UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England Inc.	)	Docket Nos. ER18-2364-000
	)	EL18-182-000

COMMENTS OF THE NEW ENGLAND STATES COMMITTEE ON ELECTRICITY

Pursuant to the Federal Energy Regulatory Commission's ("Commission" or "FERC") August 31, 2018 Notice of Filings #2, the New England States Committee on Electricity ("NESCOE") hereby files these comments on ISO New England Inc.'s ("ISO-NE" or the "ISO") August 31, 2018 filing in the above-captioned proceeding ("Interim Fuel Security Filing").[1] Connecticut does not join this filing, and instead presents its view on the various issues in this proceeding in a separate pleading.

The Interim Fuel Security Filing proposed three interrelated changes to address near-term fuel security concerns: (1) market rule revisions establishing a fuel security review for retiring resources in the Forward Capacity Market ("FCM"), including authorization for ISO-NE to retain such resources under a cost-of-service agreement when ISO-NE determines a fuel security need exists; (2) a new Appendix L to Market Rule 1 establishing the standard that determines when such need exists; and (3) revisions to ISO-NE Planning Procedure 10 ("PP-10") establishing the inputs and methodology in connection with the fuel security reliability review.[2]

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[1] NESCOE filed a doc-less motion to intervene in Docket No. EL18-182-000 on July 6, 2018 and in Docket No. ER18-2364-000 on September 4, 2018. Capitalized terms not defined in this filing are intended to have the meaning given to such terms in the ISO-NE Transmission, Markets and Services Tariff (the "Tariff"). Section III of the Tariff is Market Rule 1.

[2] Interim Fuel Security Filing, Transmittal Letter ("Transmittal Letter"), at 5-26. The changes to PP 10 are provided for informational purposes.

ISO-NE's regional fuel security review and its related cost-of-service Tariff authority would apply to the 2022/2023, 2023/2024, and 2024/2025 Capacity Commitment Periods.[3] The Interim Fuel Security Filing also proposes Tariff revisions that include a requirement for ISO-NE to provide additional information to states and stakeholders when ISO-NE enters into a cost-of-service agreement that includes resource performance-related changes to the *pro forma* cost-of-service agreement.[4]

I. COMMENTS

New England requires a robust and reliable power system. However, actions in furtherance of reliability do not generally give license to sidestep thorough analysis, shortcut process, or abandon reliance on the competitive market structure to satisfy needs.

For that reason, NESCOE agrees emphatically with Commissioner Glick that:

> "…the importance of reliability does not transform every reliability concern into an immediate emergency. To the contrary, because reliability considerations are so important—and, often, so complex—we do everyone a disservice when, absent an emergency, we rush to judgment rather than thoroughly assess the problem and identify the solutions that will best solve it."[5]

While the Interim Fuel Security Filing may be responsive to the July 2 Order, ISO-NE's proposed revisions upend the most often-cited goals of competitive wholesale markets: placing risks of business decisions on investors rather than consumers and meeting consumers' needs and preferences at the lowest costs, while not diminishing environmental quality, compromising energy efficiency, or jeopardizing reliability.[6] For that reason, and because we do not believe

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3 Transmittal Letter, at 18-19.

4 *Id.*, at 26.

5 *ISO New England Inc.*, 164 FERC ¶ 61,003 (2018) ("July 2 Order"), Partial Dissenting Opinion of Commissioner Glick ("Glick Dissent"), at 1.

6 *Electric Restructuring in New England, A Look Back*, December 2015, http://nescoe.com/wp-content/uploads/2015/12/RestructuringHistory_December2015.pdf.

ISO-NE has established that there is an immediate emergency need for continuing cost-of-service authority, NESCOE would prefer a course that avoids clearing a runway around competitive markets for more cost-of-service agreements. To the extent the Commission finds that ISO-NE has established a current, urgent need for continuing cost-of-service agreements, the Commission should ensure the Tariff sets an exceptionally high bar for future cost-of-service agreements and ensures the shortest amount of time for this authority consistent with the July 2 Order and New England's competitive market structure.[7] NESCOE offers below its perspective on several New England Power Pool ("NEPOOL")-supported amendments to that end.

Specifically, if the Commission concludes that ISO-NE has established an immediate urgent need for a cost-of-service runway, it should direct that ISO-NE incorporate a number of modifications to lessen the likelihood of a one-by-one parade of cost-of-service filings by ensuring that (i) there is an appropriately high trigger in place for cost-of-service agreements, reflective of the region's reliance on competitive markets to meet reliability needs, (ii) ISO-NE fuel security review properly accounts for compliance with the New England states' renewable portfolio standard laws, (iii) the fuel security cost-of-service authority sunsets in the shortest possible timeframe, after two years instead of three, and (iv) costs are allocated in the most cost-effective way for consumers. NESCOE also believes two features of ISO-NE's proposal are critical: the requirement that ISO-NE provide quantitative and qualitative information regarding certain changes to its *pro forma* cost-of-service agreement and its treatment of resources retained for fuel security as price takers in the Forward Capacity Auction ("FCA").

[7] *See, e.g.,* July 2 Order, at P 53 ("We reaffirm our support for market solutions as the most efficient means to provide reliable electric service to New England consumers at just and reasonable rates.")

A. Background: ISO-NE's Response to One Retirement Announcement Invites a Procession of Contract Applicants and Is Unwarranted, Given that Fuel Security Concerns Four Years in Advance Do Not Constitute an Immediate Emergency

ISO-NE's actions over the last year signaled an unwarranted departure from market-based solutions, especially in light of the fact that its fuel security concerns for a period four-years in advance do not constitute an immediate emergency. For context, when ISO-NE identifies a challenge to be addressed, its traditional — and in our view appropriate — approach is to study the problem with the input of states and market participants; define it with particularity; identify the framework, criteria, and metrics by which to evaluate potential solutions; and, after considering a range of possible options and consumer cost impacts, advance changes to address the market failure through a mechanism that relies on competitive market forces. ISO-NE has not proceeded through that process and should be directed to do so here where there is no immediate emergency.

Importantly, ISO-NE has not chosen to propose adjustments to its Pay for Performance ("PfP") incentive program because it does not have "sufficient experience with PfP to determine the extent to which it will address fuel security."[8] NESCOE has not contested ISO-NE's judgment to allow PfP to take effect as designed, but observes that given the four-year period in which to make adjustments to PfP, its rush to retain units for fuel security is unwarranted.

Moreover, what ISO-NE has <u>not</u> done is illustrative. To date, ISO-NE has not publicly:

- defined the specific fuel security problem to be solved by a market adjustment[9]

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[8] ISO-NE July 9, 2018 Memorandum Regarding Responses to Questions on Fuel Security ("ISO-NE Initial Fuel Security Responses"), at 2, available at http://nescoe.com/wp-content/uploads/2018/07/ISO-NE_Responses_7_9_18.pdf.

[9] ISO-NE July 18, 2018 Memorandum Regarding Responses to Operationally-oriented Questions on Fuel Security, at 1, available at http://nescoe.com/wp-content/uploads/2018/07/ISO-NE_FuelSecurityOperationsAnswers_18July2018.pdf

- defined what ISO-NE calls "energy-secure infrastructure"[10]
- identified the year of resource need in order to avoid a fuel security risk
- indicated the quantity of resources needed to achieve fuel security
- suggested the duration of the need[11]

Leaving these fundamentals in the "to be discussed" parking lot while clearing a runway for fuel security cost of service contracts is an approach that may prove harmful to the markets and costly for the region's consumers.

The Commission should expect what ISO-NE's proposed fuel security cost-of-service agreement authority invites: a procession of expensive cost-of-service agreements in the name of fuel security. Each will require states and stakeholders with consumer cost concerns to continue to dedicate their focus and resources to the associated litigation. That outcome is unavoidable. None of the parties that negotiate fuel security cost-of-service agreements in New England would, based on past practice, conduct consumer cost analysis to inform the terms to which they consent or consider consumer cost control to be their role.[12] The current process punts consumer cost interests explicitly to litigants—and ultimately the Commission—after ISO-NE and a resource owner conclude negotiations on the agreement's terms and conditions.

NESCOE respectfully suggests that ISO-NE's choices in the last year do not substantiate clearing a pathway around the markets for serial cost-of-service agreements. In our view, consumers are better served by ISO-NE, states and stakeholders getting to the business of better

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[10] ISO-NE presentation "Regional Energy Security: Market-Based Approaches" at the June 20, 2018 Joint Meeting of Markets and Reliability Committees at slides 12 and 20-22, available at https://www.iso-ne.com/static-assets/documents/2018/06/a2_presentation_regional_energy_security_market_based_approaches.pptx.

[11] ISO-NE Initial Fuel Security Responses, at 7.

[12] See, e.g., Response of ISO New England Inc. to First Set of Data Requests of the New England States Committee on Electricity, Docket No. ER18-1639-000, Aug. 8, 2018, at NES-ISO-1-2 ("ISO-NE did not perform a formal analysis of the means to reduce costs of the Mystic Cost of Service Agreement to consumers. ISO-NE has taken no position on the components of the agreement that address Exelon's revenue requirements and expected this aspect of the agreement to be resolved in this proceeding.")

defining the fuel security need, assessing the effectiveness of existing market-based approaches and proposing market reforms as needed, based on this assessment, without the risk and distraction of litigation over additional cost-of-service agreements.

B. If the Commission Concludes that Continuing Cost-of-Service Authority is Necessary, It Should Ensure an Exceptionally High Bar for Exercising That Authority Within the Shortest Possible Amount of Time

1. Trigger for Cost-of-Service Treatment

Under its proposal, ISO-NE will perform a fuel security analysis for resources that indicate an intention to retire from the FCM. The fuel security analysis will show a "need" to retain a resource when the modeling results indicate certain triggering conditions. ISO-NE's model indicates a fuel security need to retain a retiring resource when either of two conditions apply: (i) 10-minute operating reserves become depleted below 700 MW for any single hour (over the hypothetical future 90-day winter) in more than one liquefied natural gas ("LNG") availability case, ***or*** (ii) there is insufficient energy to meet load (i.e., 1 MW of expected unserved energy) for any single hour in any case.[13] In effect, ISO-NE intends to provide a fuel security cost-of-service agreement whenever the fuel security model indicates, three years in advance, that 1 MWh of load shedding would be necessary.

[13] The language reads: "in any hour in the absence of a contingency in more than one liquefied natural gas supply scenario case." Interim Fuel Security Filing, Section III Market Rule 1, Appendix L. This statement both: (i) eliminates the contingency cases (e.g., loss of a nuclear unit, loss of a compressor station, etc.), and (ii) increases the importance of the 1.0 Bcf/d LNG assumption. ISO-NE will assume three levels of LNG in the FSA: 0.8 Bcf/d, 1.0 Bcf/d, and 1.2 Bcf/d. If more than two of these scenarios must meet the trigger, the 1.0 Bcf/d case becomes the determinative LNG imports availability scenario (If 0.8 fails, so will 1.0 and 1.2; If 0.8 passes, but 1.0 fails, so will 1.2; either way, if 1.0 fails ISO-NE's trigger is met). Based on the model's assumed 7,400 Btu/kWh heat rate, the 0.2 Bcf/d difference between the LNG cases may affect more than 1,100 MW of non-gas capacity per scenario, assuming ratable takes over the operating day.

ISO-NE's trigger is too conservative, and thus, in NESCOE's view,[14] clears the way for the procession of cost-of-service agreements discussed above. As an alternative, NEPOOL is proposing a trigger that recognizes that the fuel security analysis is a planning study performed more than three years ahead of the operating period.[15] Under NEPOOL's approach, the model indicates a fuel security need to retain a retiring resource when there is a modest amount of unserved energy already deemed acceptable in the planning and resource adequacy studies. Specifically, NEPOOL's trigger is the total amount of expected unserved energy from the most recent resource adequacy model results. For example, the same metric that ISO-NE provided for FCA 10 above would be updated and relied upon in the fuel security analysis (i.e., the FCA 14 Net ICR modeling results for expected energy not served at criteria for retirement bids in FCA 14). The total amount of unserved load in the fuel security analysis would accumulate over the 90-day study period, and the NEPOOL trigger is met once the aggregate total is equal to the resource adequacy unserved energy projection. Applying NEPOOL's trigger to the fuel security analysis is appropriate for the limited purpose and time that such fuel security review provisions will be in place.

By design, the FCM procures a quantity of supply and demand resources to meet the forecasted summer peak more than three years in advance of the operating period. The quantity ISO-NE procures, the Net Installed Capacity Requirement ("Net ICR"), is based on a probabilistic assessment of future resource performance and a host of system planning assumptions. Importantly, the resource adequacy standard to which the Net ICR is developed

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[14] As noted above, Connecticut does not join this view and instead offers its position on the trigger in a separate pleading.

[15] The difference between the two approaches has a relatively minor effect on fuel security and the NEPOOL approach is more analytically sound. New England winter season energy demand in 2023 is forecast to be approximately 29,000,000 MWh and a trigger value on the order of 683 MWh represents just a fraction of this amount.

explicitly assumes that ISO-NE will shed load under extreme circumstances: the so-called 1 day-in-10 loss of load expectation.

For example, the testimony of Drs. Geissler and White in a previous proceeding explain that even at the target level of procurement in the FCM, there is still an expectation that more than 1 MWh go unserved:

> Based on the ISO's reliability planning simulation model, in an unconstrained system with 34,151 MW of capacity overall [for FCA 10], an additional 1 MW of capacity would reduce expected energy not served by 0.6 MWh annually.
>
> As a point of reference for context, using the same system planning parameters, the ISO's reliability planning simulation models indicate that at Net ICR in an unconstrained system (i.e., one without any constrained capacity zones), the total expected energy not served is approximately 683 MWh/year.[16]

ISO-NE's fuel security resource retention trigger is more conservative than, and inconsistent with, ISO-NE's planning standard applied to resource adequacy. It is not clear why ISO-NE plans to procure capacity assuming a certain loss of load level and plans to perform fuel security reviews assuming no load loss. In NESCOE's view, and as a matter of principle, fuel security and resource adequacy analyses are both planning studies and should be internally consistent to the extent feasible. To this end, NEPOOL's alternative trigger is an incremental improvement towards ISO-NE planning consistency and principles in the resource adequacy context.

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16 Prepared Testimony of Christopher Geissler and Matthew White on Behalf of ISO New England Inc., Docket No. ER16-1434 (April 15, 2016), at pp. 36-37 (Convex Demand Curve Testimony), available at: https://www.iso-ne.com/static-assets/documents/2016/04/er16-1434-000.pdf.

2. Reflecting Compliance with State Renewable Portfolio Standards in Regional Fuel Security Reviews

NESCOE proposed an amendment to ISO-NE's proposed changes to PP-10 that would require ISO-NE to assume in its reliability reviews that the New England states will continue to meet the obligations of Renewable Portfolio Standard ("RPS") laws. NEPOOL widely supported the amendment. Information collected by the U.S. Department of Energy's Lawrence Berkeley National Laboratory establishes the reasonableness of this assumption: historically, the New England states have generally satisfied the RPS laws and there is no factual basis to assume they will not continue to do so in the future.[17] Moreover, states' RPS laws generally provide economic incentives to resources that alleviate fuel security risks. For example, RPS laws in New England support resource types that are available regardless of winter season natural gas pipeline constraints, including on- and off-shore wind, solar photovoltaic and thermal, small hydro, landfill gas, and certain biomass resources.[18] Absent this change, the contributions from these resources will not be included in the model and ISO-NE's analysis will overstate any fuel security need, possibly creating unwarranted consumer costs.[19] NESCOE asks the Commission

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[17] NEPOOL Comments, at 31-35. As demonstrated in the NEPOOL Filing, annual RPS achievement rates for programs focused on incremental, new renewable resources generally maintained pace with the steady growth in states' RPS requirements from 2003-2014. For a state by state analysis of compliance with RPS laws, see Lawrence Berkeley National Laboratory's Electricity Markets & Policy Group Renewable Portfolio Standards Resources, available at https://emp.lbl.gov/projects/renewables-portfolio.

[18] *See* Brief of Intervenor in Support of Respondent, Case No. 17-1110, at Addendum (D.C. Cir., filed Dec. 12, 2017), available at http://nescoe.com/wp-content/uploads/2017/12/DCCircuit-17-1110_RenewablesExemption_Brief_12Dec2017.pdf.

See Mechanisms to Support Public Policy Resources in the New England States (2015), at 3-7, available at http://nescoe.com/wp-content/uploads/2015/12/PublicPolicyMechanisms_December2015.pdf.

[19] This assumption represented approximately 1,400 MW of additional renewable resources in the OFSA. Assuming the states will continue to achieve RPS laws significantly reduced the fuel security risks indicated in the analysis. For more information, see NESCOE's Preliminary Input requesting the assumption change, available at http://nescoe.com/wp-content/uploads/2018/02/FuelSecurityAnalysisComments_15Feb2018.pdf, and the results of the updated assumption in the Addendum to the OFSA, at slides 78-80, available at https://www.iso-ne.com/static-assets/documents/2018/04/addendum-to-iso-operational-fuel-security-analysis.pdf.

to consider and direct ISO-NE to adopt adjustments to its PP-10 for the reasons more fully set out in NEPOOL's filing in this matter.[20]

3. Fuel Security Cost-of-Service Sunset

If the Commission concludes that continuing cost-of-service authority is necessary at this time, the Commission should minimize to the greatest extent possible ISO-NE's departures from competitive markets to satisfy reliability needs. NEPOOL's broadly supported amendment (also supported by NESCOE with the exception of Connecticut) to shorten the number of years during which fuel security cost-of-service agreements are available from three years to two years (i.e., sunset the new Appendix L and other Market Rule 1 provisions after 2023/2024 commitment period) is most consistent with this core principle.

New England should get to work developing a market-based solution to any fuel security challenge. A sustainable market-based fuel security solution should obviate the need to retain resources for fuel security and to enter into any associated cost-of-service agreements in 2024/2025. Should the region fail to achieve such a solution, should PfP prove inadequate to incent resource performance as it was designed to do, and/or should ISO-NE identify an immediate time-sensitive need for a fuel security cost-of-service agreement in future years, ISO-NE would be free thereafter to establish the need for continuing cost-of-service agreements and request such authority.

4. Allocating the Costs in the Most Cost-Effective Way for Consumers

ISO-NE's tariff proposes to collect the costs of fuel security cost-of-service agreements through Real-Time Load Obligation ("RTLO") due to the Commission's direction based on

[20] NEPOOL Comments, at 31-35.

prior, albeit very different, circumstances. For context, all three of ISO-NE's winter reliability programs had approximately 80-90 participants each winter and, on a combined basis, cost New England consumers approximately $94 million.[21] In contrast, the proposed two-year cost-of-service agreement for fuel security with a single market participant may cost more than $400 million, depending on weather and the Atlantic Basin LNG market in 2022-2024.[22]

Consistent with its co-sponsorship of a broadly supported cost allocation amendment, NESCOE requests that the Commission direct ISO-NE to collect costs of fuel security cost-of-service agreements from Network Load because it is far more cost-effective for consumers who are required to pay for them.[23] Based on recent experience, fuel security cost-of-service agreements are complicated, volatile and expensive. Collecting such costs through RTLO would require consumers to not only fund those costly out-of-market action costs but also to fund incremental amounts in the form of load serving entity risk premiums that will arise under an RTLO allocation.[24]

NESCOE takes no position on whether such costs should be regionalized or localized or whether and/or how such costs should be allocated between states.

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[21] For more information, see ISO-NE's Winter Program Payment Rate webpage, available at https://www.iso-ne.com/markets-operations/markets/winter-program-payment-rate/.

[22] *Constellation Mystic Power, LLC*, 164 FERC ¶ 61,022 at P 5 (2018).

[23] Comments of New England Power Pool Participants Committee, Docket No. ER18-2364 (September 14, 2018) ("NEPOOL Comments"), at 8.

[24] *See* Comments of NextEra Energy Resources, LLC, Docket No. ER18-2364 (September 21, 2018), Testimony of John Hanger.

C. The Interim Fuel Security Filing Includes a Critical Provision Requiring ISO-NE to Provide Quantitative and Qualitative Information In Connection with Changes to the *Pro Forma* Cost-of-Service Agreement

During the stakeholder process, NESCOE advanced an amendment to require ISO-NE to provide states and stakeholders with quantitative and qualitative information about any performance obligation-related change ISO-NE sought or consented to in a cost-of-service agreement that varied from the *pro forma* version found in Market Rule 1 Appendix I. After the amendment received broad NEPOOL support, ISO-NE incorporated a variation of that amendment in its proposed tariff.[25] We strongly support this addition by ISO-NE to the Tariff so that all cost and consumer implication analysis of any change in the terms agreed to by the negotiating parties are not left solely to other litigants in a Commission proceeding. We appreciate NEPOOL's concurrence and ISO-NE incorporating it in the proposal.

D. If the Commission concludes that the Cost of Service authority is necessary, the Commission Should Approve ISO-NE's Proposed Price-Taking Auction Treatment for Resources Retained for Fuel Security

Under ISO-NE's proposed Tariff revisions, resources that are retained for fuel security reliability purposes will enter the FCA as price-takers. This approach is consistent with resources that ISO-NE retains in the FCA for transmission security.[26] The Interim Fuel Security Filing explains how entering such resources as price-takers in the FCA addresses the risk of over-procuring capacity and achieves the appropriate pricing outcome for resource adequacy. Specifically, ISO-NE's economist Dr. Geissler explains:

> Because the ISO's proposal produces the same capacity clearing price for resource adequacy as would occur if the FCA added a new constraint to reflect the region's fuel security needs, it is correct to conclude that it produces a competitive FCA price for all resources

[25] Transmittal Letter, at 26. See new sub-section III.13.2.5.2.5.1(e).

[26] Transmittal Letter, at 15-18.

> acquired (solely) for resource adequacy purposes. That capacity clearing price is correct under the ISO's proposed treatment, and is not suppressed.[27]

NESCOE strongly agrees (with the exception of New Hampshire) with ISO-NE's proposed treatment of resources retained for fuel security as price takers and that this treatment provides an economic, competitive outcome in the FCA that is entirely consistent with Commission precedent.

In a series of cases concerning the New York Independent System Operator ("NYISO"), the Commission explained why it is appropriate for reliability-must-run ("RMR") units to be treated as price takers.[28] In *IPPNY*, the Commission denied a complaint that electric power generators brought against NYISO, leaving intact NYISO's market rules that offered RMR resources into the capacity market at *de minimis* prices.[29] The Commission referred to the analysis of David B. Patton, Ph. D. in reaching its decision. Dr. Patton, who served as NYISO's market monitor (and currently serves as ISO-NE's external market monitor), submitted an affidavit in the proceeding that was attached to NYISO's answer to the complaint ("Patton Affidavit").[30]

The Commission adopted Dr. Patton's analysis:

> We agree with Dr. Patton that "the units are economic from the perspective of satisfying the NYISO's reliability requirements. . . . If the reliability needs satisfied by these units were reflected in the capacity market, the units would both clear." As Dr. Patton notes, these units would also contribute to addressing . . . the local

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27 Interim Fuel Security Filing, Testimony of Christopher Geissler, at 26.

28 *Indep. Power Producers of N.Y., Inc. v. N.Y. Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,214 (2015)("IPPNY"); N.Y. Independ. Sys. Operator, Inc., 161 FERC ¶ 61,189 (2017) ("2017 Order"), order on reh'g & compliance, 155 FERC ¶ 61,076 (2016) ("2016 Order"), order on reh'g & compliance (2016), 150 FERC ¶ 61,116 (2015). These comments refer to these cases collectively as the "RMR Cases."

29 *IPPNY* at PP 64-65.

30 Answer of the New York Independent System Operator, Inc., Docket No. EL13-62-000 (filed May 30, 2013).

> reliability need. Thus, we agree with Dr. Patton that "it is efficient for these units to clear in the NYISO capacity market, [and] [a]ny provisions imposed that would cause them not to clear would be unreasonable."[31]

Dr. Patton elaborated on this rationale, stating that "[i]f the planning need being satisfied by the [RMR units] were fully specified in the capacity market, these units would both clear and the price at their locations would generate revenue sufficient to keep them in operation if they were the lowest-cost means to satisfy the needs – hence, they would be revenue adequate and economic."[32] Dr. Patton concluded that "[t]he fact that the markets do not reflect this reliability need makes the units no less economic and makes it no more justifiable to mitigate" the RMR units.[33]

The Commission further explained that the RMR units' low capacity market offers are fully consistent with their going-forward costs and a competitive market outcome. The RMR units had low going-forward costs because, as the Commission discussed, the RMR revenues must be accounted for in that calculation: the units "would clear a capacity market that also reflected local reliability needs" and the RMR revenues provided to these units "reflect the value of the services provided by these resources to customers."[34] Accordingly, the Commission found that "[i]n calculating the going forward costs of these two resources, it is reasonable to deduct their [RMR] revenues, because the revenues do not overstate the value provided by the resources to customers."[35]

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31 *IPPNY* at P 66 (citations omitted).

32 Patton Aff. at ¶ 22.

33 *Id*.

34 *IPPNY* at P 66.

35 *Id.* (citation omitted).

In the 2017 Order, the Commission affirmed its rejection of a NYISO proposal to price RMR resources in the capacity market at an amount exceeding $0.00/kW-month.[36] In that initial rejection, the 2016 Order, the Commission found that "RMR generators are needed to maintain reliability, but they have not received sufficient market revenues to continue operations and therefore seek to deactivate."[37] Citing *IPPNY*, the Commission stated that it "continue[d] to believe that RMR generators should not be subject to a capacity minimum offer price because RMR generators are needed to fulfill a reliability need that market forces have not fulfilled."[38] The Commission held that such a minimum offer price "would allow for inefficient outcomes and is thus unreasonable."[39]

The Commission further explained why this outcome would be inefficient:

> . . . imposing a higher offer price [than $0.00/kW-month] may result in an RMR generator not clearing the market, and another generator that otherwise would not have cleared the market clearing instead, thereby requiring ratepayers to pay twice to satisfy the same capacity need. . . . RMR generators "are needed to fulfill a reliability need that market forces have not fulfilled," and therefore, "should not be subject to a capacity minimum offer price" that would allow for inefficient and unreasonable outcomes.[40]

The RMR Cases thus set forth two rationales for ensuring that RMR resources enter the capacity auction as price takers. The first rationale is that these resources are economic but revenue inadequate. The second rationale is that consumers could be required to pay for duplicative capacity if the resources fail to clear the market, a violation of the Federal Power

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36 2017 Order at P 62; *see also id.* at PP 54-55.

37 2016 Order at P 82.

38 *Id.* at P 83.

39 *Id.*

40 2017 Order at P 55 (quoting 2016 Order at PP 82-83).

Act's prohibition against excessive charges. *Xcel Energy Servs. Inc. v. FERC*, 815 F.3d 947, 952 (D.C. Cir. 2016); *see FERC v. Elec. Power Supply Ass'n*, 136 S. Ct. 760, 781 (2016). *Accord NextEra Energy Resources, LLC et al. v. FERC*, No. 17-1110, 2018 U.S. App. LEXIS 21112, at *13, *26 (D.C. Cir. July 31, 2018) (deferring "to the Commission's determination that the renewable exemption effectuates the market's primary purpose by sending the correct demand signals to new entrants and by protecting consumers from excessive rates" and finding that "the Commission is not required to protect against all price suppression").

Consistent with the RMR Cases, the Commission should reject any claims in this proceeding that ISO-NE's proposed treatment of resources retained for fuel security results in "price suppression." Any such claims are unfounded. Like the resources at issue in the RMR Cases, if ISO-NE's market design reflected the system's fuel security reliability needs, the resources retained for fuel security would receive adequate revenue and be considered "economic." As Dr. Patton found, just because the markets do not account for a reliability need "makes the units no less economic and makes it no more justifiable to mitigate" those units.[41]

In addition, just as the Commission found that "[i]n calculating the going forward costs of these two resources, it is reasonable to deduct their [RMR] revenues, because the revenues do not overstate the value provided by the resources to customers,"[42] the same rationale applies here. Revenues earned from a resource under a cost-of-service arrangement for fuel security should be reflected in the resource's offer in the same way that revenues earned in the energy and ancillary services markets reduce a resource's going-forward costs.

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41 *Id*.

42 *Id.* (citation omitted). *See* Wilson Aff. at ¶ 19 (summarizing Patton Affidavit).

NESCOE recognizes that the Commission noted that it may view there to be "material differences between retaining resources through cost-of-service agreements for local transmission needs and retaining resources through cost-of-service agreements for regional fuel security concerns."[43] The July 2 Order does not analyze the treatment of fuel security resources as price takers through the lens of the RMR Cases or otherwise confront this precedent. Instead, it provided ISO-NE with flexibility to propose an appropriate mechanism to address "how resources retained for fuel security (e.g., under cost-of-service agreements) would be treated in the FCM."[44] NESCOE appreciates the flexibility provided by the Commission. For the reasons provided above, the resources ISO-NE retains for fuel security must be treated as price takers consistent with Commission precedent, and any departure from this past practice must be analyzed and explained. *See, e.g., New Eng. Power Generators Ass'n, Inc. v. FERC*, 881 F.3d 202, 211-213 (D.C. Cir. 2018) (finding that the Commission did not engage in reasoned decision-making because it "failed to respond to the substantial arguments . . . and failed to square its decision with its past precedent" and that the Commission must "provide some analysis and explanation . . . regarding why it changed course"). NESCOE respectfully urges the Commission to approve ISO-NE's proposal to treat resources retained for fuel security reliability purposes as price takers in the FCA.[45]

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[43] July 2 Order, at P 57.

[44] *Id.*

[45] NESCOE discussed the issues above in greater detail in a protest filed earlier this year, which included the Affidavit of James F. Wilson. The Wilson Affidavit analyzed the RMR Cases in the context of ISO-NE's proposal to retain resources for fuel security. *See* Protest of the New England States Committee on Electricity (Docket No. EL18-154-000) (June 6, 2018), available at http://nescoe.com/wp-content/uploads/2018/06/Protest_EL18-154_6-6-18.pdf.

II. CONCLUSION

NESCOE respectfully requests that the Commission consider the views expressed above in making its final determination in this proceeding.

Respectfully submitted,

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Date: September 21, 2018

CERTIFICATE OF SERVICE

In accordance with Rule 2010 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day served by electronic mail a copy of the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Longmeadow, Massachusetts this 21st day of September, 2018.

Respectfully submitted,

/s/ Benjamin S D'Antonio

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