

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

ISO New England Inc.)	
)	Docket Nos. ER18-2364-000
)	EL18-182-0000

**REQUEST FOR REHEARING OF THE
MAINE PUBLIC UTILITIES COMMISSION**

Pursuant to Section 313(a) of the Federal Power Act (“FPA”), 16 U.S.C. § 8251(a) and Rule 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. §§ 385.713, the Maine Public Utilities Commission (“MPUC”) requests rehearing of the Commission’s December 3, 2018 Order Accepting Compliance Filing and Requiring Informational Filings, *ISO New England Inc.*, 165 FERC ¶ 61,202 (2018) (“December 3 Order”). In the December 3 Order, the Commission approved ISO-NE’s proposal for Reliability-Must-Run (“RMR”) contracts for units retained for fuel security (“Fuel Security RMRs”). The Fuel Security RMR proposal arose out of ISO-NE’s determination that two generating units and their source of LNG supply owned by Exelon Generation Company, LLC (“Exelon”) Mystic 8 and 9 (“Mystic Units”) and Distrigas, respectively, were needed for fuel security. The December 3 Order approved a regional cost allocation for Fuel Security RMRs and for units determined to be needed for both fuel security and local transmission reliability. As discussed below, the December 3 Order’s approval of regional cost allocation for Fuel Security RMRs and Fuel Security/Local Reliability RMRs fails to follow Commission precedent on cost causation. In addition, the December 3 Order does not reflect reasoned decision-making because it does not address arguments against regional cost allocation and is not supported by substantial evidence that demonstrated that Maine receives zero benefits from Fuel Security RMRs in general and the Mystic/Distrigas RMR in particular.

I. SPECIFICATION OF ERRORS

The MPUC specifies the following errors in the December 3 Order, pursuant to Rule 713(c)(1) of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.713(c)(1), warranting rehearing of the December 3 Order:

1. The December 3 Order's approval of Regional Cost Allocation for Fuel Security RMRs runs counter to Commission cost causation precedent which should have precluded allocating Fuel Security RMR Costs to Maine, since Maine does not benefit from these RMRs.
2. The December 3 Order's determination that the lack of fuel security impacts reliability of the entire region is unreasonable and not supported by substantial evidence where the uncontested record evidence demonstrated that, in the extreme circumstances posited by ISO-NE, load-shedding in Maine would be counter-productive.
3. The December 3 Order is arbitrary and capricious and not the product of reasoned decision-making because it failed to address the MPUC argument that region-wide allocation of the costs of a unit needed for both fuel security and local transmission reliability does not comport with Commission precedent on cost causation.

II. STATEMENT OF ISSUES

1. Whether the December 3 Order's approval of regional cost allocation for fuel security RMRs runs counter to Commission cost causation precedent which should have precluded allocating Fuel Security RMR costs to Maine, since Maine does not benefit from these RMRs and whether, therefore, the Commission therefore failed to engage in reasoned decision-making regarding its own precedent.¹

¹ *La. Pub. Serv. Comm'n v. FERC*, 184 F.3d 892, 897 (D.C. Cir. 1999) (for the agency to reverse its position in the face of a precedent it has not persuasively distinguished is quintessentially arbitrary and capricious."); *Motor Vehicle Mfrs. Ass'n. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983), quoting *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C.

2. Whether the December 3 Order’s determination that the lack of fuel security impacts the reliability of the entire region is unreasonable and unsupported by substantial evidence where the uncontested record evidence demonstrated that, in the extreme circumstances posited by ISO-NE, load-shedding in Maine would be counter-productive.²

3. Whether the December 3 Order is arbitrary and capricious and not the product of reasoned decision-making because it failed to address the MPUC argument that region-wide allocation of the costs of a unit needed for both fuel security and local transmission reliability does not comport with Commission precedent on cost causation.³

III. BACKGROUND

On May 1, 2018, ISO-NE filed a petition for waiver (“Waiver Petition”) of multiple provisions of the ISO-NE Open Access Transmission Tariff (OATT). The purpose of the Waiver Petition was to allow ISO-NE to enter into a RMR contract with Exelon, owners of Mystic Units 8 and 9⁴ for the purpose of addressing fuel security concerns. The MPUC and numerous other

Cir.), cert. denied, 403 U.S. 923 (1971) (“An agency's view of what is in the public interest may change, either with or without a change in circumstances. But an agency changing its course must supply a reasoned analysis ...”)

² *Sithe/Independence Power Partners, L.P. v. FERC*, 165 F.3d 944, 948 (D.C.Cir.1999) (quotations omitted). (the Commission “must be able to demonstrate that it has made a reasoned decision based upon substantial evidence in the record”); *Motor Vehicle Ass’n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (“[T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made” (citations omitted))

³ *PPL Wallingford Energy LLC v. FERC*, 419 F.3d 1194, 1198 (D.C. Cir. 2005) (an agency’s failure to respond meaningfully to objections raised by a party renders its decision arbitrary and capricious”) (citations omitted).

⁴ At the time that ISO-NE submitted the Waiver Petition, Exelon was in the process of acquiring Distrigas, an LNG storage facility that supplies fuel to the Mystic units. Exelon now owns the Distrigas facility.

parties filed protests to the ISO-NE Waiver Petition, and on July 2, 2018, the Commission issued its Show Cause Order in which it denied ISO-NE's petition and instituted a proceeding under section 206 of the FPA concerning the justness and reasonableness of the ISO-NE Tariff.⁵ Specifically, the Show Cause Order directed ISO-NE either: (1) to submit within 60 days of the Show Cause Order, interim Tariff revisions that provide for the filing of a short-term cost-of-service agreement to address demonstrated fuel security concerns and to submit by July 1, 2019 permanent Tariff revisions reflecting improvements to its market design to better address regional fuel security concerns; or (2) within 60 days of the date of the Show Cause Order, to show cause as to why the Tariff remains just and reasonable in the short-and long-term such that one or both filings is not necessary.⁶ In addition, the Commission directed ISO-NE to include, as part of its proposed tariff revisions, a cost allocation proposal for resources retained for fuel security.⁷ The Commission did not pre-approve any cost allocation methodology but stated that it would "expect any cost allocation proposal to adhere to our cost causation precedent and appropriately identify the beneficiaries of the service rendered."⁸

ISO-NE's Compliance filing proposed to allocate Fuel Security RMRs region-wide and also to allocate region-wide all of the costs of RMRs for units retained for both fuel security and local transmission reliability. The sole explanation given for allocating costs region-wide was the

⁵ *ISO New England Inc*, 164 FERC ¶ 61,103 (2018) ("Show Cause Order").

⁶ *Id.*, Ordering paragraph (F).

⁷ *Id.* at P. 58.

⁸ *Id.*

filing's reference to testimony in the Waiver Filing Petition, opining that "fuel security is a basic system operating requirement that affects the entire region."⁹

The MPUC filed a protest, accompanied by an affidavit, from MPUC engineer, Denis Bergeron. Mr. Bergeron demonstrated that the benefits of Fuel-Security RMRs did not *inure to the entire region*. Specifically, the Bergeron Affidavit demonstrated that, in the type of extreme scenario that the Mystic analysis posited, there would be *no* benefit to Maine to retaining a unit for fuel security. The reason for this is that transmission constraints would prevent the flow of power from Maine to the rest of the region.¹⁰ Therefore, as shown in the Bergeron Affidavit, the fuel security RMR "benefit" of preventing load shedding does not extend to Maine because load shedding in Maine, in the extreme circumstances posited by ISO-NE, would result in a need to back down Maine generation and therefore would be counterproductive.¹¹

Finally, with regard to the specific circumstances of the Mystic/Distrigas facilities, the Bergeron Affidavit demonstrated that Distrigas is not a regional resource. The Bergeron Affidavit demonstrated that fuel from the Distrigas facility has no physical means to reach Maine. As shown in the Bergeron Affidavit, the Algonquin and Tennessee pipeline systems in Massachusetts operate at a significantly lower pressure than Maine's Maritime and Northeast pipeline. The lack of compression and the inability to permit new compression in Massachusetts results in Distrigas serving local gas load in Massachusetts.¹² No party filed answers or counter-affidavits to the MPUC protest and the Bergeron Affidavit.

⁹ August 31 filing of ISO-NE at 21 ("August 31 filing.").

¹⁰ Bergeron Affidavit at ¶¶ 4-5.

¹¹ Bergeron Affidavit at ¶¶ 4-5

¹² *Id.* at ¶ 6.

IV. ARGUMENT

A. The December 3 Order’s Approval of Regional Cost Allocation for Fuel Security RMRs Runs Counter to Commission Cost Causation Precedent Which Should Have Precluded Allocating Fuel Security RMR Costs to Maine Since Maine Does Not Benefit from these RMRs.

In the Show Cause Order, the Commission directed the ISO to propose a cost allocation consistent with Commission cost causation precedent.¹³ Accordingly, the Commission should have examined “whether a proposal fairly assigns costs among those who cause the costs to be incurred and those who otherwise benefit from them.”¹⁴ Further, Commission precedent on cost causation requires that “cost must be allocated in a way that is roughly commensurate with the benefits receives. This precludes an allocation where the benefits received are trivial in relation to the costs to be borne.”¹⁵

In its protest, the MPUC explained why ISO-NE’s proposed cost allocation for Fuel Security RMRs was not consistent with the Commission’s precedent on cost causation. Specifically, the Bergeron Affidavit demonstrated that, in the type of extreme scenario that the Mystic analysis posited, there would be *no* benefit to Maine of retaining a unit for fuel security. The reason for this is that transmission constraints would prevent the flow of power from Maine to the rest of the region.¹⁶ Therefore, as shown in the Bergeron Affidavit, the fuel security RMR “benefit” of preventing load shedding does not extend to Maine because load shedding in Maine,

¹³ Show Cause Order at P 58.

¹⁴ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order 1000, 136 FERC ¶ 61,051 at P 536 (2011) (“Order 1000”).

¹⁵ *Id.* at P 639.

¹⁶ Bergeron Affidavit at ¶¶ 4-5.

in the extreme circumstances posited by ISO-NE, would result in a need to back down Maine generation and therefore would be counterproductive.¹⁷

The MPUC protest and Bergeron Affidavit also demonstrated that Distrigas facility, the retention of which (along with the Mystic units) triggered the current proceeding, is not a *regional* unit because fuel from the Distrigas facility has no physical means to reach Maine. Mr. Bergeron demonstrated that (1) the Algonquin and Tennessee pipeline system in Massachusetts operates at a significantly lower pressure than Maine's Maritime and Northeast Pipeline and (2) the lack of compression and the inability to permit new compression in Massachusetts results in Distrigas serving local gas load in Massachusetts.¹⁸ No party contested the facts contained in the Bergeron Affidavit.

The information in the Bergeron Affidavit and the MPUC protest demonstrated that Maine will receive zero benefit from the retention of Fuel Security units, in general, or Mystic/Distrigas, in particular. While the December 3 Order acknowledges the MPUC arguments against regional cost allocation, it failed to address them. Instead, the December 3 Order makes the following conclusory statement:

As ISO-NE has previously explained, multiple factors, including infrastructure limitations and the lack of transmission development to accommodate large projects, have contributed to current regional fuel security concerns. While some of these individual factors may seem local in nature, the lack of fuel security nevertheless impacts the reliability of the entire region. Consequentially, any mitigating measures benefit the entire region. Therefore, we find ISO-NE's proposal just and reasonable and consistent with cost-causation principles.¹⁹

¹⁷ *Id.*

¹⁸ *Id.* at ¶¶ 4-6.

¹⁹ December 3 Order at P.55.

The December 3 Order’s conclusory response does not even discuss the Commission’s cost causation precedent, much less explain how the benefits to the entire region (including Maine) are even roughly commensurate with costs. The Show Cause Order’s directive that the fuel security RMR cost allocation be consistent with Commission precedent on cost causation should have resulted in an ISO proposal for a cost allocation that demonstrated that the benefits of a fuel security RMR are at least commensurate with the costs borne by consumers throughout the region (including Maine).²⁰ In light of the showing made by the Bergeron Affidavit that Maine receives zero benefit from Fuel Security RMRs, the Commission was required to explain how allocating costs of fuel security RMRs to Maine could be roughly commensurate with the benefit Maine receives from such RMRs.²¹ This failure renders the December 3 Order arbitrary.

Further, the Commission is required to “respond meaningfully” to objections raised and address contrary evidence in more than a cursory fashion.”²² Instead of doing so, the December 3 Order simply concludes that “the lack of fuel security nevertheless impacts the reliability of the entire region,” and that therefore the mitigation of this lack of fuel security is a regional benefit. This statement doesn’t explain *why* fuel security impacts the reliability of the entire region in

²⁰ *New England Power Pool and ISO New England, Inc*, 100 FERC ¶ 61,287 at P. 61 (2002) (Approving local cost allocation where benefits of retaining units for local transmission reliability did not inure to the entire grid); *Order 1000*, 136 FERC ¶ 61,051 at P 536 (Cost causation principles require the identification of beneficiaries and examination of whether a proposal fairly assigns costs among those who cause the costs to be incurred).

²¹ *Ill. Commerce Comm’n v. FERC*, 756 F.3d 556 (2014); *Ill. Commerce Comm’n v. FERC*, 576 F.3d 470, 477–78 (7th Cir. 2009).

²² *See, PSEG Energy*, 665 F.3d at 208 (“Among other things, ‘[a]n agency’s “failure to respond meaningfully “to objections raised by a party renders its decision arbitrary and capricious.”’) (quoting *PPL Wallingford Energy, LLC v. FERC*, 419 F.3d 1194, 1198 (D.C. Cir. 2005 (quoting *Canadian Ass’n of Petroleum Producers v. FERC*, 254 F.3d 289, 299 (D.C. Cir. 2001))).

light of the uncontested information supplied by the MPUC that Fuel Security RMRs would provide zero benefits to Maine. For these reasons, the December 3 Order fails the test of reasoned decision-making.²³ Further, the determination that the lack of fuel security impacts the reliability of the entire region is not supported by substantial evidence in the record.²⁴ Instead, the record demonstrates that in the extreme circumstances posited by ISO-NE, load shedding in Maine would be counter-productive.

B. The December 3 Order is Arbitrary and Capricious and Not the Product of Reasoned Decision-Making Because It Failed to Address the MPUC Argument that Region-Wide Allocation of the Costs of a Unit Needed for both Fuel Security and Local Transmission Reliability Fails to Comport with Commission Precedent on Cost Causation.

ISO-NE's Compliance Filing proposed to allocate region wide *all* of the costs of a unit needed for both fuel security and local transmission reliability, even though in the absence of a fuel security concern, the cost of a unit needed for local transmission reliability would be allocated to the reliability region that benefited from retaining the unit. Local allocation of local transmission needs has been a long-standing rate design and is rooted in the Commission's cost causation precedent. In 2002, the Commission approved the local cost allocation of RMRs necessary to retain generators in transmission-constrained areas of Connecticut. The Commission determined that cost-causation principles supported local cost allocation of units

²³ *Mo. Pub. Serv. Comm'n v. FERC*, 628 F.2d 578, 593 (D.C. Cir. 2000), quoting, *Columbia Gas Transmission Corp.*, 628 F.2d 578, 593 (D.C. Cir. 1979) (“A passing reference to relevant factors, however, is not sufficient to satisfy the Commission's obligation to carry out ‘reasoned’ and ‘principled’ decisionmaking. We have repeatedly required the Commission to “fully articulate the basis for its decision.”)

²⁴ *See, Sithe*, 165 F.3d at 948 (quotations omitted). (the Commission “must be able to demonstrate that it has made a reasoned decision based upon substantial evidence in the record”).

needed for local transmission reliability and this cost allocation methodology has been in place since then.²⁵

As discussed in the MPUC protest, the circumstance of a dual purpose RMR is not hypothetical. Rather, this dual need circumstance is at issue in the retention of the Mystic units because ISO-NE has stated that it is highly likely that the Mystic units will be needed for local transmission reliability: “While retaining Mystic 8 & 9 for fuel security addresses a New England-wide reliability need—not a local reliability issue—if *Mystic 8 & 9 are not retained, there is a significant likelihood that the ISO would be unable to operate the system without violating the NERC reliability criteria applicable for local reliability issues.*”²⁶

Assuming, *arguendo*, that all or a portion of fuel security RMR’s costs should be allocated regionwide, a proposition that as discussed above the December 3 Order fails to justify, the rationale for allocating *all* the costs regionally in the case of a dual purpose RMR appears nowhere in the December 3 Order. Approval of this allocation proposal is directly contrary to the Commission’s determination that costs for local transmission reliability RMRs should be allocated locally. At the very least, the December 3 Order should have required that in the costs for a dual purpose RMR should be allocated partly to the region and partly to the load zone with the local transmission reliability need. However, instead of requiring a cost allocation for dual purpose RMRs that reflects cost causation, the December 3 Order, entirely fails to address this issue, other than characterizing the MPUC argument.²⁷

²⁵ For example, in *New England Power Pool*, the Commission adopted local cost allocation for RMR contracts because the contracts represented the costs of local transmission congestion and because allocation of these costs to local areas would send the proper price signals to site needed transmission. *New England Power Pool*, 100 FERC ¶ 61,287 at P. 61.

²⁶ ISO-NE Waiver Petition in Docket No. ER18-1509 at 22 (emphasis added).

²⁷ *PSEG Energy*, 665 F.3d at 208 (“To characterize objections, however, is not to answer them.”).

Accordingly, the December 3 Order is arbitrary in that it fails to allocate costs consistent with cost causation and also fails to address the MPUC arguments that cost causation requires at the very least that some of the costs of dual purpose RMRs be allocated to the load zone with local transmission reliability need.

V. CONCLUSION

For the reasons stated herein, the MPUC respectfully requests that the Commission grant rehearing. Specifically, the MPUC asks the Commission to reconsider its decision to accept (1) the region-wide allocation of the costs of RMRs for units retained for fuel security and (2) the region-wide allocation of all of the costs of RMRs for units needed for both fuel security and local reliability rather than allocating the costs partly region-wide and partly locally.

Dated: January 2, 2019

Respectfully Submitted,

/s/ Lisa Fink

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document either by first class mail or electronic service upon each party on the official service list compiled by the Secretary in this proceeding.

Dated at Hallowell, Maine, this 2nd day of January, 2019.

/s/ Lisa Fink

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