

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

ISO New England Inc.

)
) **Docket No. ER19-1428-000**
)

**NOTICE OF INTERVENTION AND PROTEST
OF THE MAINE PUBLIC UTILITIES COMMISSION**

Pursuant to Rules 211, 212, and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission¹ (“Commission”) and the Commission’s March 25, 2019 Combined Notice of Filings #1, the Maine Public Utilities Commission (“MPUC”) hereby files this Notice of Intervention and Protest. On March 25, 2019, ISO New England Inc. (“ISO-NE”) filed tariff provisions (“March 25 Filing”) to implement an “inventoried energy program” for the winters of 2023-2024 and 2024-2025. As discussed below, the MPUC protests this filing because ISO-NE has failed to demonstrate that the program is just and reasonable.

I. PRELIMINARY STATEMENT

The MPUC’s Notice of Intervention is filed pursuant to Rule 214(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.214(a)(2) (2019), and the Commission’s March 25, 2019 Combined Notice of Filings #1 in which the Commission established April 15, 2019, as the date by which interventions and comments were to be filed in the instant proceeding.

¹ 18 C.F.R. §§ 385.211, 385.212 and 385.214 (2019).

The persons to whom correspondence, pleadings, and other papers in relation to this proceeding should be addressed and the persons whose names are to be placed on the Commission's official service list are designated as follows pursuant to Rule 203, 18 C.F.R. § 385.203 (2019):

Lisa Fink, Esq.,
Counsel for the State of Maine
Public Utilities Commission
101 Second Street
Hallowell, ME 04347
Mailing Address: 18 State House Station
Augusta, ME 04333-0018
(207) 287-1389 (telephone)
lisa.fink@maine.gov

Denis Bergeron
Regional Grid Coordinator
Public Utilities Commission
101 Second Street
Hallowell, ME 04347
Mailing Address: 18 State House Station
Augusta, ME 04333-0018
(207) 287-1366 (telephone)
denis.bergeron@maine.gov

II. NOTICE OF INTERVENTION

Under Maine law, the MPUC is the state commission designated by statute with jurisdiction over rates and service of electric utilities in the state. 35-A M.R.S. § 101 *et seq.* It is, therefore, a “state commission” under the Commission’s regulations, 18 C.F.R. § 1.101(k) (2019). Accordingly, the MPUC hereby gives notice of its intervention pursuant to Rule 214(a)(2) of the Rules of Practice and Procedure of the Commission, 18 C.F.R. § 385.214(a)(2) (2019) and respectfully requests that the Commission recognize the MPUC as an intervenor in this proceeding, with all rights attendant thereto.

III. BACKGROUND

The March 25 Filing follows a series of filings and Commission orders relating to fuel security. These include ISO-NE’s Waiver Petition in which it sought a waiver of multiple provisions of the ISO-NE Open Access Transmission Tariff (“OATT”) to allow ISO-NE to enter into a cost of service (also known as a Reliability-Must-Run (“RMR”)) contract with the owners of Mystic Units 8 and 9 for the purpose of addressing fuel security concerns; the Commission 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; ISO-NE's August 31, 2018 compliance filing in which it proposed provisions allowing it to retain resources for fuel security reasons, as well as provisions for short-term cost-of-service agreements for retained units, and the Commission's order on the August 31, compliance filing.²

The March 25 Filing proposes an interim fuel security program for the winters of 2023-2024 and 2024-2025. According to ISO-NE, the program "will provide incremental compensation to resources that maintain inventoried energy during cold periods when winter energy security is most stressed."³ ISO-NE explained in the stakeholder process that it had identified four design objectives:

(a) provide similar compensation for similar service; (b) reduce the likelihood that an otherwise economic resource seeks to retire because it is not fully compensated for its winter energy security attributes in the wholesale markets; (c) simple, transparent, and can be implemented in time for CCP 14 [by June 1, 2023]; and (d) satisfies standard market design principles.⁴

In its filing, ISO-NE explains that these objectives are in tension and that the simplicity objective took precedence over the sound market design principle. Specifically, ISO-NE states that the program does not specify the value of the winter energy security attributes or the region's demand for these attributes.⁵ ISO-NE states that doing so "would add significant

² *ISO New England Inc*, 165 FERC ¶ 61,202 (2018).

³ ISO-NE's, March 25, 2019 filing proposing Inventoried Energy Program, Transmittal at 1.

⁴ NEPOOL Participants Committee, March 13, 2019 meeting, agenda item #6, Attachment A https://www.iso-ne.com/staticassets/documents/2019/03/npc_20190313_composite4.pdf.

⁵ Transmittal at 7.

complexity and likely undermine meeting the paramount objective of simplicity and timeliness.”⁶

ISO-NE estimates that this program will increase costs by approximately \$102 million at the “lower bound and \$148 million at the “upper bound” per year during this two-year program. However, ISO-NE states the actual program costs could fall above or below the upper and lower bound estimates.⁷

IV. PROTEST

A. Without Any Qualitative or Quantitative Determination of Need, There Is No Ability to Measure the Success of the Interim Program

ISO-NE has consistently stated concerns related to fuel security during the winter months. What it has failed to do is actually define the reliability requirement that it believes should be met. This is the *sine qua non* of a reliability rule as iterated by the External Market Monitor (“EMM”): “Before designing a market mechanism to ensure fuel security, it is necessary to define a clear reliability requirement that the ISO seeks to satisfy by procuring resources.”⁸ The EMM further states such a requirement “should be based on a probabilistic analysis of potential fuel supply contingencies and adopt the one-day-in-10-year standard employed in all other planning studies.”⁹

In contrast to the EMM’s recommendation that any fuel security reliability rule should define the requirement and that the requirement should be based on the one-day-in ten years Loss

⁶ *Id.*

⁷ *Id.* at 19.

⁸ Motion to Intervene Out of Time and Comment of the ISO New England External Market Monitor (“EMM”) at 9, filed on May 25, 2018 in Docket ER18-1509-000.

⁹ *Id.*

of Load requirement as determined through probabilistic analysis, the ISO-NE filing simply states reliability concerns. For example, the March 25 filing states, “[the] *potential* lack of inventoried energy available to be converted to electric energy during . . . winter cold spells where system conditions are stressed *could potentially* lead to loss of load events.”¹⁰ The filing continues that the proposed program “seeks to reduce this concern by directly compensating resources for maintaining inventoried energy that can then be converted into electric energy during such cold spells.”¹¹ The absence of any defined reliability requirement leaves open the question of how ISO-NE, the Commission or any consumer (who will pay the costs of the program) can determine whether the program is successful. Therefore, it is impossible to determine whether the cost of the program is just and reasonable or instead whether these costs simply represent a revenue stream provided in the hope that it addresses an as-yet undefined reliability standard.

ISO-NE concedes that the proposed program does not include a “robust specification of demand for the desired reliability attribute.”¹² It argues that doing so would add significant complexity, but does not explain why, over the course of a number of years in which ISO-NE has expressed concerns over winter reliability, it has never established a reliability requirement (such as one-day-in ten) that can be measured.¹³

¹⁰ Transmittal at 8 (emphasis added).

¹¹ *Id.*

¹² *Id.* at 6.

¹³ The MPUC notes in this regard that ISO-NE’s current filing follows a number of earlier market rule changes intended to address an undefined reliability metric. For example, there were a series of winter reliability programs beginning in 2013. In addition, capacity market performance incentives (PfP) which took effect in 2018 were developed as a permanent response to temporary winter reliability programs. The region re-ordered its electric market nomination time frames to better align with the gas day. ISO-NE has instituted a 21-Day Energy Assessment

Instead of pancaking one reliability program on top of another, ISO-NE should establish a reliability metric;¹⁴ then it can determine whether its program (1) is needed to meet this reliability standard, i.e., the requirement is not being met by the current markets and (2) whether the program addresses this need in a cost-effective manner.

B. The Objectives of the ISO-NE Proposed Program Appear to Conflict with the Goals of Pay for Performance.

ISO-NE states that one of the main objectives of its interim program is to “provide incremental compensation to resources that maintain inventoried energy during cold spells when winter energy security¹⁵ is most stressed.”¹⁶ This compensation, ISO-NE hopes, may deter “resources that provide winter energy security during stressed winter conditions from pursuing retirement, thereby reducing the likelihood that such resources and their reliability attributes

Forecast and Report to provide increased information of potential energy shortages to market participants. Each of these has been done in an effort to improve reliability based on the supposition that more reliability is needed than was provided by the current market rules, but there was never a determination of what level of reliability was appropriate, nor the incremental level of reliability provided by the new requirements. Thus, there was no ability to judge the effectiveness of program reforms. The increased level of reliability of each of these market reforms must have made the region more reliable, but ISO-NE has not acknowledged this. Without a reliability metric, the region is left to a “more is better” approach to resource adequacy, operation and market development.

¹⁴ The reliability metric should comport with requirements for reliability. Therefore, the metric “must be designed to achieve a specified reliability goal and must contain a technically sound means to achieve this goal” and it “does not necessarily have to reflect the optimal method, or “best practice,” for achieving its reliability goal without regard to implementation cost or historical regional infrastructure design.” Finally, the reliability metric should “achieve its reliability goal effectively and efficiently.” Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards, Order No. 672, 71 FR 8,662 (Feb. 17, 2006), FERC Stats. & Regs. Regulations Preambles ¶ 31,204 (2006). Order 672, at PP 24, 328.

¹⁵ ISO-NE has never defined what it means by “energy security,” nor has it defined what it means by “winter energy security.”

¹⁶ Transmittal at 1.

exit the market or are retained through out-of-market actions that may adversely impact the wholesale markets.”¹⁷ In trying to forestall the retirement of inefficient resources by providing additional compensation, ISO-NE now appears to be seeking to retain the same resources that were expected to retire as a result of Pay for Performance (“PfP”). Specifically, ISO-NE stated in support of its PfP program:

Less reliable, poorly performing resources cannot afford to submit lower bids in the capacity auction because the reduced capacity payments they receive will no longer cover their capacity costs. This makes poor performers less likely to clear in the capacity auction. Improving the capacity market’s performance incentives will change which resources clear, selecting a better performing, more reliable fleet, rather than being biased toward less reliable resources.”¹⁸

Thus, consumers are paying higher capacity prices in a program (PfP) that provides incentives for poorly performing resources to retire, while they would pay additional costs in the proposed program which attempts to counter the PfP incentives. The dueling incentives of these two programs provides a clear indication that the newly-proposed program is not just and reasonable.

C. ISO-NE Has Provided Indicative Program Costs, but Has Not Attempted to Estimate What Is Being Purchased.

ISO-NE provides testimony from Todd Schatzki of the Analysis Group to provide a representative estimate of the program’s total annual costs. Dr. Schatzki’s estimate ranged between \$102 million and \$148 million per year depending on the reaction to the program by eligible market participants.¹⁹ In keeping with its prior practice, ISO-NE has provided no quantitative estimate of the incremental reliability provided by its proposed program. If the

¹⁷ Geissler Testimony at 7.

¹⁸ ISO New England Inc. and New England Power Pool, Filing of Performance Incentives Market Rule Changes (“Pay for Performance”); Docket No. ER14-1050-000 at 21.

¹⁹ Transmittal at 19.

Commission approves this program, consumers in New England will know what they may be paying, but they won't know what they have bought. Accordingly, until ISO-NE can describe the additional level of reliability achieved by these proposed market reforms, the Commission should find that it is unjust and find unreasonable to impose this program's cost burden on consumers.

V. CONCLUSION

For the reasons discussed above, the MPUC protests ISO-NE's March 25 filing and respectfully requests that the Commission reject the filing.

Dated: April 12, 2019

Respectfully submitted,

/s/ Lisa Fink

Lisa Fink, Esq.
State of Maine Public Utilities Commission
101 Second Street
Hallowell, ME 04347
Mailing Address: 18 State House Station
Augusta, ME 04333-0018
(207) 287-1389 (telephone)
lisa.fink@maine.gov

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 12th day of April, 2019.

/s/ Lisa Fink

Lisa Fink
State of Maine Public Utilities Commission
101 Second Street
Hallowell, ME 04347
Mailing Address: 18 State House Station
Augusta, ME 04333-0018
(207) 287-1389 (telephone)
lisa.fink@maine.gov