

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

ISO New England, Inc.

)

Docket No. ER23-1588-000

**JOINT PROTEST OF THE MASSACHUSETTS ATTORNEY GENERAL, THE
CONNECTICUT OFFICE OF CONSUMER COUNSEL, THE NEW HAMPSHIRE
OFFICE OF THE CONSUMER ADVOCATE, AND THE MAINE OFFICE OF THE
PUBLIC ADVOCATE**

Pursuant to the April 7, 2023, Combined Notice of Filings #1, the Attorney General of the Commonwealth of Massachusetts (“Massachusetts AG”), the Connecticut Office of Consumer Counsel (“CT OCC”), the New Hampshire Office of the Consumer Advocate (“NH OCA”), and the Maine Office of the Public Advocate (“Maine OPA”) (collectively, “Consumer Advocates”), each intervenors in this proceeding,¹ submit the following protest regarding ISO New England, Inc.’s (“ISO-NE”)’s proposed revisions (“IEP Redesign”) to update the inventoried energy program (“IEP”).²

The Federal Energy Regulatory Commission (“Commission”) should reject ISO-NE’s proposed IEP Redesign because the changes to the payment rates will result in unjust and unreasonable rates. The IEP Redesign represents a substantial re-working of a program that has been fully litigated at the Commission, appealed to the D.C. Circuit Court of Appeals where the petitions of the Massachusetts AG and others were granted in part and denied in part, and is the

¹ The Massachusetts AG, CT OCC, NH OCA, and the Maine OPA timely moved to intervene in this docket on April 18, 2023, April 20, 2023, April 25, 2023, and April 24, 2023, respectively.

² *ISO New England Inc.*, Docket No. ER23-1588-000 (April 7, 2023) (“IEP Update Filing”).

subject of a compliance filing recently approved by the Commission.³ Although ISO-NE characterizes its proposal as “parameter updates,”⁴ the IEP Redesign alters the compensation structure of the IEP in a manner that shifts substantial risk to ratepayers in the form of potential tripling of program costs without a demonstration of roughly commensurate benefits.

I. DESCRIPTION OF THE COMMENTERS

The Massachusetts AG is the chief legal officer in the Commonwealth of Massachusetts and is authorized by both state common law and by statute to institute proceedings before state and federal courts, tribunals, and commissions as she may deem to be in the public interest. The Massachusetts AG is also the Commonwealth’s ratepayer advocate. She is expressly authorized by statute to intervene on behalf of public utility ratepayers in proceedings before the Commission.⁵

The CT OCC is an independent state agency of the State of Connecticut that serves as the designated advocate for all ratepayers and consumers of electric, natural gas, water, and telecommunications utility services. The CT OCC is expressly authorized to appear in any federal regulatory proceedings where the interests of Connecticut utility ratepayers may be at stake.⁶

³ *ISO New England, Inc.*, 183 FERC ¶ 61,059 (2023) (“IEP Compliance Order”).

⁴ *See, e.g.*, IEP Update Filing, at 1.

⁵ Mass. G.L. c. 12, § 11E.

⁶ Conn. Gen. Stat. 16-2a(a) (authorizing Connecticut Office of Consumer Counsel to intervene in any federal or state proceeding involving Connecticut ratepayers’ interests).

The NH OCA is tasked pursuant to New Hampshire law with representing the interests of the state’s residential utility customers before any tribunal, including the Commission, where such interests are at issue.⁷

The MA OPA is an agency of the State of Maine and charged by Maine statute to represent the interests of utility customers in any forum, including federal regulatory proceedings "in which the subject matter of the action affects the consumers of any utility doing business in this State."⁸

II. BACKGROUND AND PROCEDURAL HISTORY

A. ISO-NE Creates the IEP

On March 25, 2019, ISO-NE filed revisions to the ISO-NE Transmission, Markets and Services Tariff (“Tariff”) to implement the IEP.⁹ ISO-NE proposed the IEP as a “bridge to [a] full, market-based solution”¹⁰ to the region’s energy security challenges.¹¹ The original purpose of the IEP was to pay resources to maintain inventoried energy in the winter in the hopes of preventing retirements and improving winter energy security.

⁷ NH RSA 363:28, II.

⁸ 35-A M.R.S. § 1702.

⁹ *ISO New England Inc., Inventoried Energy Program Filing*, Docket No. ER19-1428-000 (March 25, 2019) (“Original IEP Filing”).

¹⁰ Original IEP Filing, at 7.

¹¹ Original IEP Filing, at 1. ISO-NE developed its long-term market proposal in response to the Commission’s finding that the Tariff may be unjust and unreasonable because it fails to address specific regional fuel security concerns which could result in a violation of mandatory reliability standards. *ISO New England, Inc.*, 164 FERC ¶ 61,003 at PP 49, 54 (2018). The Commission rejected ISO-NE’s long-term market-based solution on October 30, 2020. *ISO New England, Inc.*, 173 FERC ¶ 61,106 at PP 1, 5, 49 (2020).

The IEP is a voluntary program that is designed to provide incremental compensation to resources to hold their inventoried energy during the winter months of 2023/24 and 2024/25.¹² The IEP permits resources to participate in two ways: (1) through a forward rate and a spot rate, where the spot rate is applied to deviations between the megawatt hours (“MWh”) of inventoried energy maintained and the MWhs sold forward; (2) through a spot rate only where the spot rate is applied to all MWhs if none are sold forward.¹³ The current forward rate is a fixed rate of \$82.49/MWh and the spot rate is \$8.25/MWh for each trigger event.¹⁴ The forward rate represents an estimate of the minimum compensation that a natural-gas only resource would require to enter into a winter peaking supply contract for vaporized liquefied natural gas (“LNG”).¹⁵ A trigger event is any day in December, January, or February where the observed average of the high and low temperatures is less than or equal to 17 degrees Fahrenheit measured at the Bradley International Airport in Windsor Locks, Connecticut.¹⁶ The quantity of inventoried energy that each resource can provide is capped at 72 hours.¹⁷ In its Original IEP Filing, ISO-NE estimated that the program could cost between \$102 and \$148 million per year,

¹² IEP Update Filing, at 3-4.

¹³ IEP Update Filing, at 4; *ISO New England Inc.*, 171 FERC ¶ 61,235 at P 6 (“June 2020 Order”), *reh’g denied*, 172 FERC ¶ 62,095 (2020); *petition for review granted in part and denied in part sub nom, Belmont Mun. Light Dept. v. FERC*, 38 F.4th 173 (D.C. Cir. 2022) (“*Belmont*”).

¹⁴ IEP Update Filing, at 4.

¹⁵ June 2020 Order at P 7.

¹⁶ IEP Update Filing, at 4.

¹⁷ June 2020 Order at P 10.

corresponding to 1.2 million and 1.8 million MWh of inventoried energy, respectively, sold forward and maintained for each inventoried energy day.¹⁸

B. June 2020 Order and *Belmont* Decision

The Commission accepted the IEP on June 18, 2020.¹⁹ Several entities, including the Massachusetts AG, appealed the Commission’s decision.²⁰ On appeal, the D.C. Circuit vacated the Commission’s approval in part, concluding that nuclear, biomass, coal, and hydroelectric resources would not be incentivized to procure additional fuel or provide an incremental winter reliability benefit.²¹ On remand, FERC directed ISO-NE to submit a compliance filing with revised Tariff provisions that removed nuclear, coal, biomass, and hydroelectric resources from IEP eligibility.²² ISO-NE submitted its compliance filing on November 22, 2022, which was recently approved by the Commission.²³

C. ISO-NE’S Determination That a Winter Program Was Not Needed for Winter 2022/23

In the weeks leading up to July of 2022, ISO-NE conducted an analysis regarding whether the region should pursue an out-of-market program for winter 2022/23.²⁴ Specifically,

¹⁸ June 2020 Order at P 17. These estimates were based on assumptions regarding program participation, resource performance, and winter severity. Original IEP Filing, at 19.

¹⁹ June 2020 Order; *see also* IEP Update Filing n. 12 (describing procedural history prior to the June 2020 Order).

²⁰ *Belmont*, at 177-78.

²¹ *Belmont*, at 178-79, 186-87.

²² *ISO New England Inc.*, 180 FERC ¶ 61,181 P 7 (2022).

²³ *See* IEP Compliance Order.

²⁴ ISO-NE, Winter 2022/23 Analysis: Assessment and Recommendations, July 14, 2022 (“ISO-NE Winter 2022/23 Analysis”), at Slide 2 https://www.iso-ne.com/static-assets/documents/2022/07/a09_mc_2022_07_12-14_winter_2022_2023_presentation.pptx. In

ISO-NE considered whether to reactivate the former winter reliability program (“WRP”)²⁵ or accelerate the implementation of the IEP.²⁶ ISO-NE recommended against pursuing either option for Winter 2022/23, concluding that:

- Neither [program] is expected to provide significant benefits under extreme weather conditions as their incremental reliability benefits are minimal given prevailing market conditions;
- The costs are significant[; and]
- [Both programs may] undermine the performance of the market and other resources’ performance incentives.²⁷

ISO-NE’s July 2022 analysis identified several pros and cons associated with implementing each program for winter 2022/23.²⁸ With respect to each program, ISO-NE identified “speculative benefits, high cost” as a con of implementation for the WRP and IEP with indicative costs of \$170 million²⁹ and \$157 million, respectively.³⁰ For the WRP, ISO-NE

the weeks leading up to the presentation, ISO-NE assessed: (1) operational analyses of fuel surveys/discussions with resource owners about expected fuel inventories; (2) scenario modeling of regional energy adequacy under various operating conditions; and (3) and evaluation of the winter reliability program (“WRP”) and IEP including updated indicative program rates and costs. *Id.*

²⁵ The WRP refers to ISO-NE’s three-year program that ran for the 2015/16, 2016/17, and 2017/18 winters which made incremental payments for stored energy inventories and was restricted to oil and natural gas-fueled resources and certain demand response participants. *See ISO New England, Inc.*, 152 FERC ¶ 61,190 at PP 2-7, 16 (2015), *reh’g denied*, 154 FERC ¶ 61,133 (2016).

²⁶ ISO-NE Winter 2022/23 Analysis, at Slide 20.

²⁷ ISO-NE Winter 2022/23 Analysis, at Slide 5.

²⁸ ISO-NE Winter 2022/23 Analysis, at Slides 24, 28.

²⁹ ISO-NE noted that this estimated program costs is significantly higher than the 2017/18 program cost of \$25 million. ISO-NE Winter 2022/23 Analysis, at Slide 22.

³⁰ ISO-NE Winter 2022/23 Analysis, at Slides 24, 27, 28,

reasoned that “[f]orward fuel and power prices show oil is ‘in the money’ for winter 2022/23 with no program, implying there are strong incentives to maintain inventory without the program.”³¹ With respect to the IEP, ISO-NE found that it “cannot quantify incremental reliability benefits, despite the (potentially) high consumer costs.”³² In summary, ISO-NE concluded that “[t]he limited reliability benefits associated with the programs are driven by expected fuel inventories leading for this winter, the current market fundamentals that make such fuels ‘in the money’ this winter, and ISO and regional initiatives to improve winter reliability including pay-for-performance (“PfP”) opportunity cost offers, and the 21-day energy assessment.”³³

D. Proposed IEP Changes

Almost four years after the Original IEP Filing, ISO-NE filed the IEP Redesign. The most significant change that ISO-NE proposes is to the IEP’s compensation rate.³⁴ As noted above, the current forward rate is \$82.49/MWh of inventoried energy and represents an estimate of the minimum compensation that a natural-gas only resource would require to enter into a winter peaking supply contract for vaporized LNG.³⁵ According to ISO-NE witness Dr. Todd Schatzki, “the market for LNG has experienced higher and more volatile prices that have

³¹ ISO-NE Winter 2022/23 Analysis, at Slide 24.

³² ISO-NE Winter 2022/23 Analysis, at Slide 28.

³³ ISO-NE Winter 2022/23 Analysis, at Slide 29.

³⁴ IEP Update Filing, at 5. In addition to changes to the compensation rate, ISO-NE also proposes further updates that fall into two categories: (1) updates to the natural gas contract eligibility requirements; and (2) updates to clarify the IEP provisions and improve the program’s administration. *Id.* The Consumer Advocates’ protest, however, centers around ISO-NE’s proposed changes to the IEP compensation rate.

³⁵ June 2020 Order at P 8.

increased both the cost and uncertainty of securing winter inventoried energy” since the rate was set in 2019.³⁶ As a result, Dr. Schatzki contended, a “failure to adjust the rate”³⁷ to account for the substantial changes in global market conditions for LNG “*could* diminish the program’s ability to cover market participants’ costs to secure fuel supply, and thus limit the incremental inventoried energy incited by the program to improve winter reliability.”³⁸

To address the market change in global LNG prices, ISO-NE proposes to use an indexed rate in lieu of a fixed rate to set the IEP forward rate.³⁹ To determine the indexed rate formula, Dr. Schatzki calculated the rate for all weeks from October 1, 2021 through November 17, 2022 using the IEP model, then developed a regression equation that estimated the relationship between the modeled forward rate, the commodity price,⁴⁰ and the liquidation price.⁴¹ In the

³⁶ Schatzki Testimony, at 5.

³⁷ Schatzki Testimony, at 5.

³⁸ Schatzki Testimony, at 5 (emphasis added); *see also* Martin Testimony, at 3 (“These unprecedented market changes have the *potential* to impact the effectiveness of the program adversely because of the way that the compensation for participation in the IEP is currently calculated.”) (emphasis added).

³⁹ Schatzki Testimony, at 13-14. In addition to changing the structure of the rate, ISO-NE also proposes four changes to the rate calculation: (1) assumed contract structure is changed from a call option to a take-or pay contract; (2) liquidation costs are included in the IEP model; market data used in the Monte Carlo simulations are updated; and (4) assumptions used in calculating incremental ISO-NE energy revenues are adjusted. Schatzki Testimony, at 9.

⁴⁰ The commodity price is based on the average of December, January, and February Dutch TTF futures for winter 2022/23, 2023/24 or 2024/25 delivery. The futures prices are averaged weekly for each winter separately over the period of October 1, 2021 to November 17, 2022. Schatzki Testimony, at 16.

⁴¹ Schatzki Testimony, at 14-16. The liquidation price is based on Algonquin Citygates (“ACG”) forward price for February 2023, 2025, or 2025 delivery. The forward prices are averaged weekly for each February separately over the period of October 1, 2021 to November 17, 2022. Schatzki Testimony, at 16.

indexed rate formula, the rate, in \$ per MWh, is equal to (1) 45.98 plus (2) 3.25 the average Dutch TTF price for winter delivery⁴² minus (3) 0.59 times the ACG price for February delivery.⁴³

ISO-NE proposes to cap the forward rate at \$288 per MWh to account for factors not accounted for in the IEP model.⁴⁴ Assuming 1.41 million MWh of inventoried energy sold forward and maintained during inventoried energy days throughout the season, a capped rate would result in an “upper bound” cost of approximately \$406 million per year of the IEP (totaling \$812 million for both program years)—an amount nearly triple ISO-NE’s “upper bound” estimate of program costs under the original IEP.⁴⁵

Following the NEPOOL stakeholder process, the NEPOOL Markets Committee approved it with a vote of 81.62 percent.⁴⁶ The Participants Committee approved the IEP Redesign by a vote of 92.33 percent vote in favor.⁴⁷ While NEPOOL generally supported the IEP Redesign, the Consumer Advocates did not.

⁴² The value for the Dutch TTF priced used to calculate the rate for a given winter is the average of the December, January, and February Dutch TTF Natural Gas Last Day Financial Futures prices for that winter period from July 17 to 31 preceding the winter period. Schatzki Testimony, at 17.

⁴³ Schatzki Testimony, at 17. The value for the ACG price used to calculate the rate for a given winter is the average of the February ACG Fixed Price Future price for that winter period on July 17 to 31 preceding the winter period. Schatzki Testimony, at 18.

⁴⁴ Schatzki Testimony, at 22.

⁴⁵ Schatzki Testimony, at 24-25. Dr. Schatzki states that “[g]iven the Mystic cost-of-service agreement (in place for winter 2023/24), pipeline constraints, and other market factors, actual participation of LNG supply would likely be below the program’s maximum eligible quantity, particularly for winter 2023/24.” Schatzki Testimony, at 25.

⁴⁶ IEP Update Filing, at 12.

⁴⁷ *Id.*; see *Id.* n.71 (describing the participants opposing the IEP Redesign, including the Consumer Advocates).

III. PROTEST

A. Standard of Review

In reviewing a Section 205 filing, the Commission must determine whether the proposed rates are just and reasonable.⁴⁸ In ensuring that rates are just and reasonable, the Commission must protect consumers from “excessive rates and charges.”⁴⁹ As the proponent, ISO-NE bears the burden of establishing that the proposed IEP Redesign is just and reasonable.⁵⁰ While Commission determinations as to whether electric rates are just and reasonable receive deference, they must be “supported by substantial evidence” and the method of determination must be “consistent with past practice or adequately justified.”⁵¹ A reviewing court will “set aside any rate, even one within the zone of reasonableness,” if the Commission’s procedure or methodology in making its determination is “flawed.”⁵²

B. The Commission Should Reject the IEP Redesign Because It Will Not Result in Just and Reasonable Rates.

The Commission should reject the IEP Redesign because ISO-NE has failed to meet its burden under Section 205 to demonstrate that it will result in just and reasonable rates because:

(1) ISO-NE has failed to provide substantial evidence demonstrating that consumers will likely

⁴⁸ 16 U.S.C. § 824d(a); *Emera Maine v. FERC*, 854 F.3d 9, 19-20 (D.C. Cir. 2017) (internal quotations and citations omitted).

⁴⁹ *NextEra Energy Res., LLC v. FERC*, 989 F.3d 14, 21 (D.C. Cir. 2018).

⁵⁰ *NorthWestern Corp.*, 155 FERC ¶ 61,158 at PP 27–29 (2016), *rev. denied*, 884 F.3d 1176 (2018); *see also* June 2020 Order P 57 (“The interim nature of the program does not relieve ISO-NE of the need to demonstrate that the [IEP] is just and reasonable . . .”).

⁵¹ *Emera Maine*, 854 F.3d, 22 (internal quotations and citations omitted).

⁵² *Id.* at 23 (internal quotations and citations omitted).

receive benefits that are roughly commensurate with the IEP’s potential costs; (2) the IEP Redesign could result in a windfall to oil resources; and (3) in addition to fuel market changes, there have been other changes in the region since the IEP’s inception that weigh against the justness and reasonableness of the IEP Redesign. The Consumer Advocates discuss each of these points in more detail below.

1. *ISO-NE Failed to Provide Substantial Evidence Demonstrating that the Potential Costs Under the IEP Redesign Are Roughly Commensurate with Consumer Benefits.*

ISO-NE has failed to provide substantial evidence demonstrating that consumers will likely receive benefits that are roughly commensurate with the \$812 million in costs that could potentially result from the IEP Redesign.

The Consumer Advocates recognize and appreciate the Commission’s concerns surrounding winter reliability in New England⁵³ and agree with stakeholders in the region that a long-term solution is needed.⁵⁴ The fact that concerns regarding winter reliability and energy security in New England exist, however, does not automatically mean that any proposal that throws money at the problem and purports to address those concerns is just and reasonable.⁵⁵

Although rates need not be supported by analyses showing costs and benefits with exacting precision, a proponent must show that costs will be commensurate with the benefits that

⁵³ See, e.g., *RENEW Northeast, Inc. and the American Clean Power Association v. ISO New England, Inc.*, 182 FERC ¶ 61,085 P 52 (2023); *ISO New England, Inc.*, 182 FERC ¶ 61,137 (2023) (“March 2023 Order”) (Clements, Comm’r, concurring, at P 2).

⁵⁴ March 2023 Order (Clements, Comm’r, concurring, at P 2 n.3).

⁵⁵ See June 2020 Order (Glick, Comm’r, concurring, at P 3 (“[T]hat does not mean that every proposal that purports to address fuel security is a good idea.”)).

ratepayers receive.⁵⁶ Indeed, the Commission must have “articulable and plausible reason to believe” benefits are “at least roughly commensurate” with allocated costs.⁵⁷ ISO-NE, however, fails to present substantial evidence that would give the Commission plausible reason to believe that the IEP Redesign will yield benefits that are roughly commensurate with the potential near tripling of program costs.⁵⁸ Indeed, ISO-NE lacks evidence on several important aspects of both the costs and benefits of the IEP Redesign.

First, and most importantly, ISO-NE has not assessed, and the region still does not know, how much inventoried energy the region needs to ensure or meaningfully improve winter reliability.⁵⁹ While the Commission did not require this demonstration under the Original IEP,⁶⁰ the IEP Redesign’s potential tripling of costs necessitates such a determination. The need to control costs is especially salient given that, as discussed in more detail in *Section III(B)4, infra*,

⁵⁶ *Old Dominion Elec. Coop. v. FERC*, 898 F.3d 1254, 1263 (D.C. Cir 2018); *see also ISO New England Inc.*, 147 FERC ¶ 61,172 at P 23 (2014) (“PFP Order”) (finding consumers cannot be forced “to pay for capacity without receiving commensurate reliability benefits).

⁵⁷ *Ill. Commerce Comm’n v. FERC*, 576 F.3d 470, at 477 (7th Cir. 2009).

⁵⁸ The Consumer Advocates note that this increase in program costs already accounts for the reduction in costs associated with the technologies eliminated from IEP participation by *Belmont*. IEP Update Filing, at 4. Similarly, this amount does not include any assessment of potential impacts to energy market offers of resources increasing their bids to reflect opportunity costs.

⁵⁹ Given the timing of the IEP Redesign, it is also unable to achieve the second category of benefits that the Commission found may result from the IEP: decreasing the likelihood of power plant retirements. *See* June 2020 Order, at PP 12, 49, 61; *see also* ISO-NE Winter 2022/23 Analysis, at Slide 28 (acknowledging that a con of implementing a higher priced IEP for winter 2022/23 is that it “[w]ill not support entry/exit decisions that increase region’s inventoried energy capability (a principal goal of the program). An IEP for this winter, long after the FCA was run, means fuel secure resources have already made entry/exit decisions this year without considering potential program revenues.”).

⁶⁰ June 2020 Order at P 58.

consumers are already paying hundreds of millions of dollars in highly volatile costs associated with the Mystic cost-of-service agreement (“Mystic COSA”) in the name of fuel security which will overlap with the first year of the IEP.⁶¹ Without knowing how much inventoried energy the region needs, there are no contours around the reliability objective that IEP seeks to achieve and, in turn, no benchmark to determine whether the potential substantial increase in costs to consumers to try to achieve such objective(s) under the IEP Redesign is roughly commensurate with those benefits (*i.e.*, just and reasonable).

Similarly, ISO-NE has not provided any analysis quantifying the amount of incremental inventoried energy the indexed rate is likely to attract as compared to the fixed rate of the current IEP.⁶² Rather, ISO-NE relies on general claims such as the IEP Redesign is “designed to align key commercial parameters with current and expected market conditions in order to preserve the ability of the IEP to attract incremental inventoried energy to support winter reliability . . .”⁶³; “unprecedented market changes have the *potential* to impact the effectiveness of the program adversely . . .”⁶⁴; and “a failure to adjust the rate ahead of each winter period *could* diminish the program’s ability to cover Market Participants’ costs to secure fuel supply, and limit the incremental inventoried energy incited by the program to improve winter reliability.”⁶⁵

⁶¹ See June 2020 Order P 78 (recognizing that improving fuel security is the goal under the IEP and fuel security cost-of-service agreements); ISO-NE Monthly Market Operations Report March 2023 (“March 2023 Operations Report”), at 59 https://www.iso-ne.com/static-assets/documents/2023/04/2023_03_mnthly_market_rpt.pdf.

⁶² ISO-NE acknowledges that it “cannot guarantee . . . that the program will incent specific resources to take precise actions that improve winter energy security . . .” Original IEP Filing, at 7.

⁶³ Martin Testimony, at 5.

⁶⁴ Martin Testimony, at 3 (emphasis added)

⁶⁵ IEP Update Filing, at 6 (citing Schatzki Testimony, at 5) (emphasis added).

Although it is logical that a rate set closer to the winter season is more likely to reflect generator costs of securing inventoried energy (albeit not guaranteed), this change comes without a corresponding demonstration of benefits to consumers in the form of “incremental inventoried energy to support winter reliability” or “ensur[ing] winter reliability on the coldest winter days” Thus, the indexed rate proposal represents an update that focuses on costs without adequate consideration of what benefits may accrue to consumers as a result.⁶⁶ Moreover, any potential benefit that an indexed rate may deliver comes with a flip side—it directly ties the costs of the program and consumer cost impacts to the high-priced and volatile global LNG markets that have admittedly exceeded assumptions included in the original design of the IEP.⁶⁷ Finally, the IEP could interfere with Pfp⁶⁸ incentives that occur during times of system stress because of the substantial overlap in the objectives of each program.

To determine whether this increased risk and potential for substantially increased costs to consumers is just and reasonable, the Commission would have to have a sense of the incremental amount of inventoried energy that may result from the fixed rate and the indexed rate, and how each compares to the actual amount of inventoried energy that the region needs to meaningfully

⁶⁶ See, e.g., Analysis Group Inventoried Energy Program Response to Stakeholders, January 12, 20213, Slide 3 https://www.iso-ne.com/static-assets/documents/2023/01/a06b_mc_2023_01_10-12_iep_analysis_group_presentation.pdf (“As the proposed cap reflects considerations related to costs and not benefits (e.g., improved reliability), the cap would not necessarily be appropriate for all programs or market rules.”).

⁶⁷ Martin Testimony, at 5. In addition to the change to an indexed rate, ISO-NE proposes changes to the rate calculation methodology that also increases risks and costs to consumers, *i.e.*, changing the contract structure to a take or pay contract, including liquidation costs in the IEP model, and changing assumptions used in calculating incremental ISO-NE energy revenues in a manner that increases the forward rate. Schatzki Testimony, at 9.

⁶⁸ Pfp aims to incentivize resources to take steps to ensure that they are capable of producing electricity whenever a Pfp event occurs. See generally Pfp Order at PP 36-40, 63-64 (2014) (discussing Pfp).

improve and/or ensure winter reliability. ISO-NE does not claim that the current court-approved design will be ineffectual and as described above, ISO-NE has not provided any analysis to allow the Commission to perform such an assessment. How the indexed rate will stack up against the fixed rate in attracting incremental inventoried energy remains an unanswered question while shifting substantial cost risk to consumers without any meaningfully quantifiable benefit.

The significance of the fuel market changes that have occurred since the Original IEP Filing, the substantial shift of risk to consumers, and the potential for up to approximately \$812 million in program costs over two winters requires a more calibrated and precise approach to costs and benefits of the IEP than ISO-NE has provided. In short, the IEP Redesign asks consumers to pay for a program in hopes that it supports winter reliability to some unknown extent at an unknown and potentially extremely high cost that is tied to a volatile global LNG market. Such an arrangement is not just and reasonable, and the Commission should reject it.

2. *ISO-NE Has Recognized the Importance of Evaluating Potential Costs and Benefits of Implementing an Out-Of-Market Fuel Program.*

As discussed in detail in *Section II(C), supra*, last summer, ISO-NE assessed the costs and benefits associated with implementing the former WRP or accelerating the IEP for winter of 2022/23. ISO-NE ultimately recommended against pursuing either program for winter 2022/23. ISO-NE's basis for rejecting these programs was threefold: (1) neither program would provide significant benefit under extreme weather conditions as their "incremental reliability benefits are minimal given prevailing market conditions; (2) the costs for the programs were significant; and (3) the program may undermine the performance of the market and other resources' performance incentives.⁶⁹

⁶⁹ ISO-NE Winter 2022/23 Analysis, Slide 5.

ISO-NE's assessment of the costs and benefits and ultimate conclusion not to implement a fuel program for winter 2022/23 underscores the notion that just because a program can be implemented for winter reliability does not automatically mean that the program will come with benefits that justify costs (*i.e.*, just and reasonable).⁷⁰ It also demonstrates that ISO-NE is capable of conducting a more detailed analysis of consumer costs and benefits than it provides in this docket. Moreover, ISO-NE has provided no indication that market conditions that supported these conclusions will be any different for the two winters when the IEP is in place.

3. *The IEP Redesign Could Result in a Windfall to Oil Resources.*

The unexpected market trends that ISO-NE claims require the IEP Redesign also demonstrate the likelihood of another unjust and unreasonable outcome: indexing the IEP forward rate to the Dutch TTF LNG market may result in windfall profits to oil generators. Dr. Schatzki's testimony demonstrates that LNG costs have been rising faster than oil costs, such that, in September 2022, LNG became more expensive than oil on a per MMBtu basis with the Dutch TTF far outpricing other global markets.⁷¹

A continued difference in price between oil and LNG will likely result in windfall profits for oil-burning generators under an IEP where the rate is pegged to a global LNG market index. Keeping the pricing structure of the current IEP program will reduce the stark differences

⁷⁰ See Section III(B)1, *generally*.

⁷¹ See Schatzki Testimony, at 6, Figure 1; *see also* Analysis Group Inventoried Energy Program: Reevaluation of Forward Rate and Program Costs, at Slide 6 (November 2, 2022) (“Unlike recent history, LNG now has higher price than fuel oil (on a \$/MMBtu basis).”) https://www.iso-ne.com/static-assets/documents/2022/11/a04a_mc_2022_11_8-10_iep_parameter_updates_analysis_group_presentation.pdf

between types of resources and reduce the likelihood of windfall profits to oil-burning generators.⁷²

4. *In Addition to Fuel Market Changes, There Have Been Other Changes in the Region That the Commission Should Consider in Determining Whether the IEP Redesign Is Just and Reasonable.*

ISO-NE's proposal focuses on recent unprecedented fuel market changes and their impacts on generator costs for securing fuel. These unprecedented changes, however, have also profoundly impacted consumers in the region. Customers in New England states face record-breaking electricity rates and are struggling to pay their bills. For instance, in Connecticut, the default service rate for electricity for Eversource residential customers has ballooned from 8.391 cents per kWh in for the first half of 2021 to 24.172 cents per kWh for first six months of 2023.⁷³ Similarly, customers of United Illuminating have seen an increase from 9.3694 cents per kWh in the January to June portion of 2021 to 21.9429 cents per kWh in January – June of 2023.⁷⁴ Massachusetts consumers have experienced a similar spike in rates with all three distribution utilities. Rates for National Grid residential customers increased from 12.388 cents per kWh for the November 2020 to April 2021 period, to 33.891 cents per kWh for November 2022 to April 2023.⁷⁵ Rates for Eversource's eastern and western Massachusetts residential customers

⁷² Another way to avoid this outcome could be setting separate payment rates for oil and LNG under the IEP.

⁷³ See Energize Connecticut Residential Generation Rates (available at: <https://energizect.com/rate-board-residential-standard-service-generation-rates>).

⁷⁴ *Id.*

⁷⁵ See Basic Service Information and Rates, Additional Resources, View Basic Service Prices XLSX Spreadsheet (available at: <https://www.mass.gov/info-details/basic-service-information-and-rates#related->).

increased from 11.795 and 10.708 cents per kWh for January to June 2021 period, to 25.776 and 21.991 cents per kWh for January to June 2023, respectively.⁷⁶ Rates for Unital's Massachusetts residential customers increased from 11.239 cents per kWh for the December 2020 to May 2021 period to 21.429 cents per kWh for January to July 2023.⁷⁷ In New Hampshire, default energy service rates for customers who continue to rely on the incumbent distribution utility for electricity have more than doubled over the past year. For Eversource customers, the default energy service rate was 10.7 cents per kWh a year ago and is now 20.2 cents.⁷⁸ For customers of Granite State Electric Company d/b/a Liberty, the rate is now 22 cents per kWh as compared to 10.2 cents a year ago.⁷⁹ In Unital's service territory, in 2022 the rate was already high a year ago at 17.5 cents and has since increased to nearly 26 cents.⁸⁰ In Maine, default service rates have increased by approximately fifty percent over the past year. For Central Maine Power residential customers, the standard offer rate was 11.8 cents per kWh a year ago and is now 17.6 cents.⁸¹ For residential customers of Versant Power, the rate was 11.7 cents a year ago and is now 16.4 cents.⁸²

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Office of the Consumer Advocate RateWatcher (available at: <https://www.oca.nh.gov/utilities-and-rates/ratewatcher>)

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ Maine Public Utilities Commission Standard Offer Rates for Central Maine Power (available at: <https://www.maine.gov/mpuc/regulated-utilities/electricity/standard-offer-rates/cmp>).

⁸² Maine Public Utilities Commission Standard Offer Rates for Versant Power (available at: <https://www.maine.gov/mpuc/regulated-utilities/electricity/standard-offer-rates/bhd>).

Moreover, New England consumers are saddled with the extremely high and volatile costs of the Mystic COSA. Since June of 2022, monthly charges have ranged from \$2.5 million to nearly \$120 million.⁸³ From June 2022 through February of 2023, the Mystic COSA costs totaled nearly \$390 million.⁸⁴

The volatility and high costs of the Mystic COSA have been a significant concern for many stakeholders in the region. As early as September 2022 several load-serving entities posited that “[t]he Mystic [COSA] is significant in size, difficult to manage, and virtually impossible to hedge.”⁸⁵ This uncertainty can result in greater risk premiums from suppliers in bids for electric supply, particularly default service supply.⁸⁶ In fact, distribution utilities in New England have sought to modify their default service procurements to potentially minimize such risk premiums. For example, in Massachusetts, National Grid proposed to exclude the Mystic COSA costs from its default service procurements through the end of the Mystic COSA “to increase supplier participation in the solicitation process, which, in turn, may result in bud responses with lower risk premiums and, therefore, result in lower basic service rates.”⁸⁷

⁸³ March 2023 Operations Report, at 59.

⁸⁴ *Id.*

⁸⁵ See Letter from LSE Group to Gordon van Welie, President and CEO of ISO New England, and Vamsi Chadalavada, Exec. VP and COO of ISO New England, at 1 (Sept. 29, 2022) (<https://www.iso-ne.com/static-assets/documents/2022/10/npc-20221006-composite4.pdf>, at 26-28).

⁸⁶ *Id.* at 2.

⁸⁷ Massachusetts D.P.U. 22-BSF-D4, at 1, 11-12 (December 9, 2022) (available at: <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/16355979>). Under National Grid’s proposal, Mystic COSA costs would be estimated and included in default service rates rather than in bids submitted by suppliers. *Id.* at 6. The Massachusetts DPU ultimately found that the record was insufficient to support the Company’s request. *Id.* at 13-14.

Similarly, the Maine Public Utilities Commission (“Maine PUC”) recently selected one or more bids for Central Maine Power’s service territory to pass through to consumers dollar-for-dollar recovery of Mystic COSA and IEP costs in response to concerns expressed in the bidding process regarding the extraordinary level and volatility of these costs.⁸⁸ According to the Maine PUC, “[t]he acceptance of bids that pass through actual costs avoids incorporating into rates the risk premiums that the competitive power providers would otherwise utilize to hedge against the unpredictable nature of ISO-NE’s assessment of the specified regional fuel security initiative costs.”⁸⁹

The Commission can and should consider how recent unprecedented electric rates and the high and volatile costs that consumers are paying under the Mystic COSA for fuel security weigh against the justness and reasonableness of the IEP Redesign.

C. An Approved IEP Already Exists, So Rejection of the IEP Redesign Will Not Leave the Region Without an Interim Winter Reliability Program.

Changes to the Tariff will place the region’s IEP program once more into limbo, with litigation and potential court challenges delaying implementation of the proposed program. As pointed out in *Section II(B), supra*, there has been substantial litigation over the IEP already, in part due to potential program costs and lack of demonstrated benefits. Given this context, ISO-NE must provide strong justification for changing the design and expanding the program in ways that dramatically increase costs. To date, it has not done so.

⁸⁸ State of Maine Public Utilities Commission, Order Designating Standard Offer Providers, Docket No. 2022-0091, at 7-8 (November 16, 2022).

⁸⁹ *Id.* at 8.

More analysis and research must be done under the current, nascent program to determine if changes are necessary or advisable. As previously noted, ISO-NE does not claim that the fully litigated IEP design will be ineffectual. Indeed, in responding to stakeholder concerns earlier this year, Analysis Group noted that that even in a “high-price” energy market scenario, “it is likely that [the rate under the existing IEP] would attract *some* incremental energy.”⁹⁰ Moreover, as discussed in *Section III(B)3, supra*, the current payment rate is likely to attract participation from oil resources regardless of what happens with the more volatile LNG market. Further, the region will have firm LNG through the Mystic COSA for winter 2023/24 regardless of the IEP, rendering additional LNG participation less relevant in the first year of the IEP.

The Commission’s rejection of the IEP Redesign as filed would not prevent ISO-NE from making a subsequent filing supported by substantial evidence to revise the IEP based on the performance of the program’s original design in the first year. To the extent that ISO-NE finds that design changes are warranted for the second year of the program, ISO-NE can propose such changes. The Consumer Advocates recognize that fuel reliability and adequate fuel inventory to meet winter reliability needs are important goals, but the record evidence here fails to support the changes to the program that ISO-NE has suggested. There is simply inadequate evidence or justification to changing the IEP now, after years of Commission review and subsequent litigation, when the benefits of those changes have not been rigorously quantified, where the program rate is pegged to volatile LNG markets shifting substantial risk to consumers, and where out-of-market programs may reduce existing incentives or advantages forecasted by ISO-NE.

⁹⁰ “Inventoried Energy Program: Response to Stakeholders,” Todd Schatzki, Analysis Group, ISO-NE Market Committee, slide 12 (January 12, 2023) (emphasis in original) (https://www.iso-ne.com/static-assets/documents/2023/01/a06b_mc_2023_01_10-12_iep_analysis_group_presentation.pdf).

Even though ISO-NE claims that the new IEP Redesign would preserve incentives to provide incremental inventoried energy, it has failed to justify the added risk and expenses of the new design as reasonable or just.

IV. CONCLUSION

For the reasons stated herein, the Consumer Advocates respectfully request that the Commission reject the IEP Redesign because ISO-NE has failed to meet its burden under Section 205 to demonstrate that it will result in just and reasonable rates.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with 18 C.F.R. § 385.2010, I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated this 28th day of April 2023.

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