UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Advanced Energy Economy and Sustainable FERC Project.	)	Docket No. EL19-43-000

ANSWER OF ISO NEW ENGLAND INC.

Pursuant to Rule 213 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure,[1] and the Errata Notice Shortening Comment Period issued on February 21, 2019, ISO New England Inc. ("the ISO" or "ISO-NE") submits this answer in response to the Petition for Declaratory Order filed by Advanced Energy Economy and Sustainable FERC Project in this docket.[2] The Commission should dismiss the Petition, as Petitioners fail to allege facts demonstrating that there is a controversy or uncertainty ripe for resolution by a declaratory order.

I. INTRODUCTION

Petitioners seek Commission rulings relating to potential future changes by the ISO regarding how demand reduction values of energy efficiency resources are measured for purposes of participation in its Forward Capacity Market ("FCM").[3] Petitioners base their requests only on allegations that the ISO is "considering," "may apply," or "intends" to

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1 18 C.F.R. § 385.213.

2 Petition for Declaratory Order of Advanced Energy Economy and Sustainable FERC Project, Docket No. EL19-43-000 (Feb. 13, 2019) ("Petition"). Advanced Energy Economy and Sustainable FERC Project will be referred to collectively herein as "Petitioners."

3 Capitalized terms used but not defined herein are intended to have the meaning given to such terms in the ISO New England Inc. Transmission, Markets and Services Tariff ("ISO-NE Tariff").

make changes to the ISO's measurement and verification practices.[4] Such allegations fail to provide a factual predicate for a declaratory order. Petitioners present no current controversy or uncertainty for the Commission to resolve. Moreover, in the event the ISO determines a measurement and verification change is appropriate, it will present the proposed change to stakeholders through the normal stakeholder processes; if those changes require modifications to the ISO-NE Tariff, the ISO will make any necessary filings at the Commission before implementing them. Therefore, interested parties would have the opportunity to voice any concerns they may have regarding the new measurement and verification methodology and its implementation. However, prior to the ISO putting forth a proposal, there are no specifics to evaluate, and thus no controversy or uncertainty on which the Commission can opine in this declaratory order proceeding.

As the ISO demonstrates in this Answer, the Commission should reject the Petition based solely on its failure to present a controversy for resolution. However, certain allegations and assertions in the Petition have the potential to create confusion and uncertainty both for the Commission and for stakeholders. The ISO therefore takes the opportunity in this Answer to explain the reasons for its outreach to energy efficiency providers in early 2019, to confirm that the ISO currently has no plans to change the measurement and verification requirements for energy efficiency resources participating in the FCM, and to address several incorrect assertions in the Petition regarding the participation of energy efficiency in the FCM.

[4] *See, e.g.*, Petition at 1, 5, 20, 25.

II. PETITIONERS HAVE NOT ALLEGED A CONTROVERSY OR UNCERTAINTY WARRANTING A DECLARATORY ORDER

Petitioners base their request for a declaratory order on "a series of recent phone calls" made by staff of ISO-NE to FCM participants[5] during which ISO staff allegedly indicated that the ISO: (i) "intends to change its longstanding practice regarding how it measures the demand reduction value of energy efficiency resources for purposes of participation in the FCM;"[6] (ii) "*may* apply new 'net-to-gross' conversion factors to re-value energy efficiency resources;"[7] and (iii) "*may potentially* do so retroactively and *without* seeking Commission approval for these changes."[8] Even assuming arguendo that the Petitioners accurately portray the content of the phone calls,[9] Petitioners' allegations present no factual predicate upon which the Commission can issue a declaratory order.

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5 Petition at 1.

6 *Id.*

7 *Id.* at 2 (emphasis added).

8 *Id.* at 1-2.

9 Petitioners' portrayal is indeed off-base. As the script used by an ISO staff member for calls to energy efficiency providers makes clear, and as echoed in a follow up email to one provider who had contacted the ISO on behalf of a large group, the ISO was informing energy efficiency providers that it is in the process of *evaluating* the implication of potential changes in federal energy efficiency standards and new information regarding net-to-gross savings ratios. The communications do not reflect that the ISO was proposing a practice change or intending to make one. Rather, the ISO was putting participants on notice of its evaluation as well as reiterating practices regarding performance measures of energy efficiency resources. *See* Attachment A: E-mail from Douglas Smith, Technical Manager, Market Operations, ISO New England, Inc., to Robert Ethier, Vice President, Market Operations, ISO New England, Inc. (Jan. 28, 2019); Attachment B: E-mail from Douglas Smith, Technical Manager, Market Operations, ISO New England, Inc., to Stefan Nagy, Product Manager, Distributed Energy, National Grid (Jan. 29, 2019); *see also* discussion *infra* Section IV(B).

"Petitions for declaratory order, and orders granting those petitions, 'are based on the specific facts and circumstances presented.'"[10] While it is within the sound discretion of the Commission to issue a declaratory order to terminate a controversy or remove uncertainty,[11] the facts alleged must demonstrate that there is in fact a controversy or uncertainty. The Commission repeatedly has dismissed petitions for declaratory order as premature where an action that might create a controversy or uncertainty has yet to be taken.[12] That is precisely the situation here. Petitioners are seeking a declaration relating

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10 *ITC Grid Dev., LLC*, 154 FERC ¶ 61,206, at P 45 (2016) (citing *Puget Sound Energy Inc.*, 139 FERC ¶ 61,241, at P 12 (2012)).

11 *Phillips Petroleum Co.*, 58 FERC ¶ 61,290, 61,932 (1992); *see also ITC Grid Dev., LLC*, 154 FERC ¶ 61,206, at P 42 ("The Commission's authority to issue declaratory orders is based on Rule 207(a)(2) of its Rules of Practice and Procedure and section 554(e) of the APA, which allow the Commission to issue declaratory orders 'to terminate a controversy or remove uncertainty.'" (citing 18 C.F.R. § 385.207(a) (2015) and 5 U.S.C. § 554(e))).

12 *See, e.g., S. Md. Elec. Coop., Inc.*, 162 FERC ¶ 61,048, at P 13 (2018) ("It is a common practice for the Commission to dismiss a petition that is not ripe for consideration or is otherwise premature."); *City of Boulder*, 144 FERC ¶ 61,069, at P 32 (2013) (finding "that a determination on Boulder's stranded cost obligation, if any, would be premature and speculative given that Boulder and PSCo have neither negotiated the terms of, nor entered into, a power requirements contract detailing key terms of the arrangement"); *Flint Hills Res. Alaska, LLC*, 136 FERC ¶ 61,021 at P 27 (2011) ("In the exercise of its discretion, the Commission will not rule in advance on a possible tariff filing that may or may not be made."); *Lynch v. ISO New England, Inc.*, 107 FERC ¶ 61,242, at P 14 (2004) (dismissing Rhode Island Attorney General's petition for declaratory order as premature, noting that to grant the petition would inappropriately circumvent established procedures in New England); *Comm. of Certain Members of Cajun Elec. Power Coop., Inc.*, 87 FERC ¶ 61,129, at 61,509 (1999) (declining to issue order declaring that certain elements of a bankruptcy plan of reorganization are contrary to the Federal Power Act, Commission precedent, and Section 32 of the Public Utility Holding Company Act on the grounds that it was not possible to know what action the bankruptcy court would take); *Turlock Irrigation Dist. v. Pac. Gas and Elec. Co.*, 64 FERC ¶ 61,183, at 62,544, *reh'g denied*, 65 FERC ¶ 61,016, at 61,227 (1993) ("*Turlock*") (declining to issue a declaratory order regarding a proposed rate design in the absence of a rate filing); *Held*, 57 FERC ¶ 61,080, at 61,293 (1991) (declining to issue a declaratory order because the alleged controversy was purely speculative); *Minn. Power & Light*

to possible future action by the ISO. Petitioners do not allege that the ISO actually has proposed to change its FCM rules. Rather, they only assert that, in conversations, the ISO staff indicated the ISO "may" propose to change, or was "considering changing its approach to require energy efficiency resources to determine net savings."[13] Such speculative allegations simply fail to present "sufficient facts to establish the existence of a controversy or to constitute a basis"[14] for the Commission to make a determination. Accordingly, the Commission should dismiss the Petition in its entirety.

III. THE DECLARATIONS PETITIONERS SEEK ARE PREMATURE AND UNNECESSARY

The individual declarations Petitioners request also are unwarranted. Petitioners first ask the Commission to "declare, and instruct ISO-NE, that new Measurement and Verification standards cannot be retroactively applied to approved [Forward Capacity Auction] 13 Qualification Packages."[15] The Commission should decline to make this declaration. As discussed above, the ISO has made no proposal to change its measurement and verification standards. Furthermore, should the ISO propose any such changes, it will not implement them without first vetting the changes through the stakeholder process and making any necessary filings at the Commission. Thus, interested parties will have ample opportunity to address any concerns, including retroactivity, if and when the ISO presents a definite proposal to the stakeholders and, if necessary, to the Commission. Furthermore, it is impermissible under the Federal Power

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Co., 43 FERC ¶ 61,104, at 61,343, *reh'g denied*, 43 FERC ¶ 61,502, at 61,241-42 (1988) (denying request for declaratory order on prudence of acquisition as premature until public utility seeks to reflect the transaction in rates).

13 Petition at 2 and 20.

14 *Held*, 57 FERC ¶ 61,080, at 61,293.

15 Petition at 29.

Act to apply retroactively a change to a rate, term or condition of a tariff,[16] and it is therefore unnecessary (and arguably confusing) for the Commission to provide a declaration to address conduct that is, on its face, not permitted under the law.

Petitioners also request that the Commission "declare that ISO-NE does not have the discretion as a matter of law to implement a new practice for determining the capacity value of energy efficiency resources (*i.e.*, valuation on net rather than adjusted gross savings) because this new practice would impermissibly modify its existing Tariff and significantly affect rates, terms, and conditions," and "that ISO-NE must file any proposed change with the Commission, or that change will be unlawful."[17] Again, Petitioners' request is premature.

Absent a proposal from the ISO to implement a new practice, the Commission has insufficient facts to determine whether such a proposal would impermissibly modify the ISO-NE Tariff or significantly affect rates, terms and conditions of service.[18] Similarly, the Commission cannot determine whether it is necessary for the ISO to file "any

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16 *See, e.g.*, *Old Dominion Elec. Coop. v. FERC*, 892 F.3d 1223, 1230 (D.C. Cir. 2018) ("The filed rate doctrine and the rule against retroactive ratemaking leave the Commission no discretion to waive the operation of a filed rate or to retroactively change or adjust a rate for good cause or for any other equitable considerations.'" (quoting *Columbia Gas Transmission Corp. v. FERC*, 895 F.2d 791, 794-797 (D.C. Cir. 1990)); *Sw. Power Pool, Inc.*, 166 FERC ¶ 61,160, at P 45 (2019); ("The related rule against retroactive ratemaking also prohibits the Commission from adjusting current rates to make up for a utility's over- or undercollection in prior periods.").

17 Petition at 29.

18 *City of Boulder*, 144 FERC ¶ 61,069, at P 28 (denying petition finding that Commission had insufficient facts before it to determine that upon becoming a retail-turned-wholesale customer, the City of Boulder will have no stranded cost obligation for the portion of its wholesale power requirements that it purchases from its former retail supplier).

proposed change with the Commission."[19] For example, the ISO-NE Tariff specifies the Measurement and Verification Documents each energy efficiency provider must provide, the purpose for those documents, and the statistical criteria with which each reported energy efficiency measure must comply.[20] Further guidance and required elements for the Measurement and Verification Documents of On-Peak Demand Resources and Seasonal Peak Demand Resources currently are, and always have been set forth in the ISO-NE manuals.[21] The ISO-NE manuals provide implementation details and practices, which the Commission has held do not need to be filed with the Commission under its "rule of reason" policy.[22] Without a proposal on the table, the Commission has insufficient information to determine whether "a new practice for determining the capacity value of energy efficiency resources" would require an ISO-NE Tariff filing or could properly be included in the ISO's manuals, as they are today.

As discussed in Section IV below, the ISO is evaluating current measurement and verification practices in light of changes in New England's energy efficiency landscape. First, expected changes in lighting efficiency standards under section 321 of the Energy

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19 Petition at 29.

20 ISO-NE Tariff at Section III.13.1.4.3.1.

21 ISO New England Manual for Measurement and Verification of On-Peak Demand Resources and Seasonal Peak Demand Resources (rev. 7, Oct. 4, 2018), referred to herein as "ISO-NE Manual M-MVDR." The ISO-NE Manual M-MVDR is attached to the Petition at Exhibit C.

22 *ISO New England, Inc.*, 137 FERC ¶ 61,112, at P 19 (2011) ("[T]the Commission previously has affirmed the use of operating manuals . . . to provide the details for implementing tariff requirements," and "[t]he procedures set forth in such manuals do not necessarily need to be filed . . . ."); *see also Midwest Indep. Transmission Sys. Operator, Inc.*, 124 FERC ¶ 61,183, at P 145 (2008) ("Under the existing 'rule of reason' policy, only those practices that affect rates and services significantly need be included in a tariff. An RTO or ISO appropriately places in its Business Practice Manuals the implementation details that inform stakeholders how the organization conducts business under its tariff.").

Independence and Security Act of 2007 ("EISA") could substantially affect the baseline against which the savings from efficient lighting programs are determined. Second, information from updated state studies on the performance of energy efficiency measures indicates a growing disparity between gross savings and net savings values for energy efficiency resources. These factors warrant evaluating current practices regarding the measurement of energy savings for energy efficiency resources to assess whether changes to the ISO's measurement standards are appropriate. However, as stated earlier, the ISO will implement any such changes only through modifications to the appropriate governing documents—i.e., either ISO-NE manuals or ISO-NE Tariff provisions—and only after any such changes are vetted through the stakeholder process and any tariff changes are filed and accepted by the Commission. But, again, unless and until the ISO actually proposes revisions to its measurement and verification standards, it is premature for the Commission to address the lawfulness of a potential, undefined, future proposal.

IV. PETITIONERS MISCONSTRUE ENERGY EFFICIENCY'S PARTICIPATION IN THE FORWARD CAPACITY MARKET AND MISUNDERSTAND THE ISO'S PURPOSE IN REACHING OUT TO ENERGY EFFICIENCY PROVIDERS

While Petitioners have failed to demonstrate that there is a controversy or uncertainty ripe for resolution by a declaratory order, the ISO is nevertheless concerned that several incorrect and misleading assertions in the Petition may cause confusion for both the Commission and New England stakeholders. The ISO therefore offers the following additional comments to remove any such confusion.

A. Energy Efficiency Has Been a Long-Standing Participant in the Forward Capacity Market

Energy efficiency has participated as capacity supply in New England since the inception of the Forward Capacity Market. The vast majority of energy efficiency

participating in the FCM is derived from state-sponsored programs that collect money from electric ratepayers, typically in the form of an additional charge (a "system benefit charge") on utility bills, and use that money to invest in energy efficiency programs. A significant portion of the reductions in energy usage produced by these state programs has resulted from so-called "upstream lighting programs." In these programs, the state-regulated utility provides a substantial subsidy to the manufacturer or distributor of highly energy-efficient lightbulbs, and those subsidies are passed on to the consumer through a significant reduction in the price of the energy-efficient lightbulb when purchased at a retail outlet. The subsidy is provided in order to incent the consumer to purchase the highly energy-efficient lightbulb in lieu of a less efficient, but also less expensive lightbulb (as compared to the unsubsidized price of the highly efficient lightbulb).

State-sponsored energy efficiency programs achieve their objectives of lowering electricity demand independently of their participation in the ISO-administered FCM. Energy efficiency providers are permitted to enter the electricity savings produced by energy efficiency programs into the FCM as capacity supply resources, similar in concept to the way other demand reduction resources participate in the FCM. A capacity resource comprises an aggregation of energy efficiency installed "measures" (e.g., efficient lighting, heating, ventilation, and air conditioning systems, water heaters, motors, etc.), and the resource's capacity value is established by measuring the energy savings produced through installation of the measure against a "baseline," which is generally represented by the energy usage that would have resulted if the energy-efficient measure had not been installed.

Measurement of the savings created by an energy-efficient lightbulb participating in a state-sponsored program is a complex matter. Each state has developed significant expertise in performing these savings calculations in order to document the energy savings produced by the states' (and indeed by consumers') investment in these programs. These savings calculations are performed by the states at regular (multi-year) intervals, with each state following its own procedures and timelines for performing the calculations, and the results are published by the states in "technical reference manuals" or "TRMs."

The capacity produced by an energy efficiency measure is equal to the average hourly demand reduction produced during Demand Resource On-Peak Hours or Demand Resource Seasonal Peak Hours ("on-peak hours"). The kilowatt demand of the energy-efficient measure compared to the kilowatt demand of the baseline establishes the "gross savings" value. A number of adjustments are then applied to the gross savings value—for example to capture measure persistence over the measure's life, equipment in-service rates, savings realization rates based on evaluation impact studies, and savings coincidence with the applicable on-peak hours. The resulting value is often referred to as the "adjusted gross savings" value.

TRMs provide detail on how the gross and adjusted gross savings values are calculated, and may also report the net savings value, which refers to the adjusted gross savings value further reduced for the impact of "free riders" and/or increased for the impact of "spillover." As noted above, upstream lighting energy efficiency programs typically provide a subsidy that reduces the price paid by an end-use customer for purchasing and installing energy-efficient equipment. A free rider in this context is an end-use customer who would have paid full price to purchase and install the energy-

efficient equipment, but receives the energy efficiency program subsidy regardless. Spillover refers to the sale of energy efficiency measures that were not directly subsidized by the energy efficiency program but occurred as a result of the program. For example, the energy efficiency program may create increased customer awareness of the benefits of energy efficiency, which would not have occurred but for implementation of the program, and this increased customer awareness results in additional sales of energy efficiency equipment at an unsubsidized price.

While TRMs document the "gross," the "adjusted gross" and often the "net" savings value of a measure, it is important to underscore that each state follows its own guidelines and requirements for how these calculations are performed. Two states might both produce TRMs that contain gross, adjusted gross, and net savings values for a given measure. But it is possible that differences in the adjustments applied by the two states in calculating the adjusted gross value, and differences in the manner in which free riders and spillovers are accounted for, may produce different adjusted gross and net savings values for the same measures. To date, the ISO has not taken any action to require energy efficiency providers to use a single standardized methodology for performing these calculations, instead choosing to rely on the expertise of the state program administrators.

Requirements for baseline calculations are documented in the ISO-NE manuals.[23] In many cases, the energy consumption of the equipment being replaced is used as the baseline against which to establish the savings produced by an energy-efficient measure. Since program administrators do not always have data to document the actual energy consumption of the equipment that is replaced by the new measure (and in some

[23] *See* ISO-NE Manual M-MVDR at Section 6.

cases there is no existing equipment), the ISO's governing documents require that the baseline be determined using the "level of efficiency required by applicable state code or federal energy efficiency standard, or standard practice if there is no applicable state code or federal energy efficiency standard."[24] For example, the gross energy savings of a residential lighting program is based on the energy consumption of the typical lightbulb that meets the level of efficiency required by the applicable state code or federal efficiency standard minus the energy consumption of the energy-efficient lightbulb.

The forward nature of the FCM requires that capacity suppliers, including energy efficiency providers, qualify resources for participation in the Forward Capacity Auction ("FCA") approximately four years in advance of the delivery year. Thus, for the thirteenth Forward Capacity Auction ("FCA 13"), which was held in February 2019 and is associated with the 2022-2023 capacity delivery year (referred to as the "Capacity Commitment Period"), suppliers were required to qualify capacity during the summer of 2018. As Petitioners explain, an energy efficiency provider qualifies its capacity resource by establishing the approach that the provider will utilize to measure the demand reduction values for its energy efficiency measures; this approach is reflected in the Measurement and Verification Documents submitted by the energy efficiency provider to the ISO. This documentation—which includes the technical reference manuals that establish the savings values for each measure to be included in the resource—is submitted to the ISO during the six-month qualification process that takes place in the year before the auction. Once the energy efficiency provider takes on a Capacity Supply Obligation in the FCA, it then has approximately three years to install energy efficiency measures that will "deliver" the capacity during the Capacity Commitment Period.

[24] ISO-NE Manual M-MVDR at Section 6.2 (4) and (5).

Petitioners create the impression that once the ISO qualifies an energy efficiency resource for FCA participation at a particular MW level, and the resource clears at that amount in the FCA, the resource's performance during the Capacity Commitment Period equals its FCA qualified MW value. However, this is not the case. While the *methodology* for calculating demand reduction is established in a resource's Measurement and Verification Documents during the FCA qualification process, the *baseline* used to establish the actual capacity value of a given energy efficiency measure is not established until the *installation* of the energy efficiency measure.[25] For example, if during FCA qualification the applicable lighting standard requires that a typical residential lightbulb[26] use no more than twenty watts, an energy efficiency program proposing to subsidize the purchase of 10,000 ten-watt residential lightbulbs might estimate a demand reduction savings of ten watts per bulb, or 100 kW for that measure, resulting in approximately 100 kW of qualified capacity.[27] However, if the measure is installed three years after qualification, and if in those intervening three years the state or federal lighting standard is tightened such that a typical residential bulb of the same brightness must use no more than fifteen watts (rather than the twenty watts assumed during FCA qualification), the fifteen-watt baseline would be used to determine the

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25 Petition at 16 ("This average demand reduction performance is measured against 'baseline conditions,' which are defined as 'the load (MW) that would have existed, but for the implementation of a demand reduction measure' like energy efficiency." (quoting ISO-NE Manual M-MVDR at section 6.1)).

26 A sixty-watt incandescent bulb provides 800 lumens of light, which is the same amount of light produced by a fourteen-watt CFL, or a seven-watt LED bulb.

27 For purposes of this example, we ignore the various adjustments applied to establish the "adjusted gross savings," any applicable netting of free riders and spillovers, and any adjustment for transmission and distribution losses that are avoided by reducing end-use demand using energy efficiency.

capacity value of the measure. In this case, the change in baseline would reduce the measure's capacity value by half.[28]

B. Petitioners Misconstrue the Purpose for the ISO's Outreach to Energy Efficiency Providers Prior to FCA 13

According to Petitioners, they filed the Petition because of a "series of recent phone calls made by staff of ISO-NE to [FCM] participants" in which "ISO-NE staff indicated that the ISO intends to change its longstanding practice regarding how it measures the demand reduction value of energy efficiency resources for purposes of participation in the FCM."[29] Petitioners assert that "ISO-NE staff have indicated that the ISO may apply new 'net-to-gross' conversion factors to re-value energy efficiency resources" and that conversion factors "are not included in most market participants' ISO-NE approved FCA 13 Measurement and Verification Documents."[30] Petitioners also assert that the ISO indicated on these calls that it "may potentially do so *retroactively* and *without* seeking Commission approval for these changes."[31]

All of these statements are flawed. As a threshold matter, Petitioners misconstrue the purpose of the ISO's outreach. In fact, several precipitating events prompted the ISO's concerns with the current practices of energy efficiency providers with respect to calculating capacity values. The ISO reached out to energy efficiency providers to flag these concerns and raise the possibility that (1) potentially significant changes to federal

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28 If instead, in the three intervening years between qualification and installation, the applicable standard was tightened even more—for example if a bulb of equal brightness had to use ten watts or less, the measure would have no capacity value at all.

29 Petition at 1.

30 *Id.* at 2.

31 *Id.* at 1-2.

efficiency standards could prompt a significant change to the baseline against which energy savings are evaluated, and, separately, (2) the ISO *may* explore changes to the relevant Measurement and Verification Documents to account for free-riders and spillover. Furthermore, since the change in federal efficiency standards in particular could potentially impact the manner in which energy efficiency providers calculate the capacity value for individual energy efficiency measures (i.e., at the time the measure is installed and *after* the provider has taken on an obligation to provide capacity), the ISO believed it was appropriate to reach out to energy efficiency providers in advance of FCA 13.

While most energy efficiency providers have historically provided both adjusted gross and net savings values in their FCM qualification documents,[32] the majority have utilized adjusted gross savings values when actually calculating their proposed capacity values. This practice has not been questioned by the ISO because, to date, the adjusted gross and net savings values reported by energy efficiency providers in TRMs have not differed significantly, as the net-to-adjusted gross ratio has been high. The ISO has therefore not found it necessary to take a firm position on the use of gross or net savings values.

However, in reviewing the participation of a privately funded energy efficiency provider that had substantially increased its qualified capacity for FCA 13, the ISO began to reconsider whether it may be appropriate to require energy efficiency providers to take

[32] Petitioners incorrectly assert that "net-to-gross" conversion factors "are not included in most market participants' ISO-NE approved FCA 13 Measurement and Verification Documents." Petition at 2. In fact, virtually all energy efficiency providers include both an adjusted gross savings value and a net savings value in the technical reference manuals, or "TRMs" that are included with the Measurement and Verification Documents as part of the energy efficiency provider's qualification documents.

into account free riders and spillovers (in addition to the new federal lighting standards required by EISA that are scheduled to go into effect in January 2020) when calculating capacity values for residential lighting measures.[33] The ISO's concerns were further compounded by the release in 2018 of a new Massachusetts technical reference manual,[34] which contained updated net-to-gross conversion factors for energy-efficient lighting programs in place in 2019. The updated Massachusetts TRM reported an adjusted net-to-gross conversion ratio of thirty-five percent for LED lighting installed in 2019, indicating that an energy efficient lightbulb installed at that time would have a net savings value of just thirty-five percent of the lightbulb's adjusted gross savings value. Net savings values for 2020 installations were even lower. Therefore, while historically net-to-adjusted gross conversion ratios have been relatively high—in the range of ninety percent—the

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[33] While this privately funded energy efficiency provider utilized methodologies and technical documents appropriate to a state-subsidized energy efficiency program, upon closer inspection it was not clear to the ISO that this equivalence had been established. In the course of this evaluation, the ISO questioned whether this provider might be claiming savings that are not in addition to what would have occurred in the absence of their resources. The ISO has made no final determinations regarding this provider, and its evaluation is on-going.

[34] *Technical Reference Manual*, Mass Save Data, http://masssavedata.com/Public/TechnicalReferenceLibrary (last visited Mar. 7, 2019) ("Massachusetts TRM"); *see LED Bulb (RES-L-LEDB) – Massachusetts Department of Public Utilities*, Massachusetts TRM (Jan. 1, 2019), https://etrm.anbetrack.com/#/workarea/trm/MADPU/RES-L-LEDB/2019-2021%20Plan%20TRM/version/1?measureName=LED%20Bulb (addressing energy efficient lightbulbs); NMR Group, Inc., *RLPNC 17-11 LED Net-to-Gross Consensus Panel Report*, Massachusetts Program Administrators and Energy Efficiency Advisory Consultants (June 30, 2018), http://ma-eeac.org/wordpress/wp-content/uploads/RLPNC_1711_LEDNTGConsensus_30JUNE2018_final.pdf ("Net-to Gross Consensus Panel Report") (documenting net-to-gross conversion ratios). The Net-to-Gross Consensus Panel Report is cited in the Massachusetts TRM.

2018 Massachusetts TRM was the first study to indicate a significant departure of net savings from gross savings.

The updated Massachusetts TRM raised questions more generally about the impact of the updated federal lighting standards that are to be put in place starting in January 2020 for compliance with section 321 of EISA. The updated federal lighting standards have the potential to significantly affect the baselines of lighting efficiency programs, which in turn will affect the calculated gross savings of such programs.[35]

Together, these factors prompted the ISO's outreach to individual energy efficiency providers. Assuming that state-sponsored energy efficiency providers would likely want to reflect the impacts of the new EISA standards on the savings values of the energy efficiency programs, as well as account for other issues that reduce net savings reported in state-sponsored M&V studies, the ISO reached out to program administrators prior to FCA 13 to make sure that they were aware of the updated 2018 Massachusetts TRM.

The ISO did not undertake this outreach lightly. It was aware that energy efficiency providers had likely not accounted for the change in federal lighting standards when qualifying capacity for FCM 13 given the uncertainty surrounding the

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[35] EISA requires that the efficiency standard for general service lamps (i.e., the typical screw-in lightbulb) become forty-five lumens per watt effective January 1, 2020, and prohibits the sale of any general service lamp that does not meet the new standard as of that date. While there is uncertainty at this point as to whether and in what form the EISA standards will go into effect, assuming they are implemented as originally intended, the ISO estimates that baselines for a large majority of energy-efficient lightbulbs in state-sponsored energy efficiency programs will be reduced substantially. For example, the savings produced by a general service lighting efficiency program will be substantially lower if its baseline is reduced from a sixty-watt incandescent lightbulb to a fourteen-watt CFL or a seven-watt LED lightbulb. This baseline reduction is warranted given that EISA prohibits the sale of such incandescent lightbulbs starting in year 2020.

implementation of the EISA standards. The ISO was also aware that net-to-adjusted gross conversion ratios had historically been high, and that the 2018 Massachusetts TRM was the first to indicate (to the ISO's knowledge) a significant reduction in savings values. The ISO was also aware that, while most providers historically had utilized adjusted gross savings values and there was no industry standard for calculating the net-to-adjusted gross ratio, at least some energy efficiency providers *might* feel compelled to update their savings values to reflect the significant difference between the adjusted gross and net savings values.[36] And finally, even if energy efficiency providers would not feel compelled to utilize the net values, implementation of the EISA standards would likely have a *significant* impact on baselines for impacted lighting measures, which would directly impact the capacity value of any such measure installed after January 1, 2020.

Weighing these factors, the ISO reached out to energy efficiency providers prior to FCA 13 so they would be in a position to factor these considerations, as necessary, into their decisions on how much of a capacity obligation to acquire in the auction for the 2022-2023 Capacity Commitment Period.

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[36] Petitioners incorrectly assert that Measurement and Verification Documents cannot be updated after the close of the qualification period prior to the FCA. Petition at 22. Instead, Section III.13.1.4.3.1.2 of the ISO-NE Tariff expressly permits capacity suppliers to submit Updated Measurement and Verification Documents prior to the start of the Capacity Commitment Period for which the supplier has taken on a capacity obligation. The updated Measurement and Verification Documents "may include updated project specifications, measurement and verification protocols, and performance data," but may not reduce the "total claimed demand reduction value" for the resource. ISO-NE Tariff at section III.13.1.4.3.1.2. Thus, contrary to Petitioners' assertion, a program sponsor could update its Measurement and Verification Documents at any point prior to the start of the Capacity Commitment Period with, for example, the updated Massachusetts TRM, and, based on the updated TRM, transition from use of an adjusted gross savings value to a net savings value when measuring the capacity value of any given measure upon installation.

C. Petitioners Mischaracterize Energy Efficiency in the FCM

To reiterate, the ISO has made no determination regarding whether or how to change the measurement and verification requirements for energy efficiency resources participating in the FCM. There is still considerable work to be done in assessing what changes, if any, may be appropriate. For example, application of the updated federal lighting standards—when implemented—may in fact reduce the savings to be gained for energy-efficient lighting so significantly that no further adjustment is necessary.[37] Further, the ISO recognizes that no single standard exists for computing net-to-gross ratios, and that state energy efficiency providers must be consulted in establishing (if appropriate) a single standard to be utilized for FCM purposes. Thus, as stated above, the ISO would only take action to modify the measurement and verification requirements for energy efficiency resources after a stakeholder process, and only through appropriate changes to the ISO's governing documents. Any necessary changes to the ISO-NE Tariff would be implemented only after acceptance by the Commission. Further, as retroactive modification to existing rates is not permitted under the Federal Power Act,[38] the ISO would not apply any ISO-NE Tariff change in a manner that would contravene the Federal Power Act.

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37 These impacts would occur by application of the updated lighting standards in the calculation of baselines at the time energy efficiency measures are installed, in accordance with the methodology that all energy efficiency providers currently utilize for baseline calculations. *See infra* at 11-14 for an explanation of the manner in which baselines are calculated under the currently-effective ISO-NE Tariff and manuals; no changes to the ISO's governing documents are necessary for energy efficiency providers to utilize the updated lighting standards when calculating baselines at the time measures are installed.

38 *Supra* note 16.

Nevertheless, it is critical that the ISO remove confusion created by Petitioners' mischaracterization of how energy efficiency participates in the FCM.

1. Petitioners Misconstrue the Role Energy Efficiency Plays in the FCM and Fail to Account for the Potential Harm that Could Result if the Updated EISA Standards Are Ignored

Throughout their pleading, Petitioners assert harm resulting from the ISO's outreach to energy efficiency providers related, they claim, to the manner in which energy efficiency competes in the FCM. Thus, they assert that energy efficiency "competes to displace more expensive supply resources," [39] and that the measurement and verification changes which, they assert, the ISO proposed in its phone calls "would substantially impact the energy efficiency market in New England, reducing the value of energy efficiency resources in the FCM, driving up prices, and ultimately forcing ratepayers to pay higher prices."[40]

Petitioners' assertions are based on an overly simplistic understanding of the manner in which energy efficiency participates in the FCM. Any supposed "harm" is highly speculative; FCM energy efficiency resources are "reconstituted" back into the historical loads used in the development of the ISO's gross load forecast, and this revised forecast is an input into the capacity market demand curves that determine, along with the supply curve, the amount and price of the capacity the FCM procures.[41] It is possible

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39 Petition at 10 ("When this energy efficiency is offered directly into the wholesale capacity market, it competes to displace more expensive supply resources, 'thereby resulting in a lower wholesale capacity price.' In the process, energy efficiency resources can lower the cost of capacity to consumers.").

40 Petition at 6-7 ("The measurement and verification changes proposed by ISO-NE in its phone calls would substantially impact the energy efficiency market in New England, reducing the value of energy efficiency resources in the FCM, driving up prices, and ultimately forcing ratepayers to pay higher prices.").

41 *See* ISO-NE Tariff at Section III.12.8(d).

(indeed likely) that the load reconstitution process has a neutralizing effect on any price decrease that would otherwise accompany an increase in the supply of low-cost energy efficiency resources.

More fundamentally, Petitioners' assertion of potential harm is based on the assumption that the energy efficiency resources that take on a Capacity Supply Obligation in the FCM are capable of producing the level of energy savings projected at the time the auction takes place. Unfortunately, both the updated Massachusetts TRM and the updated EISA Standards are a reminder that changes to federal efficiency standards could render a proposed energy efficiency resource incapable of producing significant savings. Should that occur, the market would have procured capacity that cannot be delivered. It was entirely appropriate for the ISO to notify energy efficiency providers of the ISO's concerns, so that energy efficiency providers could factor these considerations into their decision-making with respect to the upcoming FCA.

2. Petitioners Misconstrue the Role that the Adjusted Gross Savings Value of Energy Efficiency Plays in the FCM

Petitioners' assertion that the ISO has a "long history of using adjusted gross savings"[42] in the FCM is false. As the ISO has explained above, the use of adjusted gross savings is not in fact part of the ISO's market design—it is not mentioned in the ISO-NE Tariff or manuals.[43] And indeed, certain energy efficiency programs do submit net savings values, rather than adjusted gross savings values, for use in qualifying their energy efficiency resources in the FCM as well as performance reporting. Under the

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42 Petition at 18.

43 Petitioners do not cite the ISO-NE Tariff or the manuals for their assertion that gross reporting is part of the New England market design. Instead, they cite quotations from third parties providing their perspective on the incorporation of energy efficiency into the FCM. *See, e.g.*, Petition at nn.25, 26, 36, 39.

ISO's current documents, the reporting of either net or adjusted gross savings by energy efficiency resources is permissible.

The use of adjusted gross savings values by some energy efficiency providers reflects a compromise borne of the fact that, when the FCM was first designed to include the participation of energy efficiency as capacity supply resources: (1) the parties, including industry experts, had differing opinions concerning how net savings ought to be determined; (2) the state utility programs' adjusted gross savings values were a reasonable approximation of their net savings—with net to gross ratios in the neighborhood of ninety percent; and (3) all programs of this type were state utility programs, in which the legislatures of the New England states determined that energy efficiency was in the public interest.

With the potentially significant changes to the energy efficiency landscape brought about by the implementation of the new EISA standards and by other market transformations in which consumer preferences for energy-efficient products is becoming the norm and not the exception, it is not unreasonable for the ISO to evaluate at this time whether changes to the measurement and verification requirements for energy efficiency-based capacity resources are prudent.

3. Petitioners Overstate the Case for the Use of Gross Savings Values, and Fail to Account for the Possible Negative Consequences of Using Gross Savings Values for Certain Energy Efficiency Providers

Contrary to Petitioners' assertions, it is not true that, in all circumstances, using adjusted gross savings "reflects good market design."[44] Indeed, there is a good argument that the appropriate value to use in the capacity market, the value New England load

[44] Petition at 18.

should pay for, is the *net* savings of energy efficiency, not the gross savings. As explained above, it makes little sense to charge consumers for energy savings that consumers embark on independently; if New England ratepayers choose to reduce their energy use by installing energy-efficient equipment of their own initiative, there is no economic argument supporting the proposition that the capacity procured in the FCM should be *increased* to account for these installations, and that ratepayers should then *pay once again* for the resulting load reduction in the capacity market. Yet that is precisely what Petitioners are arguing when they assert, for example, that "*[a]ll* energy efficiency installations, not just net installations, provide real, verifiable reductions in the total amount of electrical energy needed to serve peak load,"[45] and that therefore a third-party is entitled to enter that reduction into the capacity market. Accordingly, it is very reasonable to consider whether New England consumers should pay higher capacity bills resulting from reduced energy usage that would have occurred without the introduction of energy efficiency programs into the FCM.

[45] Petition at 18 ("*All* energy efficiency installations, not just net installations, provide real, verifiable reductions in the total amount of electrical energy needed to serve peak load. All efficiency resources that provide savings in excess of the baseline standards represent real energy savings that reduce the need for additional physical capacity at times of peak load.").

V. CONCLUSION

For the reasons stated above, the Commission should dismiss the Petition.

Respectfully submitted,

/s/ Michael J. Thompson

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Counsel for ISO New England Inc.

March 7, 2019

Attachment A

From: Smith, Douglas <DLSmith@iso-ne.com>
Sent: Monday, January 28, 2019 3:35 PM
To: Ethier, Robert
Cc: Hamlen, Christopher; Robinson, Dennis; Wolfson, Jennifer; Sedlacek, Carissa; Yoshimura, Henry
Subject: FW: EXT || RE: [EXT] RE: Net and Adj Gross Savings for EE Measures in FCM

I have had calls with all EE Program Administrators except National Grid and a couple others I have left messages for but not yet connected with. I hope to conclude those by tomorrow. The script of the calls is in red below. All calls so far have gone smoothly and I have not heard from other participants requesting a 'group call' before the auction next week aside from the email from Stefan Nagy of National Grid you can see below. What is your suggestion for my response to Stefan? One option is to accommodate his request for a group call and then just repeat the script of the individual calls.

As a follow-up to our recent conversations, I'm calling to let you know that we are still evaluating whether and to what extent changes to past FCM practice may be needed in response to both changing federal EISA standards and new information on free ridership and spillover we have seen in some TRM updates and their associated studies. As you decide how to manage any potential risk in terms of new qualification for FCA 13 scheduled for February 4, 2019, please keep in mind that we require all performance to be based on baselines and measure lives that are appropriate and current at the time of measure installation.

We intend to engage participants further on these issues within the FCA14 Qualification process.

-Doug

Attachment B

From: Smith, Douglas <DLSmith@iso-ne.com>
Sent: Tuesday, January 29, 2019 1:07 PM
To: Nagy, Stefan; Sedlacek, Carissa; Yoshimura, Henry
Cc: Goldman, Michael; Ingram, Miles; gembree (gmail.com); Plecs, Christopher; Belair, Thomas R; Bruno, Stephen J; Ramos, Carmen; Abdou, Marie T.; Delahaij, Beth E.; Downey, Margaret; Jodi K. Hanover; Dugan, Rachel; Jenkins, Cheryl; Burnes, Ian; Poirier, Tina; Thomas R. Belair; Downes, Mary; Hurley, Doug; Chan, Christopher W; Winkler, Eric
Subject: RE: EXT || RE: [EXT] RE: Net and Adj Gross Savings for EE Measures in FCM

Stefan (and other PA's),

We cannot hold a group meeting to address auction conduct at this time, given the proximity to the auction. If you have concerns regarding this, please contact the Internal Market Monitor.

We are still digesting the implications of recent studies indicating a potentially significant change in the difference between the adjusted gross savings values and the net savings values. We also recognize that the EISA policies have not yet been implemented but are likely to be in place in advance of the 2022-23 commitment period. It has been our practice to establish the performance of Energy Efficiency measures using savings estimates and Measure Lives that are appropriate and current at the time of measure installation. We expect that participants will make their own judgements about how to participate in the FCA given these uncertainties.

Regards,

Doug Smith
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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 Washington, D.C., this 7th day of March, 2019.

/s/ *Carrie L. Bumgarner*
Carrie L. Bumgarner