September 27, 2024

VIA ELECTRONIC FILING

The Honorable Debbie-Anne Reese, Acting Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: ***Revisions to ISO New England Inc. Transmission, Markets, and Services Tariff to Update the FCM Delivery Financial Assurance Calculation in the Financial Assurance Policy for Participants with Inadequate Corporate Liquidity; Docket No. ER24-3071-000***

Errata to Request Waiver of Rule 35.3(a)(1) for Purposes of Effective Date More Than 120 Days from Filing

Dear Acting Secretary Reese:

On September 18, 2024, pursuant to Section 205 of the Federal Power Act ("FPA"),[1] ISO New England Inc. (the "ISO" or "ISO-NE")[2] submitted with the Federal Energy Regulatory Commission ("Commission") a filing to amend the financial assurance requirements in the ISO-NE Financial Assurance Policy[3] for participants that do not have adequate corporate liquidity relative to potential obligations that may be incurred under the pay for performance construct of ISO-NE's Forward Capacity Market ("FAP Revisions").

It has come to the attention of the ISO that the September 18 filing contained a minor omission that warrants correction through this errata letter. Specifically, the ISO requested that the FAP Revisions become effective on February 1, 2025, and requested an order no later than

[1] 16 U.S.C. § 824d (2006 and Supp. II 2009).

[2] Under New England's Regional Transmission Organization arrangements, the rights to make this filing of revisions to the Tariff under Section 205 of the FPA belong to the ISO.

[3] The Financial Assurance Policy is Exhibit IA to Section I of the Tariff.

the effective date. As noted in the September 18 filing's transmittal letter, the ISO reasoned that the February 1, 2025 effective date would satisfy implementation needs while also allowing the Commission sufficient time to process the filing.[4]

February 1, 2025 is 136 days after the date of the September 18, 2024 filing. The Commission's rules require that all rate schedules or any part thereof must be filed with the Commission and posted not "more than one hundred-twenty days prior to the date on which the electric service is to commence and become effective."[5] As such, for the good cause described in the initial transmittal and excerpted above, the ISO hereby submits this errata to include, within the FAP Revisions filing, a request for waiver of the Commission's timing requirements to allow these Tariff revisions to take effect more than 120 days after the date of filing. A blackline of Section VI of the filing letter including this waiver request is hereby provided in Attachment A to this letter. Finally, the ISO respectfully requests that this errata be accepted without changes to the Commission's current comment date for the FAP Revisions filing.

Should you have any questions regarding this request, please do not hesitate to contact the undersigned.

Respectfully submitted,

ISO NEW ENGLAND INC.

By: *<u>/s/ Jennifer M. Recht</u>*

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[4] *See ISO New England Inc.*, Filing to Update the FCM Delivery Financial Assurance Calculation in the Financial Assurance Policy for Participants with Inadequate Corporate Liquidity, at 2 n.9, Docket No. ER24-3071-000 (filed Sept. 18, 2024). During the New England Power Pool ("NEPOOL") Participant Processes, the ISO had contemplated a January 1, 2025 effective date, but viewed the above-described good cause (*i.e.*, satisfaction of implementation needs while also allowing the Commission sufficient time to process the filing) as warranting a February 1, 2025 implementation date.

[5] 18 C.F.R. § 35.3(a)(1).

September 18, 2024

VIA ELECTRONIC FILING

The Honorable Debbie-Anne Reese, Acting Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: ***Revisions to ISO New England Inc. Transmission, Markets, and Services Tariff to Update the FCM Delivery Financial Assurance Calculation in the Financial Assurance Policy for Participants with Inadequate Corporate Liquidity; Docket No. ER24-3071-000 (Including September 27, 2024 Errata)***

Dear Acting Secretary Reese:

Pursuant to Section 205 of the Federal Power Act,[1] ISO New England Inc. (the "ISO" or "ISO-NE"),[2] hereby submits proposed revisions to the ISO New England Inc. Transmission, Markets, and Services Tariff ("Tariff").[3] As more fully described in Sections III and IV of this transmittal letter, the Tariff revisions proposed in this filing amend the financial assurance requirements in the ISO New England Financial Assurance Policy ("FAP")[4] for participants that do not have adequate corporate liquidity relative to potential obligations that may be incurred under the pay for performance ("PFP") construct of ISO-NE's Forward Capacity Market ("FCM"). Specifically, the revisions provide that, beginning with the 2025 - 2026 Capacity Commitment Period, the ISO will perform a corporate liquidity assessment on each FCM participant holding a Capacity Supply Obligation ("CSO") (or its guarantor, if such guarantor is guaranteeing the

[1] 16 U.S.C. § 824d (2006 and Supp. II 2009).

[2] Under New England's Regional Transmission Organization arrangements, the rights to make this filing of revisions to the Tariff under section 205 of the FPA belong to the ISO.

[3] Capitalized terms used but not defined in this filing are intended to have the meaning given to such terms in the ISO New England Inc. Transmission, Markets and Services Tariff ("Tariff"). Section II of the Tariff is the Open Access Transmission Tariff ("OATT").

[4] The Financial Assurance Policy is Exhibit IA to Section I of the Tariff.

payment of PFP penalties),[5] to determine its ability to pay potential penalty payment obligations[6] associated with its CSO within the applicable Capacity Commitment Period, over a forward looking rolling six months. Based on the results of such liquidity assessment, low risk participants will continue to be subject to the current FCM Delivery Financial Assurance methodology and medium and high risk participants will be subject to higher collateral requirements (risk adders), as they pose higher nonpayment risk to the market. The ISO also proposes a revision (to be implemented as of February 1, 2025, the proposed effective date) to the current FCM Delivery Financial Assurance formula to better protect participants from unnecessary short spikes in collateral during the delivery month. The revisions are collectively referred to as the "FAP Revisions."

The FAP Revisions are supported by the testimony of Mr. Christopher Nolan, Director, Market and Credit Risk (the "Nolan Testimony").[7] As addressed more fully in Section VI of this transmittal letter, ISO-NE respectfully requests that the FAP Revisions proposed herein become effective on February 1, 2025,[8] with the new FCM Delivery Financial Assurance obligations arising with the June 1st initiation of the 2025 - 2026 Capacity Commitment Period. The ISO also requests that the Commission issue an order accepting the FAP Revisions no later than the effective date.

I. DESCRIPTION OF THE ISO AND COMMUNICATIONS

The ISO is the independent, private, non-profit entity that serves as the Regional Transmission Organization ("RTO") for New England. The ISO operates the New England bulk power system and administers New England's organized wholesale electricity market pursuant to

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[5] For purposes of this transmittal letter and accompanying testimony, participants in the Forward Capacity Market with CSOs are referred to as participants, FCM participants, market participants, or capacity sellers. However, the FAP defines these participants as "Designated FCM Participants" (*i.e.*, "[a]ny Lead Market Participant, including any Provisional Member that is a Lead Market Participant, transacting in the Forward Capacity Market that is otherwise required to provide additional financial assurance under the ISO New England Financial Assurance Policy"). FAP Section VII.

[6] For purposes of this transmittal letter and accompanying testimony, potential PFP payment obligations are referred to as non-performance penalties or PFP penalties. Non-performance or PFP penalties colloquially describe the payments a participant may owe after failing to perform during a Capacity Scarcity Condition, although they are obligations arising under the Tariff, not true "penalties." The defined Tariff term is Capacity Performance Payments (which can be positive or negative); defined as "the performance-dependent portion of revenue received in the Forward Capacity Market, as described in Section III.13.7.2 of Market Rule 1." *See* Tariff Section I.2.2.

[7] The Nolan Testimony is Attachment 3 to this transmittal letter.

[8] During the stakeholder process, the ISO contemplated a January 1, 2025 effective date for the FAP Revisions. However, in order to provide the Commission more time to process the filing, the ISO has requested an effective date of February 1, 2025. This effective date still provides adequate time for participants to participate in the third annual reconfiguration auction and also ensures that the portion of the FAP Revisions that will be implemented as of the effective date (the IMC revisions described in more detail later in this transmittal letter) are able to be implemented at the start of a calendar month rather than mid-month which introduces implementation complexity.

the Tariff and the Transmission Operating Agreement ("TOA") with the New England Participating Transmission Owners. In its capacity as an RTO, the ISO has the responsibility to protect the short-term reliability of the New England Control Area and to plan and operate the system according to reliability standards established by the ISO, the Northeast Power Coordinating Council, Inc. and the North American Electric Reliability Corporation.

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II. STANDARD OF REVIEW

The FAP Revisions are submitted pursuant to Section 205 of the Federal Power Act, which "gives a utility the right to file rates and terms for services rendered with its assets."[9] Under Section 205, the Commission "plays 'an essentially passive and reactive' role"[10] whereby it "can reject [a filing] only if it finds that the changes proposed by the public utility are not 'just and reasonable.'"[11] The Commission limits this inquiry "into whether the rates proposed by a utility are reasonable – and [this inquiry does not] extend to determining whether a proposed rate schedule is more or less reasonable than alternative rate designs."[12] The FAP Revisions filed herein "need not be the only reasonable methodology, or even the most accurate."[13] As a result, even if an intervenor or the Commission develops an alternate proposal, the Commission must accept the Tariff revisions proposed in this Section 205 filing if the revisions are just and reasonable.[14]

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[9] *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 9 (D.C. Cir. 2002).

[10] *Id.* at 10 (quoting *City of Winnfield v. FERC*, 744 F.2d 871, 876 (D.C. Cir. 1984)).

[11] *Id.* at 9.

[12] *Cities of Bethany, Bushnell et al. v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir.), *cert. denied*, 469 U.S. 917 (1984) ("*Cities of Bethany*"); *see also ISO New England Inc*., 114 FERC ¶ 61,315 at P 33 and n.35 (2005), (*citing Pub. Serv. Co. of New Mexico v. FERC*, 832 F.2d 1201, 1211 (10th Cir. 1987) and *Cities of Bethany* at 1136).

[13] *Oxy USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995) (citing *Cities of Bethany* at 1136).

[14] *Cf. Southern California Edison Co., et al.*, 73 FERC ¶ 61,219 at 61,608 n.73 (1995) ("Having found the Plan to be just and reasonable, there is no *need* to consider in any detail the alternative plans proposed by the Joint Protesters.") (citing *Cities of Bethany* at 1136).

III. BACKGROUND

A. Current FCM Delivery Financial Assurance Formula and Recent Improvements

FCM Delivery Financial Assurance is one component of the financial assurance that a market participant is required to provide if it is participating in the FCM and holds a CSO.[15] One design feature of the ISO's FCM is the "pay-for-performance" or "PFP" construct which provides incentives for resources that perform during Capacity Scarcity Conditions ("CSCs") and, conversely, penalizes resources that do not perform or underperform during such conditions.[16] As a result, a resource's net capacity payments (*i.e.*, payments or charges based on performance during a CSC event) may be negative and, therefore, the FAP contains financial assurance requirements to collateralize the possibility of net payment obligations under the PFP market design.[17]

A participant with a resource that has a CSO is required to add FCM Delivery Financial Assurance to its total financial assurance requirements calculation.[18] The following is the current formula for the calculation of FCM Delivery Financial Assurance:

[DFAMW x PE x max[(ABR – CWAP), 0.1] x SF] – IMC – MCC

The formula is designed to address three types of risk: clearing risk, credit risk, and liquidation risk.[19] Each risk is addressed by a different portion of the formula and is more fully explained in the Nolan Testimony.[20] Generally, the formula accounts for the participant's CSO megawatts, its potential exposure in the FCM, its historical performance, the amount of system-wide reserves needed to avoid CSCs, and a month specific scaling factor to account for seasonal risk.[21] The formula also includes

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[15] *See* FAP Section VII (Forward Capacity Market specific financial assurance provisions) and Section VII.A (FCM Delivery Financial Assurance). CSOs associated with any Energy Efficiency measures are excluded from the FCM Delivery Financial Assurance calculation. *See* FAP Section VII.A.

[16] *See ISO New England Inc. and New England Power Pool*, Filings of Performance Incentives Market Rule Changes, Docket Nos. ER14-1050-000 and ER14-1050-001 (filed Jan. 17, 2014); ISO New England Inc. and New England Power Pool, Compliance Filing of Two-Settlement Forward Capacity Market Design, Docket Nos. ER14-2419-000 (filed July 14, 2014); *see also* ISO New England Inc. and New England Power Pool, Order on Tariff Filing and Instituting Section 206 Proceeding, 147 FERC ¶61,172 (2014); ISO New England Inc., Order on Compliance Filing, 149 FERC ¶61,009 (2014); ISO New England Inc., Letter Order Accepting Compliance Filing in Docket No. ER14-2419-002 (2015).

[17] *Id.*; FAP Section VII.A.

[18] *See* FAP Section VII.A.

[19] *See* Nolan Testimony at 10-11, 35-45.

[20] *Id.* at 35-45.

[21] *Id.*

collateral to cover PFP penalties incurred prior to final settlement and payment (the "IMC" and "MCC" variables).[22]

Recently, the ISO filed, and the Commission accepted, several improvements to the FCM Delivery Financial Assurance formula to: (1) decrease the liquidation risk for winter CSO positions by increasing the scaling factor (SF) for winter season months; (2) decrease the credit risk associated with CSOs by incorporating more recent operating data into the capacity weighted average performance (CWAP) of a participant's resource portfolio so that the FCM Delivery Financial Assurance formula collateralizes based on the more recent performance data; and (3) decrease the clearing risk associated with CSOs by introducing a new variable, IMC, to cover realized penalty payments that occur within the current month thereby decreasing the duration between realized penalty payment obligations from recent CSCs to when the collateral requirements are updated.[23]

B. FCM Delivery Financial Assurance Objectives

Collateral requirements to participate in the New England Markets are designed to ensure that there is sufficient cash available to clear the market each day and to cover a participant's settled obligations in the case of a default.[24] More specifically, for the FCM, individual capacity sellers are expected to be able to perform during scarcity events (or CSCs) and, if they are unable to perform, to pay their full PFP payment obligation arising from such nonperformance (or underperformance).[25]

As explained in the ISO's December FCM Delivery FA Filing, the ISO determined that the collateral requirements related to the FCM pay-for-performance design feature (*i.e.*, FCM Delivery Financial Assurance) should be enhanced to better collateralize the financial risks that participants assume by acquiring and holding a CSO.[26] After Winter Storm Elliott, the ISO monitored the disputes between PJM Interconnection, L.L.C. ("PJM") and its members over Winter Storm Elliott "non-performance" charges and generator defaults.[27] Of specific concern was several generators' inability to pay PJM's assessed penalty charges absent the Commission

[22] *Id.* at 35-36.

[23] *See ISO New England Inc. and New England Power Pool*, Revisions to ISO New England Inc. Transmission, Markets, and Services Tariff to Update the FCM Delivery Financial Assurance Calculation in the Financial Assurance Policy, Docket No. ER 24-661-000 (Dec. 14, 2023) (the "December FCM Delivery FA Filing") (accepted via Delegated Letter Order issued Feb. 9, 2024).

[24] *See* Nolan Testimony at 3.

[25] *Id.* at 10.

[26] *See* December FCM Delivery FA Filing, at 6-8.

[27] *See PJM Interconnection, LLC*, ER23-2975-000; *see also PJM, 80 Parties Agree to Trim Winter Storm Elliott Penalties*, Utility Dive (Oct. 2, 2023), https://www.utilitydive.com/news/pjm-calpine-talen-winter-storm-elliott-penalties-settlement-agreement-ferc/695296/#:~:text=The%20PJM%20Interconnection%20and%2080,the%20Federal%20Energy%20Regulatory%20Commission.

approved settlement, and multiple entities' bankruptcy filings as a result of the assessed penalties.[28] Additionally, although CSCs in New England have been somewhat limited, a few of the experienced scarcity events would have resulted in non-performance penalties up to the monthly stop-loss (if a resource did not perform) if such events had occurred at the higher payment rate that goes into effect on June 1, 2025.[29]

As a result, the ISO determined that two primary risks needed to be addressed: (1) the risk that substantial collateral shortfalls could result if the FCM Delivery Financial Assurance formula was not modified; and (2) the higher nonpayment risk posed by capacity sellers with inadequate corporate liquidity risk profiles.[30] The first risk was addressed by the improvements made to the FCM Delivery Financial Assurance formula that became effective March 1, 2024[31] and the FAP Revisions proposed in this transmittal letter address the second risk.

C. Risk of FCM Participants with Inadequate Corporate Liquidity

There is a significant risk to the New England Markets caused by the fact that many FCM participants do not have adequate corporate liquidity to satisfy their contractual,[32] financial obligations related to the CSOs they were awarded and hold (*i.e.*, the obligation to pay penalty amounts if their resources do not perform during CSCs).[33] Without adequate corporate liquidity, these entities pose significant default risk after the occurrence of multiple months containing CSCs.[34] Regardless of seasonal risk, CSCs can occur at any time during the Capacity Commitment Period and participants that do not perform during such events can incur significant penalty

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[28] *See* Nolan Testimony at 3-4, 17-18; *PJM Interconnection, L.L.C.*, Offer of Settlement in Winter Storm Elliot Complaints, Docket No. ER23-2975-000, at Section 7.3 (filed Sept. 29, 2023) (stating "This Settlement does not apply to the bankruptcy proceedings initiated prior to the filing date of this Settlement, including those of debtors Lincoln Power, L.L.C, et al., jointly administered under Case No. 23-10382 (Bankr. D. Del.); EFS Parlin Holdings, LLC, Case No. 23-10539 (Bankr. D. Del.); and Heritage Power, LLC, et al., jointly administered under Case No. 23-90032 (Bankr. S.D. Tex.).").

[29] *See* Nolan Testimony at 3-4, 31. The PFP (or non-performance) penalty rate has recently increased and will increase again on June 1, 2025. Tariff Section III.13.7.2.5 (describing a Performance Payment Rate $3500/MWh between June 1, 2021 and May 31, 2024, $5455/MWh between June 1, 2024 and May 31, 2025, and $9337/MWh beginning on June 1, 2025); *see also* December FCM Delivery FA Filing, at 3 (mistakenly referring to the change in the Performance Payment Rate occurring in 2024 and *2026*, rather than 2024 and *2025*).

[30] *See* December FCM Delivery FA Filing, at 6-8 (explaining risks of collateral shortfalls); Nolan Testimony at 4 (explaining higher nonpayment risks posed by capacity sellers with inadequate corporate liquidity).

[31] *See generally* December FCM Delivery FA Filing.

[32] Throughout this transmittal letter and the accompanying testimony, CSO obligations are referred to as contractual because to become a Market Participant, an entity must sign a Market Participant Service Agreement, which requires the Market Participant to be bound by the terms of the Tariff, including the rules for participating in the FCM. *See* Tariff Sections1.2.2, I.3.1; *see also* Tariff Attachment A, Section 3.2.

[33] *See* Nolan Testimony at 6.

[34] *Id.*

payments.[35] The non-performance penalty rates are effective on a Capacity Commitment Period basis (June 1 - May 31) and assessments for non-performance are limited each month by operation of the monthly stop-loss (as described in III.13.7.3.1 of Market Rule 1) and aggregate to the annual stop-loss (as described in Section III.13.7.3.2 of Market Rule 1).[36] The ISO's financial assurance program protects all market participants against nonpayment risks by ensuring that a participant has the ability to pay its invoices, for all aspects of its market participation.[37] If the potential for non-performance penalties during the Capacity Commitment Period in which a participant holds a CSO are not properly accounted for on a participant's balance sheet, they can place significant stress on the participant's ability to timely pay invoices that include penalty payments.[38] Because the ISO's Billing Policy requires a participant to pay within two Business Days, if a participant has not properly accounted for this risk by having enough short-term liquidity (*e.g.*, cash on hand, available credit facilities, marketable securities), it is unlikely that it would be able to resolve the liquidity needs in time to pay its invoice within the two day window.[39] However, even if a participant were afforded a longer time to pay such invoice, the ability to resolve liquidity needs after a significant obligation has been incurred (if it wasn't properly planned for) can jeopardize the financial health of the whole entity and potentially result in a bankruptcy filing.[40]

As explained in the Nolan Testimony, even short duration CSCs can result in capacity sellers owing the ISO their maximum monthly financial contractual obligation if they are unable to perform or timely address operational performance issues.[41] In other words, the underlying event's duration does not need to be an extreme, days' long event for a participant's maximum monthly penalty to be triggered.[42] Furthermore, if a participant incurs its maximum monthly obligation during several months of the Capacity Commitment Period (up to its annual stop-loss amount), the strain on liquidity will become even more pronounced if such risk was not properly accounted for.[43] And, despite certain months having a higher risk of the occurrence of CSCs than others, transient capacity scarcity events and stressed market conditions may occur during any month throughout the year which means that it would not be unexpected for a participant (with a resource(s) that does not perform) to incur their maximum penalty during more than one month per Capacity Commitment Period.[44]

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[35] *Id.* at 6-7.

[36] *See* Tariff Sections III.13.7.3.1; III.13.7.3.2; *see also* Nolan Testimony at 6-7.

[37] *See* Nolan Testimony at 15-18.

[38] *See id.* at 6-9, 15-18.

[39] *Id.* at 6-9; ISO New England Billing Policy, Section 3.1(the Billing Policy is Exhibit ID to the Tariff).

[40] *See* Nolan Testimony at 6-9.

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

[42] *Id.*

[43] *Id.* at 9, 17.

[44] *Id.* at 9.

Regardless of when a scarcity event happens, or how many months within a Capacity Commitment Period have scarcity events, or the probability of additional events occurring, by virtue of acquiring and holding a CSO, a participant is expected to account for the financial risk that penalties may be incurred if the participant's resource(s) is/are unable to perform during stressed conditions.[45] The risk of a resource being unable to perform (or underperforming) should be borne by the entity with the CSO, not the pool via socialized defaults.[46]

Because the portion of the FCM Delivery Financial Assurance formula that covers credit risk is not designed to fully collateralize all potential risk up to the full amount of potential penalties (*i.e.*, the annual stop-loss), it is particularly important that capacity sellers account for such risk on their balance sheets and are able to post incremental collateral as penalties are incurred.[47] Put another way, the FCM Delivery Financial Assurance formula does not require the full amount of potential penalties *upfront* as collateral.[48] Instead, as penalties are incurred, the clearing risk portion of the formula (*i.e.*, the IMC and MCC variables) provides for the collateralization of the incurred penalties until they are paid.[49] However, the effectiveness of the current methodology assumes that participants have sufficient liquidity to meet the full amount of their potential penalties.[50] If a participant does not have adequate liquidity to post that incremental financial assurance amount, it also means they may not have the liquidity to discharge their obligations once settled.[51] Therefore, the FAP Revisions address the issue that not all participants that have acquired and hold CSOs have adequate liquidity profiles by requiring those with insufficient liquidity to post more collateral upfront and on an ongoing basis to address the heightened risk that they pose to the market.[52]

D. Identification of Risk and Potential Mitigation

To evaluate the risk of FCM participants with inadequate liquidity, the ISO analyzed the corporate liquidity of all capacity sellers that have CSOs for the 2025 - 2026 Capacity Commitment

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[45] *Id.* at 9.

[46] *Id.* at 15-18 (explaining that, unlike other capacity markets where performance related penalties may only be socialized among other capacity sellers, the PFP obligations in ISO New England are not segregated from other market settlements, and therefore, that default amounts that cannot be covered by the Late Payment Account or the ISO's short-term funding facility will result in reduced payments to participants (from any sector) that are due to receive remittances (*i.e.*, payments) in the billing cycle in which the default occurs).

[47] *See* Nolan Testimony at 12-13.

[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] *Id.*

[52] *Id.* at 11-13, 46, 68.

Period.[53] As explained in the Nolan Testimony, this analysis showed that a substantial number of capacity sellers cannot demonstrate access to adequate corporate liquidity to ensure that they are able to pay potential non-performance penalty charges.[54] Looking at five months (roughly the time it takes to reach the annual stop-loss amount) during the 2025 - 2026 Capacity Commitment Period, the percentage of CSOs held by participants that have enough corporate liquidity to meet their monthly stop-loss amount steadily decreases as the number of months during which they incur the monthly stop-loss amount increases.[55] During the fifth month only 17% of CSO volume is held by participants with CSOs for the 2025 - 2026 Capacity Commitment Period that reported enough corporate liquidity to cover the maximum potential contractual obligations associated with their CSO (*i.e.*, roughly their annual stop-loss amount).[56] But even more striking is that more than three quarters of the CSO volume is held by participants that do not have enough corporate liquidity to cover two months of non-performance penalties.[57] Furthermore, during stressed market conditions it is possible that multiple participants with inadequate corporate liquidity may incur non-performance penalties that they are unable to pay.[58]

However, as the Nolan Testimony also explains, although many participants do not have sufficient corporate liquidity to meet their potential financial obligations arising from their CSO, the picture significantly improves when parent entities' liquidity are also considered.[59] For example, during the fifth month where only 17% of the CSO volume is held by participants that reported enough liquidity to cover the maximum potential amount, 86% of the volume have parent entities with enough liquidity.[60] For two months of maximum potential non-performance penalties, 92% of the CSO volume is held by parent entities that do have enough liquidity.[61] This is because many participants are part of larger corporate families with entities that *do* have adequate liquidity where the corporate treasury teams manage cash flows at the parent/holding company level.[62]

[53] *Id.* at 13-15. The 2025 - 2026 Capacity Commitment Period is associated with the sixteenth Forward Capacity Auction and is from June 1, 2025 through May 31, 2026.

[54] *Id.* at 13-15.

[55] *Id.* (explaining that five months is approximately the amount of consecutive or non-consecutive months it would take to reach the annual stop-loss amount based on the market prices specifically associated with the sixteenth Forward Capacity Auction, assuming a flat CSO profile). The amount of months it takes to reach the annual-stop loss will vary based on the ratio of the Forward Capacity Auction Starting Price and the Capacity Clearing Price for each auction. *See* Tariff Section III.13.7.3.2.

[56] *See* Nolan Testimony at 13-15.

[57] *Id.*

[58] *Id.* at 15-18, 30-31.

[59] *Id.* at 15.

[60] *Id.*

[61] *Id.*

[62] *Id.* at 15, 32, 47-48.

Therefore, the FAP Revisions evaluate capacity sellers' corporate liquidity as compared to their potential non-performance penalties and requires more collateral upfront and on an ongoing basis for the entities deemed riskiest to the market, but also provide that the liquidity assessment will be done at the parent (or affiliate level) if such parent (or affiliate entity) guarantees the payment of the market participant's potential non-performance penalties.[63] This approach recognizes that many parent or affiliate entities, particularly entities that are energy industry companies (as opposed to financial or private equity firms), would be incentivized to fund non-performance penalties if they arose.[64]

E. Impact of FAP Revisions

As noted above and explained in more detail below, the FAP Revisions provide that higher risk entities (that choose not to or cannot adjust their balance sheets or provide an Affiliate guaranty) will be required to post more FCM Delivery Financial Assurance (either as money in a BlackRock account or a letter of credit) to account for the heightened risk to the market.[65] Therefore, when developing the FAP Revisions, the ISO looked at several potentially impacted parties: (1) capacity sellers (and specifically, entities currently holding CSOs for the 2025 - 2026 Capacity Commitment Period); (2) the New England Markets, including other participants within the markets; and (3) consumers.[66] Importantly, entities that have accounted for the risk of potential non-performance penalties (up to, approximately, the annual stop-loss) will not be required to post any additional collateral as such entities' balance sheets show that such entities will be able to pay penalties as incurred.[67]

With respect to capacity sellers that have a CSO for the 2025 - 2026 Capacity Commitment Period (beginning June 1, 2025), the ISO expects the aggregated FCM Delivery Financial Assurance obligations to increase by an average of $72 million to $90 million over such Capacity Commitment Period depending on the number of Affiliate guaranties received by the ISO.[68] As explained in the Nolan Testimony, if the ISO receives the maximum number of guaranties (for the 2025 - 2026 Capacity Commitment Period) from eligible Affiliates, the total increase in collateral requirements would be an average of $35 million.[69] This is because out of a total of approximately 32.8 GW of CSOs held by participants for the 2025 - 2026 Capacity Commitment Period, 3.3 GW of CSOs would still fall into the high and medium risk categories and all other participants would

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[63] *Id.* at 5; Revised FAP Section VII.A.

[64] *See* Nolan Testimony at 22-23. More details regarding the ISO's assumptions regarding entities that may provide a guaranty, guaranteeing the payment of PFP penalties, is provided in the Nolan Testimony. *Id.* at 19-25.

[65] *See supra* at p. 2; *infra* at pp. 12-13, 20-21.

[66] *See* Nolan Testimony at 27-31.

[67] *See id.* at 27; Revised FAP Section VII.A.1.

[68] *See* Nolan Testimony at 25-27.

[69] *Id.* at 19-22, 26.

be covered by a guaranty or have adequate corporate liquidity.[70] If the ISO received no guaranties, the total increase in collateral requirements would be an average of $154 million.[71]

However (for the 2025 - 2026 Capacity Commitment Period), the ISO does not assume that it will receive the maximum number of guaranties, nor does it expect to receive no guaranties.[72] Instead, the ISO expects the number of guaranties to fall within a range and so the ISO developed two case scenarios to account for the range of guaranties it expects.[73] The first scenario: high case guaranties assumes that a larger amount of market participants use the Affiliate guaranty option (resulting in the lower end of the expected range of increased FCM Delivery Financial Assurance: $72 million).[74] The second scenario: low case guaranties, assumes that less participants utilize the Affiliate guaranty option (resulting in the higher end of the expected range of increased FCM Delivery Financial Assurance: $90 million).[75] And again, capacity sellers can avoid posting incremental financial assurance pursuant to the FAP revisions by either adjusting their balance sheet (by increasing liquid assets or obtaining an additional line of credit) to account for the full risk of non-performance penalties, providing an Affiliate guaranty, or shedding their position.[76] If a participant does not provide a guaranty or demonstrate sufficient corporate liquidity, it will be required to post the incremental FCM Delivery Financial Assurance per the FAP Revisions.[77] The Nolan Testimony details the development of these scenarios in more detail.[78]

Regarding the impact to other affected parties, including the remainder of participants within the New England Markets (both participants within the FCM and other market participants), the FAP Revisions shift risk of socialized defaults resulting from capacity sellers that do not have adequate corporate liquidity to the capacity sellers who have taken on the contractual obligation to perform during CSCs or pay PFP penalties.[79] Furthermore, in developing the FAP Revisions, the ISO analyzed the potential cost impacts to consumers if capacity sellers were to fully pass through the cost of the incremental collateral increase in a future auction offer.[80] Using conservative cost assumptions (at the request of stakeholders) from the nineteenth Forward Capacity Auction Net CONE updates: on the low end, using the after tax cost of debt and on the

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[70] *Id.*

[71] *Id.*

[72] *Id.* at 21-22.

[73] *Id.*

[74] *Id.* at 22-25.

[75] *Id.* at 25-27.

[76] *Id.* at 6-7, 27, 59.

[77] *Id.* at 67-68; Revised FAP Sections VII.A.1 and VII.A.2.

[78] *See* Nolan Testimony at 19-27.

[79] *Id.* at 15-18.

[80] *Id.* at 27-31.

high end, using the after tax weighted average cost of capital, the *potential* cost to consumers is immaterial and ranges from $0.00003/kWh to $0.00007/kWh while the integrity of the consumer's capacity hedge is significantly improved as potential socialized defaults are mitigated.[81] As explained in the Nolan Testimony, whether these costs would be passed through to consumers is based on a number of assumptions, so the ISO's cost analysis was performed to be illustrative, but not definitive.[82]

IV. DESCRIPTION OF THE PROPOSED TARIFF REVISIONS

The FAP Revisions address four main topics: (1) the new corporate liquidity assessment (including provisions related to Affiliate guaranties); (2) the new collateral methodologies that apply based on the outcome of the new corporate liquidity assessment; (3) how the new corporate liquidity assessment will interact with the existing capitalization requirements in the FAP; and (4) improvements to the existing IMC variable in the FCM Delivery Financial Assurance formula.

A. Corporate Liquidity Assessment

The FAP Revisions provide that, starting with the 2025 - 2026 Capacity Commitment Period (and each Capacity Commitment Period thereafter), each FCM participant that has a CSO, shall be subject to a "Corporate Liquidity Assessment" to determine its FCM Delivery Financial Assurance.[83]

Generally, the Corporate Liquidity Assessment looks at a participant's CSO profile over the next six months (beginning with the current delivery month) and identifies the participant's three largest monthly stop-losses over that six month period.[84] If the participant's "Available Corporate Liquidity" is greater than or equal to the sum of the three largest monthly stop-losses, the participant will be assessed as low risk.[85] If the participant's corporate liquidity is greater than or equal to the sum of the largest two monthly stop-losses, the participant will be assessed as

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[81] *Id.* at 28-29 (explaining why Net CONE assumptions may be particularly conservative, but that using such values does not change the ISO's overall cost impact analysis).

[82] *Id.* at 30.

[83] Revised FAP Section VII.A.

[84] *Id.* at Section VII.A.2; Nolan Testimony at 47. Again, the ISO will not begin the Corporate Liquidity Assessment until the start of the 2025 - 2026 Capacity Commitment Period, so the rolling six month window in which the ISO will compare the sum of the three largest monthly stop-losses to available liquidity will not begin until June 1, 2025. To the extent that a participant has a CSO in the 2026 - 2027 Capacity Commitment Period, the six month look ahead window will eventually capture those obligations towards the end of the 2025 - 2026 Capacity Commitment Period. *See* Revised FAP Section VII.A.2.

[85] Revised FAP Section VII.A.2(a).

medium risk, and if the participant's corporate liquidity is less than the sum of the largest two monthly stop-losses, the participant will be assessed as high risk.[86]

As explained above, many participants that do not have adequate corporate liquidity to cover their potential non-performance penalties are part of a corporate family with entities that do have adequate corporate liquidity.[87] In many instances, the cash flows generated by capacity sellers are swept up to equity owners.[88] As a result, the FAP Revisions provide that the ISO will conduct the Corporate Liquidity Assessment at a parent or affiliate level, if such parent or affiliate provides a guaranty to the ISO guaranteeing the payment of the participant's Capacity Performance Payments (*i.e.*, non-performance penalties).[89] The FAP Revisions also provide that if a guaranty is guaranteeing the non-performance penalties of multiple participants (or if a participant is also guaranteeing an Affiliate), then the participants will be assessed as a whole and assigned one Corporate Liquidity Assessment result (*i.e.*, low risk, medium risk, or high risk).[90] Similarly, if a participant provides a guaranty from multiple Affiliates, the guarantors will be assessed on an aggregate basis for purposes of the Available Corporate Liquidity calculation taking into account other guaranties provided by the guarantors.[91] By assessing entities collectively and taking into account whether a guarantor is guaranteeing multiple participants with potential for non-performance penalties, the Corporate Liquidity Assessment is able to evaluate the total liquidity of the guaranteeing entities against the collective potential non-performance penalties during the six month calculation window.[92]

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[86] *Id.*

[87] *See* Nolan Testimony at 32, 60; *supra* at p. 9.

[88] *Id.*

[89] Revised FAP Section VII.A.2 ("For the avoidance of doubt, the components of the Available Corporate Liquidity calculation that are derived from financial statements shall be based on the financial statements of the Designated FCM Participant unless it provides an Affiliate guaranty in compliance with this Section VII.A, in which case the values shall be based on the financial statements of the entity(ies) providing the guaranty. If an acceptable Affiliate guaranty is provided, stop-loss and excess financial assurance values will still be based on the Designated FCM Participant.")

[90] Revised FAP Section VII.A.2(b). When assessing multiple participants as a whole for purposes of the Corporate Liquidity Assessment, the Applicable Monthly Stop-losses for each participant are aggregated for each month during the six month Calculation Period. *Id.* The test is otherwise the same as when assessing single participants (*i.e.*, when Available Corporate Liquidity is greater than or equal to the sum of the three largest aggregated Applicable Monthly Stop-losses during the Calculation Period, each Designated FCM Participant in the collective assessment is considered low risk; less than the sum of the three largest aggregated Applicable Monthly Stop-losses but greater than or equal to the sum of two largest aggregated Applicable Monthly Stop-losses during the Calculation Period, each Designated FCM Participant in the collective assessment is considered medium risk; and less than the sum of the two largest aggregated Applicable Monthly Stop-losses during the Calculation Period, each Designated FCM Participant in the collective assessment is considered high risk). *Id.*

[91] Revised FAP Section VII.A.2(c); Nolan Testimony at 60-61.

[92] *See* Nolan Testimony at 60-61.

i. Corporate Liquidity Assessment Components

As noted above, the Corporate Liquidity Assessment compares a participant's "Available Corporate Liquidity" against "Applicable Monthly Stop-losses" over a "Calculation Period" of six months beginning with the current delivery month.[93] Applicable Monthly Stop-loss is a value that allows the ISO to review the participant's maximum potential penalty obligations over the next six months and equals the sum of the monthly stop-losses for each resource in a participant's portfolio as described in Section III.13.7.3.1 of Market Rule 1 (*i.e.*, the monthly stop-loss rule).[94] Available Corporate Liquidity is a measurement of the participant's liquid assets available to pay short-term obligations such as non-performance penalties and is the sum of a participant's: (a) unrestricted cash and cash equivalents; (b) marketable securities and money market instruments; (c) undrawn committed credit facilities not expiring within three months of the date of the applicable financial statements; and (d) financial assurance already provided by the market participant to cover its FCM Delivery Financial Assurance obligations and any financial assurance in excess of its financial assurance obligations.[95] With respect to the financial assurance value, the calculation specifically only includes financial assurance in excess of a participant's total obligations under the FAP and financial assurance covering FCM Delivery Financial Assurance because, any other financial assurance that has been provided, is to cover other market obligations (such as energy market obligations) and therefore should not be considered when looking at a participant's ability to satisfy potential non-performance penalties.[96]

The FAP Revisions provide that the first three components of Available Corporate Liquidity will be based on participant financial statements (as explained below) and the financial assurance value is as reflected in the ISO's Financial Assurance Management (FAM) or equivalent system.[97] If a guaranty is provided, then the Available Corporate Liquidity values derived from financial statements will be from the guarantor financial statements, but the financial assurance values (and any stop-loss calculations) will be at the participant level.[98]

Once determined, Available Corporate Liquidity is compared against the participant's potential non-performance payment obligations over the next six months.[99] As noted above, if the participant's Available Corporate Liquidity is greater than or equal to the sum of the three largest monthly stop-losses, the participant will be assessed as low risk; if the participant's corporate

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[93] Revised FAP Section VII.A.2.

[94] *Id.*

[95] *Id.* For simplicity, the FAP Revisions use the phrase "excess financial assurance" in the initial definition of Available Corporate Liquidity and then later define what is considered "excess financial assurance."

[96] *See* Nolan Testimony at 51-53.

[97] Revised FAP Section VII.A.2.

[98] *Id.*

[99] *Id.*

liquidity is greater than or equal to the sum of the two largest monthly stop-losses, the participant will be assessed as medium risk; and if the participant's corporate liquidity is less than the sum of the two largest monthly stop-losses, the participant will be assessed as high risk.[100]

As explained in more detail in the Nolan Testimony, the ISO categorized market participants, from a corporate liquidity risk perspective, based on their ability to pay their maximum PFP penalties in monthly increments because, for the 2025 - 2026 Capacity Commitment Period, it will only take a short duration event of approximately two hours, on average, for participants to incur their maximum penalties in a single month.[101] Therefore, the corporate liquidity risk categories are driven by the ability of market participants to demonstrate that they can at least fund their exposure to PFP penalty payments in increments of a month so that the ISO can settle the market on a timely basis when the monthly invoices become due.[102] Consequently, participants that are assessed in the low risk category can adequately demonstrate their ability to cover at least three months of maximum potential penalty payments (*i.e.*, the approximate duration of a high risk season) based on their access to cash or short-term liquidity internally.[103] The medium risk category was introduced to identify higher risk market participants that are able to demonstrate corporate liquidity to cover less than three months but more than two months of potential penalty payments.[104] Similarly, the high risk category was introduced to identify the highest risk market participants that cannot demonstrate enough corporate liquidity on their balance sheet to cover just two months of their maximum potential penalty payments as there is a higher probability of CSCs occurring during two months of the Capacity Commitment Period compared to five months, for example, which would aggregate approximately up to the annual stop-loss.[105]

ii. Financial Statements Reporting Requirements

As noted above, the first three components of Available Corporate Liquidity (*e.g.*, cash, marketable securities, and undrawn credit facilities) are values that are typically reflected on a company's financial statements or balance sheet and used in standard liquidity assessments.[106] Therefore, for purposes of calculating Available Corporate Liquidity, the FAP Revisions require

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[100] *Id.*

[101] *See* Nolan Testimony at 8, 48-51.

[102] *Id.* at 48-51.

[103] *Id.* The Nolan Testimony explains why the "low risk" assessment is based on the participant having liquidity available to meet at least the sum of its three largest monthly stop-losses, even though the annual stop-loss amount is approximately five times the monthly stop-loss amount. *Id.* (explaining that frequently the ISO will have setoff rights from a capacity seller's base capacity payments that it may exercise if a participant defaults).

[104] *Id.* at 50.

[105] *Id.* at 50-51.

[106] *See* Nolan Testimony at 51-53.

that participants periodically submit financial statements so that the ISO can complete the calculation.[107] The FAP Revisions provide that other than with respect to excess financial assurance, the elements of Available Corporate Liquidity are as reflected on the most recent financial statements provided by the participant, provided that such financial statements were provided for the most recently completed financial reporting period and compliant with the requirements of Revised FAP Section VII.A.[108] The FAP Revisions also provide that the values of Available Corporate Liquidity derived from financial statements must be calculated in accordance with international accounting standards or generally accepted accounting principles in the United States at the time of determination consistently applied.[109] In other words, if a participant provides financial statements that are from a prior reporting period, or that use non-GAAP values, or that are not accompanied by the appropriate officer's certificate (explained below), then the values from the financial statements will be assigned $0.00 for purposes of the Corporate Liquidity Assessment.[110]

The FAP Revisions provide that each participant shall submit to the ISO, on a quarterly basis, its (or its guarantor's, as applicable) audited or unaudited balance sheet or equivalent financial statements, which shall show sufficient detail for the ISO to assess the components of Available Corporate Liquidity.[111] To ensure integrity of the data and to ease the administrative burden on the ISO, the FAP Revisions also provide that participants must submit their financial statements with a certificate from a Senior Officer[112] of the participant (or guarantor, as applicable) that provides the relevant financial information and certifies the accuracy of the attached financial statements.[113] The certificate must also indicate the level of accounting attestation, if an attestation was made by an independent accounting firm; if no attestation was made by an independent accounting firm, then no such indication is required.[114] These financial statement reporting requirements are generally consistent with other financial statement reporting requirements in the FAP and allow participants to submit financials that are consistent with how their company already prepares financial statements.[115] To facilitate an efficient review of financial statements and the information provided therein, the ISO believes that having a standard form certificate provided

[107] Revised FAP Section VII.A.2.

[108] *Id.*

[109] *Id.*

[110] *Id.*; Nolan Testimony at 58-59.

[111] Revised FAP Sections VII.A.2; VII.A.3.

[112] Senior Officer is defined in Section I of the Tariff as "an officer of the subject entity with the title of vice president (or similar office) or higher, or another officer designated in writing to the ISO by that officer." Tariff Section I.2.2.

[113] Revised FAP Section VII.A.2.

[114] *Id.*

[115] *See* Nolan Testimony at 53-55; FAP Section II.C.3 (financial statement reporting requirements for participants with credit limits).

with the financial statements will streamline the reporting process.[116] Therefore, the FAP Revisions also provide that the ISO shall post a generally acceptable "clean" form of certificate on its website.[117]

For purposes of the Corporate Liquidity Assessment, the FAP Revisions provide that financial statements should be provided on a quarterly basis and be submitted within 10 days of such statements becoming available and within 65 days after the end of the applicable fiscal quarter.[118] However, some participants that are in higher risk categories may find it advantageous to provide more frequent reporting (as opposed to having to wait another quarter for a more favorable liquidity profile).[119] Such participants may provide financial statements on a monthly basis until such time as they are assessed lower risk, provided that such election is made for at least six consecutive months of lower risk (*e.g.*, from high risk to medium risk, medium risk to low risk, or high risk to low risk).[120] As explained in the Nolan Testimony, requiring monthly reporting (once a participant opts in) for at least a six month period ensures that participants are not improperly switching how frequently they are providing financial statements to the ISO to obscure an accurate liquidity assessment.[121] Monthly financial statements must be submitted within 20 days after the end of the prior month.[122]

To ensure that the ISO is able to manage a diligent review of submitted financial statements without undue administrative burden, the FAP Revisions provide that the ISO shall review the information provided for the Corporate Liquidity Assessment on a rolling basis and will calculate the Available Corporate Liquidity within a reasonable time period which shall not exceed 30 Business Days from the date of receipt.[123] This gives the ISO time to review, but also sets a limit on its review time, both in terms of reasonableness (which may be less than 30 Business Days) and the maximum time of 30 Business Days.[124]

The FAP Revisions provide that a participant may choose not to submit financial statements for purposes of the Corporate Liquidity Assessment in which case the ISO will use a value of $0.00 for those values derived from financial statements until such time as compliant

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[116] *See* Nolan Testimony at 54-55.

[117] Revised FAP Section VII.A.2.

[118] *Id.*

[119] *See* Nolan Testimony at 57-58.

[120] Revised FAP Section VII.A.2.

[121] *See* Nolan Testimony at 57-58.

[122] Revised FAP Section VII.A.2.

[123] *Id.*

[124] *Id.*

financial statements are provided.[125] Additionally, the FAP Revisions provide that the ISO will use a value of $0.00 for financial statement values if noncompliant financial statements are provided (*e.g.*, those not in compliance with GAAP or those that are not accompanied by an appropriate officer's certificate).[126] Structuring the FAP Revisions this way avoids unnecessary defaults under the FAP; if a participant doesn't provide financial statements, it does not trigger any default or suspension if they otherwise have enough financial assurance, but rather results in a $0.00 value for the components of Available Corporate Liquidity derived from financial statements until compliant financial statements are provided.[127]

iii. Affiliate Guaranties

As stated above, for purposes of the Corporate Liquidity Assessment, participants may provide a parent or affiliate guaranty guaranteeing the payment of all non-performance penalties (*i.e.*, Capacity Performance Payments) owed by such participant.[128] If a compliant guaranty is provided, then the guarantor must provide financial statements and the Corporate Liquidity Assessment components derived from financial statements will be based on the guarantor's financial statements (rather than participant financial statements).[129] The use of guaranties in this limited context recognizes that adequate corporate liquidity may not be at the subsidiary level, but that parent level entities (or other entities within the corporate family) may have adequate liquidity and be incentivized to pay incurred non-performance penalties for their subsidiary or affiliate.[130]

More specifically, the FAP Revisions provide that the guaranty must be from an Affiliate[131] must be unconditional and irrevocable; guaranty the payment of all Capacity Performance Payments (*i.e.*, non-performance penalties); and be in the form posted on the ISO's website with only minor, non-material changes (as determined by the ISO in its sole discretion).[132] Additionally,

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[125] *Id.* ("A Designated FCM Participant may choose not to submit financial statements as described in this Section VII.A").

[126] *Id.*

[127] *Id.*; Nolan Testimony at 58-59.

[128] Revised FAP Section VII.A.3.

[129] *Id.* And, as explained in this transmittal letter, financial assurance values in the Available Corporate Liquidity calculation and stop-loss values in the FCM Delivery Financial Assurance calculation and Corporate Liquidity Assessment are evaluated at the participant level.

[130] *See* Nolan Testimony at 47-48, 60.

[131] Under Section I of the Tariff, Affiliate is defined as "any person or entity that controls, is controlled by, or is under common control by another person or entity. For purposes of this definition, "control" means the possession, directly or indirectly, of the authority to direct the management or policies of an entity. A voting interest of ten percent or more shall create a rebuttable presumption of control." Tariff, Section I.2.2.

[132] Revised FAP Section VII.A.3. The ISO has indicated in the form guaranty which sections may need to be modified in the case of a foreign guarantor. The form also indicates that additional provisions may need to be inserted specific to the guarantor's country of origin to ensure the enforceability of the guaranty.

to ensure that the full amount of non-performance penalties are guaranteed, if the guaranty is from multiple Affiliates, then their liability must be joint and several.[133] The form guaranty contains standard representations and warranties as well as a requirement for the guarantor to provide financial information to the ISO for purposes of the Corporate Liquidity Assessment.[134] Finally, to allow for flexibility as guaranty case law develops or improvements are identified, the FAP Revisions provide that the ISO may update the form of guaranty in its sole discretion.[135]

Importantly, the FAP Revisions also provide that the ISO may (at any time) in its sole discretion, choose to reject or terminate a guaranty because such guaranty presents unreasonable risk to the ISO or the New England Markets.[136] As explained in the Nolan Testimony, this flexibility is crucial to allow the ISO to respond to updated liquidity or financial information regarding the guarantor that may be available to the market.[137] However, it is also important that the FAP Revisions account for the fact that the ISO's decision to reject or terminate a guaranty may have significant financial assurance impacts for the participant (because without the benefit of the guaranty it will likely become classified as medium or high risk with additional collateral requirements).[138] If a participant cannot post the incremental collateral required based on its updated Corporate Liquidity Assessment without the benefit of its guaranty, they will be suspended.[139] Therefore, the FAP Revisions strike a balance: in the case of a termination (or planned termination), upon the ISO providing notice to the participant, the guaranty shall not be considered for purposes of such participant's Corporate Liquidity Assessment beginning at 8:30 a.m. on the next Business Day, but the ISO may, in its sole discretion, extend this period by up to

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[133] *Id.*

[134] https://www.iso-ne.com/static-assets/documents/100013/guaranty-agreement.pdf. The foregoing link is a form of guaranty posted for discussion, once the FAP Revisions become effective, the ISO will post the form guaranty on the Financial Assurance and Credit webpage that contains the necessary financial assurance documents and information for participants: https://www.iso-ne.com/participate/applications-status-changes/financial-assurance-credit.

[135] Revised FAP Section VII.A.3. Importantly, the ISO would need to propose and file FAP changes if the ISO proposed updating the fundamental components of the guaranty or the overall structure because the FAP Revisions reflect those essential terms. Therefore, the flexibility for the ISO to update the form guaranty in its sole discretion is not blanket authority to change the components of the Corporate Liquidity Assessment, including the key components of the guaranty.

[136] Revised FAP Section VII.A.3.

[137] *See* Nolan Testimony at 63. The form guaranty also has a material adverse change clause requiring the guarantor to notify the ISO if there is a "material adverse change in the financial condition of Guarantor, or the increase in, or the addition of any new, material liability, direct or indirect, fixed or contingent, which change(s) or liability(ies) would (individually or in the aggregate) have a material adverse effect on Guarantor's ability to perform its obligations [under the guaranty]." Form Guaranty, Section 14.v https://www.iso-ne.com/static-assets/documents/100013/guaranty-agreement.pdf.

[138] *See* Nolan Testimony at 63-66.

[139] *Id.*; *see also* FAP Section III.B.

twenty (20) Business Days.[140] The ISO will evaluate these instances on a case by case basis and evaluate the risk to the market if a participant is afforded an extended cure period.[141]

Relatedly, the form guaranty provides that it will terminate at the earlier of (a) termination by the ISO, (b) the ISO providing written consent to terminate (not to be unreasonably withheld) so long as the guaranteed participant has provided adequate financial assurance, or (c) when the participant no longer has obligations under the FAP.[142] Because the guaranty governs the relationship between the ISO and the guarantor, while the FAP governs the relationship between the ISO and the participant, the FAP Revisions make clear that if the ISO notifies the participant that its Affiliate guaranty is being terminated, that notice to the market participant is not the contractual notice required under the guaranty.[143] This is important because the ISO will likely want to notify the participant in advance that its Affiliate guaranty is being terminated while leaving the guaranty in place until such time as the market participant has posted adequate financial assurance.[144]

Finally, the FAP Revisions provide that the ISO has the right to draw upon the guaranty in the event of a default under the ISO New England Billing Policy up to any amount owed for unpaid Capacity Performance Payments.[145]

B. Revised FCM Delivery Financial Assurance Methodology Based on Corporate Liquidity Assessment

Based on the Corporate Liquidity Assessment, a participant will be assessed as low risk, medium risk, or high risk.[146] Low risk entities will continue to be subject to the existing FCM Delivery Financial Assurance calculation (subject to the enhancements to the IMC variable, described below).[147] Medium risk and high risk entities will have a risk adder(s) added to their FCM Delivery Financial Assurance calculation to account for the increased corporate liquidity

[140] Revised FAP Section VII.A.3.

[141] *See* Nolan Testimony at 63-66 (explaining the benefit of the flexibility provided by the 20 Business Day period and the factors the ISO may consider when deciding whether to afford a participant additional time).

[142] Form Guaranty, Section 9, https://www.iso-ne.com/static-assets/documents/100013/guaranty-agreement.pdf.

[143] Revised FAP Section VII.A.3.

[144] *See* Nolan Testimony at 65.

[145] Revised FAP Section VII.A.3. Per the terms of the guaranty, the ISO does not need to first recover (or attempt to recover) the amount of unpaid penalties from the defaulting participant.

[146] Revised FAP Section VII.A.2. The FAP Revisions also make clear that the existing FCM Delivery Financial Assurance formula applies for participants that have a CSO up to and including the end of the Capacity Commitment Period associated with the fifteenth Forward Capacity Auction. Revised FAP Section VII.A.1.

[147] Revised FAP Section VII.A.1.

risk.[148] The FAP Revisions also contain a clarifying sentence that regardless of which risk category a participant is assessed, the FCM Delivery Financial Assurance formula will be limited by the operation of the applicable stop-loss.[149]

(i) Medium Risk FCM Delivery Financial Assurance

Medium risk entities will have a risk adder added to their FCM Delivery Financial Assurance calculation.[150] Generally, the risk adder is equal to the peak monthly stop-loss amount for that entity over the next six months adjusted by the estimated assumed performance (based on historical performance) of the resources in a participant's portfolio: the difference between the Average Balancing Ratio (ABR) and the Capacity Weighted Average Performance ratio (CWAP).[151] Typically, this means the risk adder (roughly one month's stop-loss) is reduced to reflect the diversification benefits of a portfolio and collateralizes the non-performance risk of a multi-resource portfolio.[152]

More specifically, if based on the Corporate Liquidity Assessment, an entity is assessed as "Medium Risk", it will be required to post FCM Delivery Financial Assurance according to the following formula:[153]

[DFAMW x PE x max[(ABR – CWAP), 0.1] x SF] – IMC – MCC – Peak Monthly Stop-loss x max[(ABR – CWAP), 0.1]

Where the first portion of the formula: "DFAMW x PE x max[(ABR – CWAP), 0.1] x SF] – IMC – MCC" is the existing FCM Delivery Financial Assurance formula and the second part of the formula: "Peak Monthly Stop-loss x max[(ABR – CWAP), 0.1]" is the risk adder.[154] Peak Monthly Stop-loss is defined as the largest monthly stop-loss (after aggregating the stop-losses for each resource in the portfolio) for that participant that would occur during the period from the current delivery month through the following five consecutive months (including months in a future Capacity Commitment Period).[155] The stop-losses are calculated pursuant to the monthly

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[148] *Id.* The "addition" of the risk adders is reflected as subtraction in the formulas because the input values will be negative.

[149] Revised FAP Section VII.A.1. As explained in more detail in the Nolan Testimony, this is a conforming change that was previously reflected in the formula but needed clarification once the risk adders were included. *See* Nolan Testimony at 72-74.

[150] Revised FAP Section VII.A.1.

[151] *Id.*; Nolan Testimony at 68-70.

[152] *Id.*

[153] Revised FAP Section VII.A.1.

[154] *See* Nolan Testimony at 68-70.

[155] Revised FAP Section VII.A.1.

stop-loss rules set forth in Section III.13.7.3.1 of Market Rule 1.[156] The second part of the risk adder "max[(ABR – CWAP), 0.1]" incorporates a concept that exists in the current FCM Delivery Financial Assurance methodology which recognizes the diversification benefits of multi-resource portfolios (based on the resources' assumed performance given historical performance during prior CSCs) effectively reducing the risk adder.[157]

Essentially, the risk adder requires medium risk entities to post an additional month's stop-loss (less estimated assumed performance) upfront (and on an ongoing basis) as collateral instead of waiting for such penalties to be incurred and collateralized per the natural operation of the formula.[158] Requiring the amount upfront recognizes that based on the participant's liquidity profile, being able to post incremental financial assurance once the penalty is incurred is less likely.[159] The risk adder concept also strikes a balance between needing to account for the increased risk that medium risk entities pose to the market but not requiring full collateralization up to the participant's annual stop-loss upfront because such outcome would be costly for lower probability scenarios.[160]

(ii) High Risk FCM Delivery Financial Assurance

High risk entities will have two risk adders added to their FCM Delivery Financial Assurance calculation.[161] Generally, the risk adders are equal to the largest (peak) monthly stop-loss and the second largest monthly stop-loss for that entity over the next six months but, in each case, adjusted by the estimated assumed performance (based on historical performance) of the resources in a participant's portfolio: the difference between the Average Balancing Ratio (ABR) and the Capacity Weighted Average Performance ratio (CWAP).[162]

More specifically, if based on the Corporate Liquidity Assessment, an entity is assessed as "High Risk", it will be required to post FCM Delivery Financial Assurance according to the following formula:[163]

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[156] *Id.*

[157] *Id.*; Nolan Testimony at 68-70. The Nolan Testimony also explains how the risk adder adjustment will affect single resource portfolios. *See* Nolan Testimony at 70.

[158] *See* Nolan Testimony at 68-70.

[159] *Id.* at 68.

[160] *Id.*

[161] Revised FAP Section VII.A.1.

[162] *Id.*; Nolan Testimony at 71-72.

[163] Revised FAP Section VII.A.1.

> [DFAMW x PE x max[(ABR – CWAP), 0.1] x SF] – IMC – MCC – Peak Monthly Stop-loss x max[(ABR – CWAP), 0.1] – Second Largest Monthly Stop-loss x max[(ABR – CWAP), 0.1]

Where the first portion of the formula "DFAMW x PE x max[(ABR – CWAP), 0.1] x SF] – IMC – MCC" is the existing FCM Delivery Financial Assurance formula and the second part of the formula "Peak Monthly Stop-loss x max[(ABR – CWAP), 0.1] – Second Largest Monthly Stop-loss x max[(ABR – CWAP), 0.1]" are the two risk adders.[164] Peak Monthly Stop-loss is the same as for medium risk entities (*i.e.*, the largest monthly stop-loss over a six month period, including months in a future Capacity Commitment Period).[165] Second Largest Monthly Stop-loss is defined as the second largest monthly stop-loss (after aggregating the stop-losses for each resource in the portfolio) for that participant that would occur during the period from the current delivery month through the following five consecutive months (including months in a future Capacity Commitment Period).[166] The stop-losses are calculated pursuant to the monthly stop-loss rules set forth in Section III.13.7.3.1 of Market Rule 1.[167] Like the risk adder for medium risk entities, each risk adder for high risk entities (Peak-Monthly Stop-loss and Second Largest Monthly Stop-loss) also reflect the diversification benefits of multi-resource portfolios by multiplying each value by "max[(ABR – CWAP), 0.1]".[168]

As explained above, the risk adders reflect that because of the higher risk that high risk entities (*i.e.*, entities without adequate corporate liquidity) pose to the market, additional collateral in the form of two monthly stop-losses (less estimated assumed performance) is a reasonable precaution for the ISO to take rather than waiting for penalties to be incurred and assuming an entity without adequate corporate liquidity will be able to post such incremental amounts and/or pay its invoice.[169]

C. Changes to Capitalization Rule for Medium and High Risk Entities

Under the current FAP, all participants are required to meet minimum capitalization thresholds or, if they are unable to do so, the participant is required to provide an additional amount of financial assurance equal to 25% of the participant's total financial assurance requirements (excluding FTR Financial Assurance Requirements, which are subject to a separate capitalization adder).[170] Requiring an additional amount of financial assurance (*i.e.*, 25% percent of a

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[164] *See* Nolan Testimony at 70-72.

[165] Revised FAP Section VII.A.1*; see also supra* pp. 21-22.

[166] Revised FAP Section VII.A.1.

[167] *Id.*

[168] *Id.; see also supra* pp. 21-22.

[169] *See* Nolan Testimony at 68; *see also supra* at p. 22.

[170] FAP Section II.A.4.

participant's total financial assurance requirements) from thinly capitalized entities better protects the market from the risk of default from entities with inadequate capitalization.[171]

Because the FAP Revisions have a similar goal of protecting the market, in this case, from entities with inadequate corporate liquidity to pay potential non-performance penalties, requiring medium and high risk entities to provide the 25% capitalization adder on their FCM Delivery Financial Assurance obligations (if they are subject to it) in addition to the risk adders would potentially collateralize the increased risk twice.[172] Therefore, the FAP Revisions provide that for entities that are assessed as medium or high risk per the Corporate Liquidity Assessment, that also do not meet the capitalization requirements, the 25% capitalization adder will not apply to that participant's FCM Delivery Financial Assurance.[173] In other words, if a participant is subject to the 25% additional financial assurance under the capitalization provisions, FCM Delivery Financial Assurance requirements will be subtracted from the participant's total financial assurance amount before applying the 25% capitalization rule.[174]

D. Changes to Collateralize Intra-month Penalties Resulting from CSCs

As explained in greater detail in the Nolan testimony, the FAP Revisions make improvements to the IMC variable (that exists in the current FCM Delivery Financial Assurance formula) to avoid situations where the formula requires an amount through operation of the IMC formula in the current month, but a portion of such amount will automatically be returned to the participant the following month.[175] In other words, the IMC adjustments contained in the FAP Revisions avoid an unnecessary collateral "spike."[176]

Currently, the IMC variable calculates the full amount of non-performance penalties incurred within a current month ("Month A"), but regardless of potential additional CSCs, there are situations where a portion of the maximum amount of monthly non-performance penalty will be returned the following month ("Month B") based on the full calculation of the participant's FCM Delivery Financial Assurance.[177] This is because once the new month starts (Month B), the full amount of the penalty that was previously captured by the IMC variable will roll into the MCC variable (which collateralizes all penalties incurred in the prior month) and the IMC will return to

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[171] Docket ER15-593-000; *see also* Nolan Testimony at 76-77.

[172] *See* Nolan Testimony at 76-78.

[173] Revised FAP Section II.A.4(c). Because the Corporate Liquidity Assessment and resulting collateral adjustments will only apply to CSOs for the 2025 - 2026 Capacity Commitment Period and after, the capitalization revisions also make clear that excluding FCM Delivery Financial Assurance from the 25% capitalization adder only applies beginning with the 2025 - 2026 Capacity Commitment Period. *Id.*

[174] *Id.*; Nolan Testimony at 76-78.

[175] *See* Nolan Testimony at 79-80.

[176] *Id.*

[177] *Id.*; FAP Section VII.A.

$0 (until a new CSC occurs).[178] If, for example, Month B is a month with a lower scaling factor and therefore would require less financial assurance, the ISO could return such amount (if requested) to the participant as soon as the calculation updates.[179] Therefore, it's unnecessary to keep such excess amount until it is returned at the start of a new month.[180] As the example in the Nolan testimony illustrates, with the IMC update contained in the FAP Revisions, the ISO remains collateralized for the full amount of incurred non-performance penalties and avoids unnecessary collateral swings.[181] The FAP Revisions accomplish this by stating that the IMC is limited by the difference (not less than zero) between the minimum applicable stop loss and the amount of additional FCM Delivery Financial Assurance when considering the participant's current month obligation compared to the next month FCM Delivery Financial Assurance obligation (without giving effect to the IMC or MCC variables).[182]

E. Clean-Up Revisions

The FAP Revisions also include updates to the FAP Table of Contents to reflect the new sections that were added for the FCM Delivery Financial Assurance Calculation, the Corporate Liquidity Assessment Methodology, and FCM Affiliate Guaranties.[183]

V. STAKEHOLDER PROCESS

The FAP Revisions were reviewed and considered through the complete New England Power Pool ("NEPOOL") Participant Processes.[184]

The ISO introduced the high-level concept of the FAP Revisions at the September 26, 2023 NEPOOL Budget and Finance Subcommittee ("B&F Subcommittee") meeting, followed by discussions at the January 24, 2024, February 9, 2024, March 26, 2024, April 24, 2024, May 10, 2024, June 11, 2024 (a joint meeting with the NEPOOL Markets Committee), and July 29, 2024 meetings. Although the B&F Subcommittee is a non-voting entity, at its July 29, 2024 meeting, some members expressed support for the ISO's overall proposal, while many others voiced a preference for alternative approaches.

Some participants, including members of the New England Power Generators Association ("NEPGA"), proposed conceptual amendments related to the FAP Revisions, including allowing a longer time to pay off non-performance penalties, having the Corporate Liquidity Assessment

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[178] *See* Nolan Testimony at 79-80.

[179] *Id.*

[180] *Id.*

[181] *Id.*

[182] Revised FAP Section VII.A.1.

[183] Revised FAP, Table of Contents.

[184] Participant Processes has the meaning given in Section 7.1.1 of the Participants Agreement..

and the resulting collateral adjustments apply beginning with the 2028 – 2029 Capacity Commitment Period (*i.e.*, associated with the nineteenth Forward Capacity Auction), and changing the submission deadline for participants to submit a Capacity Supply Obligation Bilateral. As discussed below, the latter two amendments were formally considered and voted upon by the NEPOOL Participants Committee at its September 5, 2024 meeting.

The Capacity Supply Obligation Bilateral amendment proposed to amend Market Rule 1 to recognize Capacity Supply Obligation Bilateral trades closer in time to when they are executed. Because the amendment concerned proposed changes to the Tariff (not the financial assurance rules contained in the FAP), the Markets Committee reviewed and discussed the Capacity Supply Obligation Bilateral amendment at its June 11, 2024 (as part of a joint meeting with the B&F Subcommittee), July 9, 2024, and August 6, 2024 meetings. Ultimately, at its August meeting, the Markets Committee took an advisory vote on the NEPGA-sponsored proposal, which failed to pass, with a 50% vote in favor.[185]

Final action on the FAP Revisions, as well as NEPGA's two amendments (regarding Capacity Supply Obligation Bilateral trades and the implementation date), occurred at the September 5, 2024 NEPOOL Participants Committee meeting. The NEPOOL Participants Committee's vote to support the Capacity Supply Obligation Bilateral amendment failed, with a vote of 53.47% in favor, as did the amendment to extend the FAP Revisions effective date to June 1, 2028, with a vote of 47.78% in favor. Concerning the overall FAP Revisions package, the NEPOOL Participants Committee failed to approve the ISO's proposal filed herein, with a 62.5% vote in favor (below the required 66.67% vote threshold needed to approve the FAP Revisions).[186]

As explained in the Nolan Testimony, the ISO was unable to support any of the stakeholder amendments as they did not fundamentally address the risk that entities without adequate corporate liquidity pose to the New England Markets.[187] However, throughout the process, the ISO listened

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[185] The Sector vote breakdown at the NEPOOL Markets Committee was as follows: Generation Sector (16.67% in favor, 0% opposed, two abstentions); Transmission Sector (0% in favor, 16.67% not in favor, five abstentions); Supplier Sector (16.67% in favor, 0% opposed, six abstentions); Publicly Owned Entity Sector (0% in favor, 16.67% opposed, 0 abstentions); Alternative Resources Sector (16.67% in favor, 0% opposed, two abstentions); and End User Sector (0% in favor, 16.67% not in favor, seven abstentions).

[186] Results of the voting outcomes can be found in the NEPOOL Notice of Actions (Sept. 6, 2024), available at https://www.iso-ne.com/static-assets/documents/100015/npc-noa-20240905.pdf.

[187] *See* Nolan Testimony at 31-34; *see also* ISO New England, Inc., Memorandum to NEPOOL Participants Committee, ISO's Updates Financial Assurance Policy to Mitigate Risk of Pay-for-Performance Penalty Payment Defaults, p. 384 of PDF materials (Aug. 21, 2024), available at https://www.iso-ne.com/static-assets/documents/100015/npc-2024-09-05-composite3.pdf (explaining risks requiring the need for the FAP Revisions); ISO New England, Inc., Memorandum to NEPOOL Markets Committee, Concerns with NEPGA's CSO Bilateral and Monthly Reconfiguration Auction Proposals (Aug. 6, 2024); available at https://www.iso-ne.com/static-assets/documents/100014/a00_mc_2024_08_06_nepga_amendments_response.pdf (explaining ISO position on NEPGA amendments and that such amendments do not address the financial risk that the FAP Revisions address).

to stakeholder feedback on a range of issues regarding the FAP Revisions, and the ISO made modifications to several aspects of its proposal in response to stakeholder feedback. For example, the ISO added an additional Corporate Liquidity Assessment category (to avoid a pass/fail outcome); the ISO revised the risk adders to incorporate diversification benefits for multi-resource portfolios; and made adjustments to the "Available Corporate Liquidity" calculation to include excess collateral.[188]

In light of the Participants Committee's vote, the ISO is separately proceeding with the FAP Revisions filing pursuant to Section 11.1.4 of the Participants Agreement.[189]

VI. REQUESTED EFFECTIVE DATE AND WAIVER OF 120-DAY ADVANCE NOTICE REQUIREMENT

The ISO requests an effective date of February 1, 2025 for the proposed FAP changes instituting prospective improvements through a Corporate Liquidity Assessment and changes to the methodology for calculating FCM Delivery Financial Assurance based on such assessment. Further, we respectively request an order from the Commission no later than the effective date.

In making this request for a February 1, 2025 effective date, the ISO recognizes that the Commission's rules require that all rate schedules or any part thereof must be filed with the Commission and posted not "more than one hundred-twenty days prior to the date on which the electric service is to commence and become effective."[190] In light of the fact that the February 1, 2025 requested effective date is 136 days after this filing with the Commission, the ISO respectively requests waiver of the 120-day advance notice requirement under Rule 35.3(a)(1). Good cause is warranted for this waiver as it will accommodate the ISO's implementation needs while allowing the Commission sufficient time to process the filing.

Under the terms of the FAP Revisions, improvements to the inter-month collateral (IMC) variable in the FCM Delivery Financial Assurance formula will be implemented as of February 1, 2025, the effective date.[191] As explained above, in February 2024, the Commission accepted the ISO's inclusion of a new variable input, the IMC, into its FCM Delivery Financial Assurance

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[188] *See* ISO New England, Inc., Pay-for-Performance Financial Assurance, Discussions of Financial Assurance Policy Regarding Pay-for-Performance Penalties and Further Redlines to the FAP, at Slide 8 (July 29, 2024); available at https://www.iso-ne.com/static-assets/documents/100013/pay_for_performance_fa_updated_07_22_2024.pdf (summarizing responses to stakeholder feedback).

[189] NEPOOL has informed the ISO that it will file comments in this proceeding to provide additional details regarding the various conceptual amendments and explanation of the stakeholder processes to consider the FAP Revisions.

[190] 18 C.F.R. § 35.3(a)(1).

[191] *See* Revised FAP Section VII.A.1 (including IMC variable updates in the definition of IMC, included in the base formula that is currently effective).

formula.[192] The IMC improvements included within this filing reflect further refinements to that input calculation for its continued use.[193] No prior IMC calculations will be changed.[194]

The remainder of the FAP Revisions (*i.e.*, the Corporate Liquidity Assessment and associated changes to the calculation of a capacity seller's FCM Delivery Financial Assurance obligation based on such assessment) will have a June 1, 2025 initiation date.[195] In taking this staged approach, the ISO is ensuring that its updated credit review and financial assurance assessments align with the start of a new Capacity Commitment Period.

The primary focus of the FAP Revisions is to ensure its financial assurance program includes sufficient credit review procedures and financial assurance to address the higher nonpayment risk posed by capacity sellers with inadequate corporate liquidity risk profiles when compared against their maximum potential penalty payment obligation during the applicable Capacity Commitment Period.[196] The financial assurance program is an independent element of the ISO's operations, which is implemented in accordance with the FAP, as detailed in the Tariff in Section I, Exhibit IA. Through its financial assurance program, the ISO focuses on credit review procedures, security posting requirements for market activities, measures to avoid the possibility of a participant's failures to pay amounts owed under the Tariff, and addressing nonpayment events.[197] As such, the ISO's financial assurance measures account for, but do not alter, market outcomes. Instead, the ISO's proposed credit review and financial security posting requirements incorporate a participant's current and prospective obligations within relevant markets in order to assess the ongoing creditworthiness of participants, the ability of the participants to meet Tariff payment obligations (including non-performance penalties), and to ensure that the ISO has recourse for nonpayment.

The ISO has worked to ensure the prospective application of the improvements to its financial assurance requirements that are included within the FAP Revisions. Specifically, the following implementation framework is reflected in the FAP Revisions:

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[192] *See supra* at pp. 4-5; note 23.

[193] *See supra* at pp. 24-25.

[194] The IMC variable calculates based on CSCs happening within a month and then, by natural operation of the formula, the amounts roll into the MCC variable at the start of a new month. Therefore, the IMC changes would not affect any prior IMC calculations. Once approved, the IMC changes will only apply to CSC events that happen from the effective date and forward.

[195] *See* Revised FAP Sections VII.A.2 (implementation of the Corporate Liquidity Assessment coincident to the initiation of the 2025 - 2026 Capacity Commitment Period) and VII.A.1 (application of the revised calculation for the FCM Delivery Financial Assurance upon the June 1 commencement of the 2025 - 2026 Capacity Commitment Period).

[196] *See* Nolan Testimony, at 3-6.

[197] *See* FAP Overview.

- There are no modifications to the existing Non-Commercial Capacity financial assurance requirements (*i.e.*, the FCM financial assurance obligations required to participate in an auction and prior to the start of a Capacity Commitment Period related to capacity that is not yet commercial), which change as the Capacity Commitment Period approaches and are distinct from the calculation of the FCM Delivery Financial Assurance requirements which are tied to the delivery obligations of a capacity seller for a Capacity Commitment Period and are the subject of the FAP Revisions;[198]

- The ISO proposes to prospectively implement its improvements to the IMC input of the FCM Delivery Financial Assurance calculation formula as of the proposed February 1, 2025 effective date;

- The existing FCM Delivery Financial Assurance calculation formula is applicable through the remainder of the 2024 - 2025 Capacity Commitment Period (coincident to the completion of the CSOs related to the fifteenth Forward Capacity Auction);[199]

- The new Corporate Liquidity Assessment and FCM Delivery Financial Assurance calculation methodology will apply as of June 1, 2025 for the 2025 - 2026 Capacity Commitment Period;[200] and

- Beginning on June 1, 2025, the ISO will prospectively track a market participant's exposure to non-performance penalties on a rolling six-month basis (including the current month).[201]

This structure ensures prospective application of the FAP Revisions. Adoption of the requested February 1, 2025 effective date, with a later initiation (June 1, 2025) of the new Corporate Liquidity Assessment and calculation methodology for a capacity seller's financial assurance requirements for the 2025 - 2026 Capacity Commitment Period, is compliant with the filed rate doctrine and does not constitute a retroactive rate change. As an initial matter, the FAP Revisions do not change the Tariff provisions governing the Forward Capacity Auction or the PFP program. Simply, there are ***no*** changes proposed to the filed rate (*i.e.*, the Tariff) with respect to running of the Forward Capacity Auction, settlement of initial and reconfiguration auction prices, performance obligations for entities holding a CSO within a Capacity Commitment Period,

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[198] *See* FAP Sections VII.B (Non-Commercial Capacity requirements) and VII.A (FCM Delivery Financial Assurance requirements). In addition to non-performance penalties, capacity sellers offering Non-Commercial Capacity into a Forward Capacity Auction must post a security deposit equal to $2/kW of its qualified, Non-Commercial Capacity. FAP Sections VII.B.

[199] *See* Revised FAP Section VII.A.1 (clarifying that the current formula for calculating the FCM Delivery Financial Assurance will apply through the completion of the 2024 - 2025 Capacity Commitment Period).

[200] *Id.*

[201] Revised FAP Section VII.A.2.

declarations of Capacity Shortage Conditions, or the assessment of non-performance penalties (including the rate for calculation of such penalties). All of these elements remain separately governed and administered through their existing Tariff provisions. Moreover, even in the event that the Commission were to consider the FAP Revisions as modifying the Tariff rules governing implementation of the Forward Capacity Auction or the PFP terms, the requested effective date, including initiation of the Corporate Liquidity Assessment and revised calculation of financial assurance obligations based on such assessment (as of June 1, 2025), remains a prospective change and therefore compliant with the filed rate doctrine and rule against retroactive ratemaking.[202]

To the extent that a filed rate/retroactivity question arises, this filing proposes only prospective changes to the ISO's FAP under the Tariff, Section I, Exhibit IA. In the recent Third Circuit decision in *PJM Providers Group v. FERC et al.*,[203] the appellate court ruled that a prohibited retroactive rate change to an existing filed rate had occurred through PJM's mid-auction change in the calculation of a bounding auction input (the "LDA Reliability Requirement") after an initial calculation of this input had been completed and posted in accordance with PJM's capacity auction rules.[204] In its retroactivity analysis, the court focused upon whether the initial calculation and posting of the LDA Reliability Requirement (the past action) obligated use of the posted LDA Reliability Requirement in the running of the auction (the legal consequence). Finding a clear relationship between the past action (calculation and posting of the LDA Reliability Requirement) and the legal consequence (mandated use of the posted LDA Reliability Requirement as an input to the in-progress auction), the court held that PJM's post-posting, recalculation and use of a revised LDA Reliability Requirement constituted a prohibited retroactive rate change.[205]

In contrast to the retroactive mid-auction changes rejected in *PJM Power Providers Group*, the FAP Revisions do not alter prior credit reviews or supplant previously calculated inputs into the formula for the FCM Delivery Financial Assurance requirement. First, as explained above, the changes to the IMC input calculations will be prospectively implemented as of February 1, 2025, with no changes to prior IMC calculations.

Second, a similar prospective implementation structure is in place for the changes to the FCM Delivery Financial Assurance methodology and initiation of the Corporate Liquidity Assessment. Currently, a capacity seller has no FCM Delivery Financial Assurance requirements

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[202] *See, e.g., ISO New England*, 165 FERC ¶ 21,266 at P 24 ("[T]he Commission has previously found that the terms and conditions of performance and other obligations that are a part of forward capacity markets may be revised, even after a forward auction for a future delivery year is completed, if the changes are made prospectively.") and *ISO New England Inc. and New England Power Pool*, 145 FERC ¶ 61,095 at PP 28–31 (2013) (holding that a change in the definition of a Shortage Event for operating reserves was not retroactive because of its prospective application solely to future designation of Shortage Events).

[203] *PJM Power Providers v. FERC*, 96 F.4th 390 (3rd Cir. 2024).

[204] *Id*. at 399-400.

[205] *Id.*

for the 2025 - 2026 Capacity Commitment Period and the ISO explicitly retains the current methodology for the FCM Delivery Financial Assurance requirement through the May 31, 2025 completion of the current 2024 - 2025 Capacity Commitment Period.[206] In other words, the ISO will not apply its Corporate Liquidity Assessment (and resulting collateral adjustments) to capacity sellers until the June 1 initiation of the 2025 - 2026 Capacity Commitment Period.[207] Therefore, applying the *PJM Power Providers* framework, the legal consequences of the past action--initiation of the FCM Delivery Financial Assurance requirement for the capacity seller's CSO during the 2024 - 2025 Capacity Commitment Period--are maintained. Simply, the Corporate Liquidity Assessment and corresponding FCM Delivery Financial Assurance calculation changes are not applied to the capacity seller's current financial assurance requirements for the 2024 - 2025 Capacity Commitment Period. Instead, the updated financial assurance requirements and credit review procedures will be prospectively implemented with the June 1, 2025 initiation of a capacity seller's new CSO[208] and PFP obligations[209] for the upcoming 2025 - 2026 Capacity Commitment Period. Through this approach, the legally required line has been drawn to ensure a prospective-only implementation of financial assurance requirements under the FAP Revisions in accordance with the filed rate doctrine and rule against retroactive ratemaking.

In addition to complying with the filed rate doctrine, implementation of the Corporate Liquidity Assessment and revised calculation of the FCM Delivery Financial Assurance as of the June 1, 2025 (start of the 2025 - 2026 Capacity Commitment Period) will realize significant benefits through reduction of risk exposure to nonpayment of non-performance penalties. As detailed in Mr. Nolan's testimony, a recent ISO credit risk evaluation of the upcoming 2025 - 2026 Capacity Commitment Period identified significant risks of nonpayment of non-performance penalties due to the high level of current capacity sellers with inadequate corporate liquidity.[210] As Mr. Nolan explains, PFP obligations are not segregated from other market settlements.[211] This structure means that "nonpayment of a non-performance penalty has the potential to affect the New England Markets and impacts participants in various sectors (*i.e.*, not just other FCM participants or capacity sellers)."[212] Currently this nonpayment risk is effectively borne by the entire market pool, including for the 2024 - 2025 Capacity Commitment Period. Recognizing this risk, and respecting the filed rate doctrine, the ISO has proposed an appropriate and legally

[206] Revised FAP Section VII.A.1.

[207] Revised FAP Section VII.A.

[208] While most capacity sellers initially acquire their obligations in the initial auction, they have the right to participate in the annual reconfiguration auctions, through which their CSO for the relevant Capacity Commitment Period can be increased through clearing of additional capacity supply bids or the release of some or all of their previously acquired capacity supply commitments. *See generally*, Tariff Sections III.13.7.3.1.

[209] *See* Tariff, Section III.13.7.2 (setting rules for capacity performance and non-performance penalties within the annual Capacity Commitment Period).

[210] *See* Nolan Testimony at 13-15.

[211] *See id.* at 15-18.

[212] *Id*. at 16.

compliant implementation of its revised credit review procedures and PFP-related financial assurance requirements related to payment of non-performance penalties, effective upon the June 1, 2025 initiation of the upcoming 2025 - 2026 Capacity Commitment Period. We respectfully request that the Commission authorize the requested February 1, 2025 effective date for the FAP Revisions, which will institute a staged implementation of the IMC input improvements (February 1, 2025) and the Corporate Liquidity Assessments and related changes to the FCM Delivery Financial Assurance calculations (June 1, 2025).

VII. ADDITIONAL SUPPORTING INFORMATION

Section 35.13 of the Commission's regulations generally requires public utilities to file certain cost and other information related to an examination of traditional cost-of-service rates. However, the FAP Revisions are not a traditional "rate," and the ISO is not a traditional investor-owned utility. In light of these circumstances, the ISO submits the following additional information in substantial compliance with relevant provisions of Section 35.13, and request a waiver of Section 35.13 of the Commission's regulations to the extent the content or form deviates from the specific technical requirements of the regulations.

35.13(b)(1) – Materials included herewith are as follows:

- this transmittal letter;
- marked sections of the Tariff reflecting the FAP Revisions;
- clean sections of the Tariff reflecting the FAP Revisions;
- the Nolan Testimony;
- a list of the governors, utility regulatory agencies in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont, and other entities, to which a copy of this filing is being sent electronically.

35.13(b)(2) – As noted above, the ISO, requests that the FAP Revisions become effective on February 1, 2025.

35.13(b)(3) – Pursuant to Section 17.11(e) of the Participants Agreement, Governance Participants are being served electronically rather than by paper copy. The names and addresses of the Governance Participants are posted on the ISO's website at https://www.iso-ne.com/participate/participant-asset-listings/directory?id=1&type=committee. An electronic copy of this transmittal letter and the accompanying materials has also been sent to the governors and electric utility regulatory agencies for the six New England states which comprise the New England Control Area, and to the New England Conference of Public Utility Commissioners, Inc. Their names and addresses are shown in the attached listing. In accordance with Commission rules and practice, there is no need for the Governance Participants or the entities identified in the listing to be included on the Commission's official service list in the captioned proceeding unless such entities become intervenors in this proceeding.

35.13(b)(4) – A description of the materials submitted pursuant to this filing is contained in Section VII of this transmittal letter.

35.13(b)(5) – The reasons for this filing are discussed in Sections III and IV of this transmittal letter and in the Nolan Testimony.

35.13(b)(6) – The ISO's approval of the FAP Revisions is evidenced by this filing. As noted in Section V of this transmittal letter NEPOOL did not support the FAP Revisions but this filing reflects the results of the Participants Process required by the Participants Agreement.

35.13(b)(7) – The ISO has no knowledge of any relevant expenses or costs of service that have been alleged or judged in any administrative or judicial proceeding to be illegal, duplicative, or unnecessary costs that are demonstrably the product of discriminatory employment practices.

35.13(b)(8) – A form of notice and electronic media are no longer required for filings in light of the Commission's Combined Notice of Filings notice methodology.

35.13(c)(1) – The FAP Revisions herein do not modify a traditional "rate." The statement required under this Commission regulation is not applicable to this filing.

35.13(c)(2) – The ISO does not provide services under other rate schedules that are similar to the wholesale, resale and transmission services it provides under the Tariff.

35.13(c)(3) – No specifically assignable facilities have been or will be installed or modified in connection with the revision submitted herein.

VIII. CONCLUSION

For the reasons stated herein, the ISO respectfully requests that the Commission accept the FAP Revisions as filed, without condition, suspension, or hearing, to be effective February 1, 2025.

Respectfully submitted,

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