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June 10, 2009

VIA ELECTRONIC FILING

The Honorable Kimberly D. Bose, Secretary
The Honorable Nathaniel J. Davis, Sr., Deputy Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: ISO New England Inc. and New England Power Pool, FERC Docket No. ER09-1051-000
Motion for Leave to Answer and Answer of the New England Power Pool Participants
Committee

Dear Secretary Bose and Deputy Secretary Davis:

The New England Power Pool (“NEPOOL”) Participants Committee hereby submits electronically its Motion for Leave to Answer and Answer in the above-captioned docket.

Respectfully submitted,

Emile G. Buzaid
Counsel to the NEPOOL Participants
Committee

cc: Persons identified on the Service List in the captioned docket

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

ISO New England Inc. and
New England Power Pool

)

Docket No. ER09-1051-000

**MOTION FOR LEAVE TO ANSWER AND ANSWER OF THE NEW ENGLAND
POWER POOL PARTICIPANTS COMMITTEE**

(June 10, 2009)

Pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure,¹ the New England Power Pool ("NEPOOL") Participants Committee² hereby submits this Motion for Leave to Answer and Answer to a number of pleadings filed by various parties in the above-referenced docket, including Market Participants and state regulators in New England,³ that expressed concerns and raised questions with the joint filing submitted by the ISO-NE and NEPOOL in this docket on April 28, 2009 (the "Compliance Filing"). Many of these commentators sought specific forms of relief from the Commission in the areas of: (1) demand

¹ 18 C.F.R. §§ 385.212 and 385.213 (2008).

² Capitalized terms used but not defined in this Answer are intended to have the meanings given to such terms in the Second Restated New England Power Pool Agreement (the "Second Restated NEPOOL Agreement"), the Participants Agreement, the ISO New England Inc. Transmission, Markets and Services Tariff (the "ISO-NE Tariff").

³ See Motion for Leave to Intervene and Limited Protest of Connecticut Municipal Electric Energy Cooperative, Massachusetts Municipal Wholesale Electric Company, and New Hampshire Electric Cooperative, Inc. (collectively, "Public Systems"); Limited Protest and Comments of NEPOOL Industrial Customer Coalition ("NICC"); Comments and Protest of NICC, EnerNOC, Inc., EnergyConnect, Inc., CPower, Inc., Viridity Energy, Inc., and Comverge, Inc. (collectively, the "Demand Response Supporters"); Comments of the Connecticut Department of Public Utility Control ("CT DPUC"); Comments of the Consumer Demand Response Initiative ("CDRI"); Notice of Intervention and Comments of the Maine Public Utilities Commission ("MPUC") and Industrial Energy Consumers Group ("IECG"); Motion to Intervene and Comments of Bangor Hydro-Electric Company ("Bangor Hydro"); Motion to Intervene and Comments of the Public Advocate of the Maine Public Advocate; Motion to Intervene and Comments of Electricity Consumers Resource Council ("ELCON"); Motion to Intervene and Comments of Richard Blumenthal, Attorney General for the State of Connecticut ("CT AG"); Notice of Intervention and Comments by the Massachusetts Department of Public Utilities ("Mass DPU"); Motion to Intervene and Comments of the Connecticut Office of Consumer Counsel ("CT OCC"); Motion to Intervene and Comments of the Attorney General of Massachusetts ("MA AG"); and Amended Motion to Intervene of the Vermont Department of Public Service ("VDPS"), Motion to Intervene Out of Time of the Vermont Public Service Board ("VPSB") and Comments.

response; (2) market monitoring; and (3) RTO responsiveness. While NEPOOL's specific response within each of these topics is more fully described in each section of its Answer, overall NEPOOL urges the Commission to accept the Market Rule, ISO-NE Tariff, and Participants Agreement changes contained in the Compliance Filing (the "Compliance Changes"), which were broadly supported by NEPOOL Participants as improvements to wholesale competition in New England, without modification or condition. While some stakeholders may desire additional reforms in one or more of these areas and/or the imposition of additional conditions upon the ISO-NE and the region's stakeholders, NEPOOL urges the Commission to refrain from granting such requests or otherwise predetermining or conditioning the region's existing efforts without first giving all stakeholders the opportunity to address such concerns.

The Compliance Changes were the result of an extensive effort undertaken by ISO-NE and regional stakeholders, including Market Participants, state utility regulatory agencies, and consumer advocates, following the Commission's issuance of Order No. 719.⁴ As reported in the Compliance Filing, the Compliance Changes relating to the topics of demand response and market monitoring were considered by the NEPOOL Markets and Participants Committee throughout the months of December 2008 and March 2009.⁵ In order to address the topic of RTO responsiveness, the region formed the RTO Responsiveness and Governance Working Group ("RTO Responsiveness WG") in January 2009, co-chaired by representatives from ISO-NE, NEPOOL, the New England Conference of Public Utility Commissioners ("NECPUC") and consumer advocates, in order to explore potential improvements to stakeholder and governance processes used in New England. In addition to reviewing and ultimately approving the

⁴ *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 73 Fed. Reg. 64100 (October 28, 2008), FERC Stats. & Regs. ¶ 31,281 (2008) ("Order No. 719"), *reh'g pending*.

⁵ See Compliance Filing at 7-8.

Compliance Changes that resulted from these efforts, NEPOOL also provided input on other aspects of the Compliance Filing, particularly in the areas of demand response and RTO responsiveness, although, as noted in that filing, no formal action was ever taken by NEPOOL and NEPOOL did not officially join in those portions of the filing.

The issues that the Commission addresses in Order No. 719 have been squarely in front of the region for some time now as a result of the Commission's issuance of the Advanced Notice of Proposed Rulemaking ("ANOPR") on June 22, 2007 and the Notice of Proposed Rulemaking on February 22, 2008 ("NOPR"). NEPOOL organized special working groups in response to both the ANOPR and NOPR given the interest in the region on these topics and comments were filed with the Commission that reflected the results of those efforts. Throughout this process, from the ANOPR through Order No. 719 and the Compliance Filing, there has been recognition of the complexities of the issues and potential reforms proposed and later required by the Commission, as well as the peculiarities specific to the New England region. Accordingly, NEPOOL's comments overall reflect the fact that, while NEPOOL fully agrees that it is a worthwhile effort to seek reforms to improve the operation of organized wholesale electric power market, the issues and solutions are far from simple. To the extent that parties seek to condition or modify or otherwise predetermine the outcome of these issues beyond what was filed by ISO-NE and NEPOOL in response to Order No. 719, the Commission should ensure that all regional stakeholders, including from NEPOOL, ISO-NE, NECPUC, and consumer interests, have the opportunity to consider such matters within the region.

I. MOTION FOR LEAVE TO ANSWER

While some of the pleadings are self-described as "comments," they are effectively motions seeking affirmative relief from the Commission and NEPOOL is entitled to respond to

such motions notwithstanding how they are characterized.⁶ To the extent the Commission considers a pleading to be a protest, however, answers are not permitted except for good cause shown.⁷ Under these circumstances, NEPOOL moves for leave to answer the various pleadings to the extent they are considered protests. Pursuant to Rule 213(a)(2) of the Commission's Rules, the Commission may accept the filing of an answer to a protest for good cause shown when it leads to a more accurate and complete record, helps the Commission understand the issues, clarifies matters in dispute or errors, responds to new issues raised, or provides information that will assist the Commission in its decision-making process.⁸ NEPOOL respectfully submits that its answer in response to the pleadings will assure a more complete record in the proceeding and will otherwise assist the Commission in reviewing the issues sought

⁶ See, e.g., *Iroquois Gas Transmission Sys., L.P.*, 61 FERC ¶ 61,341 at 62,341 n.9 (1992) (party is entitled to respond to affirmative request in a pleading regardless of how that pleading is captioned); *Seminole Electric Cooperative, Inc. v. Florida Power & Light Company*, 53 FERC ¶ 61,026, 61,101 (1990) (answer accepted to the extent it responded to a party's requests for affirmative relief).

⁷ See, e.g., Rule 213(a)(2), 18 C.F.R. § 385.213(a) (2009) ("An answer may not be made to a protest, an answer, a motion for oral argument, or a request for rehearing, *unless otherwise ordered by the decisional authority*"). (Emphasis added.) The Commission permits replies that would otherwise be prohibited where the reply would assure a complete record in the proceeding; *Pacific Interstate Transmission Co.*, 85 FERC ¶ 61,378 at 62,443 (1998), *reh'g denied*, 89 FERC ¶ 61,246 (1999); provide information helpful to the disposition of an issue; *CNG Transmission Corp.*, 89 FERC ¶ 61,100 at 61,287 n.11 (1999); permit the issues to be narrowed or clarified; *PJM Interconnection LLC*, 84 FERC ¶ 61,224 at 62,078 (1998); *New Energy Ventures, Inc. v. Southern California Edison Co.*, 82 FERC ¶ 61,335 at 61,323 n.1 (1998); or aid the Commission in understanding and resolving the issues. See, e.g., *Tennessee Gas Pipeline Co.*, 92 FERC ¶ 61,009 at 61,016 (2000). The Commission, on one or more of these grounds, allowed answers in *Midwest Independent Transmission System Operator, Inc.*, 101 FERC ¶ 61,221 at P 22 (2002); *Midwest Independent Transmission System Operator, Inc.*, 101 FERC ¶ 61,174 at P 6 (2002); *Cleco Power LLC*, 101 FERC ¶ 61,008 (2002); *Midwest Independent Transmission System Operator, Inc.*, 99 FERC ¶ 61,237 (2002); *Enbridge Offshore Pipelines (UTOS) LLC*, 99 FERC ¶ 61,141 (2002); *Nornew Energy Supply, Inc.*, 98 FERC ¶ 61,018 (2002); *PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,254 (2005); *Pinnacle West Energy Corp. v. Nevada Power Co., et al.*, 105 FERC ¶ 61,053 (2003); *PJM Interconnection, L.L.C.*, 104 FERC ¶ 61,309 (2003).

⁸ See, e.g., *PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,254 (2005); *Pinnacle West Energy Corp. v. Nevada Power Co., et al.*, 105 FERC ¶ 61,053 (2003); *PJM Interconnection, L.L.C.*, 104 FERC ¶ 61,309 (2003).

to be raised in this proceeding. Accordingly, NEPOOL submits that good cause exists for the Commission to grant this motion for leave to file this answer.

II. ANSWER

A. Role of Demand Response in Organized Markets

NEPOOL files its comments relating to the demand response topic largely in response to the pleadings by the Demand Response Supporters and to a limited extent, the Mass DPU and ELCON. Such parties raise a number of specific process requests that NEPOOL urges the Commission to allow the region to work through and reach consensus on given the specific facts and circumstances, and the rules and tools in use by, the region. In addition, as explained more fully below, NEPOOL is currently vetting the issues regarding demand response participation in the region's energy markets and does not take a position on the comments filed in this proceeding by the CDRI that appear relevant to that analysis other than to encourage the CDRI to continue, as it has been doing, to participate in that stakeholder process (as well any other future processes to improve demand response market rules in the region).

The Demand Response Supporters claim that ISO-NE has not fully complied with the requirements of Order No. 719 related to demand response and request a Commission order requiring further Tariff and Market Rule changes to “enable greater demand response participation by requiring comparable treatment of demand response resources and eliminating the numerous barriers to demand response participation that exist in New England.”⁹ The Demand Response Supporters also request that the Commission require ISO-NE to engage stakeholders in these efforts and require reporting by a date set by the Commission to determine ISO-NE's progress.¹⁰ They

⁹ Demand Response Supporters at 2.

¹⁰ *See id.* at 3.

further request the establishment of a generic proceeding to address common issues relating to comparability that cross RTO and ISO boundaries.¹¹

While the Demand Response Supporters state that they continue to be supportive of the initial progress and efforts the ISO-NE has made thus far on demand response resources issues, “[t]oo many barriers to demand response persist and too much work remains to allow ISO-NE’s claim of compliance to go unanswered.”¹² Specifically, the Demand Response Supporters object to the ISO-NE’s reliance on Dispatchable Asset Related Demand (“DARD”) in the reserve markets and the filed changes to the bidding parameters for DARDs, as well as the Demand Response Reserve Pilot Program (“DRRP”), to demonstrate that demand response resources are treated comparably. Demand Response Supporters state that DARDs are a special type of demand-side resources that are treated separately and under a separate set of rules from the demand response class of resources.¹³ They also claim that the rules governing participation of DARDs in the reserve markets are extremely restrictive, even accounting for the proposed changes in bidding parameters. The Demand Response Supporters further argue that the DRRP is an extremely limited pilot program that is insufficient to support ISO-NE’s claims of compliance. Finally, the Demand Response Supporters state that despite the fact that ISO-NE identified several barriers to comparable treatment of demand response resources in its filing, ISO-NE did not provide any commitment towards resolving those issues.

The Mass DPU filed comments indicating its general support for the Compliance Filing as well as its belief that more can be done to further integrate demand resources into the region’s wholesale markets, particularly the ancillary markets. The Mass DPU encouraged ISO-NE to

¹¹ *See id.* at 15-16.

¹² *Id.* at 2.

¹³ *See id.* at 9.

provide more details as soon as practicable on how it would complete this integration, including a timetable for implementation of demand response into the region's ancillary markets on a more comparable basis to generation.¹⁴ The CDRI filed comments challenging general policy claims made by ISO-NE in the Compliance Filing regarding demand response participation in the region's energy markets, but otherwise did not directly address the specifics of the Compliance Filing. ELCON filed comments stating that none of the six RTO and ISO compliance filings, including from ISO-NE, complied fully with the requirements of Order No. 719 and requesting that the Commission conduct an independent and detailed review of the compliance filings and take appropriate steps to ensure that the ISOs and RTOs comply with its Order.¹⁵ ELCON did not make any specific references to the Compliance Filing in its pleading.

In general, NEPOOL Participants support the Commission's efforts to encourage fuller integration of demand resources in its ancillary services markets and agree that certain demand response resources may be well-suited to providing ancillary services of spinning reserves, supplemental reserves, energy imbalance, and regulation and frequency response. While NEPOOL and ISO-NE have done much to integrate demand response into the region's ancillary services markets, there is unquestionably more work needed to enhance demand response participation in the ancillary services markets. As noted in the Compliance Filing, while NEPOOL did not take any formal action with respect to the evaluation of additional market barriers to demand response participation in the region's wholesale energy markets, NEPOOL provided additional input to ISO-NE on those subjects as part of its stakeholder meetings, primarily with respect to the region's ancillary service markets.¹⁶

¹⁴ See Mass DPU at 6.

¹⁵ See ELCON at 3.

¹⁶ See Compliance Filing at 8.

NEPOOL overwhelmingly supported the revisions to Market Rule 1 included in the Compliance Filing, which revised the current bidding rules governing DARD in the reserve markets and eliminated deviation charges during system emergencies or upon request by the ISO-NE in order to incentivize load response reductions. NEPOOL reported in the Compliance Filing that the NEPOOL Participants Committee approved those revisions relating to DARD with an 82.9% Vote in favor. NEPOOL specifically framed the resolution to approve the changes with an understanding that supporters could vote in favor of the changes even if they concluded that the changes were insufficient to satisfy the requirements of Order No. 719.¹⁷ Nonetheless, Participants with 17.1% Vote, mostly comprised of members that represent certain Alternative Resources and End Users, opposed the changes arguing principally there, as they do in pleadings in this proceeding, that the changes were not sufficient in breadth to satisfy the requirements of Order No. 719.¹⁸ The NEPOOL Participants Committee supported by a 100% Vote the changes relating to the elimination of deviation charges.

NEPOOL files its comments without taking a position on the merits or substance of the specific process requests made by the Demand Response Supporters, the Mass DPU and ELCON. Rather, its comments are to urge the Commission to allow the region to use the NEPOOL stakeholder process to evaluate these various requests and seek to reach resolution within the region, in consultation with ISO-NE and all interested parties. There are substantial efforts underway now in the region to examine the integration of demand response resources in all of the region's markets, including the ancillary service markets.

¹⁷ While the Compliance Changes were all presented in response to regional efforts respond to the Commission's directives and guidance in Order No. 719, NEPOOL was not asked to and did not vote separately on whether all of the changes recommended to it were in full compliance with Order No. 719, and accordingly does not take a position on that issue.

¹⁸ See Compliance Filing at 8.

There are numerous comments that seek Commission direction that, in the abstract may be reasonable, but as a practical matter are not necessary and if imposed without appropriate clarifications, conditions and limitation could have adverse and unintended effects on many other competing priorities in the region. For example, Demand Response Supporters request an order requiring completion by a date certain of additional stakeholder process exploring Market Rule and Tariff changes to enhance demand response. They seek an order establishing February 1, 2010 as a date by which ISO-NE must file any changes pertaining to the continuation of current demand response programs that might otherwise expire.¹⁹ The Mass DPU makes a similar request to drive the stakeholder process.²⁰ ISO-NE has already indicated its intent to the NEPOOL Markets Committee to extend the Real-Time Price Response Program and the Day-Ahead Load Response Program while a more comprehensive solution for the future of such price-responsive demand resources is being developed through the stakeholder process.²¹ Further, ISO-NE, with the input of NEPOOL and NECPUC, has already committed to the filing of a report with the Commission on or before July 31, 2009 that describes the results of that stakeholder process thus far, including specific proposals considered by stakeholders on the future of price-responsive demand in the New England region, as well as next steps to be taken by the region. It would be premature for the Commission to issue specific orders concerning process or substance without receiving filings and reports reflecting those efforts.

Whether to explore future arrangements governing demand response participation in the ancillary service markets, or the extension of, or modifications to, existing programs, NEPOOL is

¹⁹ See Demand Response Supporters at 2-3, 14-15.

²⁰ See Mass DPU at 6.

²¹ See Report on Demand Response of Potomac Economics Ltd. Independent Market Monitoring Unit of The ISO-New England, filed in Docket No. ER09-1051-000 on April 28, 2009 at 12.

committed to working with ISO-NE, as well as working with state regulatory agencies and consumer groups, to address the process concerns raised by the Demand Response Supporters and the Mass DPU and to develop a recommendation as to the appropriate vehicle and schedule to more fully evaluate all of these issues. As noted in the Compliance Filing, the integration of demand response into the ancillary service markets, while begun in New England, poses significant challenges as compared to other markets given the various technical requirements necessary for ancillary service resources to meet reliability standards.

In light of the ongoing discussions on these complex issues, NEPOOL is committing to working with all interested stakeholders to establish milestone dates for its efforts to review the participation of demand response resources in the region's markets, including proposed reporting deadlines, that would take into account the number of other priorities and efforts already undertaken in the region. NEPOOL welcomes general guidance and encouragement from the Commission, but urges that the Commission allow the region to determine details on how specifically to integrate demand resources, as well as other technologies, into all of its markets.

The Demand Response Supporters also request that the Commission establish a generic proceeding to address common comparability issues across several or all of the RTO regions in order to facilitate demand response participation in organized markets more efficiently. ELCON raises similar issues with respect to the value of uniformity among the ISOs and RTOs, although takes its request one step further by asking the Commission to implement initiatives to adopt a pro forma tariff and/or a Commission-headed national conference among the six regions in order to bring the RTOs and ISOs into compliance with Order No. 719. At one point in its pleading,

ELCON appears to request that the Commission adopt the ERCOT's ancillary services market, or an approach similar, for all of the RTO and ISO regions.²²

While NEPOOL supports efforts to create greater uniformity among the RTO and ISO regions, and appreciates that such efforts could enhance demand response participation in such markets, NEPOOL urges the Commission not to predetermine or otherwise condition its efforts in New England through any national effort without taking into account the many varied and complex factors that have given rise to some of those differences or without giving individual regions the opportunity to respond. As noted in the Compliance Filing by ISO-NE, the ISO/RTO Council has already undertaken a review of the differences in existing demand response programs in the various regions and has reached conclusions, specifically with respect to the issues regarding bidding parameters and technical requirements that were addressed by Order No. 719, that such variations are "appropriate (and indeed, unavoidable), for the time being."²³

B. Market Monitoring

In its pleading, the CT DPUC and the CT OCC effectively proposes for the first time what appear to be revolutionary changes to the existing MMU structure in New England, a structure that has been in place since the inception of the RTO arrangements in 2003. The CT AG (collectively with the CT DPUC and the CT OCC, the "CT Parties") joins the CT DPUC in its proposal on the basis that there is not sufficient independence in New England's MMU arrangement, as evidenced by certain circumstances that are still undergoing review in another proceeding before the Commission.

NEPOOL urges the Commission to accept the Compliance Filing as filed in this proceeding and reject the attempt by the CT Parties to effectively overhaul the entire MMU

²² See ELCON at 8.

²³ Compliance Filing at 27.

structure. Order No. 719 required a number of changes to market monitoring in the RTOs, including in the areas of structure, functions, conduct and information sharing responsibilities. The Compliance Filing includes extensive discussions on all of those areas, highlighting areas that needed to conform to Order No. 719 and identifying those areas that were already in compliance. Absent exigent circumstances, which are clearly not present here, the region should have the opportunity to explore fully the concerns now being raised by the CT Parties and the issues involved. Here, there were regional discussions of the Commission's Order No. 719 over the past six months and all interested regional stakeholders, including representatives from Connecticut, discussed in detail the market monitoring arrangements and no one raised any concerns with those arrangements. The CT Parties should be directed to raise any issues they have, recently discovered or otherwise, in the Commission-approved stakeholder process before seeking a Commission order compelling changes.

The concerns raised by the CT Parties appear to have risen out of particular circumstances currently still under review relating to the filing by ISO-NE and NEPOOL of Market Rule 1 revisions governing the treatment of capacity imports in the ICAP Transition Period and the subsequent complaints submitted by the CT Parties on such filing (Docket Nos. EL09-47, EL09-48, ER09-873) (the "Capacity Import Proceedings"). Those proceedings are still ongoing. Also ongoing are efforts in the region to review the facts and circumstances presented in the Capacity Import Proceedings, and to explore any proposals by ISO-NE or stakeholders arising out of those efforts. The Commission should allow the region the opportunity to complete its review and examination of the facts and circumstances at issue in those proceedings prior to taking any action, to the extent desired or appropriate, to modify or otherwise reform the MMU structure in New England.

NEPOOL recognizes that the facts and circumstances surrounding the issues relating to the Capacity Import Proceedings could give rise in the future to proposals from ISO-NE and stakeholders for changes to how New England monitors markets and mitigates anti-competitive behavior.²⁴ Any such proposals, if made, would properly be considered in normal course as part of stakeholder process deliberations. There is no reason here, however, for the Commission to order any changes to the regional market monitoring arrangements.

The CT DPUC, in its pleading, identifies many problems in New England as regards market monitoring and mitigation, and all of these problems relate to the internal MMU's role as the primary market monitor. Specifically, the CT DPUC takes issue with the internal MMU ("INTMMU") having primarily responsibility for the major Order 719 functions²⁵ and alleges that the INTMMU (1) contributed to the capacity imports problem by not informing the external MMU,²⁶ (2) is unduly influenced by the ISO,²⁷ (3) is unduly influenced by stakeholders,²⁸ (4) cannot be checked by the external MMU,²⁹ (5) does not provide reports that are as useful or as unbiased as PJM's,³⁰ (6) allows for the ISO to tamper with its work product,³¹ (7) does not allow sufficient opportunity for states to provide input,³² (8) does not make reports sufficiently

²⁴ See CT AG Comments at 3 ("any action the Commission may undertake in this proceeding could have profound implications for the Commission's subsequent review of the issues raised in the Connecticut Representatives' Consolidated Amended Complaint.").

²⁵ See CT DPUC Comments at 16.

²⁶ See *id.* at 17.

²⁷ See *id.* at 19.

²⁸ See *id.*

²⁹ See *id.* at 20.

³⁰ See *id.* at 21.

³¹ See *id.* at 22.

³² See *id.*

available,³³ (9) does not allow the external MMU to retain exclusive control over the data,³⁴ and (10) generally does not allow the external MMU to do its job.³⁵ The CT DPUC's proposed solutions are a fundamental shift of primary responsibility in New England's hybrid MMU structure from the internal MMU to the external MMU.³⁶ While the CT DPUC does not oppose New England's retention of an internal MMU, it would prefer to see the internal MMU relegated to strictly ministerial, non-discretionary tasks. Such a change would have the effect of externalizing virtually all significant market monitoring and mitigation in a manner similar to that which was established pursuant to settlement under PJM's new MMU arrangement.

NEPOOL is not in a position to respond substantively to the CT DPUC's new-found allegations because, remarkably, they were never raised during the extensive stakeholder discussions on such issues, but opposes the process suggested by the CT DPUC to force changes on the region. The CT DPUC has concluded unilaterally and without discussion within the stakeholder process, or even with ISO-NE it appears, that the MMU structure agreed to in order to settle issues in PJM is appropriate for New England and should be implemented. The PJM Settlement, though, provides expressly that it is a product of settlement and compromise of specific claims and actions and establishes no principles or precedent with respect to any

³³ *See id.* at 23.

³⁴ *See id.*

³⁵ *See id.* at 24.

³⁶ *See, e.g.,* CT DPUC Comments at 4 ("Where RTOs use hybrid models that assign the internal market monitor the most important functions and minimize the external market monitor's involvement in day-to-day market monitoring, however, they may put at risk key prerequisites for effective, proactive market monitoring – independence and transparency."), 15 ("the internal market monitor's role should be confined to discretionary tasks – i.e., administration of automatic mitigation procedures – and the external market monitor's role must be strengthened considerably and revitalized to act as an independent, aggressive advocate for fair and competitive markets."), and 18 ("This particular hybrid market monitoring structure – heavily skewed to keep all key duties, data collection, and information in-house at ISO-NE – will not foster independence, transparency, vigilance, and accountability that would be expected from a truly autonomous market monitoring organization.").

issues.³⁷ In approving the settlement, the Commission similarly noted that “[t]he Commission’s approval of this Settlement Agreement does not constitute approval of, or precedent regarding, any principle or interest in this proceeding.”³⁸

More to the point, the facts here are very different than presented in that proceeding. The key facts cited in support of seeking a PJM settlement were allegations by the PJM market monitor of interference by PJM management with his independence.³⁹ There is no such suggestion here. Unlike PJM, which had just a single market monitoring unit, New England has both an internal MMU and an external MMU. Like PJM’s market monitor at that time, though, ISO-NE’s internal MMU reports to both the CEO and the ISO-NE Board. The Commission concluded in PJM “on a preliminary basis, that this practice is no longer just and reasonable, *under the particular circumstances involved in PJM’s current situation*. Given the significant tension that has existed between the MMU and PJM management, we consider it essential that any negotiated settlement include a provision that the MMU report solely to PJM’s Board of Managers, or to an independent committee of that Board.”⁴⁰ There is no similar evidence here, or even an allegation, of significant tension between the internal MMU and ISO-NE management. New facts have come to light that clearly warrant further factual investigation and discussions with ISO-NE and the stakeholders about the internal MMU arrangements. In stakeholder discussions that included a public meeting on May 22, 2009, the ISO committed to an independent audit of the facts surrounding this matter and committed to continued discussions among interested parties, including direct discussions with the ISO-NE Board.

³⁷ See PJM Settlement at P 12.

³⁸ See PJM Settlement Approval Order at P 23.

³⁹ See PJM Settlement at PP 24, 28-55.

⁴⁰ *Id.* at P 61.

The ISO-NE's market monitor arrangements were negotiated by New England stakeholders and approved by the Commission.⁴¹ New England's negotiated arrangements require ISO-NE's market monitoring and mitigation functions to be accomplished through an internal MMU reporting functionally to the ISO Board of Directors and administratively to the Chief Executive Officer of ISO-NE and through contract with an independent market advisor (the external MMU) selected by and reporting to the ISO Board.⁴² The Commission concluded specifically then that New England's arrangements satisfied the requirements of Order No. 2000 and gave ISO-NE the ability, through both its internal and external market monitoring units, to evaluate Market Rules, market functions, and market procedures and to make the appropriate reports and recommendations to ISO-NE and the Commission.⁴³ The market monitoring structure accepted by the Commission in 2004 is the same structure that is still in place today and there have been no facts to suggest that the Commission was wrong in its earlier conclusions.

Indeed, the region critically reviewed the Order 719 issues surrounding market monitoring and mitigation in the region in response to the ANOPR issued in June 2007. The ANOPR Working Group met on July 24th, July 27th, August 7th, and August 17th, 2007 to discuss these issues, and convened twice with the Markets Committee prior to the Participants Committee's acceptance of the ANOPR Comments in September 2007. Subsequently, the Competition NOPR Working Group met on March 20th and March 24th, 2008, and then convened with the Markets Committee prior to the Participants Committee's acceptance of the NOPR Comments in April 2008. In these meetings, there were discussions of many MMU-related issues and potential improvements, none of which included a shift of responsibility from the internal MMU to the external MMU. To the contrary,

⁴¹ See *ISO New England Inc., et al.*, 106 FERC ¶ 61,280 at P187 (2004) ("March 24 Order").

⁴² See Participants Agreement § 9.4.2.

⁴³ See March 24 Order.

one of the key issues discussed by NEPOOL during those discussions, particularly in response to the NOPR, was how to effectively advocate to the Commission the importance of allowing the internal MMU the ability to continue to mitigate resources. At no point during any of those discussions was the hybrid structure challenged or questioned by Participants.

The MMU-related Compliance Changes were the result of an extensive effort undertaken by ISO-NE and regional stakeholders following the Commission's issuance of Order No. 719. As reported in the Compliance Filing, the Compliance Changes relating to market monitoring were considered by the NEPOOL Markets and Participants Committee throughout the months of December 2008 and March 2009.⁴⁴ In those meetings there was never any discussion of or any question as to the internal MMU's ability to effectively execute its mission.

Since the Compliance Filing, certain events have transpired that have resulted in the investigation and review by NEPOOL and ISO-NE of various aspects of the internal MMU's operations. As a result of that review thus far, ISO-NE and NEPOOL have already taken some preliminary steps to address the concerns raised by the CT Parties. Such steps included a public meeting held on May 22 to discuss the issues with the internal MMU, NEPOOL, and state regulators. At that meeting, ISO-NE committed to an independent audit of the facts surrounding this matter, which information would be generally shared with stakeholders, and direct discussions among interested parties and the ISO-NE Board at the upcoming Participants Committee Summer Meeting in late June. None of this, however, should impact the Commission's acceptance of the Compliance Changes at this time in this proceeding. To the extent any further changes to the MMU arrangements are desired or appropriate following conclusion of all issues in the Capacity Imports Proceedings, such changes will be filed accordingly.

⁴⁴ See Compliance Filing at 7-8.

While an externalized arrangement such as PJM's that CT DPUC is now seeking to have forced on the region may have its merits, it has not been proposed by anyone else in New England nor is it the arrangement that has been developed and adopted by the vast majority of affected parties in the region. Moreover, notwithstanding the CT DPUC's many new criticisms of the widely supported MMU arrangement, Order No. 719 did not mandate any particular MMU structure, and the CT DPUC has ostensibly admitted that the revolutionary change it seeks is outside of the scope of this proceeding.⁴⁵

The Compliance Changes relating to market monitoring satisfy the Commission's requirements for a MMU structure that is independent, transparent, informative, and effective. The MMU structure in New England is modeled after a conventional corporate oversight system that involves a primary internal auditor whose actions are supervised and checked by an external auditor. The Compliance Changes further enhance the existing market monitoring structure, which the region has widely accepted and supported for many years.

Given all of these circumstances, the NEPOOL stakeholder process is the correct and more appropriate and efficient forum in which to determine, in the first instance, whether changes to the internal MMU arrangements (or any other New England regional arrangements) are needed and, if so, what those changes should be. The Commission has consistently recognized the value and importance of a stakeholder process which "allows potentially affected parties to voice their concerns regarding a rate or term of service prior to the filing of the rate or term with the Commission...[i]f consensus is not reached, then a party may pursue its concerns with the Commission." *See, e.g., Northeast Utilities Service Company and Select Energy, Inc.,*

⁴⁵ *See* The Connecticut Representatives Consolidated Amended Complaint Requesting Fast Track Processing, filed in Docket Nos. EL09-47-000 and EL09-48-000 on May 22, 2009 at 33 ("Even compliance with Order No. 719 – which continues to permit hybrid market monitoring functions where an internal monitor retains principal responsibility – will not remedy this structural problem.").

109 FERC ¶ 61,204 at P 14 (2004) (requiring the CT DPUC to use the stakeholder process to address its concerns over the current marginal cost refund mechanism under New England’s standard market design); *El Segundo Power, LLC*, 95 FERC ¶ 61,159 at 7 (2001).⁴⁶ The Commission, accordingly, should reject the CT DPUC’s request in this proceeding to change the region’s market monitoring arrangements.

C. Responsiveness of RTOs and ISOs

In response to the Compliance Filing, various state regulatory agencies and Market Participants challenged certain aspects of the Compliance Changes relating to RTO responsiveness, primarily those changes to the Participants Agreement and ISO-NE Tariff that incorporate the concepts of cost consciousness and economic analysis. Several parties also challenge other proposals included in the Compliance Filing on which NEPOOL took no formal action but that were considered in the stakeholder process and included by ISO-NE in its filing. NEPOOL files its comments to support the Compliance Changes relating to RTO responsiveness as filed, which were fully supported in its stakeholder process, and urge the Commission to reject attempts to condition or otherwise modify such proposals.

In particular, several state utility regulatory agencies and Market Participants⁴⁷ request further changes to the ISO-NE Mission Statement to address their belief that the proposed language, which commits ISO-NE to strive to be cost-effective and to provide information that

⁴⁶ See also *Tenaska Power Services Co.*, 106 FERC ¶ 61,230 (2004) (requiring respondent in Section 206 proceeding to use stakeholder process to address a reasonable time frame for customers with rollover rights in its transmission queue); *Duke Energy Moss Landing, LLC*, 109 FERC ¶ 61,170 (2004) (requiring respondent in Section 206 proceeding to seek market participant input prior to developing tariff provisions that would implement the Commission’s station power policies) *Regional Transmission Organizations*, Docket No. RM99-2-000, Final Rule, Order No. 2000, 65 FR 809, 830 (2000) (“...it is generally more efficient for [RTOs] to resolve many disputes internally rather than bringing every dispute to the Commission”).

⁴⁷ MPUC, IECG, CDRI, Bangor Hydro, CMP, NICC, Maine Public Advocate, Public Systems, VDPS, VPSB, CT AG, CT OCC and CT DPUC.

will allow all stakeholders to evaluate the implications of ISO-NE's activities, does not go far enough. Such parties proposed an alternative in the stakeholder process, which did not gain sufficient support to be filed with the Commission, that they continue to request here. The primary objective of such alternative, in addition other variations in the draft, is to add language indicating that ISO-NE shall fulfill its mission "to ensure just and reasonable rates" and at "lowest reasonable cost," as opposed to striving to fulfill its mission in a cost-effective manner. In an apparent attempt to bridge the differences between the filed proposal and the alternative, Public Systems proposed language that would require ISO-NE to strive to the greatest extent possible to provide or facilitate the provision of reliable service at the lowest reasonable cost to consumers.⁴⁸

One of the primary results of this change in language, as represented by the MPUC and IECG, is to require ISO-NE to identify the lowest reasonable cost transmission solutions in the Regional System Planning ("RSP") process. ISO-NE indicated to stakeholders, as well as to the Commission in its compliance filing, its belief that it cannot determine the lowest reasonable cost without replacing its role as operator of regional markets with that of a regulator.⁴⁹ Proponents of the alternative countered that adding the phrase just and reasonable to the ISO-NE Mission Statement would not impact ISO-NE's role or authority vis-à-vis the Commission and other parties, particularly with respect to transmission planning and expansion, and that such role is either already contemplated under the ISO-NE Tariff⁵⁰ or a worthwhile goal for the ISO-NE to achieve.⁵¹ The Mass DPU filed comments supporting the ISO-NE's position in this regard and

⁴⁸ Public Systems at 8.

⁴⁹ See Compliance Filing at 118.

⁵⁰ See MPUC and IECG at 9.

⁵¹ See CDRI at 12.

indicating its strong concerns that including the “just and reasonable” language and/or the alternative “lowest reasonable cost” language in the ISO-NE Mission Statement could put ISO-NE in the position of having to become responsible for weighing the costs and benefits of particular transmission projects and/or making policy determinations that should remain with the Commission.⁵²

As noted in the Compliance Filing, the changes to the ISO-NE Mission Statement were the most heavily discussed matter during RTO Responsiveness WG meetings.⁵³ Those discussions highlighted the complexity and difficulty in trying to incorporate the concepts of cost consciousness and economic analysis in that mission statement. The language that was ultimately proposed in the stakeholder process and filed with the Commission was approved by NEPOOL through a balloting process with a 95.42% Vote in favor.⁵⁴

NEPOOL urges the Commission to uphold this approval and not order any further changes to the ISO-NE Mission Statement at this time and in this proceeding without prejudicing the ability of any interested parties to re-raise such issues at a later time once the region has the benefit of experiences and knowledge regarding how ISO-NE conducts its affairs under the filed language. In addition, many of the concerns that give rise to the alternative proposal, including concerns over transmission cost containment, may be addressed through other vehicles, including as an example, through the efforts of the Cost Estimate and Controls Working Group, which has been vigilantly working on transmission cost issues over the past six months.

NEPOOL notes as well that several parties, including the MPUC, have raised a proposal to link compensation of ISO-NE executives with their performance in fulfilling the cost related

⁵² Mass DPU at 10.

⁵³ See Compliance Filing at 115.

⁵⁴ See *id.* at 116.

provisions of the ISO-NE Mission Statement. This proposal, while it may ultimately be supported by the region, was not explored in the stakeholder process, nor was it raised as a proposal during any of the RTO Responsiveness WG discussions. NEPOOL urges the Commission to reject such requests at this time without prejudice to allowing proponents to offer such proposal in the stakeholder process. CMP, which supports the proposal to link such compensation, supports the recommendation that this issue first be vetted through the stakeholder process prior to any Commission consideration.⁵⁵

The MPUC and IEGC, with the support of Bangor Hydro, CMP, VDPS and VPSB, also requested further changes to require open ISO-NE Board meetings on the basis that it would improve the transparency of the ISO-NE Board (among other transparency reforms relating to publication of information from such meetings). ISO-NE indicated, as it did during stakeholder deliberations, that open meetings could hinder the ability of the ISO-NE Board to adequately deliberate issues and to protect confidential stakeholder information. These items were discussed during several meetings of the RTO Responsiveness WG. Ultimately stakeholders accepted a proposal that would require posting of all Board committee meeting agendas (along with ISO Board meeting agendas that are already required to be posted) and would include enhanced monthly reporting by the Chief Executive Officer of all activities of the ISO Board and its committees. Recognizing ISO-NE's concern with open Board meetings, NEPOOL did not support any other changes to the governing documents. NEPOOL urges the Commission not to institute such changes at this time and in this proceeding, without prejudice to allowing the MPUC and/or the IECG, or any other interested party, the opportunity to re-raise their proposal

⁵⁵ See CMP at n. 2.

in the stakeholder process if the agreed upon changes to enhance reporting are determined to be inadequate.

Several parties, including the MPUC, IECG, and CMP also raised concerns with the Consumer Liaison Group proposal, which was created to address concerns that the existing stakeholder processes are too complicated and resource-intensive. The Consumer Liaison Group, as more fully described in the Compliance Filing, was set up to provide another vehicle for consumers and their representatives to engage in the stakeholder process and interact with ISO-NE directly. The MPUC and IECG stated that, while they did not object to this proposal, they still think there is a need for consumers and regulators to be fully represented in the stakeholder process. To that end, they stated their desire for the establishment of a regional consumer advocate similar to proposals that were considered in earlier RTO Responsiveness WG meetings.

Similar to the efforts to require open ISO-NE Board meetings, NEPOOL urges the Commission not to institute such proposals as part of this proceeding without prejudice to allowing the MPUC and/or the IECG, or any other interest party, the opportunity to re-raise such proposal in the stakeholder process if the agreed upon formation of a Consumer Liaison Group proves to be inadequate.

III. RELIEF REQUESTED

For the reasons stated herein, NEPOOL respectfully requests that the Commission grant its motion for leave to answer, consider the comments set forth herein and accept the Compliance Changes as filed.

Respectfully submitted,
NEPOOL Participants Committee

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Its Attorneys

Dated: June 10, 2009

CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2009, I caused a copy of the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in the captioned proceedings.

Dated at Hartford, CT, this 10th day of June, 2009.

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