Revised

MEMORANDUM

TO: NEPOOL Participants Committee Members and Alternates

FROM: NEPOOL Counsel

DATE: February 17, 2014

RE: Summary of Reply Pleadings in Performance Incentives "Jump Ball" Proceeding (ER14-1050)

This memorandum provides a brief summary for your information of the several thousand pages of pleadings and supporting information submitted by various parties in response to the "jump ball" filing of alternative versions of Market Rule changes intended to increase incentives for capacity resources to perform during times of operating reserve shortages. The "ISO-NE Proposal" ("FCM PI" or "PI") would redefine capacity product to include an obligation that all capacity resources produce energy or operating reserve during all five-minute intervals of operating reserve scarcity (or "Capacity Scarcity Conditions"), with a performance payment if they do produce and a penalty if they do not. The "NEPOOL Proposal", building on recent or pending Market Rule changes, would increase the Reserve Constraint Penalty Factors ("RCPF") for Thirty-Minute Operating Reserves ("TMOR") and Ten-Minute Non-Spinning Reserves ("TMNSR") and replace the current Shortage Event mechanism for measuring the performance of capacity resources with an "EFORp" availability metric similar to that used in other northeast regional capacity markets.

We summarize below the following five categories of filings submitted in response to the jump ball filing: (1) comments of NEPOOL and ISO-NE; (2) comments submitted by ISO-NE's External Market Monitor; (3) pleadings supporting the NEPOOL's Proposal; (4) pleadings supporting the ISO-NE's Proposal; and (5) other pleadings, including protests leaning in favor of one or another proposal or not supporting either proposal as just and reasonable. As the chart below indicates, comments were submitted by the following entities:

In Favor of NEPOOL Proposal	In Favor of ISO-NE Proposal	Others
• Connecticut and Rhode Island Regulators / UI • Consumer Advocates of New England • Industrial Energy Consumer Group • Public Systems • Eastern Massachusetts Consumer Owned Systems • NU • Energy Efficiency Stakeholders • Energy Management Inc. • NRG Companies • Dominion	• GDF Suez • National Grid • H.Q. Energy Services (US) Inc. • Natural Gas Supply Association	• NESCOE • NEPGA/EPSA • Indicated Generators (Exelon, EquiPower, Essential Power, Dynegy and Casco Bay) • NextEra • PSEG Companies • Brookfield • Entergy • EnerNOC • Renewable Parties • Maine PUC • Massachusetts DPU and New Hampshire PUC • Vermont regulators • America's Natural Gas Alliance • New England's Natural Gas Industry

All pleadings are available via hyperlink from the NEPOOL Website at: http://nepool.com/Litigation_Reports.php.

<u>Summary of Pleadings</u>

1. Comments of NEPOOL and ISO-NE

***NEPOOL*:** In sum, NEPOOL's comments make clear that, while improved resource performance is desirable, a fundamental change to the capacity market is not needed and will have unnecessary adverse consequences. NEPOOL requests that the FERC approve incremental changes under the NEPOOL Proposal rather than ordering radical and unnecessary changes to FCM proposed by ISO-NE against the wishes of the majority of New England market participants. More specifically, NEPOOL makes the following arguments in response to ISO-NE:

- While additional improvements to FCM are appropriate, FCM is not broken and does not need a radical redesign in the form of FCM PI.
- Incremental improvements to FCM have been made, are working and should be allowed to continue.
- Availability is a just and reasonable measure of the performance of capacity resources and is used as a capacity market metric throughout the United States.
- Operational performance issues motivating FCM PI are better addressed through the energy and ancillary services markets. The changes in those markets already underway, coupled with the changes to the shortage pricing contained in the NEPOOL Proposal will improve performance.
- FCM PI would likely have adverse consequences, including reduced investment in capacity in New England due to heightened risks of performance penalties, acceleration of early retirement of resources, excessive costs to consumers, discriminatory treatment for certain types of resources, greater complexity of market rules and financial assurance requirements, and seams with neighboring capacity markets.

The NEPOOL Comments were supported by testimony from Ms. Julia Frayer of London Economics International LLC and supplemental testimony from Dr. Richard Tabors. The Frayer Testimony concludes that ISO-NE's Proposal: (i) is a fundamental and unnecessary change from the existing capacity market in New England and from other capacity markets across the country; (ii) is not based on sound market design; (iii) will not necessarily achieve the performance objective(s) it sets out to address; and (iv) will entail unnecessary and serious adverse consequences, including for investment, planning and operations. The Tabors Testimony concludes that (i) ISO-NE's January 17 filing fails to support the assertion that the FCM structure is broken; (ii) ISO-NE's Proposal is not based on sound market design; (iii) ISO-NE's Proposal does not achieve the objectives of a true two-settlement system; and (iv) ISO-NE's Proposal is likely to have a series of impacts on the structure of the New England Power System that are neither intended nor desirable.

***ISO-NE*:** ISO-NE's comments contain the following main arguments:

- There are serious reliability problems facing New England "because the capacity product remains ill-defined and the consequences for failure to perform are woefully insufficient."
- Postponing FCM PI or adopting the NEPOOL Proposal will make the situation worse.
- The capacity market must be redesigned to address scarcity conditions, because the energy and reserve markets do no adequately address those conditions.

- Availability is a deeply flawed metric. Resource adequacy is not just an accounting of MW but must be designed to enable performance when needed.
- PI is a clearly defined product; NEPOOL's Proposal is not.
- The NEPOOL Proposal magnifies capacity market problems in two ways: (i) it doubles down on the flawed availability metric; and (ii) it expands harmful exemptions by adding a Force Majeure exemption.
- NEPOOL is wrong in its assertions about risk introduced by FCM PI; FCM PI is "unlikely to result in significant risk premiums" for a majority of resources. Risk can be dealt with by suppliers through offer formation, bilateral arrangements and anticipation of scarcity conditions. Despite risk, most suppliers will be more profitable under PI than without it.
- NEPOOL's Proposal for improved performance through increase to the RCPF has no analytical support and would have no meaningful impact. NEPOOL's EFORp proposal has no analytical support and would harm rather than help reliability by perpetuating an availability metric and adding exemptions.
- The FCM PI two-settlement system is sound and does not result in penalties but simply rewards units for performance.
- FCM PI is not discriminatory; it rewards units in response to their contribution to reliability during scarcity conditions.

ISO-NE's Answer is accompanied by supplemental testimony from Peter Cramton and the Analysis Group (Paul Hibbard and Todd Schatzki). Mr. Cramton asserts that: FCM PI is an economically sensible capacity market design based on sound market principles; PI provides extra payments during scarcity conditions; the share of system financial obligation under PI provides the right performance incentives and allows for better management of risk; the risks of PI are manageable; and PI will not result in discriminatory treatment of capacity resources. ISO-NE's supporting testimony also asserts that the NEPOOL Proposal is not based on sound economics: the RCPF increases are too small to motivate needed investments in reliability and the proposed EFORp metric would provide weak and even destructive incentives. FCM PI fixes the shortcomings of the current FCM by replacing weak with strong performance incentives, while NEPOOL would continue to rely on the "flawed" availability metric and exemptions, resulting in adverse selection of resources. The NEPOOL Proposal has poor long-run properties (selects poorer performing, less cost-effective resources), in contrast to the desirable long-run properties of FCM PI (selects over time better performing resources at less cost).

The Analysis Group testimony provides some quantitative analysis of the NEPOOL Proposal and concludes that the incentives for improved performance provided by the NEPOOL Proposal would be substantially lower than those created by the ISO-NE Proposal, and adoption of the NEPOOL Proposal risks meaningful deterioration in system performance (relative to the ISO's proposal) by failing to provide sufficient incremental revenues to support actions that improve performance, particularly for dual-fuel investment, along with other changes to bulk power system infrastructure likely to improve the reliability of the New England system. Analysis Group also concludes that a number of assertions in the initial NEPOOL testimony are wrong about likely outcomes under the ISO-NE Proposal, including concerns raised about the potential for the ISO-NE Proposal to adversely affect system performance by accelerating the retirements of otherwise valuable resources and creating significant financial risks.

2. External Market Monitor

***Comments of the External Market Monitor*:** ISO-NE's External Market Monitor, Dr. David Patton, submitted comments on the two alternative proposals. Dr. Patton supports ISO-NE's Proposal but raises two concerns regarding aspects of the proposal that need to be fixed to make it reasonable. First, the final Performance Penalty Rate ("PPR") would be unreasonably high; Dr. Patton urges the FERC to reject the ISO-NE Proposal to raise the PPR above the initial rate, which is more consistent with a reasonable projection of the value of lost load. Second, while the initial PPR is a much more reasonable average PPR level, it should be sloped or stepped to allow its shortage pricing to appropriately distinguish between small, transitory shortages and deeper shortages when the reliability implications of poor performance are much greater. Additionally, while ISO-NE's Proposal to compensate resources based on Effective Capacity would correct the problem of insufficient incentives under the current FCM, it would over-correct by providing inefficiently strong incentives for resources to be available within 30 minutes, which would raise the overall cost of maintaining reliability unnecessarily.

Dr. Patton also concludes that, to be reasonable, the NEPOOL Proposal would require the following changes. First, Dr. Patton notes that the NEPOOL Proposal seeks to enhance real-time shortage pricing by doubling most of the operating reserve RCPF's. Dr. Patton then further notes that the current exemptions under the PER will fully apply to the shortage pricing as proposed by NEPOOL. As a result, Dr. Patton maintains that the currently effective exemptions that apply to the Peak Energy Rent, which would still apply under the NEPOOL Proposal for shortage pricing, would result in non-comparable treatment of capacity resources. Second, Dr. Patton concludes that NEPOOL's proposed EFORp metric should be modified (i) to eliminate the 50 percent excess payment or penalty for over- or under-performance; (ii) to measure over- and under-performance against the historic average EFORp for all resources, not the historic average for the unit itself; (iii) to measure performance in the peak hours in which the resource is called upon; and (iv) to eliminate the stop loss provisions (including the Force Majeure provision), which shift the responsibility for unforeseen problems with capacity resources to customers. While Dr. Patton believes that NEPOOL's proposed EFORp metric is flawed, he disagrees with ISO-NE and concludes that availability is an appropriate performance metric for the capacity market if it is designed properly.

3. Entities Supporting the NEPOOL Proposal

***Comments and Protests by the Connecticut Public Utilities Regulatory Authority, the Connecticut Office of Consumer Counsel, George Jepsen, Attorney General for the State of Connecticut, the Connecticut Department of Energy and Environmental Protection ("CT DEEP"), the United Illuminating Company and the Rhode Island Public Utilities Commission (collectively "Connecticut and Rhode Island")*:** Connecticut and Rhode Island support the NEPOOL Proposal and oppose the ISO-NE Proposal. They support the NEPOOL Proposal because it would address scarcity concerns incrementally, by doubling the maximum market clearing price for two operating reserve products (the TMOR and TMNSR products) and would maintain the current practice of measuring a capacity resource by its ability to provide electricity − consistent with its physical operating characteristics − when requested by the ISO-NE dispatchers. Connecticut and Rhode Island also argue that the NEPOOL Proposal would provide incentives to a broad range of assets that contribute to maintaining reliable electrical service and that NEPOOL's proposed EFORp mechanism reflects an improvement over the current Shortage Events metric. Connecticut and Rhode Island oppose the ISO-Proposal as "an unnecessary high-cost, high-risk proposition." They argue that FCM PI's implementation would result in higher rates for consumers, would not address fuel concerns, would not provide incentives for generators to become more responsive to ISO-NE dispatchers, and would not reduce forced outages. Connecticut and Rhode Island further argue that ISO-NE's expectations are speculative and unreasonably preferential to baseload and quick-start technologies. Connecticut and Rhode Island also note that ISO-NE failed to provide any critical analysis of the PI mechanism's adverse impacts on the regional markets. Finally, they express concern that, under the ISO-NE Proposal, oversight of sellers' behavior would be less able to protect customers and ensure a workably competitive market.

In support of its joint filing, Connecticut and Rhode Island submitted the testimony of CT DEEP's Deputy Commissioner for Energy, Katie Scharf Dykes; Elin Swanson Katz, the Connecticut Consumer Counsel; and Jonathan Falk of NERA Economic Consulting.

***Joint Comments of the Connecticut Office of Consumer Counsel, Maine Office of the Public Advocate, Massachusetts Office of the Attorney General, and the New Hampshire Office of Consumer Advocate (the "Consumer Advocates of New England")*:** In its joint comments, the Consumer Advocates of New England ("CANE") oppose the ISO-NE Proposal and support the NEPOOL Proposal. CANE argues that ISO-NE's analysis of its own proposal is insufficient, and that the costs to New England consumers could be exorbitant. CANE further argues that the ISO-NE Proposal would result in higher prices for consumers as a result of substantially increased risks to capacity resources. CANE claims that the ISO-NE's analysis understates the risk premium that Market Participants would price into their FCA bids under FCM PI. Given the unpredictability of the how much the ISO-NE Proposal will actually cost, CANE argues that the FERC should reject the proposal because it projects "too much risk on ratepayers for too speculative a gain." In contrast, CANE believes that the NEPOOL proposal exposes ratepayers to significantly less risk, while preserving the opportunity for additional targeted reforms.

***Protests and Comments of the Industrial Energy Consumer Group ("IECG")*:** IECG's pleading opposes the ISO-NE Proposal and supports the NEPOOL Proposal. IECG argues that ISO-NE's Proposal would work in theory, but not in practice, and that "PI is too brittle to be usefully adapted to the real world conditions in which it will be expected to operate." IECG also asserts that the ISO-NE Proposal would create additional unnecessary risks that would drive up prices. IECG also takes issue with the lack of a Force Majeure clause in the ISO-NE Proposal and argues that potential transmission outages, for example, would unnecessarily drive up and shift risks and costs. With respect to the NEPOOL Proposal, IECG concurs with the reasoning underpinning, and the benefits to be expected from implementation of, the NEPOOL Proposal, as articulated in NEPOOL's January 17 filing.

***Joint Comments of Connecticut Municipal Electric Energy Cooperative, Massachusetts Municipal Wholesale Electric Company, New Hampshire Electric Cooperative, Inc., Vermont Public Power Supply Authority, and Vermont Electric Cooperative (collectively the "Public Systems")*:** The Public Systems support the NEPOOL Proposal in its entirety. Noting that the NEPOOL Proposal "addresses performance concerns with more of a carrot," in contrast to ISO-NE's more aggressive approach, the Public Systems submitted that the NEPOOL Proposal "works in conjunction with existing and ongoing efforts to improve price formation in the real-time markets." The fact that the NEPOOL Proposal works within existing structures provides for the efficient implementation of its proposal in advance of FCA 9 – the earliest possible PI implementation date. The Public Systems further highlight that NEPOOL stakeholders, who have been considering this issue for more than a year, are "overwhelmingly aligned in their opposition to PI," and note the strong support for the NEPOOL Proposal across all market sectors. Generally, the Public Systems feel that the NEPOOL Proposal addresses performance issues as needed in the FCM, but also protects consumers.

***Joint Comments in Support of NEPOOL Filing of Eastern Massachusetts Consumer-Owned Systems ("EMCOS")*[1]**: In joint comments, EMCOS support NEPOOL's proposal in its entirety, noting that it "present[s] a more effective and less destructive means of improving the performance of Capacity Resources committed through ISO-NE's FCM." EMCOS' comments are accompanied by a Declaration of William G. Bottiggi, General Manager of Braintree Electric Light Department, which explains real-world impacts of ISO-NE's proposal in (i) discouraging entry into New England's FCM, and (ii) subjecting the possibility of cost recovery in the FCM to entirely random and unpredictable events. Mr. Bottiggi declares that the NEPOOL Proposal "directly addresses the root cause of the performance issues … and allows a more precise solution to ISO-NE's observations about generator fleet performance issues, without imposing the predictably high cost of a wildly unpredictable risk premium on each and every kilowatt of capacity that is bold enough (or foolhardy enough) to participate in the market."

***Comments of the Northeast Utilities Companies ("NU")*:** NU supports the NEPOOL Proposal as the preferable way to address reliability and financial incentives in New England. Particularly, NU notes that the NEPOOL Proposal provides a more targeted solution for ensuring performance without imposing unreasonable penalties. Further, NEPOOL's Proposal avoids several "fundamental flaws" contained in ISO-NE's design such as penalizing resources that are not dispatched when a scarcity condition occurs, and the disconnection between the magnitude of the redistribution of revenues and the magnitude of the scarcity problem. The NEPOOL Proposal is also preferable because it is less financially burdensome on New England consumers, provides strong economic signals with Capacity Supply Obligations to be consistently available, and "focuses on the carrot rather than the stick for a performance incentive and also provides the signal for greater economic efficiency of both the capacity market and the energy market." Lastly, NU points to the overwhelming stakeholder support of 80% as evidence that NEPOOL's proposal is just and reasonable.

***Comments of Northeast Efficiency Partnerships, with NU, Vermont Energy Investment Corporation, and Environment Northeast ("EE Stakeholders")*:** In line with the arguments found in the NEPOOL Proposal, the EE Stakeholders criticize the ISO-NE proposal because it "effectively changes the FCM from a resource adequacy market to an operating reserve market in which all resources must be available to respond to dispatch directions 24X7 or be subject to penalties." They argue that it would be unfair and unreasonable to subject energy efficiency resources, which are passive, non-dispatchable resources, to a Market Rule presumption that all capacity resources are fully dispatchable in response to short-term price signals. The EE Stakeholders support the NEPOOL Proposal because it would retain the current treatment of energy efficiency under the Market Rules and would recognize that reliability concerns during reserve deficiencies around gas supply issues are better addressed in other markets, such as the energy or ancillary services markets, and *not* the FCM.

[1] The "Eastern Massachusetts Consumer-Owned Systems" consist of the following entities: Braintree Electric Light Department, Concord Municipal Light Plant, Groveland Electric Light Department, Hingham Municipal Lighting Plant, Littleton Electric Light and Water Department, Middleborough Gas and Electric Department, Middleton Electric Light Department, Reading Municipal Light Department, Rowley Municipal Lighting Plant, Taunton Municipal Lighting Plant and Wellesley Municipal Light Plant.

***Protest of Energy Management Inc. ("EMI")*:** EMI opposes ISO-NE's Proposal and supports the NEPOOL Proposal. EMI's protest argues that the "penalty regime" of the ISO-NE Proposal "would jeopardize the financial viability of all future generation projects and effectively exclude most renewable resources from the FCM and thereby impose severe obstacles to the development of such resources, contrary to both state and federal policies." EMI further asserts that the magnitude of the penalties under FCM PI would increase prices and fail to attract sufficient investment into the market, especially in regards to investment in renewables. In addition, EMI argues that the ISO-NE Proposal would decrease fuel diversity and increase reliance on gas generation. EMI urges the FERC to reject "ISO-NE's proposed penalty regime (or, at a minimum, ordering an exemption from penalties for intermittent renewable resources) and instead approve the counter proposal approved and submitted by a supermajority of NEPOOL."

***The NRG Companies' Protest of the ISO-NE Proposal and Comments in Support of the NEPOOL Proposal*:** The NRG Companies[2] filed comments in support of the NEPOOL Proposal and protesting the ISO-NE Proposal. NRG supports the NEPOOL Proposal in its entirety because it consists of incremental improvements to the energy and reserve markets through increased RCPFs that will allow the market to clear more efficiently for all resources, and a performance metric based on availability during hours that are more likely to experience peak demand conditions. NRG opposes ISO-NE's PI proposal, arguing that it is "untested and imposes massive new risks on generators that are likely to drive investors away from the New England market." Judith Lagano, NRG Vice President of Asset Management for the East Region, testifies that investors will not view the risk of significant net losses that accompanies the capacity supply obligation under ISO-NE's Proposal favorably and that Proposal will unlikely meet its goal of attracting new investment in New England. NRG also submits a second affidavit of Dr. Susan Pope, Managing Director, FTI Consulting, Inc. Dr. Pope's testimony asserts that the likely outcome of the ISO-NE Proposal "does not represent an effective market design, and will create perverse incentives for capacity suppliers to self-schedule at exactly the time when ISO-NE must exercise greatest control over the system to keep the lights on." NRG also asserts that the "lack of adequate mitigation rules" reflects "another fatal flaw" in the ISO-NE Proposal.

***Comments of Dominion Resources Services, Inc. ("Dominion")*:** Dominion supports the NEPOOL Proposal because it would enhance financial incentives for resources to be available through scarcity pricing reforms and strengthen the metric for measuring "availability" during high peak hours in summer and winter months through the introduction of an EFORp mechanism used in other markets. Dominion claims that the NEPOOL Proposal is the only proposal that builds upon recent and planned reforms in the Energy and Ancillary Services Markets which should be given time to take effect before seeking to "tear down the FCM" as proposed by ISO-NE. Further, Dominion asserts that the ISO-NE Proposal (i) is inconsistent with sound and existing market design, (ii) fails to recognize that inefficient operation and flawed price signals in the Energy and Ancillary Services Markets are the "root cause" of FCM performance issues, and (iii) will lead to unjust and unreasonable outcomes by incentivizing those resources that don't require incentives to invest and by eliminating all exemptions.

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[2] The NRG Companies (collectively, "NRG") consist of the following: NRG Power Marketing, LLC, GenOn Energy Management, LLC, Connecticut Jet Power LLC, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, NRG Canal LLC, and Energy Curtailment Specialists Inc.

4. Entities Supporting the ISO-NE Proposal

***Comments of GDF SUEZ Energy Marketing NA, Inc. ("GDF SUEZ")*: ** GDF SUEZ summarizes its support for the ISO-NE's Proposal, observing that changes proposed by ISO-NE address resource adequacy issues through a simple, uniformly defined capacity product performance obligation which provides appropriate incentives for capacity sellers to improve their performance. GDF SUEZ argues that consumers and the region need market reform and that the ISO-NE Proposal is "the only offered solution that meets that need." GDF SUEZ believes that the NEPOOL Proposal will worsen current capacity market performance by compromising reliability, impairing economic growth and fostering uncertainty. Specifically, GDF SUEZ argues that the NEPOOL Proposal should not be accepted because (i) the proposed replacement of the Shortage Event penalty mechanism with an EFORp metric "rewards poor availability and punishes good availability" and (ii) increasing the RCPF values only exacerbates issues with the Peak Energy Rent deduction.

***Comments of Massachusetts Electric Company, Nantucket Electric Company and Narragansett Electric Company D/B/A National Grid ("National Grid")*:** National Grid supports the ISO-NE's Proposal, citing to deteriorating generator performance. National Grid argues that the ISO-NE Proposal would provide the appropriate incentives when performance is needed the most. Pointing to an uncapped energy market ('UEM") in which prices rise to levels necessary for resources to have the ability to recover their fixed costs, National Grid explains that capacity markets should follow as closely as possible the pay for performance design of the UEM and that "the existing FCM rules are not adequately ensuring that the capacity revenues are paid in the manner necessary to accurately replicate the desired competitive outcomes of the UEM." While making clear that it is not supporting implementation of a UEM in New England, National Grid contends that ISO-NE's Proposal best mimics those market outcomes. Turning to the NEPOOL Proposal, National Grid notes that the proposal adopted by the Participants Committee faced far less scrutiny than ISO-NE's Proposal and argues that it would produce results inconsistent with competitive market outcomes for the following four reasons: (i) using availability to determine capacity payments will not induce investments to improve reliability; (ii) the EFORp approach does not ensure that performance is measured during scarcity conditions when it is needed most; (iii) exemptions are counterproductive to improving reliability, "especially ones as broad and vague as those proposed by NEPOOL"; and (iv) application of a new "Force Majeure" exemption, which could allow a capacity resource which is unavailable for an entire year to retain 80% of its annual capacity payments, is not just and reasonable.

***Comments of H.Q. Energy Services (U.S.) Inc. ("HQUS")*:** Expressing its concern that the NEPOOL Proposal does not go far enough to incent capacity providers to perform under stressed conditions, HQUS concludes that the ISO-NE Proposal is the "best alternative" because the ISO-NE Proposal would: (i) incentivize performance year round while the EFORp mechanism in the NEPOOL Proposal only incents performance during certain peak hours; (ii) provide more stringent incentives to perform than the RCPF prices proposed by NEPOOL; (iii) provide for more balanced incentives for resources to perform when required (HQUS notes that, under the NEPOOL Proposal, "a poor performer with an historic EFORp of 0.70 that raises it to 0.80 will be rewarded while a supplier with an historic EFORp of 0.95 will be penalized even though it is providing a better 'product' than the poor performer." Since HQUS has historically had an EFORp of 1, it sees the effect of the NEPOOL Proposal on it as "especially perverse"); (iv) better address long-term reliability because, under the NEPOOL Proposal, generators that are not able to perform during scarcity conditions, "may still stay in the market at least in the short and medium term resulting in a less reliable system"; and (v) offer proper protections to limit downside financial risk.

***Comments of the Natural Gas Supply Association in Support of ISO-NE's Proposal ("NGSA")*:** NGSA supports the ISO-NE Proposal, but explains that it is not likely going to be able to fully resolve the underlying reliability and economic issues plaguing New England markets. NGSA notes that it hasn't had the chance to fully review NEPOOL's Proposal, and thus takes no position on its merits. NGSA claims that ISO-NE's pay-for-performance concept will help address reliability concerns in New England by: "(1) implementing a market-based solution that provides the price signals required to incent more reliable performance through investment by generators; (2) ensuring resource neutrality; and (3) providing clear market rules." To address these further concerns, NSGA urges ISO-NE and stakeholders to keep considering solutions that will resolve gas infrastructure constrains immediately, as well as urging the FERC to take an active role in fixing the current flaws of the New England Market.

5. Other Pleadings

***Limited Comments of the New England States Committee on Electricity ("NESCOE")*:** NESCOE does not take a position favoring one proposal. Instead, in its limited comments, NESCOE argues that the ISO-NE Proposal should incorporate an exemption for transmission outages so as to avoid the potential for increased risk premiums associated providing extra capacity. NESCOE further urges the FERC, if it chooses to adopt the ISO-NE Proposal, not to change the Performance Payment Rate and phase-in schedule of the ISO-NE Proposal.

***Comments of the New England Power Generators Association ("NEPGA") and the Electric Power Supply Association ("EPSA")*:** NEPGA and EPSA jointly submitted comments to promote two main points. First, in response to ISO-NE's supporting testimony regarding the ability and performance of New England generators to respond to ISO-NE dispatch instructions (the testimony of Peter Brandien), NEPGA and EPSA argue that the operational and performance issues cited by Mr. Brandien are not the result of generators failing to honor their performance obligations. NEPGA and EPSA assert that proper market price signals and clearing prices are the only efficient way to procure the generator characteristics and capabilities needed for system reliability. Second, NEPGA and EPSA reiterate their support for the adoption of a sloped demand curve as part of the ISO-NE market reform.

***Protest of Exelon Corporation, EquiPower Resources Management, LLC, Essential Power, LLC, Dynegy Marketing and Trade, LLC and Casco Bay Energy Company, LLC (collectively, the "Indicated Generators")*:** The Indicated Generators assert that neither the ISO-NE Proposal nor the NEPOOL Proposal is just and reasonable. With respect to the ISO-NE Proposal, the Indicated Generators argue that the PI proposal is "unlikely to achieve its desired result because it introduces significant new risk into the capacity market that would discourage investment in new generation and the ability to raise capital." The Indicated Generators explain that, if the FERC directs ISO-NE to implement FCM PI, they could potentially support the proposal but only if certain modifications are made including: (i) excusing non-performance in specific circumstances beyond the control of the generator; (ii) modifying the monthly stop-loss mechanism; and (iii) revising mitigation rules to provide greater certainty. Without these modifications, the Indicated Generators make clear their belief that ISO-NE Proposal is unjust and unreasonable.

Separately, while the Indicated Generators generally indicate support for NEPOOL's proposed approach of making incremental changes that will enhance and/or compliment recently implemented or soon to be implemented Market Rule changes as well as for NEPOOL's goal of improving Real-Time price signals and explain that the NEPOOL Proposal "represents a good faith effort to create an alternative to the ISO-NE Proposal in a relatively short amount of time", the Indicated Generators assert that as filed, the NEPOOL Proposal is not just and reasonable. Similar to the pleading submitted by PSEG, the Indicated Generators believe that the NEPOOL Proposal would be more appropriate under an Unforced Capacity ("UCAP") market (utilized in PJM) than an Installed Capacity ("ICAP") market (utilized in ISO-NE).

Instead of accepting either Proposal, the Indicated Generators request that the FERC reject both and encourage ISO-NE to: (1) "pursue other important, and in some cases, widely supported modifications to basic elements of the existing capacity and Energy Market designs; and (2) evaluate fully the impact of all available fuel arrangements and infrastructure projects and of recently, or soon to be implemented, Market Rule modifications after sufficient time has elapsed."

***Protest of NextEra Energy Resources, LLC ("NextEra")*:** NextEra finds neither the ISO-NE Proposal nor the NEPOOL Proposal to be just and reasonable. For the ISO-NE Proposal to be just and reasonable, as recommended and discussed in the affidavit of Robert Stoddard of Charles River Associates attached to its pleading, NextEra asks the FERC to condition its approval on five substantive changes: (i) ISO-NE's proposed seven year phase-in should be rejected, with the full Payment Performance Rate of $5,455/MWh implemented in time for FCA 9; (ii) ISO-NE's "no exceptions" rule should be revised to include a transmission outage exception; (iii) the monthly stop-loss threshold should be modified from the arbitrary starting price of the auction (e.g.,$15/kW-month) to the current threshold of 2.5 times the monthly clearing price, subject to a floor of $10/kW-month; (iv) elimination of the PER deduction from the FCM; and (v) the IMM's pivotal supplier test should be revised to focus on actual control by a Lead Market Participant and should consider all qualified capacity. NextEra considers NEPOOL's Proposal to be a "conceptual design", asserting that there are significant issues with the NEPOOL Proposal requiring further work (including, but not limited to, revision of the EFORp mechanism). If the FERC rejects the ISO-NE Proposal and accepts the NEPOOL filing, NextEra urges the FERC to direct ISO-NE "on which elements it should adopt and to provide a date certain" to submit specific elements of the NEPOOL Proposal in a compliance filing.

***Protest of the PSEG Companies*[3]:** PSEG requests that the FERC reject ISO-NE's Proposal and accept NEPOOL's incremental approach with certain modifications. PSEG argues that ISO-NE's unproven and punitive PI approach is a misguided attempt to "strongly link capacity payments" to its new definition of "resource performance during scarcity conditions" and reflects a "radical and unproven design that undermines the longstanding practice of sharing resource adequacy risks within integrated power pools." With respect to the NEPOOL Proposal, PSEG believes that it would properly incent resources to elevate their operating performance, but also believes that it could be further improved with the adoption of "unforced capacity" ("UCAP")

[3] The "PSEG Companies" (collectively, "PSEG") refers to PSEG Power LLC, PSEG Power Connecticut LLC and PSEG Energy Resources & Trade LLC.

availability ratings in place of ISO-NE's current ICAP structure. In conclusion, PSEG submits that "the New England region will be better served by an approach that ensures long-term resource adequacy through a mix of known and tested incremental market design changes rather than the leap to ISO-NE's pay for performance approach."

Comments of Brookfield Energy Marketing LP ("Brookfield")**:** In its comments, Brookfield opposes the ISO-NE Proposal because it is "not just and reasonable as submitted." Brookfield supports it pleading with the affidavit of Aleksandar Mitreski. Brookfield argues that the ISO-NE Proposal, were it to be accepted by the FERC, should only be accepted with modifications to provide limited exemptions consistent with the following: (i) resources subject to ISO-imposed limits due to transmission issues, voltage issues, posturing, or largest contingency protection should not be penalized through Capacity Performance Payments for non-delivery of energy or reserves above that restriction; (ii) the market rules should not penalize intermittent resources for non-delivery through Capacity Performance Payments because intermittent resources are already penalized by a reduction in their FCM payment based on reduced qualification of megawatts relative to their nameplate ratings; (iii) Import Capacity Resources should not be penalized through Capacity Performance Payments for non-performance when External Transactions are not dispatched by the ISO because of an inaccurate LMP forecast or latency in scheduling; and (iv) Import Capacity Resources with a Capacity Performance Score above zero should be permitted to submit Capacity Performance Bilaterals. Brookfield also opposes the NEPOOL Proposal. While it supports the reforms to the Energy and Ancillary Services Markets, it opposes EFORp because it "would lead to unequal treatment of resource types to the detriment of the market."

Comments and Conditional Protest of Entergy Nuclear Power Marketing, LLC. ("Entergy")**:** Entergy does not support the NEPOOL Proposal and conditionally protests ISO-NE's Proposal as unjust and unreasonable, stating that it should be modified to include exemptions for: (i) electric transmission outages; (ii) force majeure events; (iii) scheduled outages approved by ISO-NE; (iv) an inability to comply with an ISO-NE dispatch instruction due to offer or operational parameters; and (v) protections against undue mitigation. Entergy would support the ISO-NE Proposal as modified with the above exemptions and with the elimination of the proposed phase-in of ISO-NE's Performance Payment Rate. Entergy explains that, with the discrete and limited exemptions it has proposed, the full PPR of $5,455 should be implemented beginning June 1, 2018. Further, Entergy notes that ISO-NE's Proposal, by itself, is not a remedy for the "many market design flaws in the ISO-NE energy, capacity, and ancillary markets." In this regard, Entergy suggests that the FERC direct ISO-NE to undertake energy market reforms to address "artificially low energy prices in both the day-ahead and real-time energy markets" including changes to address price suppression caused by RMR units and uneconomic regulated Capacity.

EnerNOC, Inc.'s Conditional Protest of ISO-NE's Filing ("EnerNOC")**:** EnerNOC argues that the ISO-NE Proposal, without modification, is unjust, unreasonable and discriminatory to demand response ("DR") resources, and asks the FERC to approve ISO-NE's Proposal *provided* that Market Rules are implemented allowing DR resources to participate in the Operating Reserves Markets. Noting that it believes ISO-NE's Proposal "is better suited to solve the problems facing the New England market", EnerNOC opines that ISO-NE's Proposal would be just and reasonable and non-discriminatory if the FERC conditioned its acceptance upon the following requirements: (i) that ISO-NE file Operating Reserve Market Rules that can be approved by the FERC and implemented prior to the time that a FCA is held for any Capacity Commitment Period in which the ISO-NE's PI rules would be place and applicable to DR resources; and (ii) absent such reserve rule changes, that DR remain subject to the currently effective (pre-PI) rules. EnerNOC represents in its pleading that "ISO-NE agrees that such conditions are appropriate and that ISO-NE would not object to a compliance filing to defer the applicability of the PFP proposal to DRR until Reserve Rules are effective in advance of the applicable FCA." While EnerNoc indicates in its caption a "Protest of NEPOOL's Filing", its pleading offers no discussion of such a protest.

***Comments of Renewable Energy New England Inc. and First Wind Energy, LLC (the "Renewable Parties")*:** Comments by the Renewable Parties favor the ISO-NE Proposal over the NEPOOL Proposal, but disagree with the ISO-NE's refusal to allow any exemptions from performance penalties. The Renewable Parties argue that the NEPOOL Proposal does not go far enough to address the deeper structural issues in the market, whereas the ISO-NE Proposal would provide sufficient incentives and penalties to reshape the market. The Renewable Parties also note that wind and solar resources would likely be able to over perform during scarcity conditions under the ISO-NE Proposal. However, they do take issue with the ISO-NE Proposal's lack of exemptions, arguing that there is at least one circumstance – "when a generator is in merit, able, and willing to provide energy but is held back or curtailed by ISO-NE due to reliability concerns" – where an exemption should be granted.

***Supplemental Protest of the United Illuminating Company ("UI")*:** UI opposes the ISO-NE Proposal, explaining the negative impact it sees of that Proposal on Connecticut's energy efficiency program. In support of its arguments, UI submits the testimony of Patrick McDonnell, Senior Director of Conservation and Load Management for UI. UI argues that the negative impact ISO-NE's proposal has on energy efficiency will lead to a reduction in the economic and environmental benefits that can be achieved by energy efficient resources. Mr. McDonnell concludes that ISO-NE's pay-for-performance approach will increase the cost for energy efficiency resources to participate in the FCM, which may result in such resources exiting the capacity market.

***Protest and Comments of the Maine Public Utilities Commission ("MPUC")*:** The MPUC comments oppose the ISO-NE Proposal and support some of the steps proposed by NEPOOL. MPUC cites the numerous market changes that have occurred over the last few years and argues that they should be allowed to fully develop before making such a significant change as proposed by ISO-NE with FCM PI. MPUC also argues that the ISO-NE Proposal is "out of step" with other ISO/RTOs and that this change would move away from the FERC's "interest in developing a common set of best practices." MPUC also warns of an increase in costs that may result from greater risk premiums and the possibility of an adverse effect on reliability under the ISO-NE Proposal. Finally, the MPUC argues that ISO-NE's support for its Proposal was lacking. Regarding the NEPOOL Proposal, MPUC expresses support for NEPOOL's proposed increases to the RCPF values for the TMOR and TMNSR products. However, MPUC believes that the current Shortage Event construct provides better performance incentives than NEPOOL's proposed EFORp metric for measuring resource availability because the current mechanism can be triggered at any time.

***Comments of the Massachusetts Department of Public Utilities ("MA DPU") and the New Hampshire Public Utilities Commission ("NHPUC")*:** MA DPU and NHPUC favor the ISO-NE Proposal over the NEPOOL Proposal but disagree with the absence of any exemptions from performance penalties. MA DPU and NHPUC ask the FERC to approve an amended version of the ISO-NE Proposal containing an exemption for transmission outages. MA DPU and NHPUC oppose the NEPOOL Proposal in its entirety. In support of the ISO-NE Proposal, MA DPU and NHPUC argue that the PI mechanism only pays those units that perform and penalizes those that do not. These joint comments largely track ISO-NE's reasoning in its filing and supporting materials, but express concern that the ISO-NE Proposal prohibits exemptions for outages outside of a resource's control, and argue that there should be an exemption for transmission outages. In opposing the NEPOOL Proposal, MA DPU and NHPUC argue that the NEPOOL Proposal would result in higher and more volatile hourly energy prices, that the performance incentives from those higher prices would be insufficient, and that the EFORp approach is not appropriate.

Joint Comments of the Vermont Department of the Public Service and the Vermont Public Service Board ("Vermont"): In joint comments, Vermont argues that neither the ISO-NE Proposal nor the NEPOOL Proposal provides a meaningful performance metric to ensure that capacity resources provide energy when called upon. Vermont urges the FERC to reject both proposals. In support of this proposition, Vermont expects the implementation of either alternative will result in significant litigation, delaying any action and diverting resources from other efforts to improve ISO-NE markets and planning. Rather than implement a proposal that has uncertain value and will promptly be tied up in litigation, Vermont proposes that the FERC direct ISO-NE to continue working with stakeholders to develop a more rigorous performance mechanism that is tied to the existing concept of a shortage event.

Comments of America's Natural Gas Alliance ("ANGA"): ANGA does not weigh in with support for either the NEPOOL Proposal or the ISO-NE Proposal as the better choice. ANGA does, however, support the objectives of both proposals, acknowledging that something needs to be done in the market to support investment in infrastructure and improve reliability.

Comments of the New England Natural Gas Industry[4]: The New England Natural Gas Industry does not take a position on which proposal should be adopted by the FERC. The New England Natural Gas Industry notes that it is encouraged that ISO-NE and NEPOOL recognize that the current FCM is dysfunctional, and is content that the long-awaited performance incentives filling is finally in front of the FERC. In reference to recent actions of the New England Gas-Electric Focus Group, as well as those of NESCOE on behalf of the six New England Governors, the New England Natural Gas Industry urges the FERC to keep the need for more natural gas pipeline infrastructure in mind when choosing which proposal to approve.

[4] The New England Natural Gas Industry identified its members as: Algonquin Gas Transmission, LLC, Iroquois Gas Transmission System, L.P., Maritimes & Northeast Pipeline, L.L.C., Portland Natural Gas Transmission System, and Tennessee Gas Pipeline Company, L.L.C.; National Grid; Northeast Gas Association; New England Local Distribution Companies (Bay State Gas Company, d/b/a Columbia Gas of Massachusetts; The Berkshire Gas Company; EnergyNorth Natural Gas, Inc., d/b/a Liberty Utilities; Connecticut Natural Gas Corporation; Fitchburg Gas and Electric Light Company; City of Holyoke, Massachusetts Gas and Electric Department; Northern Utilities, Inc.; The Southern Connecticut Gas Company; Westfield Gas & Electric Department; Repsol Energy North America, and GDF Suez Gas North America.