. New England has had some experience with an advisory committee in its early days – a structure which diminished in utility as the NPC became a more balanced and representative of the broad interests of New England's electricity industry. There is no need to reinvent and retry this discarded element. More effective use of the current organizations – ISO-NE, its Board, the NPC, state regulators, etc. – is much preferred.

In summary, NECPUC believes that the current, governing structure in New England is fundamentally sound and should not be altered. NECPUC and other regional stakeholders

⁴¹ 16 U.S.C. § 825d.

⁴² ANOPR at PP 153-154.

should continue their efforts to constantly improve the quality and frequency of communications among New England’s regulators, market participants/stakeholders, and members of the Board and senior management.

B. RTO and ISO Executive Management Practices

The Commission also asks whether ISOs/RTOs could achieve better responsiveness – or make their responsiveness more apparent to their stakeholders – through improvements in the areas of (1) ISO/RTO executive management practices, (2) effective RTO and ISO stakeholder processes, and (3) transparent ISO/RTO budget processes.⁴³

NECPUC supports ISO-NE’s ongoing efforts to improve its executive management practices. ISO-NE regularly provides the market participants and regulators with information about its internal planning procedures, its list of priorities, and its budget to accomplish those goals. ISO-NE publishes several plans (annual or multi-year) that describe its strategic intent, its business plan, and its views on the current state of and need for improvements to the regional system. However, NECPUC does believe that there is some room for improvement in the ISO-NE executive and management practices. We have four substantive suggestions. These are not meant to be seen as criticisms of the current ISO-NE management, but rather as suggestions for how to improve upon its success. We hope and expect that these suggestions will be taken in this light and we hope to continue to have the opportunity to offer such suggestions in the future.

Our first suggestion is to develop metrics that can help objectively evaluate ISO/RTO management practices and procedures. Given the variety of operating approaches, it behooves the industry to identify and adopt best practices and strive for uniformity rather than allowing disparate, inconsistent and costly practices. Establishing common metrics and performing peer

⁴³ ANOPR at PP 157-163.

comparison affords the user a way to highlight local success and identify weaknesses needing improvement.

The metrics would be broad and intended to facilitate analysis. A few examples include:

- Compare cost of debt and weighted cost of capital among ISOs/RTOs. The consumer needs to be assured that financial controls are strong and fiscal management is alert to containing expenses.
- Track violations of NERC standards and NPCC criteria within each control area. Since ISOs/RTOs are required to enforce infractions, it is important to trend the frequency and severity of problems. This is an important measure for assessing the effectiveness of an ISO/RTO's focus on reliability.
- Cost of energy, capacity and transmission should be compared and contrasted among and inside each ISO/RTO. Despite regional variances in base numbers, comparing rates of escalation can be useful in spotting adverse trends.
- Develop appropriate internal operating ratios for functionally similar ISOs/RTOs (e.g., Full-Time Employees ("FTEs")/million customers, Officers/FTEs, and Percentage of Information Technology projects completed on-budget/on-time) to provide a glimpse into organizational efficiency and thereby provide a comparative basis for budgetary requests.

Our second suggestion is for the ISO/RTO to acknowledge the importance of customer driven solutions such as demand response, renewables and distributed resources in the wholesale markets by creating a senior management position in the organization with primary responsibility for these important market functions.

Our third suggestion is to provide for more effective RTO and ISO stakeholder processes by improving regional access to the RTO, its board of directors, and the important work that is accomplished through the NEPOOL process. One barrier to effective participation by some parties in RTOs comprising multiple states, including some state commissions, is equitable access to RTO and stakeholder meetings. The Commission should consider endorsing a principle that provides for equitable access to meetings by the states that make up an RTO.

NECPUC believes this is an important issue for RTOs to address to improve responsiveness to stakeholders, and state commissions and energy offices.

Our fourth suggestion is to provide more transparency on current or future RTO feedback mechanisms. ISO-NE reports that it uses a customer survey to measure and assess customer satisfaction periodically, however, to date, the state regulators have not been provided with the results of the surveys nor any conclusions drawn therefrom. In the interests of transparency, NECPUC suggests that such survey information, including the results and any conclusions drawn from such surveys, be made available to stakeholders and state regulators by posting it on the ISO/RTO website.

As to the ISO/RTO budget, ISO-NE presents this annually to the regulators and the market participants and holds meetings to gather input. NECPUC has the opportunity to review ISO-NE's budget once it is developed, simultaneous with its presentation to the NPC, and before it is submitted to the Commission for approval. While NECPUC applauds this access, it can be difficult to judge the appropriateness of various ISO-NE spending levels and to gauge the effectiveness of its programs. The varied designs and responsibilities of the several ISOs/RTOs in the country make it difficult to develop satisfactory reference points with which to gauge the performance of ISO-NE.

NECPUC does not have a solution to this important oversight problem, but we note that continued confidence in the ISO/RTO rests in part on the belief that it is spending ratepayers' money effectively and efficiently. The difficulties of closely scrutinizing and judging the ISO/RTO's budget are compounded by the limited staff resources available to the state commissions and the need to focus those limited resources on the even more important issues associated with developing the competitive markets themselves. To keep costs under control,

linking management compensation to the metrics developed in our second suggestion could at least give rate payers some assurance that quality is being measured and achieved for the money being spent on regional activities.

IX. CONCLUSION

NECPUC supports the Commission’s efforts to improve the operation of organized wholesale electricity markets. To that end, NECPUC respectfully requests that the Commission consider these comments as it determines how to proceed on these important issues.

Respectfully submitted,

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