
I. SPECIFICATION OF ERRORS

The MPUC specifies the following errors in the ISO-NE Waiver 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 ISO-NE Waiver Order:

1. The Show Cause Order’s adoption of ISO-NE’s methodology and assumptions in the Operational Fuel Security Analysis (“OFSA”) and Mystic Retirement Studies without undertaking any independent analysis is unsupported by substantial evidence and is not the product of reasoned decision-making.

2. The Show Cause Order is arbitrary and capricious and not the product of reasoned decision-making because it failed to address arguments and analysis challenging the assumptions used by ISO-NE in its OFSA and Mystic Retirement Studies.
3. The Show Cause Order is arbitrary and capricious because it failed to address the MPUC argument that the Mystic Retirement Studies adopted a completely new standard for determining a reliability problem three years in advance.

4. The Show Cause Order was arbitrary and capricious and not the product of reasoned decision-making because it unreasonably discounted the Pay for Performance market’s ability to provide sufficient incentives to market participants to ensure that they perform under stressed system conditions.

5. The Show Cause Order’s failure to direct ISO-NE to undertake a Transmission Security Analysis consistent with the provisions in the Tariff, even though it denied the ISO-NE waiver asking to be relieved of this requirement, is arbitrary and capricious and not the result of reasoned decision-making.

II. STATEMENT OF ISSUES

1. Whether the Show Cause Order’s adoption of ISO-NE’s methodology and assumptions in the Operational Fuel Security Analysis (“OFSA”) and Mystic Retirement Studies without undertaking any independent analysis is unsupported by substantial evidence and is not the product of reasoned decision making.¹

2. Whether the Show Cause Order is arbitrary and capricious and not the product of reasoned decision-making because it failed to address arguments and analysis challenging the assumptions used by ISO-NE in its OFSA and Mystic Retirement Studies.²

¹*Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (agency decision must “examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and choice made”) (citations omitted)

²*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); *PSEG Energy Resources & Trade LLC*, 665 F.3d 203, 028-210 ignoring arguments that on their face seem legitimate renders a decision arbitrary and capricious.
3. Whether the Show Cause Order is arbitrary and capricious and not the product of reasoned decision-making because it failed to address the MPUC argument that the Mystic Retirement Studies adopted a completely new standard for determining a reliability problem three years in advance.3

4. Whether the Show Cause Order was arbitrary and capricious and not the product of reasoned decision-making because it unreasonably discounted the Pay for Performance market’s ability to provide sufficient incentives to market participants to ensure that they perform under stressed system conditions.

5. Whether the Show Cause Order’s failure to direct ISO-NE to undertake a Transmission Security Analysis consistent with the provisions in the Tariff, even though it denied the ISO-NE waiver asking to be relieved of this requirement, is arbitrary and capricious and not the result of reasoned decision-making.

III. BACKGROUND

A. Pay for Performance Changes to the Forward Capacity Market

On January 17, 2014, ISO-NE and the New England Power Pool (NEPOOL), submitted two separate proposals to address resource performance problems in New England. ISO-NE’s proposal, called Pay for Performance (PFP) introduced a new mechanism, specifically tailored to address fuel security concerns. The Commission generally approved in concept ISO-NE’s proposed Pay for Performance changes to the Forward Capacity Market (FCM) tariff provisions, while requiring some changes to the proposal. In the Commission’s Order Denying Rehearing,

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).
the Commission affirmed that PFP was the appropriate mechanism for addressing ISO-NE’s concerns with resource performance.⁴

**B. Resilience Order and ISO-NE’s Operational Fuel Security Analysis**

On January 8, 2018, the Commission issued an order directing RTOs and other entities to file responses with the Commission focusing on how they evaluate and address resilience risks in their respective regions.⁵ On March 9, 2018, ISO-NE provided its response to the Resilience Order (the “ISO-NE Response”). The ISO-NE Response included as an attachment ISO-NE’s January 17, 2018 Operational Fuel-Security Analysis (“OFSA”). The OFSA is a deterministic analysis which ISO-NE has explained “is not a forecast or prediction of future events.” ⁶

The New England States Committee on Electricity (“NESCOE”) filed comments in response to ISO-NE’s and other RTO’s filings in that docket. NESCOE expressed significant concerns about the methodology used by ISO-NE to the extent such methodology is used to make investments.

**C. ISO-NE Petition for Waiver**

On May 1, 2018, ISO-NE filed a petition for waiver (“ISO-NE Waiver Petition”) of multiple provisions of the ISO-NE Open Access Transmission Tariff (OATT). The MPUC and numerous other 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

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proceeding under section 206 of the FPA concerning the justness and reasonableness of the ISO-NE Tariff. 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.\footnote{Show Cause Order, Ordering paragraph (F).}

IV. ARGUMENT

A. The Show Cause Order’s Adoption of ISO-NE’s Methodology and Assumptions in the OFSA and Mystic Retirement Studies Without Undertaking any Independent Analysis is Unsupported by Substantial Evidence and is Not the Result of Reasoned Decision Making.

The Show Cause Order’s conclusion “that ISO-NE has used a reasonable methodology to analyze the available data under \textit{a rational set of assumptions} to arrive at its conclusions in the OFSA and Mystic Retirement Studies,”\footnote{Show Cause Order at P 51 (emphasis added). The MPUC notes that in n.144, the Show Cause Order speaks of ISO-NE identifying a possible fuel security \textit{emergency} resulting from the outages of Mystic 8 and 9 and the Distrigas Facility when ISO-NE first published the OFSA and that the Mystic Retirement Studies confirmed this finding. The use of the term ‘emergency’ in this aside was inappropriate. The term ‘emergency’ is a term of art in the ISO-NE tariff and refers to circumstances happening in real-time (or near real-time) not three years in advance. Using the term ‘emergency’ in this matter does a disservice in suggesting incorrectly that dire events are about to occur.} does not provide any clues as to why the set of assumptions used by ISO-NE is “rational.” The Show Cause Order’s discussion makes clear that
instead of undertaking independent analysis, the Show Cause Order simply took ISO-NE’s word for the validity of its assumptions:

ISO-NE states that the input assumptions it used when conducting the Mystic Retirement Studies reflected the best available data at the time it conducted its analysis and the inputs represented either observed historical data or well-established projections. Further, according to ISO-NE, its input assumptions were sometimes even biased towards showing reduced fuel security concerns. In sum, we are persuaded that the record evidence supports the conclusion that, due largely to fuel security concerns, the retirement of Mystic 8 and 9 may cause ISO-NE to violate NERC reliability criteria.9

Simply repeating ISO-NE conclusions is not the product of reasoned decision-making.10

The Show Cause Order erred by failing to undertake any analysis of ISO-NE’s assumptions in finding that ISO’s methodology and assumptions reasonable. Instead of examining the assumptions, the Commission simply looked at the output of the modeling and determined that in 17 out of 18 of the scenarios “covering a range of possible circumstances if Mystic 8 and 9 were to retire prior to the 2022-2023 and 2023-2024 winter period,”11 ISO-NE would encounter ten-minute operating reserve depletion. Thus, the Show Cause Order appears to base its conclusion regarding the reasonableness of the ISO-NE assumptions on the number of scenarios that indicated a reserve depletion outcome. But as is acknowledged elsewhere in the Show Cause Order, the result of a model is directly driven by a set of assumptions.12 Therefore, it was unreasonable for the Show Cause Order to rely on the outcome of the model (the 17 out of

9 Show Cause Order at P 52.

10 Motor Vehicle Mfrs. Ass’n, 463 U.S. at 43; Mo. Pub. Serv. Comm’n v. FERC, 337 F.3d 1066, 1077 (D.C. Cir. 2003) (The Commission orders were arbitrary and capricious in relying upon a state agency’s prior approval to support the conclusion that rates are in the public interest, without undertaking any independent analysis to support that conclusion).

11 Show Cause Order at P 49.

12 “[I]t is indeed possible to achieve different results in a study by changing assumptions in the model used for the study.” Id. P 51.
18 scenarios) without examining the inputs that resulted in that outcome. Further, simply stating that the scenarios covered “a range of possible circumstances” does not provide any clues to what circumstances were covered and why it was reasonable to use those assumptions and not others. Indeed, Commissioner Powelson in his dissent makes clear that the OFSA is nothing more than a discussion piece: “The [OFSA] Study should be viewed for what it is: a good faith effort by ISO-NE England to inform all interested stakeholders on potential concerns the region could face in years to come.” Finally, the Show Cause Order does not provide any discussion of what NERC reliability criteria would be violated and why. Because the Show Cause Order simply accepted the ISO-NE studies without any analysis of why the assumptions used in the OFSA and Mystic Retirement Studies were reasonable, it is not the product of reasoned decision-making.

B. In Failing to Address Arguments and Analysis Challenging the Assumptions Used by ISO-NE in its OFSA and Mystic Retirement Studies, the Show Cause Order is Not the Product of Reasoned Decision Making.

While the Show Cause Order acknowledges that “it is indeed possible to achieve different results in a study by changing assumptions in the model used for the study,” it failed not only to analyze whether ISO-NE’s assumptions were reasonable, but also failed to even consider the alternative assumptions proposed by numerous parties. This failure is error.

In its protest, the MPUC pointed to the flaws in the Mystic Retirement Studies. The MPUC stated that the analysis failed to incorporate into its analysis any market simulations that would reflect the impact of PFP on fuel security. Specifically, the MPUC criticized the failure of

13 Id. P 49.

14 Show Cause Order at 2 (Powelson, Comm’r dissenting).

15 Show Cause Order at P 51.
the Mystic Retirement Studies to incorporate the effects of any of its market design changes in its analysis and stated that “[b]y ignoring how its own markets work, ISO’s analysis is guaranteed to produce an incorrect answer.”\textsuperscript{16} Similarly, many other parties addressed the flaws in the ISO-NE analysis and asked the Commission to require ISO-NE to modify its assumptions to restudy the OFSA and Mystic Retirement Studies incorporating more realistic assumptions.\textsuperscript{17}

Commissioner Glick’s dissent points to the failure of the Show Cause Order to address the flaws in the analyses identified by numerous parties:

As an initial matter, the parties to this proceeding have identified several potential flaws with the assumptions underlying ISO-NE’s analysis that deserve more careful consideration than today’s order provides. In addition, a number of parties point out that ISO-NE performed this analysis to “provide[] directional guidance” and begin a discussion of fuel security in the region, not with any intention of creating generic tariff provisions for bailing out any generator that the ISO believes is needed for fuel security.\textsuperscript{18}

The Commission is required to “respond meaningfully” to objections raised and address contrary evidence in more than a cursory fashion.”\textsuperscript{19} Instead of doing so, the Show Cause Order waves away the arguments and information provided by parties by stating, “[T]he fact that stakeholders can modify a model and/or a set of assumptions to achieve different outputs that

\textsuperscript{16} MPUC Protest at 17.

\textsuperscript{17} For example, the New Hampshire Public Utilities Commission pointed to the OFSA assumption that the New England states would not meet their statutory renewable and clean energy requirements, Comments of the New Hampshire Public Utilities Commission at 7. The Massachusetts Attorney General pointed out flaws in the Mystic Retirement Studies including assumptions regarding renewable generation, LDC load growth, and LNG availability. Comments of the Massachusetts Attorney General at 13.

\textsuperscript{18} Show Cause Order at 1 (Glick, Comm’r, dissenting).

\textsuperscript{19} See, \textit{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 \textit{PPL Wallingford Energy, LLC v. FERC}, 419 F.3d 1194, 1198 (D.C. Cir. 2005) (quoting \textit{Canadian Ass’n of Petroleum Producers v. FERC}, 254 F.3d 289, 299 (D.D. Cir. 2001))).
show a less severe fuel security outcome does not necessarily render ISO-NE’s analyses for the OFSA and Mystic Retirement Studies unreasonable.” This statement neither supports ISO-NE’s assumptions, nor addresses the proposed assumptions of other parties. It simply states a truism—that changing the model inputs affects the outcome. And this is the very reason that on rehearing, the Commission should provide the opportunity for further fuel security analysis, including an opportunity for consideration of alternative assumptions.

C. The Show Cause Order is Arbitrary and Capricious and Not the Product of Reasoned Decision-Making Because It Failed to Address the MPUC Argument that the Mystic Retirement Studies Adopted a Completely New Standard for Determining a Reliability Problem Three Years in Advance.

The Show Cause Order concedes that “fuel security analyses do not currently have an established methodological framework and that there are no industry standards or best practices for conducting such an analysis,” but fails to make any effort to establish such a framework. If the intent of the Order is to adopt different planning standards than the Commission has adopted for resource adequacy, then it should have defined the new standard and why it was diverging from the existing one.

20 Show Cause Order at P 52.

21 For example, the Mystic Retirement Studies introduced changes to the standard for determining resource adequacy three years in advance. It required no diminishment of ten-minute operating reserves and did not allow for load shedding. However, the requirements for determining the NetInstalled Capacity Requirement (NICR) allow both ten-minute operating reserve depletion and load shedding.

22 While the Show Cause Order appears to justify the use of a deterministic rather than probabilistic analysis by citing to the Commission’s acceptance of a deterministic analysis for its adoption of a near-term winter reliability program, citation to the order adopting this program does not answer the question of why the resource adequacy standards for planning for resource-adequacy needs three-years in advance should be scuttled in favor of the wholesale adoption, sans analysis, of the ISO-NE fuels security analysis, with its attendant claims of NERC violations.
While the Show Cause Order noted that the MPUC raised the objection to using a more stringent criteria for determining whether a unit is needed three years in advance than is in place for determining the installed capacity requirement, it fails to explain why such a change is reasonable. The MPUC pointed out that ten-minute reserve depletion is allowed under resource adequacy planning criteria and planning for such reserve depletion does not violate NERC standards.\(^{23}\) The Show Cause Order provides no discussion of why the depletion of ten-minute reserves and a certain level of load shedding is allowed when determining the installed capacity requirement three years in advance but is not allowed in determining three years in advance whether a unit is needed for fuel security. In fact, there is no discussion at all in the Show Cause Order regarding the standard for determining whether there is a fuel security concern three years in advance. As noted earlier, the Show Cause Order simply concludes without more that “Seventeen of the 18 scenarios showed that ISO-NE will deplete its ten-minute operating reserves which is a violation of NERC reliability criteria.”\(^{24}\) The Show Cause Order’s failure to address the arguments made by the MPUC that the depletion of a certain level of ten-minute operating reserves as well as load shedding, is allowed when planning for resource adequacy three years in advance is error.\(^{25}\)

D. The Show Cause Order was Arbitrary and Capricious and Not the Product of Reasoned Decision-Making Because It Unreasonably Discounted the Pay for Performance Market’s Ability to Provide Sufficient Incentives to Market Participants to Ensure that They Perform under Stressed System Conditions.

\(^{23}\) MPUC Protest at 18-20. See also Conditional Protest of First Light at 10 (explaining that in determining the installed capacity requirement three years in advance ten-minute reserve depletion and load shedding are acceptable planning actions).

\(^{24}\) Show Cause Order at P 49.

\(^{25}\) See PSEG, 665 F.3d at 210 (It is not enough to characterize objections; the Commission was required to answer objections that on their face seem legitimate).
The Show Cause Order acknowledged that PFP would send a price signal but repeated ISO-NE’s concern that PFP market signals would not be sufficient to replace the output of the Mystic units, given the transition to the full payment rate and the stop loss mechanism. However, if the Commission thought that changes to PFP were necessary, the reasonable course would be to tweak the market rules rather than opting for an out of market short-term fix. Commissioner Powelson, in his dissent, articulated the course that the Commission should have taken:

It is important that stakeholders not rule out changes to existing market-based mechanisms, such as Pay-for-Performance, if they find such changes necessary and sufficient to address the problem. While I recognize that Pay-for-Performance only recently became effective, the very essence of the Pay-for-Performance market design was to provide financial incentives to market participants to ensure they would be available to perform during stressed system conditions, the same conditions ISO-New England’s waiver is supposed to address. The New England region has yet to either test, or see the benefits of, the Pay-for-Performance reforms. As ISO-New England has correctly noted, additional fuel-security will likely come with a price. However, market participants should be able to compete to provide necessary services to ensure winter preparedness or fuel-security, passing the benefits of competition – lower costs – ultimately to consumers.26

Rather than rushing into an out of market solution, the Commission should have directed ISO-NE to consider whether changes to PFP were required to ensure that it delivered the correct incentives. Instead, the Show Cause Order simply repeated ISO-NE concerns about the ability of PFP to address fuel security concerns.

E. The Show Cause Order’s Failure to Direct ISO-NE to Undertake a Transmission Security Analysis, Consistent with the Provisions of the Tariff, Even Though It Denied the ISO-NE Waiver Petition Asking to Be Relieved of this Requirement, is Arbitrary and Capricious and Not the Result of Reasoned Decision-Making.

In its Petition, ISO-NE stated that it is possible that ISO-NE would determine that Mystic 8 and 9 are needed to ensure local transmission reliability in the Southeast New England zone.

26 Show Cause Order at 2 (Powelson, Comm’r, dissenting).
but asked that ISO-NE be permitted to avoid undertaking this tariff-required analysis.

Specifically, the ISO-NE Waiver Petition stated:

Treating the bids as though they exceeded the auction starting price triggers the ISO’s obligation to evaluate whether Mystic 8 & 9 should be retained to address a local reliability need under the criteria in Section III.13.2.5.2.5. Therefore, the ISO also requests waiver of Section III.13.2.5.2.5 to allow the ISO to determine that Mystic 8 & 9 are needed for reliability without performing the evaluation contemplated in Section III.13.2.5.2.5. As explained above, Section III.13.2.5.2.5 deems a resource to be needed for reliability if it is necessary to address “a local reliability issue,” and the resource’s retirement would result in the violation of NERC or NPCC criteria, or of ISO New England System Rules. Instead, with the proposed waiver of Section III.13.2.5.2.5, Mystic 8 & 9 will be retained to provide the fuel security needed to ensure reliability, as described above. 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.27

The MPUC argued in its protest that ISO-NE should be required to perform the transmission security analysis and noted that “[s]ince it has already performed this analysis for Mystic units 7 and 8, ISO-NE should be able to quickly comply with this existing tariff requirement.28 The Show Cause Order never addressed this argument. However, the logical result of the Show Cause Order’s denial of ISO’s requested waiver, should have been a direction to ISO-NE to comply with the provisions of the tariff and undertake the transmission security analysis. The Show Cause Order’s direction for ISO-NE to submit short-term tariff provisions to address fuel security did not absolve ISO-NE from complying with its obligation under the tariff. Importantly, if as suggested by ISO-NE, the transmission security analysis showed that the Mystic units were needed for transmission security, the current tariff provisions would provide for the ability to retain these Mystic units through a COS agreement to address local reliability.

27 ISO-NE Petition at 22 (emphasis added).

28 MPUC Protest at 14.
This approach would allow for “stakeholders to engage in a thorough process to evaluate the potential fuel security problems and identify durable solutions rather than another series of band-aids.”

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 the OFSA and the Mystic Retirement Studies assumptions. The MPUC further asks the Commission to direct ISO-NE to revise its assumptions to address the concerns with the OFSA and Mystic Retirement Studies raised by the MPUC and other parties. Finally, the MPUC asks the Commission to direct ISO-NE to undertake a transmission security analysis regarding the possible retirement of Mystic units 8 and 9.

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Respectfully Submitted,

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29 Show Cause Order at 1 (Glick, Comm’r dissenting).
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 1st day of August, 2018.

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