

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

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Grid Reliability and Resilience Pricing) Docket No. RM18-1-000
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**REPLY COMMENTS OF
THE NEW ENGLAND STATES COMMITTEE ON ELECTRICITY**

The New England States Committee on Electricity (“NESCOE”) submits these reply comments pursuant to the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) October 2, 2017 Notice in the above-captioned proceeding.¹ For the reasons discussed below, NESCOE respectfully requests that the Commission decline to expand the scope of this proceeding by directing specific actions that commenters have proposed as alternatives to the Proposed Rule. Instead, the Commission should continue its long-standing support for regional flexibility in identifying, and fashioning appropriate solutions to, emerging challenges based on defined needs and the relationship between any proposed reform and its benefit to consumers.

Many commenters in this proceeding, including NESCOE, have asked the Commission to decline to adopt the Proposed Rule.² NESCOE discussed in its initial comments how the Proposed Rule and its attendant fast-track timeline failed to meet the basic requirements of the Administrative Procedure Act, and how a final rule adopting the Proposed Rule’s reforms could

¹ *Grid Reliability and Resilience Pricing*, Notice Inviting Comments, RM18-1-000 (Oct. 2, 2017), and Notice Denying Extension of Time (Oct. 11, 2017). The Commission commenced this proceeding in response to a Notice of Proposed Rulemaking that the Secretary of the Department of Energy submitted to the Commission pursuant to section 403 of the Department of Energy Organization Act (the “Proposed Rule”). The Proposed Rule was published in the *Federal Register* on October 10, 2017 at 82 Fed. Reg. 46,940.

² See, e.g., RTO Insider, *FERC Flooded with Comments on DOE NOPR: Widespread Opposition Means Quick Approval Unlikely*, Oct. 24, 2017.

provoke unnecessary and unconstructive jurisdictional disputes with the states.³ NESCOE also discussed how the Proposed Rule lacked critical information and analysis regarding the effects that a final rule would have on existing competitive wholesale markets and the consumers those markets serve.⁴ NESCOE urged the Commission to allow individual regions “to explore whether there are needed attributes not being valued in their power markets and, as appropriate, to consider market rule changes tailored to the region’s specific challenges and market design.”⁵

While many other commenters discussed similar legal and factual flaws underpinning the Proposed Rule, some also asked the Commission to take alternative actions favorable to their interests.⁶ The Commission should reject these attempts to expand the scope of this proceeding.

³ *Comments of the New England States Committee on Electricity*, Docket No. RM18-1 (Oct. 23, 2017) (“NESCOE Comments”), at 5-10, 14-15.

⁴ *Id.* at 5, 10-13.

⁵ *Id.* at 4.

⁶ *See, e.g., Initial Comments of the Electric Supply Power Association*, Docket No. RM18-1-000 (Oct. 23, 2017), at 52 (asking the Commission to “take decisive action to protect the organized markets from the impacts of out-of-market subsidies and, more specifically, from the impacts of out-of-market subsidies for existing resources.”); *Comments of Calpine Corporation*, Docket No. RM18-1-000 (Oct. 23, 2017), at 22 (stating that the Commission should require Independent System Operators (“ISOs”) and Regional Transmission Organizations (“RTOs”) to “refocus their efforts on improving price formation.”); *Initial Comments of the Eversource Companies*, Docket No. RM18-1-000 (Oct. 23, 2017), at 11-12 (requesting that the Commission direct ISO New England Inc. (“ISO-NE”) to file an “infrastructure solution” for New England and set “strict time lines” for such a filing); *Initial Comments of the Interstate Natural Gas Association of America*, Docket No. RM18-1-000 (Oct. 23, 2017), at 1-2 (asserting that the Commission should direct ISOs/RTOs “to examine whether, and if so how, they value reliability and resilience and report their findings to the Commission within 90 days.”); *Comments of Exelon Corporation*, Docket No. RM18-1-000 (Oct. 23, 2017), at n. 43 (stating that the existing record supports the Commission’s direction of market reforms in PJM but “[t]o the extent that the Commission believes that pricing in another RTO may raise similar concerns, the Commission could consider requiring that RTO to report on the problem.”). In addition, the PSEG Companies, while urging adopting of the Proposed Rule as an interim measure, also asked the Commission to “consider directing all RTOs/ISOs to integrate carbon pricing in their regions.” *Comments of the PSEG Companies*, Docket No. RM18-1-000 (Oct. 23, 2017), at 26. The Nuclear Energy Institute urged the Commission to “amend its regulations to implement a cost-of-service mechanism for

As NESCOE explained in its initial comments, New England has an existing process for identifying power system attributes needed for reliable operations.⁷ Over time, and through this established process, our region’s competitive wholesale market rules have evolved to meet identified challenges to system reliability.

For example, only several years ago, ISO-NE proposed a fundamental change to the Forward Capacity Market design, called Pay for Performance (“PFP”), “to address real, pervasive, and escalating resource performance problems that pose a serious threat to the reliable operation of the system.”⁸ As ISO-NE explained to the Commission, market experience exposed chronic underperformance issues across New England’s generation fleet, issues which the market design at that time did not address.⁹ Based on facts and circumstances unique to New England, ISO-NE identified a shortcoming in the market rules and proposed a market-based solution to

merchant nuclear units, at least until further sustainable market-based structures are put in place that appropriately value the resiliency attributes that nuclear generation units provide. The Commission should also take steps, including potentially the initiation of new proceedings, to require as necessary, RTOs to reform their tariffs to revise price formation based on these important attributes.” *Rulemaking Comments of the Nuclear Energy Institute*, Docket No. RM18-1-000 (Oct. 23, 2017), at 5. In one of the more far afield attempts to leverage the Proposed Rule to fulfill a long-held wish list, NRG Energy, Inc. (“NRG”) requested that the Commission seek a voluntary remand from the D.C. Circuit Court of Appeals of an ISO-NE market rule that accommodates state policies. NRG Energy, Inc., Comments, Docket No. RM18-1-000 (Oct. 23, 2017), at 9-10. The NRG comments conspicuously omit that the Commission has accepted and upheld the rule in four separate orders and mischaracterizes the Commission’s position, which was clearly articulated in the Commission’s most recent rehearing order issued earlier this year. *ISO New England Inc. and New England Power Pool Participants Committee*, 158 FERC ¶ 61,138 (2017). NESCOE does not provide here an exhaustive list of all actions that commenters have requested the Commission take as part of this proceeding, and the omission of any further examples from this list should not be interpreted as NESCOE’s support for any position.

⁷ NESCOE Comments at 4-5, 10-13, 15.

⁸ *ISO New England Inc., New England Power Pool Participants Committee*, Performance Incentives Market Rule Changes, Docket Nos. ER14-1050-000 and -001 (Jan. 17, 2014), Transmittal Letter on behalf of the ISO (“ISO-NE PFP Filing”), at 1.

⁹ *Id.* at 10-11.

meet this identified system need, one which was vetted through the New England stakeholder process. The New England Power Pool proposed alternative tariff changes to the energy market through the same stakeholder process, and the Commission adopted elements of both proposals.¹⁰ While NESCOE member states did not collectively support either proposal, the stakeholder process allowed for multiple solutions to be vetted.

The process that New England employed to consider the PFP changes illustrates why the Commission should affirm in this docket its long-standing support for stakeholder processes to identify regional needs and, to the extent such needs are identified, provide regions with the flexibility to develop tailored solutions to address those needs.¹¹ The stakeholder process in connection with PFP started with discussion of a power system attribute—*performance*—that the market had not sufficiently valued. ISO-NE identified this problem based on “observed and documented” evidence related to declining resource performance.¹² It proposed a solution consistent with an overall resource and technology-neutral market design, with an incentive and penalty structure that provided transparency to market participants and a clear nexus to consumer

¹⁰ *ISO New England Inc.*, 147 FERC ¶ 61,172 (2014).

¹¹ *See, e.g., ISO New England Inc.*, 138 FERC ¶ 61,042 at P 114 (2012) (“ISO-NE’s stakeholder process is the appropriate venue . . . to propose and develop appropriate rules[.]”); *FirstEnergy Solutions Corp. and Allegheny Energy Supply Company, LLC v. PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,158 at P 46 (2012) (“Given that a sufficient record does not exist for the Commission to resolve this issue, and PJM has committed to providing additional evidence . . . we find it would not be an efficient use of Commission or industry resources for the Commission to circumvent PJM’s processes by establishing our own proceedings to evaluate the complaint at this time.”); *PJM Power Providers Group v. PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,022 at P 27 (2011) (“With respect to [the] request to defer addressing certain issues not raised in PJM’s filing, we find that those issues should first be considered by PJM’s stakeholders.”); *ISO New England Inc.*, 128 FERC ¶ 61,266 at P 55 (2009) (declining to require ISO-NE to make tariff changes where it would end-run the stakeholder process); *New England Power Pool*, 107 FERC ¶ 61,135 at PP 20, 24 (2004) (rejecting an entity’s proposed changes because the “suggested revisions have not been vetted through the stakeholder process and could impact various participants.”).

¹² ISO-NE PFP Filing at 3.

benefits. In contrast, as many commenters noted and FERC Staff recognized,¹³ the Proposed Rule does not even attempt to define what “resilience” means, let alone provide a meaningful analysis of how the proposed reform fits within each region’s current competitive market construct and how it would affect consumer interests in those regions.

As the Commission considers the Proposed Rule, NESCOE respectfully requests that it decline to direct specific actions in New England or across regions. Instead, as discussed in NESCOE’s initial comments and as further underscored above, the Commission should continue to provide regions like New England with flexibility to meet evolving system needs through an established and proven process that considers reforms based on market experience, analysis of market conditions and other relevant information, and defined consumer benefits.¹⁴

Respectfully submitted,

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¹³ The first of many questions in the October 4, 2017 list from FERC’s Office of Energy Policy and Innovation was “What is resilience, how is it measured, and how is it different from reliability?”

¹⁴ To the extent the Commission determines that further action is appropriate regarding issues raised in the Proposed Rule or comments submitted in this docket, NESCOE respectfully requests that the Commission move forward consistent with its long-standing focus on integrating needed power system attributes through a competitive wholesale market design, ensuring a clear nexus between any proposed reform and the consumer benefits it provides, and respecting regional differences.