UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England, Inc. and	)	Docket Nos. ER17-68-000 and
New England Power Pool	)	ER17-68-001

ANSWER OF ISO NEW ENGLAND, INC. TO COMMENTS OF THE EVERSOURCE COMPANIES

Pursuant to Rule 213(a) of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a), ISO New England, Inc. ("the ISO") hereby submits this Answer to the November 2, 2016 Motion to Intervene and Comments of Eversource Energy Service Company,[1] on behalf of the Eversource Companies ("Eversource").

Eversource's Comments address the proposal of the ISO and New England Power Pool (collectively, the "Filing Parties"), filed in this docket on October 12, 2016, to revise the ISO's market rules ("Resource Dispatchability Changes") to require certain generation resources that are registered with the ISO, but not dispatchable, to install equipment to enable them to receive real-time, electronic dispatch instructions from the ISO.[2] Eversource submitted the only comments on, and the only objections to, the Resource Dispatchability Changes. None of the generators to which the Resource Dispatchability Changes will apply have protested or otherwise objected to the proposal.

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1 Motion to Intervene and Comments of the Eversource Companies, Docket Nos. ER17-68-000 and -001 (Nov. 2, 2016) ("Comments").

2 Market Rule 1 Revisions to Increase Resource Dispatchability of ISO New England, Inc. and New England Power Pool, Docket Nos. ER17-68-000 and -001 (Oct. 12, 2016) ("Resource Dispatchability Changes Filing").

Eversource does not dispute the ISO's evidence[3] demonstrating that the Resource Dispatchability Changes will improve price formation in the ISO-administered Real-Time Energy Market and will enhance reliability by providing the ISO with more complete, real-time information about the affected resources' operations. Instead, Eversource expresses concerns about the effects of the Resource Dispatchability Changes on the rights and obligations of certain Qualifying Facilities ("QFs") and their host utilities under the Public Utility Regulatory Policies Act of 1978 ("PURPA")[4] and the Commission's regulations thereunder.

Eversource misunderstands the Resource Dispatchability Changes and the flexibility available to QFs under the ISO's Transmission, Markets and Services Tariff ("Tariff") and market rules. The Resource Dispatchability Changes require certain registered QFs in the New England region to become capable of receiving electronic dispatch instructions from the ISO. They do not compel a QF or its host utility to take any actions or incur any obligations contrary to PURPA or the Commission's regulations. The Commission, therefore, should reject Eversource's Comments, and should accept the Resource Dispatchability Changes without modification or condition.

I. BACKGROUND

The Resource Dispatchability Changes expand the number of registered generation resources in New England that are dispatchable, *i.e.*, that must be capable of receiving the ISO's electronic dispatch instructions. The Filing Parties have explained that, while most of the generation in New England is currently dispatchable,

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3 Resource Dispatchability Changes Filing, Testimony of Jonathan B. Lowell at 5-11 ("Lowell Testimony").

4 Pub. L. No. 95-617, 92 Stat. 3117. The Commission's regulations implementing the relevant provisions of PURPA are at 18 C.F.R. Part 292.

approximately 18 percent of the installed generation capacity is not dispatchable, *i.e.*, is incapable of receiving electronic dispatch instructions from the ISO.[5] The Filing Parties also have demonstrated that even a relatively small amount of non-dispatchable generation can result in price distortions and can affect system reliability.[6] The Resource Dispatchability Changes, therefore, will require certain Intermittent Power Resources[7] and Settlement Only Resources that are registered in the ISO market system, but which presently are not dispatchable, to install electronic dispatch capability, with the objective of improving price formation in the ISO's energy markets and enhancing grid reliability.[8] Compliance with this proposal will require the affected resources to install or connect to a Remote Terminal Unit ("RTU") and a telecommunications circuit connected to the ISO's secure, private communications network.[9] The Resource Dispatchability Changes were reviewed in the ISO and New England Power Pool's ("NEPOOL") stakeholder process, and stakeholders largely supported them.[10]

At the heart of Eversource's objections to the Resource Dispatchability Changes is its contention that the proposed rule changes will compel QFs with which Eversource has power purchase agreements to participate in the ISO's energy market in a way that interferes with the QFs' sales of their energy to Eversource under their PURPA contracts. Eversource claims in its Comments that the Resource Dispatchability Changes: (1)

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5 Lowell Testimony at 5.

6 *Id*. at 6-11.

7 Capitalized terms not defined in this Answer have the meaning set forth in the Resource Dispatchability Changes Filing or the Tariff.

8 *See* Resource Dispatchability Changes Filing at 6, 9-10. Solar, nuclear, Settlement Only Resources, and most External Transactions will remain non-dispatchable. *Id.* at 10-11.

9 Resource Dispatchability Changes Filing at 12.

10 Resource Dispatchability Changes Filing at 20.

conflict with the exemption of certain QFs from regulation under sections 205 and 206 of the Federal Power Act ("FPA"), 16 U.S.C. §§ 824(d) & (e);[11] (2) are contrary to section 292.304(d) of the Commission's PURPA regulations, 18 C.F.R. § 292.304(d), by constraining a QF's ability to determine the amount of its energy available for PURPA sales;[12] (3) represent a forced waiver of a QF's PURPA protection from curtailment except during a system emergency;[13] (4) interfere with host utilities' mandatory purchase obligations;[14] and (5) improperly impose costs on QFs which, Eversource alleges, are exempt from FPA section 205.[15] Eversource asks the Commission to reject the Resource Dispatchability Changes with respect to QF resources.[16]

Contrary to Eversource's assertions, the Resource Dispatchability Changes fully accommodate the rights and obligations of QFs, and are consistent with the Commission's regulations under PURPA and with Commission precedent regarding the treatment of QFs in regional transmission organization ("RTO") regions. Accordingly, the Commission should accept the Resource Dispatchability Changes without modification or condition.

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11 Comments at 5-6 (citing 18 C.F.R. § 292.601(c)(1)).

12 Comments at 6.

13 *Id.* at 6-7 (citing 18 C.F.R. § 292.307(b)).

14 Comments at 7 (citing PURPA section 210(m), 16 U.S.C. § 824a-3(m)).

15 Comments at 7-8. Eversource's Comments are limited to QFs making PURPA sales, and do not seem to address other sales by QFs.

16 *Id.* at 8.

II. ARGUMENT

A. Contrary to Eversource's Comments, the Resource Dispatchability Changes Do Not Modify or Limit a QF's Rights or Its Host Utility's Obligations.

1. The Resource Dispatchability Changes Do Not Compel Any Affected QF to Forego Selling Energy at a PURPA Avoided-Cost Rate When It Wants.

Eversource misapprehends or disregards the limited scope of the Resource Dispatchability Changes. The proposed market rule changes do not require any QF to sell its energy into the ISO energy market in lieu of making sales to its host utility at an avoided-cost rate, and do not affect the QF's right to sell power to its host utility in any way.

The ISO's market rules apply only to registered participants in the ISO's markets. Accordingly, the QFs to which the Resource Dispatchability Changes will apply already have elected to register their generation assets with the ISO.[17] The Resource Dispatchability Changes require each affected generator to install an RTU and telecommunications circuit to enable the generator to receive electronic dispatch instructions from the ISO, and to transmit operational telemetry to the ISO electronically. Requiring such QFs to become electronically dispatchable will not restrict their right to determine the amount of energy they will sell to their host utilities. The ISO will dispatch

[17] *See ISO New England Operating Procedure No. 14 - Technical Requirements for Generators, Demand Resources, Asset Related Demands and Alternative Technology Regulation Resources* §§ I.A.1, II.B.2 (Sept. 19, 2016), https://www.iso-ne.com/static-assets/documents/rules_proceds/operating/isone/op14/op14_rto_final.pdf.

each resource only in accordance with the physical and economic parameters specified by the resource in its energy market supply offers.[18]

2. The Resource Dispatchability Changes Do Not Restrict a QF's Ability to Sell to Its Host Utility the Quantities of Energy the QF Wants, When It Wants.

As Mr. Lowell explained in his testimony supporting the Resource Dispatchability Changes, resources—including QFs—will be able to operate in the same manner once the Resource Dispatchability Changes are implemented as when they were not electronically dispatchable.[19] Therefore, QFs will remain able to sell to their host utilities the quantities of energy they want, when they want.

A resource that wants to sell all its energy at a predetermined contract price—such as a QF selling at an avoided-cost rate—and thus wants to run regardless of the clearing price in the ISO's energy market, can do so by offering into the market at a price sufficiently low to ensure its unit will clear and will run in real time. Similarly, a resource that wants to run at full capacity during certain hours and to cut back during others can shape its offer across the hours of the day to ensure that it clears the market for the hours when it wants to run. A resource that does not clear the Day-Ahead Energy Market, but which wants or needs to run in real time, may self-schedule in the Real-Time Energy Market as a price-taker at its Economic Minimum Limit—thereby ensuring the resource

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[18] Lowell Testimony at 20; Market Rule 1, Tariff § III.1.10.2(a) ("Pool-Scheduled Resources [*i.e.*, resources that have been offered with a dispatchable range] shall be selected by the ISO on the basis of the prices offered for energy and related services, Start-Up Fees, No-Load Fees, Interruption Cost and the specified operating characteristics, offered by Market Participants.").

[19] Lowell Testimony at 22-23.

will be brought online—and then may adjust its price for incremental energy above its Economic Minimum Limit to maximize its likelihood of being dispatched.[20]

3. The Proposed Changes Do Not Violate a QF's Statutory Protection from Curtailment Except During Emergencies.

Eversource also is mistaken when it asserts that an electronically dispatchable QF will lose its assurance under the Commission's regulations that it may be curtailed only in emergency circumstances.[21] The ISO's market rules, in fact, allow any QF to offer its generation with significant flexibility using the combination of self-scheduling and economic offer parameters that are available to all dispatchable resources. Thus, by strategically shaping its offer with sufficiently low offer prices, a QF may run its facility at a specified amount without dispatch flexibility; may indicate that a portion of its QF capacity has dispatch flexibility, while a fixed portion of the unit operates inflexibly; or may indicate to the ISO that the entire output of the QF is available for dispatch. Again, the ISO will only dispatch a QF, or any other generation resource, up or down to the extent that the resource has provided dispatch flexibility through its offer. Accordingly, the ISO's market rules provide the same kind of "steps that QFs can take to prevent their facilities from being dispatched down (*i.e.*, effectively curtailed), except in the event of a system emergency"[22] that the Commission accepted in *Occidental*.

Therefore, when and to the extent that a QF tells the ISO that the QF is available with a dispatchable range, Eversource cannot reasonably claim that the ISO acts impermissibly when the ISO dispatches the resource down within the dispatch range

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20 *Id.*

21 Comments at 6-7.

22 *Occidental Chem. Corp. v. Midcontinent Indep. Sys. Operator, Inc.*, 155 FERC ¶ 61,068, at P 73 ("Occidental"), *reh'g denied*, 156 FERC ¶ 61,213 (2016).

provided by the QF itself. Nor can Eversource colorably contend that its mandatory purchase obligation as a host utility is compromised by such curtailment of a QF in accordance with the QF's offer terms. In short, nothing in the Resource Dispatchability Rules compromises QFs' protection from curtailments other than in system emergencies.

Of course, any dispatch regime is subject to system security constraints. Accordingly, without regard for the Resource Dispatchability Changes, in the event of a potential or actual system emergency, the ISO may curtail any generator, including QFs, on a non-discriminatory basis to avoid imminent loss of load, disruptions of service, and threats to life or property.[23] This could mean, in certain circumstances, dispatching a QF (and/or other generators) down to relieve a transmission constraint. As Mr. Lowell explained, such a dispatch down instruction is used to alleviate conditions that, if unchanged, would cause a transmission limit to be exceeded, *i.e.*, to avoid thermal overloads or instability and the attendant prospect of damage to the transmission system

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[23] *See Reliability Standard TOP-001-1 - Reliability Responsibilities and Authorities*, North American Electric Reliability Corporation B.R2, http://www.nerc.com/files/TOP-001-1a.pdf (last visited Nov. 16, 2016) (requiring a Transmission Operator to "take immediate actions to alleviate operating emergencies including curtailing transmission service or energy schedules, operating equipment (e.g., *generators*, phase shifters, breakers), shedding firm load, etc.") (emphasis added); *NPCC Regional Reliability Reference Directory # 2: Emergency Operations, NPCC, Inc.* §§ 3.2.3.1, 3.2.3.3.5 (adjusting generators' real power output to address abnormal voltage conditions), 4.1.2 (rejecting generation in the event of a Transmission Emergency), 5.1.1, 5.1.1.1, 5.1.4, 5.1.10 (adjusting generation to resolve transmission loading in excess of limits) (June 26, 2009), https://www.npcc.org/Standards/Directories/Directory%202%20%20Emergency%20Operations%20%2020150330_clean-GJD.pdf.

and loss of load.[24] Non-discriminatory curtailments of QFs in such circumstances are consistent with the Commission's regulations implementing PURPA.[25]

4. QFs in New England Can Achieve the Same Outcome as QFs Operating Under MISO's "Hybrid QF" Option—a Result Eversource Agrees Is Acceptable.

Citing the Commission's recent decision in *Occidental*,[26] Eversource "recognize[s] that the Commission has approved RTO policies to integrate QFs into their markets when they offer QFs market participation options that effectively allow QFs to preserve their PURPA rights."[27] But Eversource is mistaken when it goes on to assert that "ISO-NE provides no options to QFs under the Resource Dispatchability Changes in contravention of their PURPA rights."[28]

In fact, the ISO's market rules provide QFs, including those that must comply with the Resource Dispatchability Changes, the functional equivalent of the "Hybrid QF" option that the Commission determined in *Occidental* to be consistent with PURPA and the Commission's regulations.[29]

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24 Lowell Testimony at 23-24.

25 18 C.F.R. § 292.307(b). *See Occidental* at P 74; *Sw. Power Pool, Inc.*, 140 FERC ¶ 61,225, at PP 47-48 (2012) (accepting proposal for non-discriminatory curtailment of QFs). The decisions on which Eversource relies (Comments at 7 n.22) involved proposed tariff provisions much different from those the Filing Parties propose here. In *Southwest Power Pool, Inc.*, 136 FERC ¶ 61,097 (2011), the Commission rejected provisions that would have permitted curtailment of QFs' as-available sales in order to permit firm service to continue. *Id.* at P 15. In *Entergy Services, Inc.*, 137 FERC ¶ 61,199 (2011), *order on reh'g*, 143 FERC ¶ 61,143 (2013), the Commission determined that a similar proposal "to curtail unscheduled QF energy on the same basis as non-firm, secondary network service is not consistent with . . . PURPA." *Id.* at P 58.

26 *See* Comments at 7 n.24.

27 *Id.* at 7.

28 *Id.*

29 *Occidental* at PP 66-73.

First, a QF that participates in the ISO's wholesale energy market can enter into an internal bilateral transaction[30] with its host utility under which the utility will pay the QF an avoided-cost rate for all (or any mutually agreed portion) of the energy delivered by the QF to the utility. Like the example the Commission explained in *Occidental*,[31] by using the QF pricing node for the QF's deliveries and the utility's receipts, the utility would receive, through the ISO's settlement processes, a credit equal to the locational marginal price at the QF pricing node, and the parties would separately settle at the avoided-cost rate outside the ISO's settlement processes. A QF's compliance with the Resource Dispatchability Changes will not affect the availability of such bilateral transactions.

Another way for a QF to effectuate sales at an avoided-cost rate is for it to identify its host utility as the "owner," for purposes of the ISO's markets, of all, or a fixed portion, of the QF in the QF's registration with the ISO.[32] Specifically, if a QF wants to sell all of its available energy to its host utility, it can designate the host utility as the holder of a 100 percent Ownership Share of the plant in the QF's registration of its asset with the ISO, and can contract separately with the utility to be paid for its energy at the applicable, avoided-cost rate. The ISO will settle with the utility alone for all energy delivered by the plant to the utility, producing the same outcome as the one accomplished

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30 *See* Tariff § I.2.2, Internal Bilateral for Market for Energy; Market Rule 1, Tariff § III.1.7.10.

31 *See Occidental* at P 66 n.128.

32 In New England, a generator owner may designate a third party, such as a host utility under a QF arrangement, as an entity with an "Ownership Share" in the generator for purposes of participation in the ISO-administered markets. An Ownership Share affords the party "a right or obligation, for purposes of settlement, to a percentage share of all credits or charges associated with a generating unit asset or Load Asset, where such unit or load is interconnected to the New England Transmission System." *See* Tariff § 1.2.2, Ownership Share; Manual for Registration and Performance Auditing: Manual M-RPA, ISO New England §§ 1.1.2(1), 1.4.2 (June 1, 2016) ("Manual M-RPA").

using an internal bilateral transaction. Most QFs in New England use this approach, and many have done so since the inception of the ISO's wholesale energy market.

The Resource Dispatchability Changes do not limit or modify these options for QFs in any way. The ISO's proposal, therefore, preserves each QF's right and ability to effectuate sales of its energy to its host utility at the applicable, state-approved avoided-cost rate. Eversource's claims to the contrary are without merit.

5. QFs Are Free to Avoid the Resource Dispatchability Changes Altogether.

Further undermining Eversource's position is that a QF that wants to sell its energy only at a PURPA avoided-cost rate does not need to be registered with the ISO to achieve that. QFs are not *obligated* to participate in the ISO-administered energy markets. A QF can choose to operate exclusively as a behind-the-meter resource on its host utility's system.[33] Indeed, several New England QFs have elected to not participate in the ISO Markets and instead sell to the host utility. Such a QF would not be under the ISO's direct operational control and therefore, would not be subject to the Resource Dispatchability Changes.

B. Eversource's Suggestion that the Resource Dispatchability Changes Are Inconsistent with QFs' FPA Exemption Is Erroneous.

Eversource also errs when it asserts that the need to install RTUs and other equipment to comply with the Resource Dispatchability Changes is contrary to the Commission's regulation exempting certain sales by QFs from regulation under sections 205 and 206 of the FPA.[34] The exemption to which Eversource refers merely exempts "from scrutiny under sections 205 and 206" sales of capacity or energy by certain small

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33 *See* Manual M-RPA §§ 1.4.3, 1.5.3.

34 Comments at 7-8.

QFs, and sales by other QFs under contracts executed prior to March 18, 2006, or at state-established, avoided-cost rates.[35] Nothing in the Resource Dispatchability Changes would compel a QF to submit a rate under section 205, or would make the price of any QF's sales subject to review under section 206. Therefore, the Resource Dispatchability Changes do not in any way implicate QFs' exemption from rate regulation under the FPA.

Nor do the Resource Dispatchability Changes, contrary to Eversource's further assertion, require any QF to install equipment to "perform activities that 'preserve' QFs[']' PURPA rights."[36] Eversource again overlooks that the Resource Dispatchability Changes apply only to generators that have chosen to register with the ISO. The equipment necessary to comply with the Resource Dispatchability Changes is required for such facilities to receive and transmit electronic signals to facilitate the ISO's supervision of such resources' operations when they elect to make themselves a component of the regional transmission system. Contrary to Eversource's suggestion, a QF's dispatch-related communications and operational telemetry exchanges with the ISO are not "activities that are exempt from" the FPA.[37] Nor is it unjust or unreasonable to require a generator that elects to register itself as a regional asset subject to the ISO's operational control (regardless of whether the generator continues making PURPA sales

35 18 C.F.R § 292.601(c)(1).

36 Comments at 8.

37 *Id.*

to a host utility) to install equipment that is reasonably necessary in connection with its choice.[38]

Be that as it may, however, the assignment of responsibility, as between a QF and its host utility (or any other party), for the capital and operating costs of the RTU and communications circuit required to comply with the Resource Dispatchability Changes is not at issue in this proceeding. Such issues are beyond the scope of this proceeding and should properly be determined either by the terms of an affected QF's power sales or interconnection agreement with its host utility, or by the pertinent state commission's determination of whether such costs may or should be included in the host utility's avoided cost rates. The Commission has rejected concerns about the assignment of cost responsibility and cost recovery in similar circumstances,[39] and should do the same here.

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38 *See Midwest Indep. Transmission Sys. Operator, Inc.*, 134 FERC ¶ 61,141, at PP 50-51 (2011) (accepting market-related charges for QFs previously registered and participating in RTO markets).

39 *See Cal. Indep. Sys. Operator Corp.*, 147 FERC ¶ 61,200, at P 29 (2014) (rejecting comments concerning transmission cost recovery as raising issues beyond scope of filing); *N.Y. Indep. Sys. Operator, Inc.*, 135 FERC ¶ 61,157, at P 26 (2011) (finding cost recovery issues to be beyond proceeding's scope).

III. CONCLUSION

For the reasons stated above, the ISO respectfully urges the Commission to reject Eversource's comments, and to accept the Resource Dispatchability Changes without modification or condition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon the New England governors and electric utility regulatory agencies and upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Holyoke, Massachusetts, this 17th day of November, 2016.

/s/ *Linda M. Morrison*
Linda M. Morrison