

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

Grid Reliability and Resilience Pricing) Docket No. RM18-1-000

COMMENTS OF ISO NEW ENGLAND INC.

ISO New England Inc. (“ISO-NE” or the “ISO”) hereby submits its comments in response to the Federal Energy Regulatory Commission’s (the “Commission”) October 2, 2017 Notice Inviting Comments,¹ the September 28, 2017 Notice of Proposed Rulemaking by the United States Department of Energy (the “NOPR”),² and the Commission’s Office of Energy Policy and Innovation’s October 4, 2017 request for information.³

Below, ISO-NE provides its comments to the NOPR. In sum, ISO-NE objects to the NOPR on the basis that it will significantly undermine the efficient and effective wholesale electricity markets that, with the Commission’s guidance, the New England region has built. Moreover, New England has no urgent need to rush to a solution, given that the three-year Forward Capacity Market has ensured resource adequacy until at least 2021, and the region has already taken steps to improve operating procedures and generator incentives to secure firm fuel supplies.

The issues that face New England are largely related to the availability of natural gas for generation during cold winter weather. The NOPR does not address these risks, and ISO-NE proposes to instead use the time the region has in 2018 and beyond to quantify its fuel security risks. If needed, the region will then develop a solution that is, to the greatest extent practicable,

¹ *Grid Reliability and Resilience Pricing*, Notice Inviting Comments, Docket No. RM18-1-000 (Oct. 2, 2017).

² *Grid Resiliency Pricing Rule*, 82 Fed. Reg. 46,940 (Oct. 10, 2017).

³ *Grid Reliability and Resilience Pricing*, Letter Requesting Information, Docket No. RM18-1-000 (Oct. 4, 2017).

market-based. These efforts will benefit from the region’s established and robust stakeholder processes.

In the second section of this document, ISO-NE responds to certain of the questions posed by the Office of Energy Policy and Innovation in its October 4, 2017 request for information.

I. Comments of ISO New England

A. ISO-NE Opposes the NOPR as It Is Incompatible with New England’s Efficient and Effective Markets

ISO-NE objects to the adoption of the NOPR because it would undermine markets, which have demonstrated benefits for New England.

1. Impact of a Return to Cost of Service on the Markets

In order to prevent the retirement of power plants that have 90 days of on-site fuel, the NOPR proposes to ensure their “full recovery of costs.” Per the proposed rule, these costs would include a fair return on equity, fuel costs, other operating expenses, and costs of capital.⁴

This proposal will significantly undermine New England’s electricity markets in two ways. First, these resources may have no incentive to bid their appropriate fuel and operating costs in the energy market. Rather, because the resources’ fuel and operating costs would be fully recovered through guaranteed out-of-market payments, they could profitably bid zero. While there are admittedly few coal resources remaining in the region, if these costly units bid zero, it will undermine price formation in the day-ahead and real-time energy market and increase emissions.

Second, the Forward Capacity Market (“FCM”) enables resources to offer to retire if the capacity market does not clear at or above a specific price. Normally, as units age and their costs

⁴ NOPR at pp. 2-3, p. 11, p. 19.

rise, new resources will be more economic than retaining aging units that require a higher price. With full cost recovery guaranteed, however, these aging resources will remain, deterring the development of newer, more efficient and more cost-effective generating units. These adverse outcomes in the energy and capacity markets will be incurred regardless of the reliability need for these units, further undermining the benefits of competition and their cost-effectiveness for consumers.

For these reasons, “cost of service” payment arrangements are generally viewed as incompatible with competitive markets. In the Commission’s own words, these types of arrangements “suppress market-clearing prices, increase uplift payments, and make it difficult for new generators to profitably enter the market.” Their extensive use “undermines effective market performance.”⁵

Despite their incompatibility with markets, cost-of-service arrangements have been preserved as an option (sometimes known as “Reliability Must Run” or “RMR” agreements) in regions with competitive markets when there is a discrete reliability need that the markets cannot compensate. However, in these cases they are a “last resort.” As the Commission has stated, “the proliferation of these agreements is not in the best interest of the competitive market as they affect other suppliers participating in this market.”⁶ Respectfully, as discussed in more detail below, ISO-NE does not believe that New England has reached the “last resort.”

⁵ *Devon Power LLC, et al.*, 103 FERC 61,082 at P. 29 (2003). In that case, the Commission denied generators’ requested full cost-of-service agreements and ordered ISO-NE to establish market-based rules to compensate the units (*see* P. 1). *See also Independent Power Producers of New York, Inc. v. New York Independent System Operator, Inc.*, 150 FERC 61,214 at P. 68 (2015) (in requiring NYISO to develop a cost-of-service option, the Commission noted that such agreements should be a “last resort” given their effects on price formation, although they may be necessary where it is not feasible or practical to model all transmission constraints).

⁶ *Devon Power LLC, et al.* at P. 31.

2. The Commission Should Preserve Markets, Which Have Demonstrable Benefits

Of course, markets are only worth preserving if they are working. In the case of the nation's wholesale electricity markets, even the Department of Energy recognizes that they are operating as intended. In its recent study, the Department stated:

To date, wholesale markets have withstood a number of stresses. While markets have evolved since their introduction, they are currently functioning as designed—to ensure reliability and minimize the short-term costs of wholesale electricity—despite pressures from flat demand growth, Federal and state policy interventions, and the massive economic shift in the relative economics of natural gas compared to other fuels.⁷

In New England, competitive markets have worked effectively to bring forward the resources needed to ensure reliable power system operations, while reducing power system emissions and wholesale power prices. The open, transparent wholesale electricity marketplace designed and run by the ISO stimulates strong competition among over 400 buyers and sellers and has attracted billions of dollars in private investment in some of the most efficient, lowest-emitting power plants in the country.

New England's markets select the lowest-priced power resources competing to produce electricity or provide other specialized services, compensating all suppliers equally, regardless of technology. The day-ahead and real-time energy markets provide the incentive for resources to offer prices for energy as close as possible to their fuel and operating costs and to perform reliably. Accordingly, the availability of low-cost natural gas from the nearby Marcellus Shale formation was the main driver of a 44% decrease in the average price of New England's wholesale electricity between 2004 (the first full year of the redesigned market) and 2016.

⁷ U.S. Department of Energy, *Staff Report to the Secretary on Electricity Markets and Reliability*, <https://www.energy.gov/downloads/download-staff-report-secretary-electricity-markets-and-reliability>, p. 10 (August 2017).

The capacity market ensures reliability through resource adequacy. FCM has procured about 30,000 MW of generating capacity and close to 3,000 MW of active demand response and energy efficiency to meet New England’s needs in 2017 and replace retiring generators. Resources that clear in these auctions receive monthly payments in exchange for their commitment to be available to meet the projected demand for electricity three years out. The new generation projects include natural gas, solar, wind, and hydro resources, with several major generators to be located near load centers to serve areas with high demand.

B. There Is No Need for Urgent Action in New England

As will be discussed in more detail below, ISO-NE’s key risks relate to fuel security– i.e., the possibility that power plants will not have the fuel they need to run, particularly in winter. Accordingly, the region has taken a number of steps to improve markets and operations. Moreover, through FCM, the region has procured an operable resource mix three years in advance. Therefore, barring significant contingencies related to key energy facilities, there are a number of years before ISO-NE’s gas dependence challenges become pressing.

1. ISO-NE Has Tools to Ensure Reliability in the Short-Term

ISO-NE’s attention to winter preparedness dates back to the January 2004 “Cold Snap,” during which New England experienced extremely low temperatures and particularly high demand for electricity, prompting concern about market and system performance during severe cold weather conditions. The 2004 “Cold Snap” revealed vulnerabilities of the New England bulk power system, especially with regard to capacity limitations on the natural gas pipeline system and the availability of gas transportation for non-firm customers like gas-fired generators within New England.

After the Cold Snap, ISO-NE developed new operating procedures designed to improve information on generator availability during cold weather conditions. These procedures required generators to report their anticipated availability to ISO-NE, including details on their ability to procure fuel and any physical limitations of their generating units. The ISO also enhanced communications with the regional gas industry to improve the ability to detect conditions on the gas system that could affect the availability of gas-fired generators.

In addition, the ISO developed decision-support tools for system operators. One such tool, called the Gas Usage Tool (or “GUT”), allows the ISO to estimate the amount of natural gas available for electric generation. This is accomplished by estimating the demand for gas by industrial and local gas distribution companies’ customers, as well as gas-fired generators, compared to the capability of the natural gas pipeline system, including LNG injections into the regional gas pipelines.

On the markets side, the ISO has taken major steps to increase efficiency and improve gas-electric coordination to address the challenges posed by the region’s constrained natural gas pipeline system. For example, the ISO has shifted the day-ahead energy market timeline to better align the electricity and natural gas markets to give generators more time to procure the gas they need to run. The ISO now closes the day-ahead market offer and bid period at 10 am (as compared to 12 pm under the former rules), and publishes the results by 1:30 pm (as compared to 4 pm under the former rules), giving generators more time to nominate the gas they need to run the following operating day. The ISO also implemented energy market offer-flexibility enhancements to allow participants to update their offers to supply electricity in real-time to reflect changing fuel costs, improving market pricing and incentives to perform.

In addition, the ISO improved scheduling of wholesale electricity sales between New York and New England through a project called Coordinated Transaction Scheduling, which makes more efficient use of the transmission lines connecting New York and New England by allowing bidding and scheduling in 15-minute intervals. These changes enable the scheduling of the most economic transactions between New York and New England, enhancing the efficient flow of electricity over the ties.

Most significantly, through the Pay For Performance suite of changes, the ISO tightened the shortage event trigger in FCM and increased payments to resources providing reserves during scarcity conditions. These changes give resources strong incentives to perform when they are needed the most, with the potential that the significant rewards and penalties will cause generators to respond with firm fuel arrangements. The Pay For Performance rules will ramp up in 2018.

Should the above changes be insufficient to address concerns about fuel security, the ISO has a track record of taking necessary action. For example, after instances in the winter of 2012-2013 in which generators had insufficient fuel to perform, the ISO instituted a winter reliability program to improve incentives for a limited number of generators to secure firm fuel supplies. The winter program was a “stop gap” until the Pay For Performance rules take effect.

As discussed below, the ISO has an upcoming process planned to quantify risks related to fuel security. Should the region determine that actions are required beyond those already taken, ISO-NE respectfully requests that the region be permitted to design market-based solutions that are targeted to New England’s specific needs.

2. FCM Assures Resource Adequacy Three Years Ahead

Not only does ISO-NE have tools in place, but, through FCM, it also knows which resources it will be operating through 2022. As described above, FCM ensures that the New England power system will have sufficient resources to meet the future demand for electricity by holding annual auctions three years in advance of the operating period.

The tenth Forward Capacity Auction, held in 2016, procured sufficient resources to meet demand in 2019-2020, with more than 1,400 MW of new generating capacity entering the market. Fewer new resources cleared in the next auction (held this year), but existing resources, new passive demand resources, and smaller generation additions were sufficient to meet expected system-wide demand for 2020-2021. In fact, given the lower net load forecast, the resources procured in this year's auction will be sufficient to meet the region's projected net requirements through 2026; the region is projected to have a minimum of 1,717 MW more resources than its net requirements throughout the planning horizon, assuming no retirements.⁸ Moreover, given the completion of the qualification process for the 2018 auction, ISO-NE knows that it will have no significant fleet retirements in next year's auction, for the period 2021-2022.⁹

C. New England's Concerns Are Unique, and Are Not Addressed by the NOPR

Broadly speaking, New England is "at the end of the pipeline" when it comes to the fuels used most often to generate the region's power. New England has no indigenous fossil fuels and, therefore, fuels must be delivered by ship, truck, pipeline, or barge. This problem is particularly acute with natural gas, on which the regional power system is increasingly dependent. In 2016,

⁸ RSP at p. 3.

⁹ ISO-NE Presentation to NEPOOL Reliability Committee, *2021-2022 Capacity Commitment Period Evaluation of Permanent and Retirement De-List Bids*, https://smd.iso-ne.com/operations-services/ceii/rc/2017/08/a2_fca_12_retirement_delist_bid_presentation.pdf, p. 3 (August 1, 2017) (contains Critical Energy Infrastructure Information).

natural gas generation was 49% of the electricity produced in New England, and it is expected to grow to 56% by 2026.¹⁰ However, the gas infrastructure was sized and built to meet the peak demand needs of the entities contracting for that gas – local natural gas utilities serving gas customers that the utilities are obligated to serve under all conditions.

On many days, pipeline capacity is sufficient for both the local gas utilities and the natural-gas-fired power plants, but it cannot meet all of the demand during the coldest weeks of the year. As a result, natural-gas-fired power plants—which typically buy pipeline capacity released by local gas utilities on the secondary market—may not be able to access natural gas.

As discussed herein, ISO-NE has taken a number of steps to mitigate these fuel security risks and is in the process of scoping the problem to determine, with stakeholders, if additional market reforms are necessary. That process is vastly preferable to the NOPR. The NOPR does not solve New England’s fuel security constraints related to availability of natural gas for generators in winter conditions, and it is an approach that, as discussed above, would cripple markets. ISO-NE respectfully requests that the Commission instead give the region time to develop a market-based approach.

D. If the Need for Solutions Emerges, the Region Should Be Allowed to Develop Those Solutions Through its Established Stakeholder Processes

As noted above, ISO-NE is concerned about the region’s gas dependence, and has improved both operating procedures and market rules to address those concerns. In addition, ISO-NE launched an Operational Fuel-Security Analysis in late 2016 to further its understanding of the region’s fuel-security risks. The study looks at power system operations in winter 2024/2025. The target winter was selected because challenges to power system reliability are

¹⁰ ISO New England, Inc., *Public Meeting Draft 2017 Regional System Plan*, <https://sandbox.iso-ne.com/system-planning/system-plans-studies/rsp> (“RSP”), p. 98 (August 2017).

expected to be manageable in the near-term given the current regional resource mix and the tools currently available.

The objective of the study is to quantify the potential fuel security risks, under a wide range of scenarios, with the intent of engaging regional stakeholders in a discussion on the degree of risk that can be tolerated and whether it is necessary to make improvements to the wholesale market design.

If the region determines that additional measures are required, the identification of appropriate market design improvements will be a complex undertaking and will require a systematic and deliberative regional process for examining the risks and potential solutions. This is particularly true given the policy imperatives in many of the New England states to significantly reduce carbon emissions over the coming decades.

In sum, the ISO's goal has always been to work with stakeholders—market participants, regulators, policymakers, and others—to address New England's unique fuel-security challenges through the wholesale market construct. ISO-NE respectfully asks the Commission to allow the region to use the time-tested stakeholder process that has successfully produced market improvements that are tailored to the region's needs.

II. Responses to the Commission's Specific Questions

Need for Reform

- 1. What is resilience, how is it measured, and how is it different from reliability? What levels of resilience and reliability are appropriate? How are reliability and resilience valued, or not valued, inside RTOs/ISOs? Do RTO/ISO energy and/or capacity markets properly value reliability and resilience? What resources can address reliability and resilience, and in what ways?**

Generally speaking, reliability is defined as having adequate resources to meet load and reserves, and being able to transmit electricity within voltage, thermal and stability limits based

on criteria contingencies. The region “procures” reliability in the form of sufficient capacity, energy and reserves, as well as reliability products (e.g., voltage, black start), at prices that, where feasible, reflect relative scarcity. The standards promulgated by the North American Electric Reliability Corporation (“NERC”) and the Northeast Power Coordinating Council (“NPCC”) serve as a means of measuring reliability, including resource adequacy.

Resilience, on the other hand, is an amorphous notion with effectively no definition. In fact, the definition of resilience may vary by region depending on the types of threats faced there. (For example, in New England, resilience may refer in whole or in part to fuel security.) None of the Commission, NERC or NPCC has provided any guidance on resilience requirements, beyond the requirement to develop a System Restoration Procedure.

It would be a significant undertaking to define resilience and launch a process to measure it. If and when the concept is adequately defined, each region should engage in a stakeholder process to value it and develop market-based products to procure it.

2. The proposed rule references the events of the 2014 Polar Vortex, citing the event as an example of the need for the proposed reform. Do commenters agree? Were the changes both operationally and to the RTO/ISO markets in response to these events effective in addressing issues identified during the 2014 Polar Vortex?

As noted above, ISO-NE has made a number of improvements to its operating procedures and markets. Because the strong financial incentives do not take effect until June 2018, it is unclear if the most significant of these improvements, the FCM Pay For Performance rules, will be effective in providing sufficient incentives for generators to assure they have appropriate fuel arrangements to provide energy under stressed system conditions. If these incentives are insufficient, ISO-NE would like the ability to determine that result with its stakeholders and, if necessary, design additional market-based measures to alleviate fuel security concerns.

- 3. The proposed rule also references the impacts of other extreme weather events, specifically hurricanes Irma, Harvey, Maria, and superstorm Sandy. Do commenters agree with the proposed rule's characterization of these events? For extreme events like hurricanes, earthquakes, terrorist attacks, or geomagnetic disturbances, what impact would the proposed rule have on the time required for system restoration, particularly if there is associated severe damage to the transmission or distribution system?**

ISO-NE does not agree that the NOPR, if implemented, would be effective in an extreme weather event. In a storm, most nuclear units would need to shut down and would not be allowed to restart until the grid was secured; in a winter storm, coal piles freeze. In any case, if the transmission or distribution system is not functioning, no amount of fuel will permit a generator to run.

- 4. The proposed rule references the retirement of coal and nuclear resources and a concern from Congress about the potential further loss of valuable generation resources as a basis for action. What impact has the retirement of these resources had on reliability and resilience in RTOs/ISOs to date? What impact on reliability and resilience in RTOs/ISOs can be anticipated under current market constructs?**

As ISO-NE reported in its most recent Regional System Plan, more than 5,700 MW of generation and demand-response capacity has retired or will retire in less than five years¹¹ and reliability has been maintained despite those retirements. Given the ISO's retirement review process and the development of new resources in the region, as well as existing market and operational tools, the New England power system will remain reliable through at least 2022 barring a significant event at a key facility in the region.

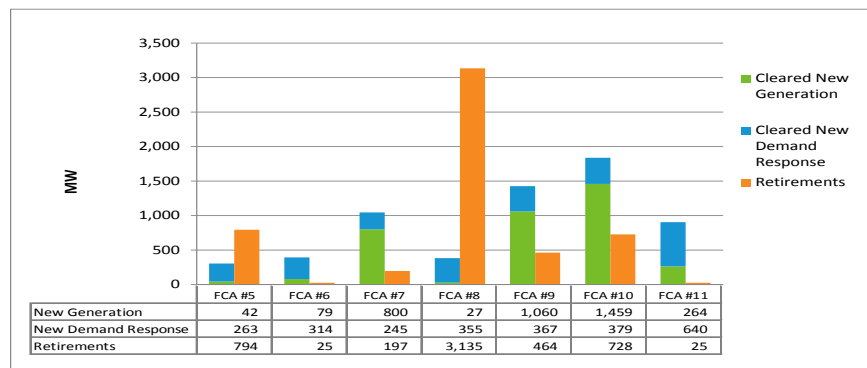
Before a retirement is approved, the ISO evaluates its effect on the power system to determine whether the capacity associated with the retirement is needed for the reliability of the New England electric power system. This reliability analysis is done in accordance with the ISO Tariff and ISO New England Planning Procedure No. 10 (PP-10) – Planning Procedure to

¹¹ RSP at p. 49.

Support the Forward Capacity Market.¹² The procedure requires analysis of the thermal, voltage and, if appropriate, stability impacts of retirements of 5 MW or greater. If the capacity is determined to be needed for reliability reasons, the unit will be compensated at its bid price or, in certain situations and at the resource’s option, pursuant to a cost-of-service agreement.¹³

In response to major retirements on the system, new generation resources have typically been clearing within one to two auctions, while new demand resources have been clearing at relatively the same levels regardless of retirements. In many cases, the new generating resources are more flexible and have better heat rates than the retired facilities.

The following figure shows the amount of new generation and demand resources granted obligations through FCM, and those resources, including demand resources, that chose to retire.



Summary of new capacity and retirement requests for the 5th through 11th Auctions (MW).¹⁴

In addition, some of the New England states are actively seeking additional renewable resources, including solar, hydropower and off-shore wind.

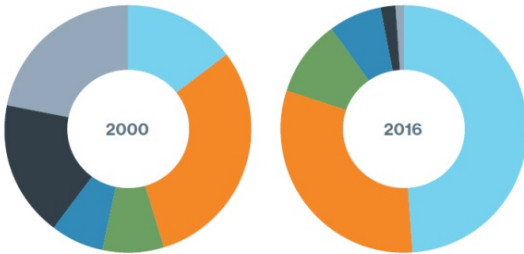
¹² ISO New England, Planning Procedure No. 10, *Planning Procedure to Support the Forward Capacity Market*, http://www.iso-ne.com/static-assets/documents/rules_proceeds/isone_plan/pp10/pp10.pdf (January 13, 2015).

¹³ ISO Tariff at Section III.13.2.5.2.5.1. This description greatly simplifies the types of bids that constitute a retirement or “delisting” from FCM. For certain types of bids, the generator can refuse the additional compensation and force its retirement.

¹⁴ RSP at p. 50.

5. Is fuel diversity within a region or market itself important for resilience? If so, has the changing resource mix had a measurable impact on fuel diversity, or on resilience and reliability?

Annual Fuel Mix



	2000	2016
Natural Gas	15%	49%
Nuclear	31%	31%
Renewables	8%	10%
Hydro	7%	7%
Coal	18%	2%
Oil	22%	1%

Planning for fuel diversity is consistent with integrated resource planning and traditional cost-of-service regulation. There are no established criteria for fuel diversity; as such, it is impossible to define this term in the context of a competitive wholesale market. Presumably, the concept of fuel diversity will vary from region to region, depending in large part on the policy choices in each region.

Wholesale markets solve for one objective, i.e., reliability at least cost, such that a competitive market will select the most cost effective resources

(and fuels) to generate electricity. Therefore, the most competitive resources/fuels will displace less efficient resources/fuels.

As depicted in the figure above,¹⁵ New England has experienced increased dependence on natural gas for generation. Such dependence clearly increases the risks associated with the unavailability of gas. On the other hand, while the markets have resulted in greater investment in gas-fired resources over time, they have also provided opportunities for demand response resources, imports and renewables. And the New England states are contracting for additional renewable resources in many forms, all of which will increase regional fuel diversity over time.

As noted above, ISO-NE and the region will work to quantify the risks related to fuel

¹⁵ ISO New England Inc., *2017 Regional Electricity Outlook*, <https://www.iso-ne.com/about/regional-electricity-outlook>, p. 12 (January 2017).

security and develop any necessary solutions. That said, absent compelling reliability concerns, the ISO will not support a solution that seeks to improve diversity by retaining inefficient technology that is receiving market signals to retire.

Eligibility

General Eligibility Questions

- 1. In determining eligibility for compensation under the proposed rule, should there be a demonstration of a specific need for particular services? What should be the appropriate triggering and termination provisions for compensation under the proposed rule?**

This question, and subsequent questions in this and other sections, indicate that this NOPR is not ready for implementation in the time frame allotted. For a fully implementable rule, ISO-NE would require criteria regarding eligibility, including with regard to the region's need for the unit, participation by new or repowered resources, MW thresholds, required technical characteristics, and participation by hydroelectric, geothermal, dual fuel, storage, and other technologies. Moreover, in prior RMRs with cost-of-service compensation, the Commission has required an assessment of whether the generator was denied the opportunity to recover its costs in the market.¹⁶

...

- 6. The proposed rule would limit eligibility to resources that are not subject to cost of service rate regulation by any state of local regulatory authority. How should the Commission and/or RTOs/ISOs determine which resources satisfy this eligibility requirement?**

Decisions whether a resource is subject to cost-of-service regulation should be made by the Commission. This determination should be based upon the filing by the resource if the NOPR is adopted and subject to standard hearing procedures at the Commission.

¹⁶ See, e.g., *Bridgeport Energy, LLC*, 113 FERC ¶ 61,311 at ¶ 30 (2005),

90-day Requirement

- 1. The proposed rule defines eligible resources as having a 90-day fuel supply. How should the quantity of a given resource's 90 days of fuel be determined? For example, should each resource be required to have sufficient fuel for 24 hours/day and sustained output at its upper operating limit for the entire 90-day period? Would there be any need for regional differences in this requirement?**

Among other issues, the NOPR is missing much detail on the definition of a 90-day fuel supply. For example, the requirement can be calculated in a variety of ways for multi-unit stations. Is each unit required to have 90 days of fuel? Or will multi-unit generators be able to “double count” their on-site fuel supply for each unit? There are also issues related to the impact of operations on fuel supply. Does the cost-of-service treatment cease when the fuel supply dips below 90 days? Will there be prohibitions on the transfer of fuel? How close must the stored fuel be to the generator's location? In the normal course of business, these and related issues would be reviewed in a stakeholder process in each region. Absent that, the Commission must provide these and other details in order for ISO-NE to implement any final rule.

- 2. Is there a direct correlation between the quantity of on-site fuel and a given level of resilience or reliability? Please provide any pertinent analyses or studies. If there is such a correlation, is 90 days of on-site fuel necessary and sufficient to address outages and adverse events? Or is some other duration more appropriate?**

While having fuel on-site has reliability advantages, it is not foolproof; as discussed above, nuclear units generally cannot operate in severe storms, and coal piles can freeze. ISO-NE believes that reliability is best served by creating incentives for resources to obtain fuel when needed. For example, the Pay For Performance rules are designed to send a roughly \$9,000/MWh price signal to provide both the incentive and compensation for resources to make appropriate fuel arrangements. This level of compensation was based on the cost of a dual fuel facility, and could be adjusted to accommodate other fuel arrangements (e.g., firm pipeline gas or LNG).

...

Implementation

- 4. Should there be performance requirements for resources receiving compensation under the proposed rule? If so, what should the performance requirement be, and how should it be measured, or tested? What should be the consequence of not meeting the performance requirement?**

The NOPR provides no incentives for performance, particularly during the adverse conditions it highlights (storms, cold weather, etc.). Without clear performance obligations and incentives, ISO-NE has no confidence that resources would deliver reliability benefits and be able to perform when needed. However, such performance incentives are fundamentally inconsistent with cost-of-service compensation, the benefit of which (for the generator) is insulation from the risk of insufficient revenue. While such incentives could be implemented in conjunction with the proposed treatment, it would add another level of complexity and negotiation. Indeed, most New England states moved from traditional cost-of-service regulation to markets to provide appropriate incentives and to shield customers from poor investment decisions. The NOPR proposal would place all risks squarely back on customers.

- 5. Should there be any restrictions on alternating between market-based and cost-based compensation?**

While ISO-NE opposes the NOPR, if it is adopted then toggling should not be permitted. In accordance with the Commission's past precedent, "toggling" between an RMR and market-based compensation should be disallowed. In one case, the Commission rejected a provision in an RMR that would have allowed a generator to terminate at any point on thirty days' notice. The Commission noted, "should Bridgeport terminate the proposed RMR Agreement, it subsequently would be able to seek another RMR agreement if it was not content with its

earnings in the market. Therefore, approval of this language would theoretically allow Bridgeport to toggle between RMR cost-of-service rates and market-based rates at will.”¹⁷

Later, in ISO-NE’s FCM filing, ISO-NE proposed that cost-of-service agreements would only be available for those generators whose cleared permanent de-list bids or non-priced retirement requests were rejected for reliability. In approving that proposal, the Commission again referenced toggling, noting: “We agree with ISO-NE that it is not reasonable to allow a resource that will remain in the capacity market in future years to toggle between cost-based and market-based compensation since a resource that could receive market prices when they exceed its costs and cost-based prices in the other years would be virtually guaranteed to earn revenues above costs over time. Providing a resource with a cost-based backstop would also blunt incentives for the resource to minimize its costs.”¹⁸

Rates

- 1. The proposed rule lists compensable costs that should be included in the rate as operating and fuel expenses, costs of capital and debt, and a fair return on equity and investment. Are there other costs that would be appropriate to be included in the rate? Would any of the listed costs be inappropriate for inclusion?**

ISO-NE has no opinion on whether any specific costs should be considered. Should the Commission determine to pursue this rule, it should make all rate-setting determinations. RTOs and ISOs are not regulatory agencies and should not be required to design or establish specific rates for covered resources. Rather, following its traditional rate setting practices, the Commission should require a filing by the resource, followed by a fully litigated proceeding in which any interested party could participate.

¹⁷ *Bridgeport Energy, LLC.*, 118 FERC ¶ 61,243 at ¶ 66 (2007).

¹⁸ *ISO New England Inc.*, 125 FERC ¶ 61,125 at ¶ 46 (2008).

2. How should RTOs/ISOs allocate the cost of the proposed rule to market participants?

Cost allocation is a particularly contentious issue and the decision whether the state in which a resource is located should pay the cost or, instead, the cost should be regionalized is a matter that the Commission, with full input from the impacted states, should address.

...

Other

- 1. The proposed requirement for submitting a compliance filing is 15 days after the effective date of any Final Rule in this proceeding, with the tariff changes to take effect 15 days after the compliance filings are due. Please comment on the proposed timing, both to develop a mechanism for implementing the required changes and to implement those changes, including whether or not such changes could be developed and implemented within that timeframe.**

The NOPR proposes a wholesale re-write of each region's market rules within fifteen days after the effective date of the final rule. This is unreasonable, given the complexity of the Tariff in each region, as well as the impossibility of consulting with stakeholders pursuant to existing processes. Moreover, as indicated above, there are significant open questions about many important details regarding the NOPR.

The NOPR also proposes implementation within fifteen days, which is markedly inadequate given the need to adjust procedures and software. Projects of this magnitude often require years to retain vendors, develop design documents, complete programming, test the changes, and fulfill cyber security requirements.

- 2. Please comment on the proposed rule's estimated burden of \$291,042 per respondent RTO/ISO, to develop and implement new market rules as proposed, including the potential software upgrades required to do so. SEE RLC**

In the preceding question, ISO-NE outlines some of the steps that will take significantly more time than the NOPR allocates for implementation. These steps will also require

expenditures for vendors or internal development time, software, legal costs, and stakeholder meetings. Such efforts will be in the millions of dollars for each RTO.¹⁹

3. Please describe any alternative approaches that could be taken to accomplish the stated goals of the proposed rule.

The Commission has generally avoided “one-size-fits-all” solutions, in recognition of the different concerns and structures in each ISO/RTO region. As noted above, the NOPR does not address New England’s fuel security concerns, which require careful thought and significant stakeholder process in New England. Should the Commission crisply identify an issue that it would like each region to address, ISO-NE respectfully requests that the Commission take action on the NOPR to require each region to engage in further evaluation with its stakeholders, with any solution designed by that region and tailored to its needs. In any event, those solutions should not undermine the competitive markets to which the Commission and the ISOs/RTOs have dedicated decades of effort.

....

III. Conclusion

ISO-NE respectfully requests that the Commission decline to adopt the NOPR as a final rule because the NOPR will significantly undermine the efficient and effective wholesale energy markets that, with the Commission’s guidance, the New England region has built. Moreover, there is no urgent need to rush to a solution, given that ISO-NE’s three-year forward capacity market has ensured resource adequacy until at least 2021, and the region has already taken steps to improve operating procedures and generator incentives to secure firm fuel supplies.

¹⁹ ISO New England’s recent annual capital budget filing provides examples of the costs (and timelines) of projects that are likely to be significantly simpler than the NOPR. ISO New England Inc., Filing of 2018 Capital Budget and Revised Tariff Sheets for Recovery of 2018 Administrative Costs, Docket No. ER18-77-000, at pp. 24-30 (Oct. 16, 2017).

ISO-NE requests that the Commission allow New England to develop its own market-based solutions, if any are needed, using the established and robust stakeholder processes that are in place.

Respectfully submitted,

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Dated: October 23, 2017

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Holyoke, Massachusetts this 23rd day of October, 2017.

/s/ Linda M. Morrison
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