UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England Inc.	)	Docket Nos. EL18-182-000
	)	ER20-1567-000

MOTION FOR LEAVE TO ANSWER AND THIRD ANSWER OF THE NEW ENGLAND STATES COMMITTEE ON ELECTRICITY

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission" or "FERC"), 18 C.F.R. §§ 385.212 and 385.213 (2020), the New England States Committee on Electricity ("NESCOE") moves for leave to answer and files this third answer in the above-captioned proceeding.[1] NESCOE submits this answer to respond to the answer that ISO-NE filed on June 15, 2020.[2]

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[1] On April 15, 2020, ISO New England Inc. ("ISO-NE") filed with the Commission its proposed energy security improvements ("ESI") program ("ESI Proposal"). ISO New England Inc., Compliance Filing of Energy Security Improvements Addressing New England's Energy Security Problems, Docket Nos. EL18-182-000 and ER20-1567-000 (filed April 15, 2020) ("ISO-NE Filing"). Attachment B of the ISO-NE Filing included an April 15, 2020 internal report, Energy Security Improvements: Creating Energy Options for New England ("ESI White Paper"). Attachment C of the ISO-NE Filing included an April 2020 report from the Analysis Group, Inc., the Energy Security Improvements Impact Analysis ("Impact Assessment").

The ISO-NE Filing was made in response to the Commission's July 2018 order requiring ISO-NE to file long-term revisions to its market rules "to address specific regional fuel security concerns." *ISO New England Inc.*, 164 FERC ¶ 61,003 at P 2 (2018) ("July 2018 Order"). 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.

[2] Motion for Leave to Answer, Motion for Leave to Answer Out of Time, and Answer of ISO New England Inc., Docket Nos. EL18-182-000 and ER20-1567-000 (filed June 15, 2020) ("ISO-NE Answer").

On May 15, 2020, NESCOE filed a protest ("NESCOE Protest") to the ESI Proposal. Attachment A of the NESCOE Protest is the Prepared Testimony of James F. Wilson in Support of the Protest of the New England States Committee on Electricity ("Wilson Testimony").

NESCOE filed an initial answer in this proceeding on June 1, 2020 ("First Answer") and a second answer on June 22, 2020 ("Second Answer"). In filing this third answer, NESCOE has already addressed many of the arguments raised in the ISO-NE Answer, in some cases *ad nauseam*, including arguments against the alternative New England Power Pool proposal. NESCOE's silence on any issues here should not, of course, be construed as agreement with ISO-NE's positions and should be understood as a consideration of the already lengthy record in this proceeding.

I. MOTION FOR LEAVE TO ANSWER

NESCOE respectfully seeks leave to respond to the ISO-NE Answer. While the Commission's rules generally do not allow an answer in response to answers or protests, the Commission can allow such an answer where good cause is shown. *See* 18 C.F.R. §§ 385.213(a)(2) and 385.101(e) (2020). NESCOE's answer meets this standard because it provides the Commission with a more complete and accurate record upon which to base its decision.[3] NESCOE's answer corrects inaccuracies and clarifies the record in this proceeding. Accordingly, there is good cause for the Commission to accept this answer.

II. ANSWER

A. ISO-NE Tries Unsuccessfully to Reframe the Scope of the July 2018 Order

Like ESI's other supporters, ISO-NE seeks to extend the Commission's directives to address issues that were not the subject of the July 2018 Order.[4] ISO-NE makes several arguments in support of this expansion. It asserts that a year-round ESI program is justified because "emerging energy supply risks," which ISO-NE's Operational Fuel Security Analysis ("OFSA") identified, will "increasingly challenge the reliability of the" region's power system.[5] ISO-NE argues that reliability standards require a program extending across all months and that recent system events demonstrate that need.[6] It also contends that improving price formation is

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[3] *See, e.g., ISO New England Inc.,* 171 FERC ¶ 61,160 at P 25 (2020) (accepting answers because they provided information that assisted the Commission in its decision-making process); *Midcontinent Independent System Operator Inc.*, 170 FERC 61,075 at P 31 (2020) (same); *HORUS Central Valley Solar 1, LLC, et al. v. California Independent System Operator Corp.*, 157 FERC ¶ 61,085 at P 29 (2016) (same).

[4] *See* Second Answer at 4-6 (rebutting generator parties' efforts to expand the directives of the July 2018 Order).

[5] ISO-NE Answer at 20.

[6] *Id.* at 23, 105-116.

required under the July 2018 Order and that ESI is needed to address an influx of renewable resources.[7] None of these attempts to rewrite the July 2018 Order are successful.

Of course, NESCOE agrees that it is critical to address emerging reliability risks, whether related to supply constraints or other issues. But such a broad mandate is not reflected in the July 2018 Order. ISO-NE's answer acknowledges that the Commission's directives are expressly tied to the OFSA and subsequent "Mystic Reliability Studies,"[8] analyses that identify fuel security concerns solely in the winter period.[9] ISO-NE does not meaningfully explain how Commission directives that are cabined by fuel security concerns during the winter provide the license ISO-NE seeks to address broad categories of emerging risks on a year-round basis. As NESCOE previously explained, ISO-NE can propose market rule reforms to address emerging needs but those proposals should take place in a different proceeding and not in response to a narrower Commission directive within the confines of a section 206 order.[10]

NESCOE has also previously discussed why assertions that reliability standards require the year-round ESI products are without merit.[11] NESCOE appreciates ISO-NE's efforts in responding to the most recent system events it identifies in May and June 2020, ensuring that it "operated the system within all applicable reliability standards and no operating reserve deficiencies were realized."[12] But the fact that ISO-NE operators needed to dispatch some

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7 *Id.* at 23-26.

8 *Id.* at 20-21, 62, and nn. 45, 47, and 190.

9 NESCOE Protest at 17-22.

10 *See id.* at 26.

11 *See* First Answer at 14-18.

12 ISO-NE Answer at 115. The steady work of ISO-NE's control room operators in responding to unplanned system events is impressive, ensuring a continuity of electric service that promotes the region's economy, public health and safety, and quality of life.

resources out-of-market to address one of the May 2020 events, as ISO-NE states,[13] does not establish or further support the need for ESI. Presenting ESI as a choice between addressing reliability through out-of-market actions or not is a false premise, as NESCOE has already explained.[14] These out-of-market commitments are also infrequent. Examining the two years ISO-NE isolates in its answer, 2018 and 2019, those commitments were on average less than 0.5% and 0.4% of total system generation, respectively.[15]

Moreover, ISO-NE presents no evidence to demonstrate that any of the system events it identifies implicated a third contingency event that would have warranted procurement of Replacement Energy Reserve ("RER")—an outlying product that no other region appears to view as needed to meet reliability standards.[16] Indeed, despite ISO-NE's repeated efforts to normalize ESI by citing to the Commission's recent approval of a PJM reserve product,[17] the differences in ESI's design and objectives—and the respective markets in which they would be implemented—set those products apart.[18]

Regarding its discussion on price formation benefits, ISO-NE employs a strategy it reverts to at various points in its answer, building a straw man to argue a point that is not in

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[13] *Id.*

[14] First Answer at 16-17.

[15] ISO New England Internal Market Monitor 2018 Annual Markets Report, at 85, available at https://www.iso-ne.com/static-assets/documents/2019/05/2018-annual-markets-report.pdf and ISO New England Internal Market Monitor, 2019 Annual Markets Report, at 87, available at https://www.iso-ne.com/static-assets/documents/2020/05/2019-annual-markets-report.pdf.

[16] *See* NESCOE Protest at 34; First Answer at 15-16; Second Answer at 5-6.

[17] *See, e.g.,* ISO-NE Answer at 87-88, 90-91, 105-106.

[18] *See, e.g.,* Wilson Testimony at Section IV (describing the uniqueness of ESI's energy call option) and 55 (stating that the energy call option may be without precedent in any region); NESCOE Protest at 34 (explaining that there is no indication that any other region procures a product like RER, which addresses a third contingency event); *see infra* Section II.G (discussing risks under ESI that do not exist in other market designs and the inefficiencies it creates).

controversy.[19] No party, including NESCOE, has opposed the relationship between "good price formation" and a "functioning market."[20] To the contrary, NESCOE identified in its protest a series of price formation reforms that ISO-NE has made as well as NESCOE's support for those changes.[21] The point is, no matter the shared interest in proper price formation, that was not what the Commission directed ISO-NE to reform.[22] ISO-NE's reference to various proceedings related to price formation are inapposite to its specific compliance obligations here.

Similarly, ISO-NE's reliance on an "influx of renewables" to support the need for ESI should be given no weight. NESCOE has previously explained that "ISO-NE never analyzed an increased integration of clean energy generation in designing ESI and blanket statements that the program is needed to address an evolving resource mix are not substantial evidence."[23] Moreover, when ISO-NE included in its OFSA the expected growth in renewable and clean energy resources pursuant to the requirements of state laws, the reliability risks identified in the OFSA were *significantly diminished* by the influx of non-gas-fired resources in the modeling.[24] The growth of clean energy resources that contribute to the region's resource adequacy should not be leveraged as rationale for supporting an ESI program that is oversized to address the Commission's specific fuel security concerns.

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19 ISO-NE Answer at 24.

20 *Id.*

21 NESCOE Protest at 25-26.

22 *See id.* at 24-26.

23 First Answer at 17; *see* NESCOE Protest at 22, 46-47, 54; Second Answer at 6.

24 *See* Operational Fuel Security Analysis: Stakeholder Requests for Additional Scenarios, at slides 78-80, available at https://www.iso-ne.com/static-assets/documents/2018/05/a2_operational_fuel_security_presentation_march_2018_rev1.pdf. For example, assuming that states will continue to meet the requirements of their laws increases the amount of imports and renewables relative to ISO-NE's reference case. Reflecting state law requirements in the assumptions reduced All OP4 Actions from 165 hours (ISO-NE Reference Case) to 24 hours (High Renewables Case), Depletion of 10-Minute Reserves from 53 hours to 2 hours, and OP 7 Action: Load Shedding from 14 hours to zero hours.

B. ISO-NE's New Data on "Replacement Energy" Fails to Demonstrate a Need for RER

According to ISO-NE, "[w]hile contingency reserve and its restoration requirements form the basis for the proposed RER product definition and quantities to be procured[,]" RER is intended to "serv[e] a broader purpose of enabling the system, as part of its next-day Operating Plan, to manage uncertainties in both supply and demand that arise during the operating day . . ."[25] ISO-NE presents data from 2018-2019 in an attempt to support its contention that "replacement energy" is needed routinely and, specifically, outside the winter months.[26]

As far as NESCOE is aware, this is the first time ISO-NE has presented this data. It is unfortunate that ISO-NE did not present this information in support of a "replacement energy" service during the long stakeholder process to allow states and stakeholders an opportunity to ask questions to better understand the data. At this late stage, it appears that ISO-NE is attempting to justify the need for RER—and by extension its need outside the winter period—by lumping together real-time balancing services, unexpected supply reductions (also known as generator contingencies), and unexpected demand increases (load under-forecast error) into one broad category of "replacement energy."[27] To the extent ISO-NE is representing the total real-time dispatch as "replacement energy" and not disaggregating into the type of underlying event, it is overstating the need for and value of RER by season.

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[25] ISO-NE Answer at 104.

[26] *Id.* at 106-114.

[27] *Id.* at 107.

In any case, what the newly provided information clearly shows is that the amount of "replacement energy" needed on average is small,[28] the need for larger amounts is infrequent,[29] and the current market incentives are keeping the lights on in New England.[30] Moreover, ISO-NE's latest data continues to provide no nexus between system events and the failure of suppliers to make advance fuel arrangements.

It is also misleading for ISO-NE to refer to so-called "replacement energy" as the result of unexpected supply and demand deviations. The "replacement energy" illustrated in Figure 1 of the ISO-NE Answer reflects the day-to-day operation of the real-time market,[31] which has the objective of providing least-cost dispatch while meeting load and reliability requirements. ISO-NE implies that all of the "replacement energy" in Figure 1 is the result of *unexpected* supply decreases or demand increases. But "unexpected" supply reductions that occur approximately 99.97% of the time, as ISO-NE presents earlier in the data,[32] cannot by definition be unexpected. It is the norm. ISO-NE cannot justify RER on the basis of a normal pattern of real-time dispatch that exceeds day-ahead commitments. There is nothing extraordinary about that deviation, and it plainly does not establish the need ISO-NE asserts it does.

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[28] *See id.* at 107-108 and Table 1, 110-11 (showing the average hourly net need for "replacement energy" to be only 188 MW for 2018 and 2019).

[29] *See id.* (showing the net need for "replacement energy" in five percent of all hours in 2018 and 2019 to be only 819 MW or greater and the maximum amount needed, 3,821 MW, occurring only one time in 2018).

[30] NESCOE understands that there has been only one scarcity event to date since the Pay-for-Performance program went into effect in 2018. *See* NESCOE Protest at 22 (describing the September 2018 event and its lack of nexus to fuel security); *see also* ISO-NE Answer at 111 n. 331 (referencing the September 2018 event).

[31] ISO-NE Answer at 112.

[32] *Id.* at 108 (Table 1).

C. ISO-NE Undermines Its Own Claims Regarding a Market Power Assessment and Cites No Relevant Cases Supporting Its Request

ISO-NE takes issue with NESCOE and other protesters citing to a 2007[33] order where the Commission rejected a proposed new ancillary services market for operating reserves because a market power assessment had not been completed.[34] ISO-NE argues that "the instant proceeding and the [ESI Proposal] differ materially from the circumstances of the" 2007 Order.[35] ISO-NE also asserts that the 2007 Order is not controlling because that proceeding arose out of a Federal Power Act ("FPA") section 205 filing while ESI responds to an FPA section 206 compliance directive.[36] The Commission should reject these claims, which are undercut by ISO-NE's own filing.

ISO-NE first put the 2007 Order into play. In explaining that it needs more time to complete a market power assessment for ESI, ISO-NE cited to the 2007 Order in recognition that such analysis "is a necessary component of a market-design proposal."[37] ISO-NE did not distinguish between ESI and the market design proposal reflected in the 2007 Order nor did it otherwise seek to qualify the order as procedurally different from this proceeding. ISO-NE fails to reconcile how the 2007 Order can be both relevant and misplaced at the same time.

Nonetheless, despite ISO-NE's new attempt to distance ESI from the 2007 Order it introduced, its request for conditional acceptance of the program pending the outcome of a

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[33] *Midwest Indep. Transmission Sys. Operator, Inc.*, 119 FERC ¶ 61,311 (2007) ("2007 Order"), *reh'g denied* 120 FERC ¶ 61,202 (2007).

[34] ISO-NE Answer at 69-71.

[35] *Id.* at 71.

[36] *Id.* at 71-72.

[37] ISO-NE Filing at 70. In the interest of clarity, NESCOE notes that ISO-NE's citation to the 2007 Order contains a typographical error in referencing "116 FERC ¶ 61,311" instead of "119 FERC ¶ 61,311," an understandable mistake in any filing let alone one of that length.

market power assessment is deficient for the same fundamental reason the Commission identified in its earlier order.[38] Without a market power assessment to accompany ISO-NE's request to approve an entirely new market, the Commission cannot "undertak[e] a full evaluation" of ESI.[39] ISO-NE fails to identify any Commission precedent to support its claim that ESI, an entirely new market construct, can be approved subject to further compliance. The one case it cites, *ISO New England Inc.*, 149 FERC ¶ 61,009 (2014), contains no further compliance directives related to power market assessments or mitigation rules.[40]

ISO-NE never grapples with, and simply ignores, the line of cases NESCOE cites that require the Commission to determine that market power does not exist or that it is adequately mitigated prior to approving market-based rates.[41] To the extent ISO-NE suggests that this threshold requirement can be deferred in section 206 proceedings in contrast to those initiated under section 205, it provides no support for that assertion.[42] In addition, if the Commission credits ISO-NE's argument, its ability to accept any portion of the ESI Proposal under section 205 would be constrained by the Commission's more limited authority to condition acceptance of a proposal under that procedural posture.[43]

Furthermore, ISO-NE's reliance on *NRG* in claiming that the Commission would have been constrained in its authority to condition acceptance in the 2007 Order is unfounded.[44] The Commission adjudicated the 2007 Order a decade before *NRG* became controlling. And prior to

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38 2007 Order at P 37.

39 *Id.*

40 *See* ISO-NE Answer at 70 n. 209.

41 NESCOE Protest at 28-29.

42 ISO-NE Answer at 71-72.

43 *Id.* at 72 n. 215 (citing *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108 (D.C. Cir. 2017) ("*NRG*")).

44 *Id.* at 72.

NRG, the Commission understood and regularly exercised its authority under section 205 to conditionally accept a utility's filing subject to directed modifications.[45] The Commission elected not to do so in the 2007 Order, rejecting the proposal without prejudice.[46]

D. Concerns About the Exercise of Market Power Are Both Timely and Borne Out in the Wilson Testimony

ISO-NE argues that it is premature to address market power concerns.[47] That is incorrect as a matter of law. As discussed above, the Commission cannot approve market-based rates for ESI before market power issues are evaluated and, if necessary, addressed.

ISO-NE has been aware of concerns regarding market power and mitigation in connection with ESI at least since early 2019.[48] NESCOE and others continued to express concerns through the remainder of the stakeholder process.[49] Despite its awareness of these concerns over many months, ISO-NE failed to perform even a scoping analysis regarding the potential exercise of market power.[50]

ISO-NE now seeks to shift the immediate task of performing an analysis to NESCOE's witness and incorrectly charges that the Wilson Testimony was conclusory on the issue of market power.[51] In fact, though the burden is on ISO-NE to analyze and address market power, Mr.

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45 *See* Brief of Respondent FERC, Case Nos. 15-1452 and 15-1454 (D.C. Cir.) (filed Sept. 27, 2016), at 34 ("[T]he Commission has a long standing practice, where it finds that a proposal is not just and reasonable absent modifications, of giving the filing utility a choice to fix its proposal or to have the filing rejected and continue to operate under the existing tariff.") (quotations marks and citation omitted). *See also id.* at 19-20, 30-38.

46 2007 Order at P 2.

47 ISO-NE Answer at 73-75.

48 Wilson Testimony at 39.

49 *Id.* at 40-41.

50 *Id.* at 42.

51 ISO-NE Answer at 75 ("While the presence of market power may be possible in theory, that does not overcome Mr. Wilson's failure to offer any data or analysis to suggest that such conditions are likely to occur with the Energy Security Improvements.").

Wilson did provide economic analysis of the market power concerns he identified. His testimony includes discussion of the relevant product and geographic market and explains why this relevant market raises significant market power concerns—concerns which are different and more problematic than under other regions' more conventional approaches to day-ahead ancillary services.[52]

ISO-NE's attempt to downplay NESCOE's concern about market power is unavailing. It claims that the ISO-NE Filing contained "summary data" that raises questions about Mr. Wilson's testimony that "ESI is relatively susceptible to market power[.]"[53] But this "summary data" shows only ancillary service quantities and not energy or total capacity quantities.[54] As the Wilson Testimony explained, total ancillary service demand is not the relevant market in assessing market power here: due to co-optimization of energy and ancillary services, the relevant market is "the total capacity [ISO-NE] seeks to acquire for *energy and* [day-ahead ancillary services] [.]"[55]

E. ISO-NE Fails to Justify the Extreme Mismatch Between Revenues and Holding Costs Reflected in the Impact Assessment

ISO-NE complains that NESCOE mischaracterizes net revenues in the Impact Assessment and, bizarrely, that NESCOE is collaterally attacking competitive market

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52 Wilson Testimony at 42-47.

53 ISO-NE Answer at 75-76 (quoting Wilson Testimony at 47).

54 ESI White Paper at 174; *see id.* at 175 (The main point of these data is straightforward. In New England, the generation fleet has ample nominal – that is, *apparent* – capability to fully satisfy the system's ancillary service needs . . . .") (emphasis in original).

55 Wilson Testimony at 42-43.

dynamics.[56] Neither assertion is true.[57] Here, ISO-NE pivots back to its straw-man tactic, serving up a didactic defense of uniform clearing prices that is far afield.[58] There is no quarrel in the record on the workings of inframarginal rents. The Commission need not be lured down that rabbit hole.

ISO-NE never contests NESCOE's observation, based on the Impact Assessment results, "that resources would be rewarded with net earnings that may be dozens to hundreds of times more than their costs to hold fuel."[59] Instead, ISO-NE responds that "NESCOE fails to acknowledge that these figures reflect the most profitable generation,"[60] conceding that NESCOE has accurately characterized the results for those scenarios. ISO-NE fails to explain why resources must receive so much revenue relative to their incremental holding costs—in ISO-NE's words, why those revenues must "far outweigh" or "far exceed" those costs at such potentially staggering levels[61]—to incentivize advance fuel supply arrangements.

In failing to offer such an explanation, ISO-NE provides the Commission with no record support to justify revenues that ISO-NE has itself described as far more than is needed to compensate resources for the incremental costs they would incur. This absence of record support precludes the Commission from finding that ESI's costs to consumers would be commensurate

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56 ISO-NE Answer at 46-48.

57 Similarly, ISO-NE's broad statement that "protesters generally do *not* challenge the quantitative findings of the Impact Assessment or otherwise find fault with its methodology" is misleading as it relates to NESCOE. ISO-NE Answer at 45 (emphasis in original). Curiously, ISO-NE notes NESCOE's concern about the analysis just several pages later. *See id.* at 49-53.

58 *Id.* at 47-48.

59 NESCOE Protest at 40; *see* ISO-NE Answer at 48.

60 ISO-NE Answer at 48.

61 *See* NESCOE Protest at 38-41; *see also id.* at 4-5.

with the reliability benefits provided.[62] ISO-NE acknowledges that this assessment of costs and benefits is an inquiry that is distinct from a cost-benefit analysis.[63]

Further, it is misleading to accuse NESCOE of cherry picking these scenarios: ISO-NE highlighted these same high profit opportunities for the Commission as a basis for approval of its program.[64] And contrary to ISO-NE's claim, NESCOE noted the range of conditions that the Impact Assessment considered and described projected net revenues over a mild winter.[65]

F. ISO-NE Distorts the Record Regarding How ESI Overbuys Reserves and the Potential for a More Conventional Approach to Ancillary Services to Help Address Fuel Security Concerns

ISO-NE replays a portion of NESCOE's quotation to an External Market Monitor ("EMM") analysis regarding ESI, where the EMM concludes that:

> . . . use of the option style contract would require loads to take day-ahead positions in energy that *substantially exceed* their expected real-time energy needs, since loads would be required to purchase "at the money" call options for an amount of operating reserves that is *extremely likely to exceed* the amount that would be converted to energy in real-time. Ultimately, it is difficult to predict the extent to which the option style contract will allow

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62 *See ISO New England Inc. and New England Power Pool Participants Committee*, 147 FERC ¶ 61,172 at P 23 (2014) (finding that consumers cannot be forced "to pay for capacity without receiving commensurate reliability benefits."); *ISO New England Inc. and New England Power Pool Participants Committee*, 152 FERC ¶ 61,190 at P 47 (2015) (declining to accept ISO-NE winter reliability program because consumer payments were not found to be commensurate with the reliability provided), *order on reh'g*, 154 FERC ¶ 61,133 (2016); *see also NSTAR Elec. & Gas Corp. v. FERC*, 481 F.3d 794, 803 (D.C. Cir. 2007) (stating that reasonable rates are those "not materially exceeding the range needed to assure availability of the needed generating capacity."); *TransCanada Power Mktg. Ltd. v. FERC*, 811 F.3d 1, 13 (D.C. Cir. 2015) (finding that sellers in a cost-based program are not "free to command high prices" in the name of reliability benefits that are not adequately explained and weighed against the costs).

63 ISO-NE Answer at 80.

64 *See* NESCOE Protest at 4-5 (citing ISO-NE Filing at 30).

65 *Id.* at 39-40. Additionally, ISO-NE's charge that NESCOE contradicts itself in describing ESI's incentives is wrong. ISO-NE Answer at 46 n. 140. Mr. Wilson's testimony that ESI's core design may not induce resources to change their fuel supply practices, *see* NESCOE Protest at 23, does not mean that resources will not earn overly generous revenues through the program.

> [ISO-NE] to maintain reliability more efficiently than it would using the conventional forward contract for ancillary services.[66]

ISO-NE omits the last sentence of this block quote.[67] Then, in a strange turn, ISO-NE implies that NESCOE purposely left it out. According to ISO-NE, the EMM repeated the first sentence of the quoted passage in its filed comments in this proceeding, "but [the sentence] is followed by the concluding observation that 'it is difficult to predict the extent to which the option style contract will allow the ISO to maintain reliability more efficiently than it would using the conventional forward contract for ancillary services.'"[68] ISO-NE claims that the two sentences read together "simply highligh[t] an empirical question about the option construct" and that it fails to support NESCOE's argument that ESI overbuys reserves.[69]

ISO-NE misunderstands the EMM's conclusion. The only question the EMM raises is whether the novel ESI design will succeed in meeting its objective compared to a more established market design for ancillary services. That conclusion draws from the EMM's earlier comments: "Many elements of the [ESI Proposal] have been implemented in other markets, but one novel element is the call option-style reserve product as opposed to the more commonly used forward-style ancillary service contract."[70]

ISO-NE's specious claims snowball from there. It incorrectly characterizes NESCOE's summary of the EMM's analysis, where NESCOE notes that "ISO-NE is making consumers buy

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66 NESCOE Protest at 37 (quoting Memorandum from David B. Patton and Pallas LeeVanSchaick of Potomac Economics to ISO New England and NEPOOL Markets Committee, NESCOE Proposal to Raise the Strike Price of Energy Call Options, Mar. 20, 2020 ("EMM Memo"), at 2 (emphasis added; footnote omitted)).

67 ISO-NE Answer at 94.

68 *Id.* at 94-95 (quoting Motion to Intervene and Comments of the ISO-New England External Market Monitor, Docket Nos. EL18-182-000 and ER20-1567-000 (filed May 15, 2020) ("EMM Comments"), at 9).

69 ISO-NE Answer at 95.

70 EMM Comments at 4.

more reserves in a day-ahead market than the system would typically need in real-time."[71] ISO-NE argues that this statement misconstrues why reserves are procured.[72] NESCOE won't take the bait and neither should the Commission. NESCOE never defined or described the standard for buying reserves. It was simply underscoring what the EMM said: ESI would procure "an amount of operating reserves that is extremely likely to exceed the amount that would be converted to energy in real-time."[73] NESCOE's summary seeks to give ISO-NE some benefit of the doubt, acknowledging that the amount procured might not be oversized across *all hours* of the day, *i.e.*, what "the system would typically need in real-time." Tellingly, ISO-NE never meaningfully addresses the merits of NESCOE's argument or the EMM's supporting analysis.

On the other hand, the new data that ISO-NE provides for the first time in its answer appears to confirm NESCOE's point. As discussed above, for 2018 and 2019, ISO-NE shows the average hourly net need for "replacement energy" to be only 188 MW and such net need in five percent of all hours to be 819 MW or greater.[74] The maximum amount needed, 3,821 MW, occurred only one time in 2018.[75] With the exception of a single event over the two year period, these amounts are well below what appears to be ISO-NE's stated cumulative ESI demand of

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71 NESCOE Protest at 37.

72 ISO-NE Answer at 93.

73 EMM Memo at 2.

74 *See supra* nn. 28-29.

75 *See supra* n. 29.

roughly 4,000 MW.[76] ISO-NE's new data supports a finding that the full freight of ESI products is not needed the vast majority of the time.[77]

ISO-NE similarly misstates Mr. Wilson's testimony regarding a more conventional approach. Contrary to ISO-NE's claim, Mr. Wilson was clear that such a conventional approach, *together* with a seasonal or other forward construct, could potentially provide energy security more effectively and at a lower cost.[78]

ISO-NE pivots to complaining about a lack of analysis supporting a more conventional approach as part of the region's energy security solution.[79] To the extent ISO-NE suggests that parties submitting a protest in this proceeding were obligated to provide an alternative market design, that claim is unsupported and is inconsistent with the Commission's rules and the FPA. The Commission should give no weight to attempts to shift a compliance obligation onto regional stakeholders or other participants in this proceeding.

In any event, ISO-NE's argument overlooks NESCOE's entire point. ISO-NE leaves a gap in the record the Commission must rely upon in considering ESI:

> ISO-NE never fully examined the potential for a seasonal forward market, together with more established approaches to ancillary services, to provide the incentives it believes are needed to promote advance energy supply arrangements because it instead elected to focus on the ESI design. ISO-NE fails to justify the risk premiums and other costs associated with implementation of such a novel and untested design. To the extent ISO-NE now commits

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[76] *See* ISO-NE Filing at 19 (stating that ISO-NE "relies upon approximately 4 GW or more to satisfy the three operational requirements" ESI is designed to address); ESI White Paper at 159 (Table 7-2) (listing total ESI quantity example as 3,650 MWh).

[77] The Wilson Testimony described how setting maximum prices for different quantities of ESI products using a diminished marginal reliability value could address this issue. Wilson Testimony at 59-69; *see infra* Section II.H.

[78] *See* ISO-NE Answer at 33 (citing Wilson Testimony at 21).

[79] *See id.* at 33-34 and n. 96.

> to developing a seasonal forward procurement, it appears that such a program would be layered upon an unproven ESI experiment.[80]

These more established market design constructs stand in contrast to an experimental ESI design that, as explained, exposes consumers to costs inherent in the energy call option.[81]

G. ESI Creates Risks that Do Not Exist in Other Market Designs

ISO-NE misrepresents NESCOE's position on the connection between ESI and risk premiums. It argues about the role that risk premiums generally play in markets.[82] NESCOE takes no issue with the economic theory that ISO-NE posits here. It never did.[83] The point is that ESI, and the energy option approach in particular, creates new risks for suppliers that they do not face under the current market design or under a conventional approach to day-ahead ancillary services.[84] These new risks, as ISO-NE notes, must be compensated for and ESI therefore increases total costs. This results in a loss in efficiency relative to other designs.[85]

ISO-NE also suggests that the risks inherent in the ESI design already exist because suppliers of day-ahead energy are exposed to the real-time energy price if they fail to perform.[86] ISO-NE's conflation of existing and new risks obfuscates NESCOE's point. The issue here is the new risk that ESI's novel energy option approach creates for suppliers of day-ahead *ancillary services*. ESI does nothing to change the current risks and settlement of day-ahead *energy sales*.

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80 NESCOE Protest at 47; *see id.* at 24-25 ("[B]ecause the ESI Proposal does not adequately address fuel security concerns, NESCOE expects that ISO-NE will return with yet another remedy at a later juncture, seeking to impose even more costs on consumers.").

81 *Id.* at 46-47.

82 ISO-NE Answer at 9.

83 Neither did Mr. Wilson: "Risk premiums are, or are equivalent to, a cost for sellers to do business . . . . A seller must be able to recover the risk premium, along with all other costs, to be willing to do business."). Wilson Testimony at 37.

84 NESCOE Protest at 46-47; Wilson Testimony at 11, 22, 34-38, 55-58.

85 Wilson Testimony at 11, 16-17, 34-35, 37-38.

86 ISO-NE Answer at 42.

H. ISO-NE Fails to Explain Why ESI Departs from Past Approaches to Marginal Reliability Value and Conflates NESCOE's Position on Price Impacts with Quantities Procured

In its protest of ESI, NESCOE questioned why ISO-NE failed to reflect a diminished marginal reliability value ("MRV") in pricing ESI when it has taken such an approach regarding its Forward Capacity Market demand curve and in its first winter reliability program.[87] ISO-NE never explained the reason for that departure. It still has not. Instead, ISO-NE attempts to shift the burden, suggesting that it is NESCOE, and not ISO-NE, that owes a greater explanation of the MRV approach.[88] Consumers deserve a response on the merits.[89]

ISO-NE also plainly misstates NESCOE's position, arguing that our challenge went to quantities procured instead of price.[90] This claim is flatly wrong. The Wilson Testimony is clear that the MRV approach takes no issue with the day-ahead quantities.[91] Its focus is on the maximum prices ISO-NE is willing to pay for them, which exceed the MRV to consumers of the full quantities of these services.[92] The underlying premise of ISO-NE's response is factually untrue.

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87 NESCOE Protest at 35-37.

88 ISO-NE Answer at 90-92.

89 During the stakeholder process, NESCOE and others repeatedly asked ISO-NE about the MRV of the proposed quantities of ancillary services it would procure under ESI. *See* Wilson Testimony at 60. ISO-NE failed to meaningfully respond to these questions. *See id.*

90 ISO-NE Answer at 90 ("NESCOE's ensuing discussion makes clear their underlying preference: a different approach to specifying reserve demand quantities entirely . . . .").

91 Wilson Testimony at 59-69. The Wilson Testimony explains that the applicable principles for determining the MRV of reserves have been established over many years in the context of shortage pricing rules using operating reserve demand curves. *Id.* at 64-65. Mr. Wilson also notes that ISO-NE has "applied this concept to develop the demand curve for its" capacity market construct. *Id.* at 60.

92 *Id.* at 68-69.

III. CONCLUSION

For the reasons discussed herein, NESCOE respectfully requests that the Commission grant its motion to answer, accept and consider its answer in this proceeding, and provide the requested relief that NESCOE sought in its protest to the ESI Proposal.

Respectfully submitted,

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Dated: June 30, 2020

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 Cambridge, Massachusetts this 30th day of June, 2020.

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