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

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

ISO New England Inc. and
New England Power Pool Participants Committee

Docket No. ER15-2208-000

ORDER ON PROPOSED TARIFF REVISIONS

(Issued September 11, 2015)

1. On July 15, 2015, ISO New England Inc. (ISO-NE) and the New England Power Pool (NEPOOL) Participants Committee jointly submitted, pursuant to section 205 of the Federal Power Act (FPA)[1] and section 11.1.5 of the Participants Agreement,[2] two alternative proposals[3] to revise Market Rule 1[4] of ISO-NE's Transmission, Markets and Services Tariff (Tariff) to establish a program to maintain reliability during winters

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[1] 16 U.S.C. § 824d (2012).

[2] Section 11.1.5 of the Participants Agreement, commonly referred to as the "jump ball" provision, provides, in pertinent part, that if a Market Rule proposal that differs from that proposed by ISO-NE is approved by a Participants Committee vote of 60 percent or more, ISO-NE "shall, as part of any required Section 205 filing," describe the alternate Market Rule proposal in sufficient detail to permit reasonable review by the Commission and also explain its reasons for not adopting the alternate proposal and why it believes its own proposal is superior. Section 11.1.5 provides that the Commission may "adopt any or all of ISO[-NE]'s Market Rule proposal or the alternate Market Rule proposal as it finds…to be just and reasonable and preferable." ISO-NE Participants Agreement, § 11.1.5.

[3] These proposals will be referred to respectively as the ISO-NE Proposal and the NEPOOL Proposal.

[4] ISO-NE Transmission, Markets and Services Tariff, § III (Market Rule 1).

2015-2016, 2016-2017, and 2017-2018.[5] The main difference between the proposals relates to the types of resources eligible for compensation under the program. In this order, we conditionally accept the NEPOOL Proposal, to become effective September 14, 2015, as requested, subject to ISO-NE submitting revised Tariff records in a compliance filing within 45 days of the date of this order, as discussed below.

## I. Background

### A. 2013-2014 Winter Reliability Program

2. On September 16, 2013, the Commission conditionally accepted ISO-NE's proposed Tariff revisions that provided additional compensation for demand response, oil inventory, and dual-fuel testing services (2013-2014 Winter Reliability Program).[6] In accepting the 2013-2014 Winter Reliability Program, the Commission explained that market-based solutions are generally preferable to out-of-market solutions but recognized the temporary nature of the program and the need to address particular challenges to reliability for the coming winter, including increased reliance on natural gas-fired generation and poor resource performance during periods of stressed system conditions.[7]

3. Under the 2013-2014 Winter Reliability Program, resources were compensated for fuel inventory procured ahead of the winter through a monthly payment derived from the resources' as-bid price, rather than a uniform clearing price, in addition to any compensation they received for capacity (in the Forward Capacity Market), energy, ancillary services, or other services. Under that program, participants burned 2.7 million barrels of oil[8] and the program cost customers approximately $75 million.[9]

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[5] Each proposal and its associated Tariff revisions would be effective between September 14, 2015 and March 15, 2018.

[6] *ISO New England Inc., et al.*, 144 FERC ¶ 61,204 (2013), *reh'g denied, ISO New England Inc.*, 147 FERC ¶ 61,026 (2014).

[7] *Id.* P 21.

[8] Testimony of Jeffrey W. Bentz at 10.

[9] NEPOOL Transmittal at 6.

### B. 2014-2015 Winter Reliability Program

4. On September 9, 2014, the Commission accepted ISO-NE's proposed temporary, out-of-market solution to ensure adequate fuel supplies for the winter of 2014-2015 (2014-2015 Winter Reliability Program).[10] The program was modeled on the 2013-2014 Winter Reliability Program[11] but included the addition of dual-fuel commissioning incentives and liquefied natural gas (LNG) resources as eligible participants, as well as compensation based on a set rate rather than under an "as bid" payment mechanism. In addition, resources were compensated only for unused fuel inventory at the end of the winter (instead of an upfront payment as used in the first year) to encourage generators to fill their inventories at the beginning of the winter rather than rely on a strategy of replenishing fuel supplies throughout the winter. Additionally, compensation was not given for fuel consumed when the participating generator was dispatched as an in-merit resource. In accepting the 2014-2015 Winter Reliability Program, the Commission noted that, while it would prefer a long-term, market-based solution, it recognized the particular challenges to reliability for the coming winter and the temporary nature of the proposed Tariff provisions in making its determination.[12] The Commission stated that it "expect[s] ISO-NE to abide by its commitment to develop a long-term, market-based solution to address winter reliability issues."[13]

5. On October 9, 2014, the New England Power Generators Association, Inc. (NEPGA) asked the Commission to clarify that the September 9, 2014 Order required ISO-NE to develop and implement a market-based solution to address winter reliability

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[10] *ISO New England Inc. and New England Power Pool Participants Committee*, 148 FERC ¶ 61,179 (2014) (September 9, 2014 Order), *clarification granted*, *ISO New England Inc. and New England Power Pool Participants Committee*, 150 FERC ¶ 61,029 (2015) (January 20, 2015 Order), *reh'g denied*, *ISO New England Inc. and New England Power Pool Participants Committee*, 151 FERC ¶ 61,052 (2015) (Order on Rehearing).

[11] *See ISO New England Inc.*, 144 FERC ¶ 61,204 (2013), *reh'g denied*, *ISO New England Inc.*, 147 FERC ¶ 61,026 (2014) (accepting subject to condition 2013-2014 Winter Reliability Program); *see also ISO New England Inc.*, 145 FERC ¶ 61,023 (2013), *reh'g denied*, *ISO New England Inc.*, 147 FERC ¶ 61,027 (2014) (accepting, subject to condition, 2013-2014 Winter Reliability Program bid results).

[12] September 9, 2014 Order, 148 FERC ¶ 61,179 at PP 39-41.

[13] *Id.* P 41.

issues in time for the 2015-2016 winter.[14] On January 20, 2015, the Commission granted NEPGA's motion for clarification explaining that "the Commission intended that ISO-NE would determine whether a winter reliability solution is necessary for the 2015-2016 winter and future winters, and, if so, develop an appropriate market-based solution through the stakeholder process that can be implemented beginning with the 2015-2016 winter."[15] The Commission recognized that, while the so-called Pay-for-Performance market design could help address winter reliability concerns in the future,[16] the design would not be fully implemented until the 2018-2019 Capacity Commitment Period.[17]

6. ISO-NE requested rehearing of the January 20, 2015 Order's clarification that any future winter reliability solution must be market-based. On April 17, 2015, the Commission granted ISO-NE's request for rehearing "to allow the possibility that ISO-NE may file additional out-of-market winter reliability programs until the two-settlement capacity market design becomes effective in 2018" finding that "an expanded version of the current winter program might better produce the desired results in terms of reliability than the introduction, at this point in time, of the market-based solutions examined by ISO-NE."[18] However, the Commission stated that it "expects ISO-NE to abide by its commitment to work with stakeholders to expand any future out-of-market winter reliability program to include 'all resources that can supply the region with fuel assurance,' such as nuclear, coal, and hydro resources."[19] The Commission also stated that, if any future out-of-market program is not fuel neutral, it "expects that ISO-NE

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[14] NEPGA Motion for Clarification at 1.

[15] January 20, 2015 Order, 150 FERC ¶ 61,029 at P 10.

[16] Pay-for-Performance refers to the impending two-settlement market design intended to incent generator performance. Under that mechanism, a resource that produces energy or provides reserves during capacity scarcity conditions in excess of a pro rata share of its capacity supply obligation will receive additional revenue, while a resource that produces less than its pro rata share will face penalties. *ISO New England Inc.*, 147 FERC ¶ 61,172 (2014).

[17] *Id.*

[18] Order on Rehearing, 151 FERC ¶ 61,052 at P 17.

[19] *Id.* (quoting ISO-NE's Request for Rehearing).

would provide a detailed description of the options it considered to make the program fuel neutral and why those options were ultimately not included."[20]

7. The 2014-2015 Winter Reliability Program compensated resources for unused fuel inventory, as measured on March 15, 2015. The program also compensated demand response resources and partially reimbursed resources for the costs associated with commissioning or re-commissioning dual-fuel capability through December 2016. Participants burned about the same amount of oil as during the previous winter—2.7 million barrels—and none of the 0.5 Bcf of qualifying LNG inventory was used.[21] The cost of the program was approximately $46 million.[22]

## II. Proposed Tariff Revisions

8. ISO-NE and NEPOOL submitted the two alternative proposals at issue here. Both proposals are modeled on the 2014-2015 Winter Reliability Program and are intended to address the reliability challenges created by New England's increased reliance on natural gas-fired generation. Because both proposals are intended to be stop-gap measures until Pay-for-Performance becomes effective in 2018, both proposed programs would be in place for the winters of 2015-2016, 2016-2017, and 2017-2018, with annual payment rates to be updated in advance of each upcoming winter. The main difference between the proposals relates to the types of resources eligible to receive compensation under the program.

### A. The ISO-NE Proposal

9. ISO-NE states that, according to ICF International, winter peak day gas supplies will be barely adequate or slightly in deficit through 2020, as long as there are no major contingencies, such as an outage to gas supplies, loss of electrical sales to New England from the north due to extreme weather, or a nuclear unit tripping offline.[23] Thus, ISO-NE states, like the 2014-2015 Winter Reliability Program, its proposal offsets generators' carrying costs for unused firm fuel, thereby creating an incentive for generators to secure fuel at the beginning of the winter. ISO-NE states that it believes its version of the program reflects the Commission's requirement that ISO-NE work to expand any winter

[20] *Id.*

[21] Testimony of Jeffrey W. Bentz at 12.

[22] NEPOOL Transmittal at 7.

[23] ISO-NE Transmittal at 5.

reliability program to include all resources that can supply the region with fuel assurance. ISO-NE asserts that its proposal includes "any other assets that are supplied by on-site fuel."[24] Thus, ISO-NE explains, its proposal eliminates the demand response component included in prior years and provides compensation not only for fuel oil and LNG, but also for nuclear, hydro, biomass and coal-fired resources.

10. ISO-NE states that the oil and LNG components of its proposal are nearly identical to those accepted in the 2014-2015 Winter Reliability Program. Specifically, oil-fired generators must have a minimum level of oil at the beginning of the winter to be eligible to receive an end-of-season payment to offset the costs of unused oil inventory. At the beginning of the winter, a participant's inventory must meet or exceed the lesser of (1) 85 percent of usable fuel storage capability or (2) supply sufficient to operate the generator for 10 days at full load. At the end of the winter, participants will be compensated based on the lesser of their December 1 or March 15 inventory, subject to a cap that is the lesser of (1) 95 percent of usable fuel storage capability or (2) supply sufficient to operate the generator for 10 days at full load.[25] The resulting inventory level is multiplied by the payment rate established by ISO-NE and then by a performance adjustment factor. The performance adjustment factor is calculated as the number of hours in which the generator was fully or partially available or in which there was a transmission outage rendering it fully unavailable, divided by the total winter hours.

11. Like the 2014-2015 Winter Reliability Program, participants may not sell their fuel and must offer into the day-ahead and real-time markets.[26] ISO-NE explains that it reduced last year's 15-day compensation cap to 10 days, given the inclusion of additional resource types. ISO-NE states that the reduction in the cap will only affect a small minority of participants and is not expected to materially impact participation. ISO-NE also states that, because of the three-year length of the program, it will establish a methodology to set the payment rate annually (as opposed to a single three-year rate). ISO-NE explains that the establishment of an annual rate will allow ISO-NE to reflect current market conditions and will protect against over- or under-paying to meet ISO-NE's fuel inventory objective. ISO-NE states that it will use the same methodology

[24] ISO-NE Transmittal at 6.

[25] ISO-NE Transmittal at 7; Appendix K, § III.K.2. Like the 2014-2015 Winter Reliability Program, the March 15 inventory excludes any oil added after March 1.

[26] ISO-NE Transmittal at 7; Appendix K, § III.K.1(c), (d).

developed for the 2014-2015 Winter Reliability Program to calculate the annual payment rates.[27]

12. In addition, like the 2014-2015 Winter Reliability Program, generators that contract for LNG also would receive an end-of-season payment to offset the cost of unused LNG contract volumes. ISO-NE will accept contracts with a "take or pay" construct up to the aggregate cap of 6 Bcf.[28] Unlike the unused oil inventory program, there is no required minimum amount of LNG because some generators require small amounts of LNG and because the reliability need for New England can be met through the unused oil program alone. Generators will be compensated at the end of the winter based on the lesser of December 1 LNG contract volume and March 1 remaining LNG contract volume, not exceeding the amount of fuel necessary to permit the generator to operate for four days at full load.[29] ISO-NE states that the payments will be reduced by the same performance adjustment applied to oil generators and that compensation will be set at a rate converted from the oil rate established by ISO-NE the preceding July 15 before each winter based on a fuel oil heat content of 6.0 MMBtu/barrel.[30] ISO-NE states that the resource auditing, performance monitoring, cost allocation, settlement, and financial assurance rules for oil and LNG resources remain the same as in the 2014-2015 Winter Reliability Program.

13. Regarding the new types of resources added to the program, ISO-NE explains that it based the structure for participation of the additional resource types on the provisions for oil-fired generators, including the same provisions regarding minimum fuel inventory, compensation methodology, the cap on compensation, and the performance adjustment. ISO-NE states that the resource auditing, performance monitoring, cost allocation and financial assurance rules are the same as for oil and LNG resources, with the only material difference being that fuel inventory for the new resources is converted to equivalent energy (MWh). ISO-NE also states that it eliminated the demand response

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[27] ISO-NE Transmittal at 8.

[28] A take or pay contract for LNG is one where a buyer must take the LNG it has purchased or pay the supplier if it does not. ISO-NE explains that it requires this contract construct in the Winter Reliability Program because it makes the LNG component most comparable to the unused oil inventory component, which requires a physical commodity to be delivered. According to ISO-NE, constructs other than take or pay can often reflect financial, rather than physical, transactions. ISO-NE Transmittal at 9.

[29] ISO-NE Transmittal at 9; Appendix K, § III.K.3(d).

[30] ISO-NE Transmittal at 9-10; Appendix K, § III.K.1(g).

component of the program because including demand response would not further the program's fuel assurance objective.[31]

14. ISO-NE states that its proposal is preferable to NEPOOL's proposal because, by including all resources that can supply the region with fuel assurance, it better approximates the results of a market-based construct and is nondiscriminatory because all resources that have the requisite on-site fuel are compensated for their contribution to reliability. ISO-NE states that the inclusion of these resources should provide value to the region in that the expectation of a three-year revenue stream may cause these generators to invest in additional fuel inventory and in their assets more generally.[32]

15. ISO-NE estimates that the cost of the oil and LNG components, assuming a payment rate of $13 per barrel, would be $66.3 million per year if no oil or LNG is used and, consequently, fuel inventories are full at the end of winter. If fuel is used in proportion to the usage during the 2014-2015 Winter Reliability Program, ISO-NE estimates that actual program costs for the oil and LNG components would be approximately $36.4 million. ISO-NE estimates that the incremental cost of adding the new resource types in its proposal would be approximately $35 million per year if no fuel is used.[33]

### B. <u>The NEPOOL Proposal</u>

16. NEPOOL states that its proposal is designed to maintain the core components of the 2014-2015 Winter Reliability Program: (1) compensation for certain oil inventory that remains in New England following the end of each winter period; (2) end-of-season compensation for LNG contract volumes that were available for use during the winter but were not called upon to produce energy; and (3) a supplemental demand response program.[34] The oil and LNG components in the NEPOOL proposal are identical to those in the ISO-NE proposal. Like the ISO-NE proposal, NEPOOL states that compensation for these resources is based on an annual payment rate established by ISO-NE and posted on ISO-NE's website no later than July 15 prior to each winter.[35] In addition, the

[31] ISO-NE Transmittal at 10.

[32] *Id*. at 12.

[33] *Id*. at 11.

[34] NEPOOL Transmittal at 2.

[35] ISO-NE's website currently states a rate of $12.90/barrel for the winter of 2015-2016.

NEPOOL proposal maintains the demand response component from the 2014-2015 Winter Reliability Program, which is absent from the ISO-NE proposal. Similar to the 2014-2015 Winter Reliability Program, participation is available to new demand response assets that are not currently participating in the wholesale markets or resources that are currently participating in the Forward Capacity Market but have additional capacity beyond that needed to meet their Capacity Supply Obligation. NEPOOL states that, as in the 2014-2015 Winter Reliability Program, participation will be limited to 100 assets at a level not to exceed 100 MW, and the monthly program payment rate for the demand response component will be based on the same annual rate established for the unused oil inventory component.[36]

17. NEPOOL asserts that, in addition to reinstating a known and reasonably priced interim solution that has proven to be successful in satisfying incremental winter reliability needs, its proposal balances costs with benefits. NEPOOL states that, unlike the ISO-NE proposal, its proposal is targeted to encourage specific behavior not incented by existing market rules and avoids imposing on consumers costs for resources that already see market signals for providing firm fuel during winter.[37]

18. NEPOOL further states that its proposal is overwhelmingly and broadly supported, with a vote of 87.1 percent in favor from the NEPOOL Participants Committee, while the ISO-NE proposal only garnered a vote of 13.43 percent in favor.[38] NEPOOL claims that ISO-NE's proposal to expand the types of resources eligible for compensation increases the supplemental out-of-market costs by, according to some estimates, as much as $46 million annually.[39] NEPOOL specifies that those opposing ISO-NE's proposal see no incremental benefit for the increased cost associated with ISO-NE's version. According to NEPOOL, ISO-NE's version would compensate nuclear, coal, and hydro resources for doing precisely what they already have been doing in preparation for energy and reserve market operations during the winter months.[40]

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[36] NEPOOL Transmittal at 13-14.

[37] *Id.* at 15-16.

[38] *Id.* at 2.

[39] *Id*. at 16. ISO-NE estimates a maximum cost differential of $35.1 million depending upon fuel usage and demand response participation. ISO-NE Transmittal at 11.

[40] *Id.* at 16.

19. NEPOOL argues that ISO-NE changed the objective of the winter reliability program for the upcoming years to support its filing. According to NEPOOL, for the 2013-2014 and 2014-2015 Winter Reliability Programs, the stated objective was to obtain incremental energy needed during colder than normal weather with minimal market distortions and to improve overall fuel security.[41] However, NEPOOL states, for the 2015-2018 programs, ISO-NE has redefined the objective to be one of maintaining on-site fuel, and, in doing so, ISO-NE would exclude many forms of renewable generation and all forms of demand response.

## III. <u>Notice of Filings and Responsive Pleadings</u>

20. Notice of the July 15, 2015 filing was published in the *Federal Register*, 80 Fed. Reg. 43,082 (2015), with interventions and protests due on or before August 5, 2015.

21. The Vermont Department of Public Service filed a notice of intervention. Numerous parties filed timely motions to intervene.[42] Of these, Dynegy Marketing and Trade, LLC and Brayton Point Energy, LLC (Dynegy and Brayton) and Entergy Nuclear Power Marketing, LLC, NextEra Energy Resources, LLC, and Dominion Resources Services, Inc. (Entergy, NextEra, and Dominion) filed comments in support of the ISO-NE Proposal. Essential Power, LLC, Essential Power Massachusetts, LLC, and Essential Power Newington, LLC (Essential Power); New England States Committee on Electricity ((NESCOE); and TransCanada Power Marketing Ltd. (TransCanada) filed comments in support of the NEPOOL Proposal. New England Power Generators Association, Inc. and the Electric Power Supply Association (NEPGA and EPSA) and PSEG Companies (PSEG)[43] filed comments neither supporting nor opposing either proposal.

22. The Connecticut Public Utilities Regulatory Authority (Connecticut PURA) filed a notice of intervention and comments in support of the NEPOOL Proposal. On August

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[41] NEPOOL Transmittal at 17. NEPOOL also states that ISO-NE addresses the issue of excluding nuclear and hydro units in the 2014-2015 Winter Reliability Program, stating that “the primary objective of the program is to ensure fuel adequacy, and it is difficult to identify additional fuel requirements for these types of resources, which typically have low-cost fuels or extended fuel supplies to meet their expected operation.” *Id*. (citing ISO-NE’s June 2013 Filing at 6 (submitted in Docket No.ER13-1851-000); ISO-NE’s June 2014 Filing at 8 (submitted in Docket No. ER14-2407-000)).

[42] *See* Appendix A.

[43] PSEG Power LLC, PSEG Energy Resources & Trade LLC, and PSEG Power Connecticut LLC.

19, 2015, ISO-NE filed an answer to certain comments. On August 20, 2015, NEPOOL filed an answer to certain comments.

## A. Comments in Support of the ISO-NE Proposal

23. Entergy, NextEra, and Dominion argue that ISO-NE's expanded program better approximates a market-based solution because it is open to more resource types.[44] They state that the additional resource types may take steps to ensure availability in response to their inclusion in the program.[45] In addition, Entergy, NextEra, and Dominion argue that the NEPOOL Proposal is flawed, as its exclusion of more resource types can distort market signals, reduces the amount of fuel available compared to the ISO-NE Proposal, is discriminatory, and represents a collateral attack on Commission precedent.[46]

24. Entergy, NextEra, and Dominion assert that the ISO-NE Proposal would procure a level of fuel closer to that which ISO-NE calculated the region would need to get through a particularly cold winter like 2003-2004. They also assert that nuclear units' high capacity factors and on-site fuel make them a critical component in helping to ensure that ISO-NE has the capability available to keep the lights on during severe winter weather.[47] They add that the impending retirement of non-gas generators will exacerbate winter reliability concerns between now and implementation of Pay-for-Performance, making expansion of the winter reliability program more critical.[48]

25. Entergy, NextEra, and Dominion argue that NEPOOL's decision to exclude other on-site fuel resources solely for cost reasons will continue to distort market signals during the winter periods and erode reliability if additional firm fuel resources are forced into retirement.[49] Entergy, NextEra, and Dominion assert that, contrary to NEPOOL's assertion, ISO-NE does not have to show that the benefits of its proposal will be "at least roughly commensurate with the costs." They contend that the winter reliability program is an out-of-market solution that removes the true costs of providing energy from market

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[44] Entergy, NextEra, and Dominion Comments at 7.

[45] *Id*. at 16.

[46] *Id*. at 8, 10, 15, 17.

[47] *Id*. at 8-9.

[48] *Id*. at 12.

[49] *Id.* at 10.

signals and targets costs at specific resources. They contend that the proper evaluation is to ensure that the costs that should be reflected in the market are reintroduced to market participants in a comparable way. They further contend that, of the two proposals, only that of ISO-NE correctly attempts to account for the costs of the winter programs that are not reflected in market prices by including all resources with on-site fuel characteristics contributing to the reliability of the system.[50]

26. Entergy, NextEra, and Dominion also assert that the NEPOOL Proposal represents a collateral attack on Commission precedent because the Commission "clearly provided its judgment on the underlying design of the NEPOOL proposed winter program."[51] Entergy, NextEra, and Dominion argue that, in the previous proceeding on the 2014-2015 Winter Reliability Program, the Commission was clear in its findings and judgment on the extension of last year's winter program to future winters, subject to ISO-NE explaining why a program expanded to additional resources is not a viable solution.[52]

27. Entergy, NextEra, and Dominion assert that the NEPOOL Proposal is unduly discriminatory against resources that can supply the region with fuel assurance. They argue that the added resources are likely to take extra steps, including preventative maintenance prior to the winter, to ensure that they are fully available and ready to perform throughout the winter. Entergy, NextEra, and Dominion further argue that these other resources should be eligible for the program regardless of whether they take significant incremental steps to participate because they are similarly situated and capable of providing the fuel assurance sought by the program.[53]

28. Dynegy and Brayton state that various factors justify a larger and more expansive program that does not include just oil resources, including load growth in excess of additional new winter generation; the retirement of Vermont Yankee, Brayton Point, and Norwalk Harbor generation facilities; the reduction in demand response participation; and the time needed for additional gas pipeline expansions to be operational. Therefore, they

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[50] *Id*. at 14.

[51] *Id*. at 17

[52] *Id*. at 19.

[53] *Id*. at 14-16 (citing *PJM Interconnection, L.L.C.*, 152 FERC ¶ 61,064, at P 39 (2015) (finding that PJM did not provide a sufficient rationale for wholly excluding non-generation resources from its Transition Auctions)).

argue, the Commission should reject the NEPOOL Proposal as it fails to ensure the level of reliability necessary in New England during upcoming winter seasons.[54]

### B. Comments in Support of the NEPOOL Proposal

29. Essential Power and NESCOE state that they support the NEPOOL proposal because it is a proven design that has successfully ensured winter reliability during two winters of extreme weather; it is narrowly targeted to incentivize appropriate market participants to achieve reliability goals; it is more cost-effective than the ISO-NE proposal;[55] and it is the outcome of the stakeholder process with the support of the stakeholders.[56] NESCOE also states the NEPOOL Proposal is preferable because it provides regulatory certainty by continuing a program with which market participants are already familiar.[57] NESCOE argues that there is nothing in the Commission's order on rehearing that required ISO-NE to file an expanded program but, instead, an expectation that ISO-NE would abide by its commitment to work with stakeholders. NESCOE notes that the Commission provided ISO-NE flexibility to file a program taking a different approach and that ISO-NE could explain why it did not ultimately propose a more fuel neutral program.[58]

30. Essential Power, NESCOE, TransCanada, and Connecticut PURA state that they oppose the ISO-NE Proposal because it has higher costs than the NEPOOL Proposal, without providing more reliability.[59] NESCOE further claims that, even if the newly eligible resources could provide additional reliability, it is not clear that additional capacity beyond what was included in the 2014-2015 Winter Reliability Program is needed.[60] NESCOE adds that payments made under the NEPOOL Proposal directly correspond to incremental reliability benefits received. In their support for NEPOOL's

[54] Dynegy and Brayton Comments at 6-7.

[55] Essential Power Comments at 1-2 and NESCOE Comments at 2.

[56] Essential Power Comments at 1 and NESCOE Comments at 33.

[57] NESCOE Comments at 34.

[58] *Id*. at 28-29.

[59] Essential Power Comments at 5; NESCOE Comments at 11; TransCanada Comments at 1; and Connecticut PURA Comments at 1.

[60] NESCOE Comments at 18.

Proposal, Connecticut PURA and NESCOE also point to the importance of maintaining reasonable electric rates.[61]

31. In addition, TransCanada and Connecticut PURA argue that it is not discriminatory to exclude resources that would not provide incremental reliability benefits from receiving compensation under the winter reliability program, as the Commission has previously found such programs just and reasonable.[62] Connecticut PURA and NESCOE contend that the Commission did not require future winter reliability plans to be fuel neutral in the Order on Rehearing; rather, the Commission requested that ISO-NE either provide a fuel neutral plan or an explanation for why a fuel neutral plan was not appropriate.[63]

### C. Comments Pertaining to Both Proposals

32. Essential Power, PSEG, and Dynegy and Brayton oppose the change in the limit of the amount of fuel inventory eligible for carrying cost recovery from 15 days of continuous operation (also referred to as a compensation cap), as in prior years, to 10 days, an element of both proposals.[64] Essential Power and PSEG argue that neither ISO-NE nor NEPOOL has properly justified lowering the limit and request that the Commission either direct the filing parties to provide additional support for this change or require ISO-NE to set the limit at 15 days. Dynegy and Brayton assert that, with respect to ISO-NE, it appears that the reduction was proposed solely to lower costs instead of being based on any reliability considerations. They assert that NEPOOL has not adequately supported its proposed reduction, particularly given its failure to include nuclear, coal, and hydro resources. Dynegy and Brayton request the Commission reinstate the 15-day compensation cap and direct ISO-NE to reevaluate the amount of fuel needed for reliability annually.

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[61] Connecticut PURA Comments at 7; NESCOE Comments at 23.

[62] TransCanada Comments at 5; Connecticut PURA Comments at 5 (citing September 9, 2014 Order, 148 FERC ¶ 61,179 at P 43 ("it would not be appropriate to make separate payments intended to incent resources to make the same fuel procurement decisions they would have made, and been compensated for, absent the Program.")).

[63] Connecticut PURA Comments at 9 and NESCOE Comments at 28 (citing Order on Rehearing, 151 FERC ¶ 61,052 at P 17).

[64] Essential Power Comments at 2; PSEG Comments at 7; Dynegy and Brayton Comments at 7-8.

33. NEPGA and EPSA assert that ISO-NE is proposing to use a different methodology to calculate the program payment rate than it used for the 2014-2015 Winter Reliability Program.[65] Specifically, NEPGA and EPSA assert that ISO-NE's proposed methodology differs from the Analysis Group methodology used for the 2014-2015 Winter Reliability Program in three material respects: (1) ISO-NE calculates a single carrying cost rate based in part on certain unit assumptions not necessarily applicable to each unit type, instead of calculating unit-specific carrying costs; (2) regarding unit availability, ISO-NE adjusts each resource's total program payment downward (and makes no change to the payment rate) to the extent the resource is unavailable any time during the winter season, while the 2014-2015 Winter Reliability Program adjusted each unit's carrying costs by the unit's historical winter availability, dividing the gross carrying cost rate by an availability factor, effectively increasing the rate to account for unit availability; and (3) for purposes of applying a risk-free return to the carrying cost calculation, ISO-NE proposes to use a one-year Treasury rate while the 2014-2015 Winter Reliability Program used a three-month Treasury rate. NEPGA and EPSA state that they do not oppose ISO-NE's methodology rate, per se, but ask that the Commission order ISO-NE to explicitly define in its Tariff the methodology it will use to establish a program payment rate.[66]

34. NEPGA and EPSA, Dynegy and Brayton, and PSEG comment that both the ISO-NE Proposal and the NEPOOL Proposal are moving away from competitive market principles or harm competitive markets.[67] NEPGA and EPSA request that, in future proceedings, the Commission order ISO-NE to make market design changes when the Commission deems changes necessary rather than rely on ISO-NE's commitments to make the changes.[68] PSEG urges the Commission to direct ISO-NE and NEPOOL to develop market-based solutions for the two winters leading up to the implementation of the Pay-for-Performance capacity market design.[69] If the Commission accepts ISO-NE's proposal, PSEG requests that the Commission direct ISO-NE to demonstrate that

[65] NEPGA and EPSA Comments at 8 (referring to the memo posted on ISO-NE's website, available at: http://www.iso-ne.com/markets-operations/markets/winter-program-payment-rate).

[66] NEPGA and EPSA Comments at 9-10.

[67] Dynegy and Brayton Comments at 4; NEPGA and EPSA Comments at 2; PSEG Comments at 2.

[68] NEPGA and EPSA Comments at 11.

[69] PSEG Comments at 4.

expanded eligibility of resource types will result in sufficient incremental on-site inventory above what might otherwise be available based on market signals.[70]

### D. Answers

35. ISO-NE responds to the assertion that the cap on inventory eligible for compensation should be raised from 10 days' worth of fuel to 15 days. ISO-NE states that the cap is relevant only to the inventory at the end of the winter and the objective of the program is fuel assurance at the beginning of the winter. ISO-NE asserts that, because the target for beginning fuel inventory is the same as the 2014-2015 Winter Reliability Program (a minimum of 10 days of fuel or 85 percent of the tank, whichever is less), reducing the cap on compensation to 10 days has no impact on the region's ability to meet this target at the beginning of the winter. ISO-NE further states that most oil-fired generators that participated in the 2014-2015 Winter Reliability Program had inventories that, at 85 percent or more of their capacity, were well below the 10-day threshold and therefore the reduction in the cap would be of no consequence to these generators.[71]

36. ISO-NE also responds to NEPGA and EPSA's request that the Commission require ISO-NE to define the formula for calculating the program payment rate as well as the allegation that ISO-NE and NEPOOL changed the payment rate methodology from the one used in the prior year without vetting that change through the stakeholder process. ISO-NE states that it does not object to including the formula in the Tariff, if the Commission so orders, but it maintains that it met its commitment to stakeholders to update the payment rate using the formula developed by the Analysis Group for the 2014-2015 Winter Reliability Program. ISO-NE states that, while there was an immaterial and inadvertent change to one of the factors used in the formula, it had no impact on the ultimate rate. ISO-NE states that it never intended to conduct a complete re-analysis of the study to determine the marginal unit that had been completed the prior year by the Analysis Group and that it communicated to stakeholders its intention to simply perform the calculation at the end of the Analysis Group's "Further Explanation of Rate Calculations" document.[72] ISO-NE further recognizes that it inadvertently used a one-year Treasury rate instead of the three-month rate that was used by the Analysis Group but that the error had no impact on the calculation of the program payment rate. Going forward, ISO-NE proposes to use a fixed value of 0.73 percent (the three-month rate

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[70] *Id*. at 7.

[71] ISO-NE Answer at 3, n.13.

[72] *Id*. at 6.

previously used by the Analysis Group) in lieu of the three-month Treasury rate, which has been de-listed from the exchange and is no longer available.[73]

37. In its answer, NEPOOL addresses several issues that were raised in comments. First, addressing Entergy, NextEra, and Dominion's argument that the ISO-NE Proposal will alleviate concerns they have regarding their economic viability, NEPOOL states that no party has offered any empirical evidence at any time to support the claim that the economic viability of certain resources depends on the selection of the ISO-NE Proposal over the NEPOOL Proposal. In addition, NEPOOL argues that, as both proposals are out-of-market, the NEPOOL Proposal results in less market interference with smaller out-of-market payments targeted to encourage specific behavior not incented by the existing market rules by paying supply resources incremental revenues for incremental benefits. NEPOOL asserts that supporters of the ISO-NE Proposal have not identified any incremental benefits associated with their requested incremental revenues.[74]

38. Second, concerning arguments that the NEPOOL Proposal is unduly discriminatory, NEPOOL states that there are compelling differences between resources that are eligible for incremental revenues under its proposal and those that are not. NEPOOL explains that the NEPOOL Proposal extends participation eligibility to only those resources that will provide incremental reliability benefits during the next three winter seasons; the additional resources that ISO-NE proposes to compensate under the ISO-NE Proposal will not receive additional payments under the NEPOOL Proposal because they are not similarly situated to oil, LNG, and demand response resources. Furthermore, NEPOOL states that Entergy, NextEra, and Dominion's reliance on the PJM Transition Auctions mechanism is unavailing since PJM failed to provide an adequate explanation as to why excluded resources were not similarly situated, which is not the case in this proceeding.[75] NEPOOL asserts that resources excluded from compensation, such as nuclear and coal units, do not fall within the category of resources that would procure more fuel than they would have otherwise.

39. Third, regarding assertions that the NEPOOL Proposal is a collateral attack on Commission orders, NEPOOL states that ISO-NE was not required to follow one specific approach with little room for deviation. Instead, NEPOOL states, the Commission

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[73] *Id*..

[74] NEPOOL Answer at 5-6.

[75] *Id*. at 7-8.

afforded a fair amount of discretion for the design of a subsequent winter reliability program.[76]

40. Fourth, regarding the amount of fuel inventory for which compensation is eligible, NEPOOL states that stakeholders relied on ISO-NE's conclusions as to how much incremental assurance is needed for ISO-NE to be satisfied that it could reliably operate the system through the next three winters. NEPOOL also points to the ISO-NE testimony explaining that setting the unused inventory cap at 10 days versus 15 would only affect a small minority of participants and is not expected to materially impact participation.[77] In addition, NEPOOL notes that no factual support was offered for deviating from the ISO-NE recommendation, and at no time did a stakeholder seek a vote to use the same 15-day cap from the 2014-2015 Winter Reliability Program. NEPOOL explains that the only difference between the previous winters and the subsequent winters is that there is marginally less incentive to have fuel remaining in the tanks at the end of each winter, something that should only affect a few resource owners that have storage large enough to have more than 10 days of unburned fuel left in the tanks at the end of each winter.

41. Finally, regarding the payment rate or formula, NEPOOL states that ISO-NE explained in the stakeholder process, without objection or controversy, how it would establish the payment rate each winter and included how the payment rate is determined in the materials submitted in this proceeding. Nonetheless, NEPOOL states, it would not be opposed to a Commission order requiring ISO-NE to file with the Commission either the payment rate formula or the actual payment rate proposed for each winter period.[78]

## IV. Discussion

### A. Procedural Matters

42. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

43. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest or an answer unless otherwise

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[76] *Id.* at 10.

[77] *Id*. at 12, citing Testimony of Andrew Gillespie at 6.

[78] NEPOOL Answer at 15.

ordered by the decisional authority. We accept ISO-NE's and NEPOOL's answers because they have provided information that assisted us in our decision-making process.

### B. Substantive Matters

44. The Commission is presented with competing proposals filed pursuant to section 11.1.5 of the Participants Agreement, both of which create winter reliability programs for the winters between September 14, 2015 and March 15, 2018. After evaluating each proposal and with consideration given to the cost of expanding the program, we conditionally accept the NEPOOL Proposal as just and reasonable and preferable,[79] to become effective on September 14, 2015, as requested, subject to ISO-NE submitting revised Tariff records in a compliance filing within 45 days of the date of this order, as discussed below.

45. We acknowledge that neither of the proposed solutions is market-based. Although the Commission continues to prefer market-based mechanisms as a means of ensuring just and reasonable rates, the Commission has recognized that out-of-market solutions might be appropriate in certain circumstances, and we find that it is appropriate in this case. As the Commission previously stated, "an expanded version of the current [2014-2015] winter program might better produce the desired results in terms of reliability than the introduction, at this point in time, of the market-based solutions examined by ISO-NE."[80] Given the difficulties associated with creating and implementing a temporary and effective market-based reliability solution in a short timeframe, we are satisfied that an out-of-market program is an appropriate and necessary interim measure to aid in maintaining reliability during the next three winters, until the market-based Pay-for-Performance revisions become effective in 2018.

46. After considering both proposals before us, we find that the NEPOOL Proposal is just and reasonable, and preferable to the ISO-NE Proposal. The NEPOOL Proposal is essentially identical to last year's program, a program that provided reliability benefits during winter 2014-2015. Moreover, we also note that the NEPOOL Proposal is widely

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[79] Where alternative proposals are submitted pursuant to section 11.1.5 of the Participants Agreement, that section provides that the Commission may "adopt all or any of ISO[-NE]'s Market Rule proposal or the alternate Market Rule proposal as it finds…to be just and reasonable and preferable." *See ISO New England Inc.*, 130 FERC ¶ 61,105 (2010).

[80] Order on Rehearing, 151 FERC ¶ 61,052 at P 17.

supported in the region by a substantial majority of stakeholders representing all six NEPOOL stakeholder sectors.[81]

47. We recognize that the ISO-NE Proposal is an attempt to comply with the Commission's request to work with stakeholders to expand the types of resources eligible to participate in future winter reliability programs. However we find that for the reasons stated herein, the NEPOOL proposal is just and reasonable and is preferable to ISO-NE's proposal. While ISO-NE expanded the types of resources eligible to participate in the program, the record does not reflect that including the additional resource types under the same general program principles will incent any additional fuel procurement. Further, although ISO-NE asserts that the expectation of a three-year payment stream might incent the additional resources to invest in their assets more generally, we find that this potential result is beyond the scope of the program, which is designed particularly to ensure reliability *during the winter* by incenting market participants to provide additional reliability services that they would not have provided otherwise.[82]

48. We also disagree with commenters who argue that NEPOOL's proposal is unduly discriminatory and represents a collateral attack on the Commission's prior orders. As the Commission explained in the September 9, 2014 Order accepting the 2014-2015 Winter Reliability Program, also applicable here, the proposal is not unduly discriminatory merely because it does not compensate all resources for providing firm fuel service if those resources are not similarly situated.[83] On rehearing of the January 20, 2015 Order, the Commission stated that, "if any future out-of-market program is not fuel neutral, we expect that ISO-NE would provide a detailed description of the options it considered to make the program fuel neutral and why those options were ultimately not included."[84] ISO-NE was not obligated to expand the program. Rather, the Commission intended to encourage ISO-NE to work to expand the program, while still affording ISO-NE and regional stakeholders a reasonable amount of discretion to design a program that

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[81] The position of the majority of stakeholders, even when there is not complete stakeholder consensus, can be considered in a finding of justness and reasonableness. *See Am. Elec. Power Serv. Corp. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,083, at P 172 (2008); *see also PJM Interconnection LLC*, 119 FERC ¶ 61,063, at P 56 (2007); *New England Power Pool, et al.*, 105 FERC ¶ 61,300, at PP 22-23 (2003), *reh'g denied*, 109 FERC ¶ 61,252 (2004).

[82] *See* September 9, 2014 Order, 148 FERC ¶ 61,179 at P 13.

[83] *See id.* P 43.

[84] Order on Rehearing, 151 FERC ¶ 61,052 at P 17.

would adequately address the region's needs. We find that NEPOOL sufficiently explained how the region considered ISO-NE's fuel neutral proposal and why NEPOOL ultimately decided not to support or propose a fuel neutral option.[85]

49. The NEPOOL Proposal also incorporates demand response programs to reduce use of power in times of system stress. We disagree with ISO-NE that demand response is incompatible with the winter reliability program's objective. Indeed, as the Commission found in accepting the demand response component of the 2013-2014 Winter Reliability Program, demand response resources can be dispatched at times when generator availability risks due to fuel uncertainty are highest thereby providing additional reliability to the grid by helping ISO-NE to avoid resource unavailability at times when the system is stressed.[86]

50. Certain commenters have argued that NEPOOL has not provided a justification for reducing the maximum inventory compensation cap from 15 days to 10 days. However, ISO-NE states that the cap reduction will affect a small minority of participants and is not expected to materially impact participation in the program.[87] Further, ISO-NE maintains that "the reliability need for New England can be met through the unused oil program alone."[88] The record reflects that ISO-NE determined that a 10-day inventory compensation cap is sufficient to incent participation in the program even if the additional resource types are not included.

51. NEPGA and EPSA request that the Commission require ISO-NE to revise the Tariff to define the formula for calculating the annual payment rate. We agree that because the multi-year nature of the NEPOOL Proposal requires ISO-NE to re-calculate the payment rate each year until 2018, the Tariff should explicitly include the formula that ISO-NE will use each year to establish the rate. Because ISO-NE specifies in its transmittal that the formula methodology (under either proposal) is the same as was used for the 2014-2015 Winter Reliability Program, we direct ISO-NE to submit a compliance

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[85] *See supra* PP 17-18, 38.

[86] *See ISO New England Inc.*, 144 FERC ¶ 61,204, at P 50 (2013).

[87] ISO-NE Transmittal at 8; ISO-NE Answer at 3 (noting that last winter, most participating oil-fired generators had inventories that, at 85 percent or more of their capacity, were well below the 10-day threshold and thus would not be affected by the cap reduction).

[88] ISO-NE Transmittal at 9.

filing within 45 days of the date of this order to revise the Tariff to include the same formula used in last year's program to calculate the annual rate.[89]

52. In addition, we direct ISO-NE to include in its compliance filing the following corrections to NEPOOL's proposed Tariff revisions: (1) in section III.K.2(b), a reference to "Section III.K.2(d)" should instead be "Section III.K.2(c)"; (2) in section III.K.6, a reference to "Section III.7" should instead be "Section III.8A"; and (3) in section III.K.7(a)(ii), references to "Section III.K.4(f)(i)-(ii)" and "Section III.K.4(f)(iii)-(iv)" should instead be "Section III.K.4(f)(a)-(b)" and "Section III.K.4(f)(c)-(d), respectively."

The Commission orders:

(A) The NEPOOL Proposal is hereby accepted, with the Tariff revisions to become effective September 14, 2015, subject to condition, as discussed in the body of this order.

(B) The ISO-NE Proposal and associated Tariff revisions are hereby rejected, as discussed in the body of this order.

(C) ISO-NE is hereby directed to submit a compliance filing within 45 days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[89] ISO-NE currently includes this formula on its website; however, it is not included in the Tariff.

**Appendix A**

| **Motions to Intervene** | **Comments and Protests** |
|---|---|
| Brookfield Energy Marketing LP | Connecticut Public Utilities Regulatory Authority (Connecticut PURA) |
| Calpine Corporation | Dynegy Marketing and Trade, LLC and Brayton Point Energy, LLC |
| Connecticut Office of the Consumer Counsel | Entergy Nuclear Power Marketing, LLC, NextEra Energy Resources, LLC, and Dominion Resources Services, Inc. |
| Connecticut Public Utilities Regulatory Authority | Essential Power, LLC, et. al. |
| Consolidated Edison Energy, Inc., et. al. [90] | New England Power Generators Association, Inc. and the Electric Power Supply Association |
| Dominion Resources Services, Inc. | New England States Committee on Electricity |
| Dynegy Marketing and Trade, LLC and Brayton Point Energy, LLC (Joint) | PSEG Companies[91] |
| Emera Energy Services, Inc. | TransCanada Power Marketing Ltd. |
| Entergy Nuclear Power Marketing, LLC | |
| Essential Power, LLC, *et. al.* [92] | |
| Eversource Energy Service Company | |
| Exelon Corporation | |
| GDF Suez Energy North America, Inc. | |
| New England Power Generators Association, Inc. and the Electric Power Supply Association (Joint) | |
| New England States Committee on Electricity | |

[90] Consolidated Edison Solutions, Inc. and Consolidated Edison Energy, Inc.

[91] PSEG Power LLC, PSEG Energy Resources & Trade LLC, and PSEG Power Connecticut LLC.

[92] Essential Power, LLC; Essential Power Massachusetts, LLC and Essential Power Newington, LLC.

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| NextEra Energy Resources, LLC | |
| Noble Americas Energy Solutions, LLC | |
| NRG Companies[93] | |
| PSEG Companies[94] | |
| The United Illuminating Company | |
| TransCanada Power Marketing Ltd. | |
| Vermont Department of Public Service | |

[93] NRG Power Marketing LLC and GenOn Energy Management, LLC.

[94] PSEG Power LLC, PSEG Energy Resources & Trade LLC, and PSEG Power Connecticut LLC.

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