

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

<b>ISO New England Inc.</b>	)	<b>Docket Nos. ER14-2419-000</b>
	)	<b>ER14-2419-001</b>
	)	
<b>ISO New England Inc.</b>	)	<b>Docket No. EL14-52-000</b>
<b>New England Power Pool</b>	)	
	)	<b>(not consolidated)</b>

**NEPOOL RESPONSE TO  
ISO-NE MOTION FOR LEAVE TO ANSWER AND ANSWER**

(August 28, 2014)

Pursuant to Rule 212 of the Commission’s Rules of Practice and Procedure,<sup>1</sup> the New England Power Pool (“NEPOOL”)<sup>2</sup> Participants Committee<sup>3</sup> hereby responds to ISO New England’s (“ISO-NE”) Motion for Leave to File Answer and Answer (the “ISO-NE Answer”). If the Commission grants ISO-NE’s motion to answer the protests filed in response to its *No Exemption Alternative*, NEPOOL moves pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure<sup>4</sup> for leave to answer and answers two arguments in the ISO-NE Answer.

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<sup>1</sup> 18 C.F.R. §§ 385.212 (2014).

<sup>2</sup> Capitalized terms not defined herein have the meanings as cited thereto in the Second Restated NEPOOL Agreement, Participants Agreement or the ISO-NE Transmission Markets and Services Tariff (“ISO-NE Tariff”). Section III of the ISO-NE Tariff is referred to as Market Rule 1.

<sup>3</sup> NEPOOL is a voluntary association organized in 1971 pursuant to the New England Power Pool Agreement, and it has grown to include approximately 430 members. The Participants include all of the electric utilities rendering or receiving services under the ISO-NE Tariff, as well as independent power generators, marketers, load aggregators, brokers, consumer-owned utility systems, demand response providers, developers, end users and a merchant transmission provider. Pursuant to revised governance provisions accepted by the Commission in *ISO New England Inc. et al.*, 109 FERC ¶ 61,147 (2004), the Participants act through the NEPOOL Participants Committee. The NEPOOL Participants Committee is authorized by Section 6.1 of the Second Restated NEPOOL Agreement and Section 8.1.3(c) of the Participants Agreement to represent NEPOOL in proceedings before the Commission. NEPOOL is the principal stakeholder organization for the New England RTO. NEPOOL intervened as a party in each of the captioned proceedings.

<sup>4</sup> 18 C.F.R. §§ 385.212 and 385.213 (2014).

First, NEPOOL responds to ISO-NE's argument with still more examples that its *No Exemption Alternative* "directly mimics the outcome in a fully functioning, uncapped energy market," going so far as to suggest that any exemption of any sort -- indeed, anything but its *No Exemption Alternative* -- "would significantly harm the market design, and adversely affect the long-term reliability goals of the Forward Capacity Market."<sup>5</sup> NEPOOL explains in this pleading why the *No Exemption Alternative* does not reflect an economically pure design and is unnecessary to achieve efficient market and long-term reliability goals. NEPOOL also explains why ISO-NE's quest for theoretical purity should not be permitted to trump commercial reasonableness. There is nothing economically impure about the fact that sellers do not want to be forced to choose between either not selling capacity at all or taking on an unmanageable transmission-related risks, and buyers correspondingly do not want to contract (and pay for) the associated risk premium.<sup>6</sup> Further, ISO-NE couches its *No Exemption Alternative* in arguments about long-term efficiency of investment and reliability, and the potential for capacity sellers in constrained sub-areas of Capacity Zones to abuse their position, but those arguments ignore the purpose of Capacity Zones and the transitory and unpredictable nature of the intra-zonal constraints at issue in this proceeding. Finally, ISO-NE's new hypothetical scenarios do not refute or respond to the many examples described in NEPOOL's Protest that demonstrate commercially unreasonable results that will arise under its *No Exemption Alternative*, especially in circumstances where resources are fully performing consistent with their obligations.

Second, NEPOOL responds to ISO-NE's explanation for its inflexibility in addressing with NEPOOL members the Commission's identified flaw in ISO-NE's original Performance

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<sup>5</sup> ISO-NE Answer at p. 10.

<sup>6</sup> Even in an energy-only market, forward obligations and their Real-Time settlement are subject to terms and conditions mutually agreed upon by the counterparties. These conditions can include exceptions, including for transmission-related unavailability.

Incentives (“PI”) proposal. ISO-NE suggests in its Answer that it alone is motivated to have “a functional and efficient market design,” and argues that everyone else (apparently including State regulators, load, Transmission Owners, suppliers, marketers, Publicly Owned Entities, Alternative Resources, and End Users) is motivated by money and/or politics to achieve a specific market design outcome.<sup>7</sup> While some may contest ISO-NE’s immunity, what is irrefutable is that NEPOOL members, not ISO-NE, have actual commercial experience in the competitive markets. Regardless of the numerous and often varied financial or political interests of the NEPOOL members, what should be compelling here is that they are uniform in their rejection of the *No Exemption Alternative*. To be clear, not even one NEPOOL member found ISO-NE’s *No Exemption Alternative* for intra-zonal transmission congestion to be sensible or reasonable, notwithstanding an earlier ISO-NE presentation that was actually encouraging to NEPOOL members.<sup>8</sup>

NEPOOL has explained in its Protest<sup>9</sup> why ISO-NE’s *No Exemption Alternative* fails to comply with the Commission’s directive set forth in the May 30 Order.<sup>10</sup> As discussed more fully herein, ISO-NE’s continued reliance on economic theory alone, and its rejection of even the

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<sup>7</sup> See ISO-NE Answer at p. 6.

<sup>8</sup> ISO-NE has asserted both in the stakeholder process and in its Answer (*see* ISO-NE Answer note 19) that it did not change its proposal during the stakeholder process. Regardless of whether the proposal did or did not change, what did change dramatically was NEPOOL members’ understanding of ISO-NE’s proposal that they formed from an ISO-NE presentation that NEPOOL cited for the Commission. (ISO-NE’s June 20 presentation is available at [http://www.iso-ne.com/committees/comm\\_wkgrps/mrktts\\_comm/mrktts/mtrls/2014/jun202014/a02\\_iso\\_presentation\\_r1.pptx](http://www.iso-ne.com/committees/comm_wkgrps/mrktts_comm/mrktts/mtrls/2014/jun202014/a02_iso_presentation_r1.pptx).) It was that understanding of NEPOOL members that largely informed NEPOOL’s decision not to seek rehearing of the May 30 Order. NEPOOL’s recitation of these facts in its August 4 Protest was not intended to imply ISO-NE was seeking to subvert the legal process. Rather, it was intended to explain the material change from one in which there appeared to be initial support for an ISO-NE proposal as reflected in NEPOOL’s motion for clarification in Docket No. ER14-1050, to one of unanimous rejection as reflected here.

<sup>9</sup> See NEPOOL Protest (dated Aug. 4, 2014).

<sup>10</sup> *ISO New England Inc. and New England Power Pool*, 147 FERC ¶ 61,172 (2014), *clarification and reh’g requested* (the “May 30 Order”).

narrow exemption defined by the Commission in the May 30 Order, will produce unreasonable and unduly discriminatory outcomes.

**I. IF THE ISO-NE MOTION FOR LEAVE TO ANSWER IS ACCEPTED, NEPOOL’S ANSWER SHOULD BE PERMITTED.**

If the Commission is inclined to accept the ISO-NE motion in its Answer, NEPOOL moves pursuant to Rule 213<sup>11</sup> for leave to answer ISO-NE’s pleading and asks that the Commission consider NEPOOL’s answer.<sup>12</sup> Pursuant to Rule 213(a)(2) of the Commission’s Rules, the Commission may accept the filing of an answer to an answer for good cause shown.<sup>13</sup> NEPOOL’s response here will help clarify issues that ISO-NE’s Answer confuses, will ensure a more complete and accurate record and will otherwise assist the Commission in reviewing the issues sought to be raised in this proceeding. Accordingly, good cause exists for the Commission to grant this motion for leave to file this Answer.

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<sup>11</sup> 18 C.F.R. § 385.213(a)(2) (2014).

<sup>12</sup> The Commission is entirely justified in rejecting ISO-NE’s Motion for Leave to Answer (“Motion”) in these circumstances. ISO-NE acknowledges in its Motion that the pleadings to which it is responding are protests and that answers to protests are generally prohibited. (*See* ISO-NE Answer at p. 4). ISO-NE goes on to identify various bases upon which its answer might be justified. ISO-NE’s Motion however does not provide good cause for its answer. It does not correct inaccuracies in the record, assure a complete record, clarify or narrow any issues, aid in addressing the protests, or assist the Commission in its decision-making process. Rather, it introduces additional examples for the Commission to consider and takes more extreme and intransigent positions with respect to its *No Exemption Alternative* and the Commission’s exemption suggestion. Further, it fails in its attempt to dismiss its inability to persuade one single entity to support the *No Exemption Alternative*. In these circumstances, the Commission would be entirely justified in rejecting the Motion altogether.

<sup>13</sup> The Commission permits replies that would otherwise be prohibited where the reply would assure a complete record in the proceeding; *See, e.g., Las Vegas Cogeneration LP*, 117 FERC ¶ 61,309 at P 20 (2006); *S. Natural Gas Co.*, 121 FERC ¶ 61,118, at P 5 (2007); or assists the Commission in its decision-making process; *see Virginia Elec. and Power Co.*, 124 FERC ¶ 61,207 at P 22 (2008); *Pepco Holdings, Inc.* 125 FERC ¶ 61,130 at P 24 (2008); *Potomac-Appalachian Transmission Highline, LLC*, 122 FERC ¶ 61,188 at P 23 (2008); *S. Cal. Edison Co.*, 122 FERC ¶ 61,187 at P 19 (2008); *N.Y. Indep. Sys. Operator, Inc.*, 121 FERC ¶ 61,112 at P 4 (2007); *PJM Interconnection, L.L.C.*, 116 FERC ¶ 61,179 at P 19 (2006); provide information helpful to the disposition of an issue; *see CNG Transmission Corp.*, 89 FERC ¶ 61,100 at 61,287 n.11 (1999); or permit the issues to be narrowed or clarified; *PJM Interconnection LLC*, 84 FERC ¶ 61,224 at 62,078 (1998); *New Energy Ventures, Inc. v. S. Cal. Edison Co.*, 82 FERC ¶ 61,335 at 61,323 n.1 (1998).

## II. ANSWER TO ISO-NE MOTION

### A. ISO-NE's *No Exemption Alternative* is unnecessary to achieve an efficient market design and would produce unreasonable market outcomes

In pursuit of its version of economic theoretical purity, ISO-NE asserts that its *No Exemption Alternative* would result in outcomes that are economically efficient and appropriate because they would directly mimic those that would occur in a fully-functioning, uncapped energy-only market.<sup>14</sup> Remarkably, that was one of the main arguments made by ISO-NE in Docket No. ER14-1050 to defend its original PI design. Under that original design, Resources located on the export side of an intra-zonal transmission constraint delivering energy during Capacity Scarcity Conditions would, even if constrained from delivering up to their full capability, at least receive credit in PI for that delivery rather than being charged performance penalties as if they had delivered no energy at all. The May 30 Order, however, requires a different outcome for resources on the export side of an intra-zonal constraint in certain circumstances. ISO-NE sought neither clarification nor rehearing of the May 30 Order, thereby acknowledging that its version of theoretical purity does not satisfy the Federal Power Act. Despite ISO-NE's assertions to the contrary, the *No Exemption Alternative* does not reflect a theoretically pure market design, is not necessary to achieve an efficient outcome in the FCM, and produces outcomes that are commercially unreasonable. ISO-NE's Answer does nothing to prove otherwise, and if anything, helps to underscore the commercial unreasonableness of its proposed *No Exemption Alternative*.

#### i. *The No Exemption Alternative is unnecessary to achieve efficient market design*

At core, FCM establishes a commercial transaction between all capacity sellers and all capacity buyers. There is nothing economically or theoretically impure about buyers collectively

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<sup>14</sup> See generally ISO-NE Answer.

agreeing to accept the risks of unpredictable and transitory transmission conditions that result in intra-zonal congestion, and in so doing avoiding the inevitable risk premiums capacity suppliers would insist upon for accepting such an obligation.

ISO-NE fails in its argument that imposing such risks on buyers through a transmission-related exemption like the very one contemplated by the Commission in the May 30 Order would somehow adversely affect long-term reliability. There is no reasoned basis to believe that a resource's performance will be worse if it is exempt from making performance payments solely because it finds itself on the export side of unpredictable and un-modeled transmission constraints. Indeed, the *No Exemption Alternative* would remove incentive in the FCM for such resources to produce as much energy as could efficiently be used during Capacity Scarcity Conditions, even in response to ISO-NE dispatch instructions.<sup>15</sup> ISO-NE's long-term reliability concerns are only valid if ISO-NE anticipates that it will fail to follow the Tariff requirement that any persistently congested part of the system be defined as a separate Capacity Zone and/or resolved as appropriate and necessary in the regional system planning process.<sup>16</sup> Proper administration of the Tariff, not the *No Exemption Alternative*, will result in appropriate locational economic signals and price separation.<sup>17</sup>

ISO-NE also argues now that competitive market efficiency will be compromised if there is *any* proposal other than its *No Exemption Alternative*. That argument ignores the simple fact that performance exceptions are routine in a competitive and efficient market for forward sales,

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<sup>15</sup> To be clear, while all FCM incentives may be eliminated and indeed may result in disincentives if performance penalties exceed base capacity payments, incentives from any infra-marginal rents in the energy and ancillary services markets might still be present. NEPOOL's Protest provided examples of perverse incentives created by the *No Exemption Alternative* such as slightly decreasing availability such that the export-constraint does not bind.

<sup>16</sup> See ISO-NE Tariff § III.12.4 (eTariff § III.12 Calculation of Capacity Requirements, 9.0.0).

<sup>17</sup> The Commission in the future will have full opportunity to ensure the proper establishment of zones in the FCM.

even in an uncapped, energy-only market. It is this point where a unanimous NEPOOL voice should be taken seriously.

ii. *The No Exemption Alternative is Commercially Unreasonable*

ISO-NE's Answer also does nothing to refute the many examples of negative commercial effects of the *No Exemption Alternative*, and if anything, reinforces the commercial unreasonableness of its proposal. NEPOOL and others have demonstrated in this proceeding that ISO-NE's unilateral *No Exemption Alternative* proposal would produce illogical, discriminatory and unreasonable outcomes in the FCM. ISO-NE's Answer in response proposes alternative hypotheticals<sup>18</sup> based on the premise that any resource that finds itself on the export side of an intra-zonal transmission constraint has zero scarcity value, regardless of what that resource produced for the consumption on the import side of the constraint. Those alternative hypotheticals do not address examples of unreasonable commercial outcomes. Indeed, one such alternative example<sup>19</sup> demonstrates that that the *No Exemption Alternative* does not meet ISO-NE's own economic purity goals.

ISO-NE posits a resource providing 9 MW out of a 10 MW Capacity Supply Obligation ("CSO") during reserve scarcity hours when the Capacity Balancing Ratio was 80%, with an intra-zonal transmission limitation responsible for the resource's inability to produce a full 10 MW. In this example, from the perspective of the capacity resource, it was under contract in the FCM to provide 8 MW during Capacity Scarcity Conditions and it met and exceeded its obligation. ISO-NE argues that this unit should be treated like it failed to provide any energy in response to its contractual commitments because, in ISO-NE's view, the "scarcity pricing signal

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<sup>18</sup> See ISO-NE Answer at pp. 11-16.

<sup>19</sup> *Id.* at pp. 14-15.

for energy at the resource's node" should be zero.<sup>20</sup> Even though the resource performed above its contractual commitment, ISO-NE argues it should be assessed a performance penalty for 8 MW that it did provide per its commitment,<sup>21</sup> in addition to being denied a performance payment for the 1 MW it provided over and above its commitment.

NEPOOL submits that the result in this hypothetical, like the results in so many others presented in various protests, would violate ISO-NE's own premise that this is a two-settlement capacity market construct.<sup>22</sup> In a two-settlement system, a resource gets paid in the first settlement at its location for a promise to deliver in the second settlement at its location. The second settlement is a mechanism to balance deviations from the commitment made in the first. If indeed FCM PI is a two-settlement system, then a resource would get credit for *all the MWs of energy delivered in Real-Time* at its location. Such an outcome is logical since delivery of energy, up to the transmission limit, is valuable because it is flowing through the constraint and helping to meet the need on the other side of the constraint. Indeed, it could easily be that operation of this constrained resource is critical (these MWs – up to the transfer limit – have

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<sup>20</sup> *Id.* at p. 14.

<sup>21</sup> Presuming zero load on the export-side of the hypothetical constraint, 8 MWs of energy were delivered beyond the constraint to reduce the magnitude of the scarcity situation – clearly performing.

<sup>22</sup> ISO-NE suggests that resources can and will price such modified obligations into their FCM bids and offers. *See, e.g.*, Filings of Performance Incentives Market Rule Changes, Attachment I-1e (the "LaPlante/Gheblealivand Testimony"), *ISO New England Inc., New England Power Pool Participants Committee*, Docket No. ER14-1050 (Jan. 17, 2014) at pp. 40-46. That suggestion is troubling to many. On the supply side, delist bids for FCA 9 have already been submitted and, per the Market Rules, cannot be increased to reflect ISO-NE's *No Exemption Alternative*. Among load resources and state regulators, it suggests even higher risk premiums than those that were found unacceptable in ISO-NE's initial PI construct. *See, e.g.*, Joint Motion to Intervene, Protest of ISO New England "Pay For Performance" Proposal and Comments in Support of NEPOOL Filing of Eastern Massachusetts Consumer-Owned Systems, Docket No. ER14-1050 (Feb. 12, 2014); Comments and Protest by Connecticut and Rhode Island, Docket No. ER14-105 (Feb. 12, 2014); Notice of Intervention, Protest and Comments of the Mine Public Utilities Commission, Docket No. ER14-1050 (Feb. 12, 2014).



exactly the same value to the system as MWs on the import side of the constraint).<sup>23</sup> Yet according to ISO-NE, this unit should be penalized \$2,000/MWh irrespective of how much energy it delivers in Real-Time. Penalizing a resource that met 100% of its assigned obligation for that hour is illogical and commercially unreasonable. The Commission-proposed exemption, if properly designed, would avoid this illogical and commercially unreasonable outcome.

### **B. ISO-NE Does Not Have A Corner on Efficient Market Design**

Despite the Commission's compliance directive, the unprecedented 0.0% Vote of its stakeholders, and the numerous examples filed that demonstrate the unreasonable market outcomes that would occur under ISO-NE's *No Exemption Alternative*, ISO-NE now submits that NEPOOL and others' characterizations of, and objections to, its proposal are proffered solely because of a "vested financial interest or political interest in a specific market design outcome."<sup>24</sup> The implication here that ISO-NE *is the only entity* in New England that is motivated by goals of economic efficiency and market functionality is patently false.

It is clear from the zero NEPOOL support, along with the various pleadings submitted in objection to the *No Exemption Alternative*, that New England buyers, sellers, and regulators believe the narrow exemption identified by the Commission will not compromise reliability and locational capacity price signals.<sup>25</sup> The collective group opposing the *No Exemption Alternative*

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<sup>23</sup> In the alternative example presented on pages 14-15 of the ISO-NE Answer, ISO-NE states that "the resource should be credited zero dollars in the capacity market's second-settlement for its actual performance during these scarcity conditions, because the appropriate scarcity price signal for the 9 MW of energy it delivered each scarcity hour is zero." This is in fact incorrect. While the 10th MW may have no value to alleviate the scarcity condition, the first 9 MW of energy delivered are of great value and arguably the exact same value as all MWs on the other side of the constraint.

<sup>24</sup> ISO-NE Answer at pp. 5-6.

<sup>25</sup> In contrast to ISO-NE's steadfast insistence that any narrowly-crafted transmission-related exemption would defy logic and sound market design, "significantly harm the market design", and compromise long-term reliability (*see* ISO-NE Answer at pp. 7, 10), PJM has very recently proposed a limited performance exception for its new capacity product proposal that would implicitly include the transmission exception sought by NEPOOL members. Specifically, the PJM Capacity Performance

has vastly greater commercial experience than ISO-NE. What would be harmful to longer-term collaboration and efforts to build consensus is a persistent ISO-NE presumption that its theoretical preferences and judgments should trump those of electric consumers, asset owners and state officials, either individually or, in this case, collectively, even when stakeholders all agree. Those in the market are the ones who are directly and immediately impacted by dysfunctional or inefficient market design, and functional and efficient market designs do not produce uniform rejection on both the buy and the sell side of the market. NEPOOL urges the Commission to reject ISO-NE's presumption as well as its *No Exemption Alternative*.

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Proposal (dated Aug. 20, 2014) proposes exceptions from performance penalties in “instances when PJM did not schedule a unit, or when the unit was on line but dispatched down by PJM. The reasons PJM would dispatch a unit down could include dispatch to provide ancillary services or to control power balance or transmission constraints. It is also possible for PJM to not schedule a resource entirely because of transmission constraint, in which case the unit would not be subject to performance penalties under this proposal.” (See PJM proposal at p. 25, available at: <http://www.pjm.com/~media/documents/reports/20140820-pjm-capacity-performance-proposal.ashx>). Presumably, ISO-NE would agree that PJM also is striving for a functional and efficient market design and without a “vested financial or political interest in a specific market design outcome.” (see ISO-NE Answer at p. 6).

### III. REQUESTED RELIEF

WHEREFORE for the reasons explained herein, if the Commission accepts ISO-NE's Motion for Leave to Answer, then NEPOOL respectfully requests that the Commission accept NEPOOL's response and reject ISO-NE's proposed *No Exemption Alternative*. Further, for reasons set forth herein and in its August 4 Protest, NEPOOL urges the Commission to make clear that the redesigned PI to be in place for 2018 and beyond must include, at the very least, the Commission's narrowly-defined solution to exempt from Capacity Performance Payments (both negative and positive) "all resources within a zone experiencing a Capacity Scarcity Condition and which are located on the export side of a binding transmission constraint."<sup>26</sup>

Respectfully submitted,

NEPOOL PARTICIPANTS COMMITTEE

By:



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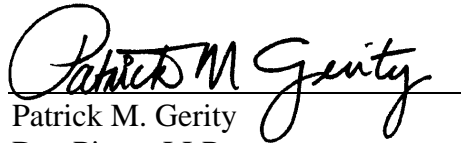
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<sup>26</sup> May 30 Order at P 67.

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a copy of the foregoing document to be served electronically upon each person designated on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission.

Dated at Hartford, Connecticut this 28<sup>th</sup> day of August 2014.

A handwritten signature in black ink that reads "Patrick M. Gerity". The signature is written in a cursive style and is positioned above a horizontal line.

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