

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

New England Winter Gas-Electric Forum)

Docket No. AD22-9-000

COMMENTS OF THE OFFICE OF THE MASSACHUSETTS ATTORNEY GENERAL

The Office of Attorney General Andrea Joy Campbell (“Massachusetts AGO”) submits these comments to the Federal Energy Regulatory Commission (“FERC” or “Commission”) in response to the Notice Inviting Post-Forum Comments following the June 20, 2023, New England Winter Gas-Electric Forum (“June Winter Forum”) convened “to discuss solutions to the electric and gas challenges facing the New England region.”¹ The June Winter Forum served as a follow-up to the Commission’s September 8, 2022, Winter-Gas Electric Forum (“September Winter Forum”).²

The Massachusetts Attorney General 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 Attorney General 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.³

¹ *New England Winter Gas-Electric Forum*, Notice of Request for Comments, AD22-9-000 (July 10, 2023).

² *See New England Winter Gas-Electric Forum*, Supplemental Notice, AD22-9-000 (September 6, 2022).

³ Mass. G.L. c. 12 § 11E.

Based on the discussions at the June Winter Forum, the Massachusetts AGO makes three observations/recommendations: (1) the region must rigorously analyze and quantify winter risk and any proposed solutions; (2) the region should work to close the information gap regarding interdependencies between the gas and electric systems; and (3) the Commission should continue to convene subsequent New England Winter Gas-Electric Forums because they provide a unique opportunity to gather a diverse group of stakeholders, traverse the jurisdictional boundaries implicated by the region’s winter reliability issues, and bring important conversations into the public sphere. The Massachusetts AGO addresses each of these points in more detail below.

I. The Region Must Rigorously Analyze and Quantify Winter Risks and Any Proposed Solutions.

As the Commission is aware, ISO New England (“ISO-NE”) has raised significant concerns regarding winter reliability for many years. The crux of ISO-NE’s concerns stems from the region’s reliance on natural gas-fired generation for half of its electricity coupled with the region’s lack of native fossil fuel resources, lack of incentives for resources to contract for firm gas, and limited interstate pipeline capacity that constrains the availability of gas for electric generation during cold winter periods.⁴ These concerns have led to multiple temporary, short-term out-of-market programs such as the Winter Reliability Programs in effect for the winters of

⁴ ISO-NE, Resource Mix, available at: <https://www.iso-ne.com/about/key-stats/resource-mix/> (last visited Aug. 14, 2023); ISO-NE, Natural Gas Infrastructure Constraints, available at <https://www.iso-ne.com/about/what-we-do/in-depth/natural-gas-infrastructure-constraints> (last visited Aug. 17, 2023).

2013/14 through 2017/18,⁵ the Mystic Cost of Service Agreement,⁶ and the Inventoried Energy Program,⁷ that have, and likely will continue to, cost consumers hundreds of millions of dollars. Despite the substantial expenditure of consumer dollars to address winter reliability concerns, there is little evidence as to whether and to what extent these programs have or will improve winter reliability in New England.⁸

The rhetoric around winter reliability concerns leading into the September Winter Forum was dire and urgent.⁹ In spite of this urgency and the call for immediate solutions during the September Winter Forum, the region still could not articulate the extent and scope of New England’s winter reliability challenges that needed to be addressed. Indeed, a common and consistent theme emerged from the September Winter Forum—the need to rigorously and objectively quantify the risk of energy shortfalls associated with the impact of extreme winter weather and constrained fuel supplies.¹⁰

⁵ *Order Conditionally Accepting Tariff Revisions*, 144 FERC ¶ 61,204, P 1 (2013) at 1; *Order Accepting Tariff Revisions*, 148 FERC ¶ 61,179, Pat 1 (2014); *Order on Proposed Tariff Revisions*, 152 FERC ¶ 61,190 P at 1 (2015).

⁶ The total charge for the first year of the Mystic Cost of Service Agreement is \$523,679,164.17. ISO-NE Mystic Cost of Service Preliminary Report, available at: https://www.iso-ne.com/static-assets/documents/2023/08/mystic_cos_prelim_06_2023.pdf (last visited Aug. 15, 2023).

⁷ See *ISO New England Inc.*, Schatzki Testimony, at 24-25, Docket No. ER23-1588-000 (Apr. 7, 2023).

⁸ See Attachment 1, Consumer Considerations for FERC Winter Reliability Forum: Recommendations from Four New England Consumer Advocates (“Consumer Considerations for Winter Reliability”).

⁹ See, e.g., June Winter Forum, Tr. 115:19-21 (Commissioner Danley stating “[I]f we’re told the sky is falling nine months ago and then – and really, don’t think that’s an unfair characterization.”); 230:14-16 (Commissioner Tierney stating “[n]ine months ago, the message was, oh, my word, the sky is falling. Today the message is, well, we’ve got some breathing room.”); See also Draft ISO/EDC/LDC problem Statement and Call to Act on LNG and Energy Adequacy Federal Energy Regulatory Commission New England Winter Gas-Electric Forum (Sept. 2, 2022) (“Due to the urgency of this issue, we believe it is incumbent upon the region to expeditiously move forward with practical and feasible short-term actions while studying long-term solutions.”).

¹⁰ See September Winter Forum, Tr. 245:23-24 (Commissioner Clements stating: “I’m still left at the end of the day wondering what is the scope of the problem?”); *RENEW Northeast, Inc. and the American*

The Massachusetts AGO is in complete agreement with that goal. To date, the extent of winter risk in New England has been characterized by uncertainty and changing assessments. Indeed, much of the conversation at the June Winter Forum coalesced around the drastic change in ISO-NE's messaging around the region's near-term winter risk since the September Winter Forum. As noted by several panelists at the June Winter Forum, this significant change in messaging stemmed from ISO-NE's recent efforts to study, analyze, and quantify the region's winter reliability challenges.¹¹ Specifically, in the months between the September Winter Forum and June Winter Forum, ISO-NE released three analyses: two deterministic winter outlooks for the winters of 2023/2024 and 2024/2025 ("Winter Outlooks")¹² and the preliminary results of its probabilistic joint study with the Electric Power Research Institute ("EPRI") on Operational

Clean Power Association v. ISO New England Inc., 182 FERC ¶ 61,085 (2023) (Clements, Comm'r concurring, P 3, n. 3).

¹¹ June Winter Forum, Tr. 219:1-9 (ISO-NE CEO Gordon van Welie stating: "So the good news is in the short run, the risks seem to be abating a little bit. And I'm very happy to see that. And that's really because of the work that the states have done on energy efficiency and the solar penetration. Really modest demand growth and high solar penetration have offset some of the energy adequacy risk. We didn't see that until we did this analysis."); Tr. 118:2-5 (Commissioner Danley stating "It is a pretty dramatic shift that we're seeing in the story we're being told."); Tr. 87:5-16 (Chair Bartlett stating: "I think this study is a valuable contribution to the region, helping us to understand both the likelihood and the magnitude of the risk that we face so that we can make informed decisions. Historically, we haven't had this rigorous analytical approach as we've been developing solutions. We've known we have a problem. We've developed a number of in-market and out-of-market fixes over the years, but we haven't really measured in advance just what the contribution was going to be to reliability or afterwards to really understand whether it's had the desired impact."); June Tr., at 230: 15-22 (Commissioner Tierney stating "[t]oday the message is, well, we've got some breathing room. But I can relate to the bewildered sense that Commissioner Danly has, because I've puzzled about this all day. And I just asked one of my colleagues in one sentence what has changed. And we really struggled with come up with that one sentence. But then Phil said they did the analysis; they did the robust analysis, and they're to be congratulated for that.").

¹² ISO-NE Opening Presentation: Winters 2023/2024 and 2024/2025 in New England and the Role of Everett, Slides 8-16 (June 9, 2023) ("Winter Outlook Presentation").

Impacts of Extreme Weather Study for Winter 2027 (“EPRI Study”).¹³ Where the Winter Outlooks involved deterministic assessments of winter scenarios (moderate and severe), the EPRI Study uses probabilistic analysis to estimate the likelihood and magnitude of potential energy shortfalls under extreme weather conditions. Each of these studies concluded, in essence, that New England’s winter risks are “manageable” through 2027 due, in part, to the extent of projected energy shortfalls and the probabilities of those shortfalls.¹⁴ More recently, ISO-NE released preliminary results of its Operational Impacts of Extreme Weather Study for Winter 2032 which appear to indicate that winter risks for 2032 are similarly “manageable.”¹⁵

Comprehensive and quantitative assessments, like the EPRI Study, are necessary to appropriately address winter risks.¹⁶ This is because the EPRI Study focuses the conversation around quantifying the probability, timing, and extent of risk (i.e., potential energy shortfalls). As such, it has the potential to serve as a critical tool in achieving the goal of accurately capturing the scale and scope of the region’s winter reliability challenges and appropriately tailoring responses to those challenges.

This kind of quantification also shifts thinking around potential solutions, as expressing potential shortfalls in terms of MWh rather than Bcf expands the scope of possible solutions to

¹³ ISO-NE, Extreme Weather Risks to ISO-NE, Presentation of the EPRI Study (June 9, 2023) (“EPRI Winter 2027 Presentation”).

¹⁴ Winter Outlook Presentation, Slides 11,13-15; EPRI Winter 2027 Presentation, Slides 2, 13, 18.; June Winter Forum, Tr. 72:6-10.

¹⁵ ISO-NE Operational Impact of Extreme Weather Events, Preliminary Results of Energy Adequacy Studies for Winter 2032, Slide 47 (Aug. 25, 2023).

¹⁶ The Massachusetts AGO recognizes that the EPRI platform is relatively early in its development and that the results of the 2032 analysis are likely to continue to evolve as stakeholder-requested sensitivities and feedback on assumptions are incorporated in the coming months. Operational Impact of Extreme Weather Events Winter 2032, Slides 48-64.

those beyond traditional fossil fuels, i.e., solutions that are in line with New England States' decarbonization goals.¹⁷ Indeed, discussion during the June Winter Forum demonstrated the ability of comprehensive quantitative analyses like the EPRI Study to challenge conventional thinking about potential solutions to winter reliability risks. For example, according to ISO-NE, the EPRI Study illuminated three main drivers behind the more positive outlook on New England's winter reliability in the near term (through 2027): (1) relatively flat demand; (2) the pace of supply-side increases and retirements; and (3) the rapid deployment of behind-the-meter solar PV.¹⁸ A number of panelists described being surprised at the extent to which behind-the-meter solar deployment impacts the winter energy outlook in New England.¹⁹

The EPRI Study appears to lay promising groundwork for a platform that can move the region toward the goal identified at the September Winter Forum: to identify and quantify the scope of the region's winter risks. Additionally, as noted above, this type of rigorous analysis can aid in determining the appropriate level of risk tolerance, identifying the broadest set of cost-effective solutions, and contributing to thorough cost/benefit analyses and implementation of market and/or infrastructure solutions that provide the greatest benefits to consumers at the lowest cost.²⁰ As noted above, consumers have and likely will continue to pay hundreds of

¹⁷ See, e.g., EPRI Winter 2027 Presentation, Slides 13, 18.

¹⁸ June Winter Forum, Tr. 35:17-25 – 36:1-3.

¹⁹ June Winter Forum, Tr. 35:17-20 (Vamsi Chalavada stating “[W]hat really surprised us was to see the impact of the PV installation on reducing the energy requirements for New England over a period of time.”); Tr. 87:22-25 (Chair Bartlett stating “I think one of the great surprises was the impact of solar PV and the contribution that’s making to fuel security. I had never heard that talked about as a potential benefit of PV.”); Tr. 108:21-24 (Chair Gerwatowski stating “So, I mean, the value of the solar has gone up quite a bit from my perspective, just from the basis of the study. I never thought it would be helpful in the context of winter reliability, and it is.”).

²⁰ Consumer Considerations for Winter Reliability.

millions of dollars for out-of-market winter reliability programs with little insight into whether and to what extent these programs enhance winter reliability. As such, any potential solutions to the region’s winter reliability risks should focus on long-term improvements to the region’s current markets rather than additional, expensive short-term out-of-market fixes with unclear benefits to consumers. A methodological, data-driven process would go a long way toward ensuring that potential solutions within the Commission’s jurisdiction protect consumers from excessive rates and charges—a fundamental tenant of FERC’s obligation under the Federal Power Act.²¹

While the region has made progress on the charge to rigorously and objectively quantify the risk of energy shortfalls associated with the impact of extreme winter weather and constrained fuel supplies through the EPRI study, there remains much more to be done. In the coming months, the region should undertake the completion of the 2032 EPRI study including stakeholder sensitivities and incorporation of feedback, possible study of additional years and scenarios, actual scoping of winter risk, regional discussion of risk tolerances, and the identification and consideration of potential solutions. Most importantly, consumer benefits, impacts, and perspectives should be the common thread that guides the region through the next steps in this process and the discussions that will follow. The Commission’s leadership in making clear that consumer costs should be a primary consideration in these efforts would be invaluable. Finally, as discussed further below, the Commission should continue to convene future New England Winter Gas-Electric Forums so that this momentum can continue.

²¹ *NextEra Energy Res., LLC v. FERC*, 898 F.3d 14, 21 (D.C. Cir. 2018) (citation omitted).

II. The Region Should Work to Close the Information Gap Regarding the Interdependencies Between the Gas and Electric Systems.

The June Winter Forum highlighted a reality that many in New England already knew: the electric and gas systems are highly interdependent. As discussed in Section I, *supra*, ISO-NE appears to be laying promising groundwork for an analytical platform that can provide probabilistic analyses regarding the extent of energy shortfalls on the electric system in various extreme weather scenarios. This tool and its results, including ISO-NE's conclusion that the Everett Marine Terminal ("EMT") is not needed for electric system reliability for the foreseeable future, rest upon a significant assumption: that the New England gas system will continue to be reliable.²² ISO-NE has made clear that it does not believe that it has the expertise to evaluate the reliability of the gas system and that it is relying on the gas pipeline operators and local distribution companies to identify any gas system operational concerns.²³

Unfortunately, there is substantially less transparency into the reliability of the gas system and even less transparency into how the two systems impact and interact with one another. As ISO-NE CEO Gordon van Welie noted, "[But still surprising to me that after 20 years of talking about this issue, we still do not have a regular, rigorous analysis of whether the gas system is going to meet not only the firm customers, but also the electric generation needs of the system, whether they're firm or not. So I think that's a regulatory gap that has to be addressed."²⁴ The call for this type of rigorous analysis of the gas system's reliability was echoed by other panelists at the June Winter Forum.²⁵

²² June Winter Forum, Tr. 217:9-12.

²³ Winter Outlook Presentation, Slide 16.

²⁴ June Winter Forum, Tr. 218:4-9.

²⁵ June Winter Forum, Tr. 93:10-18 (Chairman Gerwatowski stating "But regardless of where those negotiations lead, I'm concerned that there is a conspicuous absence of studies of which I'm aware that

While this information gap also comes with challenging regulatory gaps—for example, the gas distribution infrastructure falls under state jurisdiction—it is critical that the interstate pipelines, local distribution companies in conjunction with state regulators, and ISO-NE work quickly and collaboratively to close the gap through rigorous analysis. The need to understand the reliability of the New England gas system and its impact on the reliability of the electric system goes beyond the immediate conversation around the future of EMT and will likely only become more critical as the region progresses into its clean energy transition.

The Commission’s leadership can play a substantial role in bridging the regulatory and expertise gaps implicated by gas and electric system interdependencies. The Commission’s recognition of and focus on the need to rigorously analyze and understand system interdependencies coupled with future Winter Forums that probe on the region’s progress toward that goal would serve as a springboard for the regional collaboration that this challenge requires.

III. The Commission Should Convene Additional New England Winter Gas-Electric Forums.

As noted above (and throughout the June Winter Forum), New England’s winter reliability issues cross jurisdictional boundaries, implicate a host of potential solutions within and beyond the Commission’s jurisdiction, and require the input of a substantial and diverse group of stakeholders. The Commission’s New England Winter Gas-Electric Forums provide a

address the operational capabilities of the gas delivery systems as they relate to all the winter risks that we’ve been talking about. We have substantial transparency on the electric side, but we’ve had almost nothing that I’ve heard in evaluating the gas side of the equation, and they link together.”); Tr. 232:34-25–233:1-6 (Commissioner Tierney stating “I do want to say let’s do the study that Gordon has so clearly articulated needs to be done and that Ron so passionately advocated for. Let us start looking at gas and electric systems as the interdependent systems they are and let us do more, more analysis there, to understand how we can make those systems talk to each other in order to make greater progress on our winter reliability and our transition for how our grid is fueled.”).

unique and unmatched opportunity to bring ISO-NE, state regulators, consumer advocates, inter and intrastate pipeline owners and operators, market participants, reliability organizations, and members of New England communities impacted by these issues into one room for a comprehensive and transparent discussion.²⁶ Moreover, as noted at the June Winter Forum, the conversations that typically happen at NEPOOL and other less formal venues do not provide the same opportunity for public participation and input on these topics. The Commission’s convening of these Forums provides the public with an opportunity to learn about these issues and participate as panelists at future Winter Forums.

Critically, future Winter Forums will help significantly in maintaining the region’s momentum on addressing challenging and complex issues such as rigorously quantifying winter risk, developing cost-effective and consumer-centric solutions, and closing the information gap regarding the interdependencies of the region’s electric and gas systems.

²⁶ June Winter Forum Tr. 234:1-13 (Commissioner Tierney stating “[a]nd nobody can make ISO and the states and the industry and stakeholders who want in on the conversation sit up and pay attention and speak their minds in the presence of each other the way FERC can. So this is not a gratuitous use of your time. This is, I think, the way we plug the regulatory gap that has become clear between our state jurisdiction and our federal justification, where we all see that we are terribly reliant on collaboration.”).

IV. CONCLUSION

The Massachusetts AGO appreciates the Commission's close attention to and focus on winter reliability in New England. The Massachusetts AGO respectfully requests that the Commission consider its comments in this proceeding.

Respectfully submitted,

ANDREA JOY CAMPBELL
ATTORNEY GENERAL OF
MASSACHUSETTS

By: /s/ Ashley Gagnon
Ashley Gagnon
Assistant Attorney General
Energy and Environment Bureau
Massachusetts Office of the Attorney General
One Ashburton Place
Boston, MA 02108-1598
(617) 963-2235
Ashley.Gagnon@mass.gov

Consumer Considerations for FERC Winter Reliability Forum: Recommendations from Four New England Consumer Advocates

ISO New England (ISO-NE), the region's electric grid operator, has raised concerns about winter electric reliability and energy adequacy for years. While New England winter electric loads are not as high as summer loads, the winter poses unique fuel security concerns for New England's gas-dominated generation mix. In the winter, buildings use more gas for heating. That increased consumption takes up most of the region's gas pipeline capacity. This leaves potentially limited remaining gas fuel supply to a large gas-fired electric generation fleet, particularly during extended cold snaps. In response to this concern, the Federal Energy Regulatory Commission (FERC) is holding the 2023 New England Winter Gas-Electric Forum in Portland, Maine, on June 20, following a September 2022 forum in Burlington, Vermont. The Connecticut Office of Consumer Counsel, the New Hampshire Office of the Consumer Advocate, the Maine Office of the Public Advocate, and the Massachusetts Attorney General's Office – the Consumer Advocates – would like to share three considerations for the 2023 Winter Gas-Electric Forum and for subsequent related discussions on winter energy security in New England.

Base Decisions on Rigorous Winter Reliability Risk Analysis

Requests for consumer investments in infrastructure or new market designs should be backed by rigorous analysis. This need has been highlighted by the recent and sudden change in messaging about the magnitude of winter reliability risks coming from ISO-NE. For years, ISO-NE expressed significant concerns and pursued out-of-market programs to address them. However, three recent ISO-NE analyses (the Operational Impacts of Extreme Weather Study, the 2023/2024 and 2024/2025 Winter Outlook Scenarios, and the Resource Capacity Accreditation preliminary impact assessment) have all found that winter risks are manageable. Before consumers make costly investments in additional winter reliability solutions, rigorous analysis quantifying the costs, benefits, and risks is essential.

Avoid Overlapping and Duplicative Winter Reliability Solutions

It is in the best interests of consumers to avoid overlapping and duplicative winter reliability solutions that add new costs in addition to market energy prices. The region will have two such out-of-market programs—the Mystic Cost of Service Agreement (COSA) and the Inventoried Energy Program (IEP)—in place for the 2023/2024 winter. However, despite estimated consumer costs of hundreds of millions of dollars (the Mystic COSA alone has a cost over \$450 million in the first 11 months), ISO-NE has not demonstrated the incremental reliability benefits of having both programs in place. Improvements to existing markets should be considered before new programs with incremental costs are implemented.

Involve Consumer Advocates in Winter Reliability Discussions

Consumer Advocates—who have the unique legal responsibility within each state to represent the interests of ratepayers (i.e., those who must pay for any implemented winter reliability solutions)—should have a more prominent role to review proposed New England winter reliability measures. Ratepayers are not adequately represented if the Consumer Advocates are left out of discussions convened by ISO-NE, FERC, or the New England States on winter reliability solutions, regardless of whether such discussions occur within the New England Power Pool (NEPOOL) or in other forums. Winter reliability discussions impact electric reliability and consumer cost, and New England consumers deserve a voice.