

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

Complaint and Request for Expedited )  
Consideration of RENEW and the )  
American Clean Power Association )

Docket No. EL22-42-000

**JOINT COMMENTS OF THE CONNECTICUT DEPARTMENT OF  
ENERGY AND ENVIRONMENTAL PROTECTION, MASSACHUSETTS ATTORNEY  
GENERAL MAURA HEALEY, AND CONNECTICUT ATTORNEY GENERAL  
WILLIAM TONG**

Pursuant to the Federal Energy Regulatory Commission's (the Commission) order of March 28, 2022, and Commission Rules 211 and 212, the Connecticut Department of Energy and Environmental Protection (CT DEEP), the Massachusetts Attorney General, and the Connecticut Attorney General (Filing Agencies) hereby respectfully submit these Comments in the above-captioned proceeding.<sup>1</sup>

CT DEEP is the agency of the State of Connecticut statutorily charged with overseeing Connecticut's energy and environmental policies.<sup>2</sup> In carrying out its duties, CT DEEP is tasked with the development of a comprehensive energy plan for the state, an integrated resources plan and to plan and deploy facilitates needed to permit Connecticut's transition to cleaner, more sustainable sources of energy to meet Connecticut's energy and environmental policies. The resolution of the matters raised in this proceeding has the potential to establish policies that may impact the design of the ISO New England Inc. (ISO-NE) administered markets, the treatment of

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<sup>1</sup> 18 C.F.R. §§ 385.211, 212. Capitalized terms not otherwise defined in this filing are intended to have the meaning given to such terms in the ISO New England Inc. Transmission, Markets and Services Tariff (the Tariff).

<sup>2</sup> Conn. Gen. Stat. §§ 22a-2d, 22a-5.

state-sponsored resources in those markets, and, ultimately, may impact CT DEEP's ability to carry out the State's energy and environmental policies.

The Massachusetts Attorney General is the Commonwealth's Ratepayer Advocate, responsible for advocating for a reliable and safe power system at the lowest possible cost for all ratepayers. The issues raised in the Complaint directly affect reliability and consumer costs. The Massachusetts Attorney General is also the Commonwealth's chief law enforcement officer, including the enforcement of Massachusetts environmental and clean energy laws.

The Connecticut Attorney General (CTAG) is an elected Constitutional official and the chief legal officer of the State of Connecticut. CTAG's responsibilities include intervening in various judicial and administrative proceedings to protect the interests of the citizens and natural resources of the State of Connecticut and in ensuring the enforcement of a variety of laws of the State of Connecticut, including Connecticut's Unfair Trade Practices Act and Antitrust Act, so as to promote the benefits of competition and to assure the protection of Connecticut's consumers from anti-competitive abuses. CTAG's request for leave to intervene in these proceedings is in furtherance of these overall responsibilities.<sup>3</sup>

The Federal Power Act (FPA) prohibits undue discrimination or preference in FERC jurisdictional rates, terms or conditions, or rules or practices affecting those rates, terms or conditions.<sup>4</sup> RENEW Northeast, Inc. (RENEW) and the American Clean Power Association

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<sup>3</sup> The CTAG has previously initiated or intervened in a number of recent Commission proceedings addressing important policy issues affecting the electric industry and electric ratepayers in Connecticut and New England. These proceedings include Commission Docket Nos: AD18-7, *Grid Resilience in Regional Transmission Organizations and Independent System Operators*; RM18-1, *Grid Reliability and Resiliency Pricing*; RP16-301, *Iroquois Gas Transmission System, LP*; ER16-1023, *ISO New England, Inc., et al*; EL16-19, *ISO New England, Inc.*; CP16-21, *Tennessee Gas Pipeline Company, L.L.C.*; ER-13-185, *ISO New England, Inc.*; EL-13-033; *Environment Northeast, et al. v. Bangor Hydro-Electric Company, et al.*; ER12-1455, *ISO New England, Inc.*; ER12-953, *ISO New England, Inc.*; EL11-66, *Martha Coakley, Massachusetts Attorney General, et al. v. Bangor Hydro-Electric Company, et al.*; IN12-007, *Constellation Energy Commodities Group, Inc.*; ER11-1943, *ISO New England, Inc.*

<sup>4</sup> 16 U.S.C. §§ 824d(a) and (b).

(ACP) filed a complaint under FPA section 206<sup>5</sup> claiming that the current ISO-NE rules and practices create undue preferences for certain gas-fired generation resources that have neither dual-fuel capability nor dedicated, firm natural gas supply arrangements and fail to take into account the uncertainty of natural gas supply in New England, particularly in winter peak conditions (Complaint).

Specifically, RENEW and ACP allege that the ISO-NE market rules grant an undue preference for natural gas resources “to the detriment of both resources with known, dedicated fuel supplies (e.g., dual-fuel, oil, nuclear, pumped storage and pondage hydro) and intermittent generation (e.g., wind, solar, and run of river hydro).”<sup>6</sup> RENEW and ACP claim that the ISO-NE rules and practices effectively assume that gas generation will have sufficient fuel supply to operate reliably when in fact those generators that do not have firm contracted gas supplies are vulnerable to loss of supply during constrained conditions.<sup>7</sup> RENEW and ACP seek to have the Commission order ISO-NE to limit winter qualification for gas resources to levels that can actually be supplied and that winter supply uncertainties should be accounted for in determining winter capacity ratings.<sup>8</sup>

RENEW and ACP have taken the unusual procedural step of bypassing the New England Power Pool (NEPOOL) stakeholder process that would otherwise have provided an opportunity for thorough vetting and stakeholder review and comment and filing a Complaint under Section 206 of the FPA and Rule 206 of the Commission’s Rules of Practice.<sup>9</sup>

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<sup>5</sup> 16 U.S.C. § 824e (2018).

<sup>6</sup> Complaint at 2-3.

<sup>7</sup> See Complaint at 3.

<sup>8</sup> See Complaint at 31.

<sup>9</sup> 18 C.F.R. § 385.206 (2021).

## I. COMMENTS

The Filing Agencies agree that the Complaint raises issues that warrant further investigation and, if current accreditation methods are found to be unduly discriminatory, issues that require a remedy. The forward capacity market (FCM) must ensure that *all* resources, not just intermittent resources, are subject to accurate capacity accreditation. However, the Complaint alleges a single potential problem with the existing FCM that is but one of numerous FCM deficiencies that lead to a material disconnect between the intended purpose of the FCM and its actual function. In this regard, the Filing Agencies have long opposed rules and practices such as CASPR, the Minimum Offer Price Rule (MOPR) and Offer Review Trigger Prices for offshore wind, battery storage and solar, that discriminate against and unduly burden clean and renewable resources, particularly those resources needed to attain state public policy goals.

The Filing Agencies takes issue with the Complaint and its proposed remedies because (1) the proper venue to address the demonstrated failures of the regional capacity market is first through the established NEPOOL process<sup>10</sup> with the full participation of all relevant stakeholders; (2) there has been no stakeholder vetted analysis of the impacts of this proposal sufficient to determine if it is just and reasonable; and (3) ISO-NE has indicated that it intends to include re-accreditation of thermal resources, including gas-only resources, in its ongoing capacity accreditation initiative.<sup>11</sup>

### **Need for Broad Reform in the FCM**

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<sup>10</sup> See, e.g., *Ameren Servs. Co. v. Midwest Indep. Transmission Sys. Operator*, 121 FERC ¶ 61,205 at P 93 (2007)(noting that “the Commission often indicates its expectation that stakeholders seek relief through the processes provided by the ISO or RTO itself before coming to the Commission. . . .”). While not denying the complaints on these grounds, the Commission held the hearing procedures in abeyance “to allow the stakeholder process an opportunity to complete negotiations.” *Id.* at P 94. See also *ISO New England Inc.*, 130 FERC ¶ 61,145 at P 34 (2010) (“...as we have stated in previous orders, we encourage parties to participate in the stakeholder process if they seek to change the market rules, and we are mindful that ISO-NE intends to file [or ‘has filed’] market design changes which may address the substance of [the articulated] concerns”).

<sup>11</sup> ISO-NE Updated 2022 Annual Work Plan, p.5.

The problems with the regional capacity market in New England are well known. For example, the capacity market fails to send the correct market signals to incent resources to address known reliability concerns, such as the potential lack of winter fuel; neither does the capacity market provide the necessary signals to incent the retirement of obsolete and polluting resources that provide no material reliability benefit. Connecticut's 2021 Integrated Resources Plan (IRP) included an in-depth discussion of the history of the development of the regional capacity market and how it has failed to meet its design goals.<sup>12</sup> As the IRP noted, "[t]he regional market's design has evolved primarily around the investment needs of natural gas plants, allowing them to receive capacity payments in spite of their inability to run when called upon during winter cold snaps due to limited fuel availability."<sup>13</sup> Over the years the Massachusetts AGO has been similarly critical of aspects of the FCM such as its inability to facilitate integration of clean and renewable resources, the design and functioning of the CASPR program and ISO-NE's proposed Offer Review Trigger Prices for Offshore Wind, battery storage and solar.

The ISO-NE has long represented that it has a winter reliability problem. The ISO has experimented with different programs over the last decade, such as Pay-for-Performance (PFP), none of which have fully succeeded. What is clearly evident is that the capacity market has not met the design goal of encouraging resources to address winter reliability. In addition, there is also clear evidence that obsolete, largely oil-fired, resources that essentially never run, are content to simply take whatever, even minimal capacity payments and have no reason or incentive to retire as they should. As CT DEEP's 2021 IRP noted:

Most of these older units run on residual oil, and their technology is so inefficient and costly to operate that they run infrequently, producing less than

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<sup>12</sup> 2021 IRP, pp. 76-81.

<sup>13</sup> 2021 IRP, p. 74.

1.8 percent of the electricity, yet 3 percent of the CO2 emissions and 28 percent of the NOx emissions in Connecticut's large fossil-fuel generating fleet. These units receive revenue streams through the ISO-NE capacity market. There does not seem to be evidence that the [PFP] program instituted by ISO-NE is impacting the retirement decisions of resources, as the region has seen minimal retirements since PFP has been in place.<sup>14</sup>

As one industry commenter has noted, the concern with inadequate retirement signals “is not hypothetical – the existing wholesale capacity markets actually discourage rarely used resources to retire once they reach that point of obsolescence.”<sup>15</sup> This commenter added: “Absent an effective retirement signal, such obsolete resources [in this case, a kerosene-fired combustion turbine] are encouraged to remain in the [FCM] to collect capacity payments in exchange for providing very little system value, which is the current state of affairs.”<sup>16</sup> As discussed more below, the solution offered in the Complaint could exacerbate this problem because such resources might earn higher FCM revenues. A holistic evaluation—one that examines how capacity accreditation interrelates with other needed reforms like retirement incentives—is needed to ensure a just, reasonable, and not unduly discriminatory solution is achieved.

### **There is An Ongoing ISO-NE Initiative to Reform Capacity Accreditation**

ISO-NE intends to devote the remainder of this year, and part of next, to capacity re-accreditation.<sup>17</sup> As indicated in its 2022 Work Plan, the ISO is considering a new capacity accreditation approach, originally termed Effective Load Carrying Capability and now re-named Resource Capacity Accreditation (RCA), to more accurately identify the actual capacity contributions of specific resources. The initial focus of ISO-NE's efforts has clearly been on

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<sup>14</sup> 2021 IRP, p. 119.

<sup>15</sup> FirstLight Comments, New England States' Vision for a Clean, Affordable, and Reliable 21<sup>st</sup> Century Regional Electric Grid: Market Reforms, p. 7 (Feb. 24, 2021).

<sup>16</sup> *Id.*

<sup>17</sup> ISO-NE Updated 2022 Annual Work Plan, p.5.

intermittent resources and, until recently, the ISO was vague about when or if it would reconsider accreditation of thermal resources as well. However, in its recent MOPR filing ISO-NE gives an indication that thermal resources will be included, stating that “[i]t is anticipated that the revised approach [*i.e.*, the RCA] will account for intermittency, *limitations on fuel supplies*, and other factors traditionally ignored in resource adequacy assessment and capacity qualification processes (and largely ignored in the ISO’s current process).”<sup>18</sup> The Filing Agencies strongly support a holistic review of the capacity accreditation issue that is not limited to intermittent resources, but also addresses thermal resources, including gas-only resources. The Filing Agencies urge ISO-NE to expressly commit to timely undertake re-accreditation of thermal resources as part of the ongoing RCA initiative. Doing so would ensure that complainants concerns are addressed in the upcoming NEPOOL stakeholder process.

**Deciding this Issue in Isolation is Inefficient and May Lead to Unjust and Unreasonable Results.**

If the Commission were to grant the relief requested by the Complaint in whole, the only consequence would be to reduce the effective capacity factor of natural gas generators without firm supply. This simply shifts the supply curve in a manner that increases costs to load substantially. The Complaint fails to demonstrate how the requested remedy will maintain or improve reliability or provide other benefits to consumers that justify such a cost. Again, the Filing Agencies do not dispute the possibility that the Complaint may accurately identify a problem with the current Tariff. However, merely derating gas only resources so that the resources are treated similarly to other resources does not, *ipso facto*, make the proposed solution just and reasonable. The market rules, taken together, must be just and reasonable. The

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<sup>18</sup> Revisions to ISO New England Transmission, Markets and Services Tariff of Buyer-Side Market Power Review and Mitigation Reforms, Docket No. ER22-1528-000, fn. 142 (emphasis added).

opportunity to address the gas-only accreditation issues as part of the NEPOOL stakeholder process on re-accreditation will allow the region to comprehensively evaluate any proposed changes in the context of accreditation reforms for all resources, as well as how those accreditation reforms interact with other areas of needed reforms (*e.g.*, improved market signals for retirement, improved alignment with provision of reliability and revenues, *etc.*).

The FCM is a web of intertwined rules and mechanisms. Adjusting one rule or mechanism can have far-reaching, and sometimes, unanticipated consequences. Implemented in isolation, a stand-alone fix to capacity accreditation for gas-only resources could very well end up raising other FPA concerns. For example, there are a number of other capacity market reforms under consideration in NEPOOL, some of which were described previously in these comments. A number of these reforms could lead to an increase in FCM prices (*e.g.*, solutions that directly address fuel security concerns and/or solutions that better align revenues with provision of reliability benefits) and it is important to understand how each of these reforms is interrelated before making any final determinations. In other words, addressing the specific issue raised in the Complaint without a holistic examination of the proposed solution could lead to unjust and unreasonable rate increases for consumers over time. The Filing Agencies wish to avoid that situation here, especially where the issue can and should be addressed as part of the ISO's 2022 Work Plan.

While again agreeing with RENEW and ACP that the Complaint may identify a legitimate problem, the Filing Agencies respectfully request that the Commission give the region and stakeholders time to address this issue through the upcoming RCA efforts before proceeding



any further with the Complaint.<sup>19</sup> Doing so will allow the Commission to make a determination on the broader set of issues implicated in the Complaint after states and stakeholders have had an opportunity to engage fully with ISO-NE on its intended design and any proposed changes that come forward through the NEPOOL stakeholder process. Considering the RENEW and ACP proposal now will effectively balkanize the ongoing process at NEPOOL and result in the piecemeal consideration of an issue that is only one element of the broader reforms being considered to improve the ISO-NE markets.

### **Lack of Stakeholder Analysis to Support Remedy Sought**

Finally, one other downside to bypassing the NEPOOL stakeholder process is that there has been no analysis of the actual impact of the RENEW and ACP proposal. ISO-NE has stated that it intends to conduct an impact analysis of its RCA design in early 2023. Until that time, the Commission will be without the benefit of a stakeholder-vetted analysis of the effect of capacity accreditation changes. That deprives this Commission of a useful tool to evaluate whether the capacity accreditation changes proposed by complainants and by ISO-NE or other stakeholders are just and reasonable. For this reason alone, the Commission should hold this matter in abeyance or dismiss this Complaint as premature.

## **II. CONCLUSION**

For the reasons stated herein, the Filing Agencies respectfully request that the Commission dismiss this Complaint or, in the alternative, hold this matter in abeyance pending the completion of the NEPOOL stakeholder process. If the Commission should choose to hold this matter in abeyance, the Filing Agencies note that it may be beneficial to the process of

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<sup>19</sup> CT DEEP cautions, however, that not all gas only resources may be subject to the same risks. There are some gas only resources on pipelines that do not face the same constraint risks as other resources. Complainants RENEW and ACP make no attempt to distinguish between resources and thorough evaluation of such risks must be undertaken.

developing a solution for stakeholders to be able to communicate with the Commission. Therefore, the Filing Agencies respectfully request that the Commission include as part of the abeyance order either a modification to Rule 2201 regarding *ex parte* communications<sup>20</sup> or the establishment of a technical conference,<sup>21</sup> if requested by ISO-NE or the states, to permit full and open discussion.

Respectfully submitted,

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<sup>20</sup> The Filing Agencies note that 18 CFR § 385.2201(a) permits the Commission to “by rule or order, modify any provision of [the rules governing *ex parte* communications], as it applies to all or part of a proceeding, to the extent permitted by law.” The Filing Parties submit that the Commission could modify the *ex parte* rules as such rules apply to this specific complaint to allow for *ex parte* communications. See *State-Federal Regional RTO Panels RTO Informational Filings et. al.*, 98 F.E.R.C. ¶ 61,309, at 62,322 (Mar. 18, 2002) (“[T]he Commission modified the application of Rule 2201 to the RTO proceedings, by treating what would otherwise be prohibited off-the-record communications with state commission parties as exempt off-the-record communications subject to disclosure and notice to the public.”).

<sup>21</sup> See *ISO New England Inc. v. Constellation Mystic Power, LLC*, Docket No. EL18-182-000, Notice of Staff-Led Public Meeting, at p. 1 (May 21, 2019) (describing a joint request for “a public meeting to share with Commission staff information about efforts to develop these proposed Tariff revisions without violating the Commission’s *ex parte* rules.”).

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### CERTIFICATE OF SERVICE

In accordance with Rule 2010 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day served by electronic mail a copy of the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at New Britain, Connecticut this 14th day of April 2022.

*/s/ Robert Snook*

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