

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

ISO New England, Inc. and
New England Power Pool

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Docket No. ER22-1528-000

**JOINT COMMENTS AND PARTIAL PROTEST OF MASSACHUSETTS ATTORNEY
GENERAL MAURA HEALEY AND THE MAINE OFFICE OF THE PUBLIC
ADVOCATE**

The Attorney General of the Commonwealth of Massachusetts and the Maine Office of the Public Advocate (hereinafter, Consumer Advocates), pursuant to Rule 211 of the Federal Energy Regulatory Commission’s (Commission) Rules of Practice and Procedure and the Combined Notice of Filings dated March 31, 2022, comment in part and protest in part ISO-New England (ISO-NE) and the New England Power Pool’s (NEPOOL) filing in this proceeding. The filing (MOPR reform filing) contains ISO-NE and NEPOOL’s proposed Minimum Offer Price Rule (MOPR) reform design, coupled with a transition provision that delays the effective date of the reforms until Forward Capacity Auction (FCA) 19 in February 2025. Consumer Advocates support the MOPR reform portions of the filing but protest the two-FCA transition mechanism. Contrary to the requirements of the Federal Power Act (FPA) and FERC precedent, the ability of the transition mechanism to address the market risks identified by ISO-NE as arising from MOPR reform, as well as the purported benefits of the two-FCA delay, are unsubstantiated. For these reasons, discussed in more detail below, the MOPR reform filing should be rejected.

I. INTRODUCTION

The Consumer Advocates

The Massachusetts Attorney General is the chief legal officer of 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 further authorized expressly by statute to intervene on behalf of public utility ratepayers in proceedings before the Commission.¹

The Maine Office of the Public Advocate is an agency of the State of Maine and is charged by Maine statute to represent the interests of consumers of utility services 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."²

II. BACKGROUND

A. Procedural History

In May 2021, of its own volition, ISO-NE stated its intention to eliminate the MOPR. This initiative was announced in a written statement to the Commission, where ISO-NE explained that "to better accommodate state-sponsored resources in [*sic*] FCM, ISO-NE is committed to working with the states and stakeholders to eliminate FCM's Minimum Offer Price Rule ("MOPR"). Without further action, the MOPR may prevent sponsored resources from

¹ MASS. GEN. LAWS ch. 12, § 11E.

² 35-A M.R.S. § 1702.

clearing in the market.”³ ISO-NE’s rationale for MOPR reform is that accommodating entry of state sponsored policy resources into the capacity market is necessary to avoid what ISO-NE terms the “inefficient overbuild” problem where the capacity contributions of sponsored policy resources are ignored and consumers pay twice for capacity that will be built under New England states’ policies, regardless of whether it can clear in the FCA.⁴ At the outset of this project, ISO-NE took the position that MOPR reform could increase financial uncertainty for existing and new merchant generators due to its potential effect on capacity market prices.⁵ It identified two principle consequences of this uncertainty and related risk: (1) the potential of the capacity market to fail to clear new entry when needed because offers reflecting the increased risk would be too high to clear and (2) the potential for inefficient retirements due to price suppression from entry of sponsored policy resources.⁶ ISO-NE believed that these potential effects posed risks to reliability.⁷ However, ISO-NE determined that it could adequately address these risks and maintain competitive capacity market pricing, while achieving MOPR reform in time for FCA 17.⁸ To do so, ISO-NE tasked the External Market Monitor (EMM) “to assess and quantify the uncertainty and accompanying risk that capital markets may impose on new or existing resources in a market without a MOPR when merchant resource investment is necessary.”⁹ ISO-NE

³ Pre-Conference Statement of ISO-NE, at 1, *Modernizing Electricity Market Design: Resource Adequacy in the Evolving Electricity Sector*, Docket No. AD21-10-000 (May 21, 2021), available at <https://www.ferc.gov/media/panels-1-3-iso-ne-written-statement>

⁴ ISO-NE and NEPOOL Filing letter (Filing letter) at 5.

⁵ ISO-NE, *Memo from Chadalavada to NECPUC, NESCOE and NEPOOL* at 1 (May 17, 2021), available at https://www.iso-ne.com/static-assets/documents/2021/05/a0_memo_on_elimination_of_mopr.pdf. (“unsponsored merchant resources (both existing and new) will face greater uncertainty with regard to future capacity market prices.”) These risks were also discussed in ISO-NE presentations at Markets Committee meetings from July through October 2021.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 1-2.

⁹ *Id.*

believed that the second risk—inefficient retirements—would be appropriately mitigated by its planned 2022-23 project on capacity resource re-accreditation.¹⁰

During the stakeholder process, the EMM conducted and completed the modeling and analysis necessary to quantify and remedy the increase in the financial risk for merchant resource owners as a result of MOPR reform. The EMM derived adders to CONE and Net CONE to account for the risk and also calculated an increase in the Performance Payment Rate (PPR) based on the higher Net CONE.¹¹ The EMM's determinations were adopted in ISO-NE's original MOPR reform design prior to the incorporation of the transition mechanism.¹² ISO-NE has also commenced its work on capacity reaccreditation, known as the Resource Capacity Accreditation (RCA) project.

At the outset and throughout the majority of the stakeholder process, ISO-NE's stated goal was to file a Section 205 MOPR elimination proposal no later than the first quarter of 2022, so that it could be implemented for FCA 17, which will occur in March 2023.¹³ In accordance with that schedule, ISO-NE's MOPR reform proposal went through the NEPOOL stakeholder process from June 2021 through February 3, 2022. During the stakeholder process, certain fossil fuel generators¹⁴ proposed a MOPR transition amendment that would postpone the MOPR reform provisions from taking effect until ISO-NE had implemented planned market changes such as capacity reaccreditation and redesign of the previously rejected Energy Security

¹⁰ *Id.* at 2.

¹¹ Potomac Economics, External Market Monitor, *Evaluation of Changes in the Minimum Offer Price Rules on Financial Risk in New England*, at 50 (November 2021), available at https://www.iso-ne.com/static-assets/documents/2021/11/a03a_mc_2021_11_09_10_ccm_without_mopr_emm_presentation.docx.

¹² The Filing letter explains that this component was removed from the current MOPR reform proposal, to be updated and re-filed prior to FCA 19. Filing letter at 46.

¹³ ISO-NE, *Memo from Chadalavada to NECPUC, NESCOE and NEPOOL* at 1-2, available at https://www.iso-ne.com/static-assets/documents/2021/05/a0_memo_on_elimination_of_mopr.pdf; see also, May 6, 2021 Minutes of NEPOOL Participants' Committee at 4443, available at https://nepool.com/wp-content/uploads/2021/06/Minutes_NPC_2021_0506.pdf.

¹⁴ The sponsors of the transition were Vistra, then Dynegy, Calpine and Nautilus.

Improvements (ESI) program.¹⁵ This amendment was first introduced in July 2021¹⁶ and thereafter was discussed at NEPOOL Markets Committee meetings on August 31, September 29, October 21, December 7 and finally on January 11, 2022. It must be noted that while the transition provision is repeatedly referred to in the MOPR reform filing as a “two year transition”,¹⁷ it is in fact a three year delay in implementing MOPR reform. It includes three calendar years (February 2022-February 2025) but comprises two FCAs (FCAs 17 and 18). The proposed transition amendment changed in certain details over time but as voted at the Markets Committee consisted of 1) a two-FCA term; 2) retention of the MOPR with an RTR (Renewable Technology Resources) exemption of 700 MW over two FCAs; and 3) retention of the CASPR program with elimination of the CASPR Test Price.¹⁸

Over the course of the Markets Committee proceedings the transition amendment was not positively received by NEPOOL stakeholders and failed to gain traction. During the process ISO-NE also voiced concerns about the transition mechanism. In a presentation at the August 31, 2021 Markets Committee, ISO-NE expressed skepticism, stating:

Vistra has introduced a conceptual framework to the Markets Committee

- The ISO continues to assess the conceptual design framework being discussed with the Markets Committee
- Initial ISO observations:
 - Transition mechanisms generally require detailed rules across multiple time periods which presents challenges given the expedited timeline

¹⁵ See Vistra, “CASPR Transition Proposal” at 4-5 (July 7, 2021), available at https://www.iso-ne.com/static-assets/documents/2021/07/a2b_iv_vistra_presentation_caspr_transition_proposal.pptx.

¹⁶ *Id.*

¹⁷ See, e.g., Filing letter at 1,7.

¹⁸ Dynegy/Calpine, “MOPR Transition Proposal” at 4 (Jan. 11, 2022) available at https://www.iso-ne.com/static-assets/documents/2022/01/a02a_iii_mc_2022_01_11-12_mopr_removal_amendment_dynegy_calpine_presentation.pptx. The proposed netting from the FCA 17 RTR cap of amounts that cleared through CASPR in FCA 16 was subsequently eliminated.

—Implementation concerns exist as the conceptual approach would impact many ISO systems.¹⁹

It was not until the December 7, 2021 Markets Committee meeting, seven months into the nine month stakeholder process, that ISO-NE for the first time indicated that it was willing to consider including the transition proposal. That willingness was conditional, “*assuming the ISO receives broad support for the transition proposal from stakeholders and the states.*”²⁰ There was no suggestion that ISO-NE actively supported the delay. At this meeting, ISO-NE once again expressed concerns about the difficulty of evaluating the transition proposal, noting “the challenge of quantitatively evaluating Vistra’s transition proposal because of a lack of data and the need to make assumptions of how market participants will bid.”²¹ At the same December 7 meeting, the New England States Committee on Electricity (NESCOE)²² indicated that “the states’ current thinking is leaning towards supporting the ISO proposal over the Vistra proposal at this time... .”²³

The vote at the Markets Committee took place on January 11, 2022. ISO-NE’s MOPR reform design voted on that day consisted of (1) a greatly narrowed buyer-side market review process consisting of three lanes;²⁴ (2) upward adjustments to CONE, Net CONE and the PPR to

¹⁹ ISO-NE, “Feedback on several stakeholder conceptual approaches” at 10 (Aug. 31, 2021), available at https://www.iso-ne.com/static-assets/documents/2021/08/a2a_iso_presentation_providing_feedback_on_stakeholder_proposals.pptx.

²⁰ ISO-NE, Dec.7-9 Minutes of the NEPOOL Markets Committee Meeting, at 9 (emphasis added), available at https://www.iso-ne.com/static-assets/documents/2022/01/a01_mc_2022_01_11-12_meeting_minutes_dec.docx

²¹ *Id.*

²² NESCOE is a non-profit entity that represents the collective perspective of the six New England Governors in regional electricity matters. It is not a NEPOOL member and does not have a vote, but it does participate in stakeholder proceedings.

²³ ISO-NE, Dec.7-9 Minutes of the NEPOOL Markets Committee Meeting, at 9.

²⁴ See Filing letter at 46-63 and “Testimony of Ryan McCarthy on behalf of ISO-NE regarding Buyer Side Market Power Review Reforms mechanism” (“McCarthy BSMPPR Testimony”) for a detailed description of the mitigation mechanism and how the three mitigation lanes were determined. See also, ISO-NE, *Memo re Competitive Capacity*

address increased financial risk to fossil fuel generators and (3) removal of the Offer Review Trigger Price (ORTP) design and the CASPR Substitution Auction.²⁵ Prior to the vote, ISO-NE represented that “if there is broad support for the transition amendment from NEPOOL and the majority of states are unopposed, the ISO plans to adopt the transition proposal”²⁶ Prior to the vote, NESCOE, which does not vote at NEPOOL, “[c]larified that five states do not oppose a transition, as long as NEPOOL supports it, ISO adopts it, and there are no attempts to extend the transition beyond FCA 19.”²⁷ Thus on January 11, 2022, support for the transition by ISO-NE and NESCOE was fully conditional on broad support from NEPOOL.

At the January 11 Markets Committee meeting, the New England Power Generators Association (NEPGA) made a presentation critical of ISO-NE’s MOPR reform proposal, characterizing it as allowing “uncompetitive” offers resulting in uncompetitive clearing prices, lacking adequate offer mitigation review and being premature because capacity accreditation and ancillary services reforms were not yet in place.²⁸ Also, at the meeting the representative of one of the sponsors of the transition, Vistra/Dynegy, made a presentation that suggested that “Broad

Markets without a Minimum Offer Price Rule – Further Updates to Tariff Revisions at 1-2, (Jan. 4, 2022), for an explanation of a late change to the mitigation mechanism by eliminating the impact test. Available at https://www.iso-ne.com/static-assets/documents/2022/01/a02a_mc_2022_01_11-12_mopr_removal_iso_memo_changes_since_december_mc_meeting_further_updates_to_tariff_revisions.pdf.

²⁵ See ISO-NE, “Competitive Capacity Markets without a Minimum Offer Price Rule (MOPR)”, at 22-30 (Dec. 7-9, 2021), available at https://www.iso-ne.com/static-assets/documents/2021/12/a02a_mc_2021_12_07_09_iso_presentation.pptx, for the particulars of each of these design elements voted at the Markets Committee. As noted previously, the CONE/Net CONE adder and increase to the PPR are not part of the current MOPR reform filing, but ISO-NE intends to update the values and file them in time for FCA 19, when the MOPR reform becomes effective under the transition. Filing letter at 44-46.

²⁶ ISO-NE, Jan.11-12, 2022 Minutes of the NEPOOL Markets Committee Meeting, at 9, available at https://www.iso-ne.com/static-assets/documents/2022/02/a01a_mc_2022_02_08_minutes_jan_mc_final.docx.

²⁷ *Id.* at 10.

²⁸ NEPGA, “ELIMINATION OF THE MINIMUM OFFER PRICE RULE AND COMPETITIVE MARKET OUTCOMES” (January 11, 2022), at 2, available at https://www.iso-ne.com/static-assets/documents/2022/01/a02a_i_mc_2022_01_11-12_mopr_removal_nepga_presentation.pdf.

stakeholder support reduces likelihood of contentious years long litigation that would distract stakeholders from focus on important reforms.”²⁹

ISO-NE’s MOPR reform design, without the transition, received broad support across all six NEPOOL sectors and was approved by the Markets Committee on January 11 with a vote of 74.04% in favor (60% support needed)³⁰ Conversely, the Vistra transition amendment received negligible support from NEPOOL, failing with a vote of 23.79% in favor, or put another way, was rejected by a vote of 76.21 %.³¹

Typically, a NEPOOL stakeholder amendment that garners so little support at the Markets Committee is not reurged at the final vote of the Participants Committee. However, after the Markets Committee vote, ISO-NE became the surprising champion of the transition amendment.

Over two weeks later, on January 26, 2022, just nine days before the final vote on MOPR reform at the NEPOOL Participants Committee, ISO-NE issued a memorandum stating for the first time that it “wholly supported and preferred” the transition proposal that fared so poorly at the Markets Committee January vote.³² ISO-NE’s decision to support the transition so late in the process, after NEPOOL had rejected it, was a complete surprise to Consumer Advocates and to other stakeholders. Had ISO-NE’s intention been known earlier, Consumer Advocates and others would have subjected the transition to a much more robust evaluation in the stakeholder

²⁹ Dynegy/Calpine, “MOPR Transition Proposal” at 3 (Jan. 11, 2022) available at https://www.iso-ne.com/static-assets/documents/2022/01/a02a_iii_mc_2022_01_11-12_mopr_removal_amendment_dynegy_calpine_presentation.pptx.

³⁰ ISO-NE, Jan.11-12, 2022 Minutes of the NEPOOL Markets Committee Meeting, at 11.

³¹ *Id.* at 10.

³² ISO-NE, *Memo from Chadalavada re: ISO Support and Preference of Transition to Minimum Offer Price Rule (MOPR) Elimination*, at 1 (Jan. 26, 2022), available at <https://www.iso-ne.com/static-assets/documents/2022/02/npc-2022-02-03-composite4.pdf> at 196.

process. As it was, stakeholders had only the final Participants Committee meeting at which to discuss this new development.

ISO-NE's January 26 memorandum cited reliability concerns due to inefficient retirements as the reason for its newfound support of the transition.³³ The memorandum nonetheless conceded that "MOPR elimination for FCA 17 is feasible."³⁴ The reliability risk cited in the January 26 memorandum explaining ISO-NE's sudden change in position was thus the same familiar concern it had identified at the outset of the project and that it previously represented would be adequately addressed by the EMM's CONE/Net CONE adder and by the 2022 capacity reaccreditation project. The memorandum went on to raise a number of negative consequences that *might* flow from the feared inefficient retirements, but ISO-NE did not attempt to quantitatively evaluate the probability or extent of those negative outcomes, or whether or to what degree the transition would address or remedy them. The memorandum also touted, somewhat improbably, the transition's potential cost savings for consumers.³⁵ Again, there was no attempt to substantiate or quantify these savings.

The January 26 memorandum was accompanied by an unusually active outreach and lobbying effort from ISO-NE in support of the transition prior to the final vote. At the vote of the Participants Committee meeting on Feb. 3, the minutes reflect that ISO-NE COO Dr. Chadalavada said that the transition was ISO-NE's preferred path forward in lieu of "prolonged litigation that could result from a failure to compromise."³⁶ When the transition amendment was voted, it passed by an extremely narrow margin: 61.49% in favor, or 1.49% over the required

³³ *Id.* at 2.

³⁴ *Id.* at 5.

³⁵ *Id.* at 3-4 ("more certainty in expected market outcomes can create opportunities for reduced consumer costs.")

³⁶ NEPOOL, Feb. 3, 2022 Minutes of the NEPOOL Participants Committee Meeting, at 4579, available at https://nepool.com/wp-content/uploads/2021/11/Minutes_NPC_2022_0203.pdf.

minimum.³⁷ ISO-NE did not offer its original, unamended proposal approved by the Markets Committee for vote, as only it had the right to do under the rules. Instead, only the amended proposal, combining ISO-NE's MOPR reform and the transition amendment, was offered for a vote. The amended proposal passed with 69.56% in favor.³⁸ ISO-NE and NEPOOL characterize this as evidence of "wide-spread stakeholder support" for the transition in their filing³⁹ but Consumer Advocates attribute the higher percentage of support in the final vote to the fact that those in favor of MOPR reform were presented at that point with only two choices: either voting against MOPR reform or supporting it with the two-FCA delay. The true measure of the degree of NEPOOL support for the transition was its vote on the transition amendment, at 1.49% over the minimum percentage needed to pass, and that result was only accomplished with ISO-NE's thumb on the scale. Consumer Advocates voted against both the amendment and the amended proposal on the grounds that neither the need for nor the benefits of the transition provisions had been adequately established.

At the Participants Committee vote on February 3, a NESCOE representative stated that NESCOE would not oppose the transition proposal.⁴⁰ After the vote, in response to criticism by the public and the press,⁴¹ NESCOE issued a statement attempting to clarify its stance:

NESCOE expressed the view (with NH opposing) that the MOPR reforms should be enacted *as soon as possible* in a manner that supports system reliability. NESCOE recognized ISO New England's support of a transition proposal as ISO New England's preferred way to reform the MOPR to mitigate the potential for short-term reliability impacts. Accordingly, NESCOE (with NH opposing) expressed it would not

³⁷ *Id.* at 4583.

³⁸ *Id.* at 4584.

³⁹ Filing letter at 44.

⁴⁰ NEPOOL, Feb. 3, 2022 Minutes of the NEPOOL Participants Committee Meeting, at 4582.

⁴¹ *See, e.g.,* Spiegel, *New England takes a detour on grid reform, griping ensues*, CT. Mirror, February 23, 2022, available at <https://ctmirror.org/2022/02/23/new-england-takes-a-detour-on-grid-reform-griping-ensues/>; *see also,* Shankman, *A decision made behind closed doors may set clean energy back by two years*, *Boston Globe*, February 5, 2022, available at <https://www.bostonglobe.com/2022/02/05/science/decision-made-behind-closed-doors-may-set-clean-energy-back-by-two-years/>.

oppose the transition approach if it was adopted by ISO New England and supported by NEPOOL.⁴²

It is clear from the above statement that NESCOE was greatly influenced by ISO-NE's preference for the delay and that rather than expressing active support for the transition, NESCOE did not oppose it under certain conditions. As Connecticut DEEP Commissioner Katie Dykes was quoted as saying, "It's a long way from not opposing to supporting."⁴³

B. Components of the MOPR Reform Mechanism

As noted above, ISO-NE's MOPR reform design voted at the Markets Committee on January 11, 2022 (original MOPR design) consisted of three main provisions: (1) removal of the MOPR, including the ORTP-related design elements, (2) incorporation of a narrow buyer-side market power review consisting of three mitigation "lanes"; and (3) adjustment of the financial inputs used to calculate the Cost of New Entry (CONE) and Net CONE, including an update to the Performance Payment Rate (PPR) based on these updated values.⁴⁴

ISO-NE's original MOPR design was based on extensive, data-driven analysis and modeling. The EMM's work to derive the appropriate values for the adders to Net CONE and the PPR to account for higher investment risk involved months of modeling and data analysis and presentations to stakeholders on the modeling results. The EMM's study culminated in a report in November, 2021.⁴⁵ In addition, ISO-NE did extensive analysis involving five test cases

⁴² NESCOE, *Perspective Communicated to NEPOOL and ISO New England on the Minimum Offer Price Reform*, at 1 (February 8, 2022) (emphasis added), available at <https://nescoe.com/resource-center/mopr-perspective-2022/>

⁴³ Spiegel, *New England takes a detour on grid reform, griping ensues*, CT. Mirror, February 23, 2022.

⁴⁴ ISO-NE, *Voting Memo re: Competitive Capacity Markets without a Minimum Offer Price Rule*, at 1 (Jan. 5, 2022), available at https://www.iso-ne.com/static-assets/documents/2022/01/a02a_mc_2022_01_11-12_mopr_removal_iso_voting_memo.pdf.

⁴⁵ Potomac Economics, External Market Monitor, "Evaluation of Changes in the Minimum Offer Price Rules on Financial Risk in New England" (November 2021), available at https://www.iso-ne.com/static-assets/documents/2021/11/a03a_mc_2021_11_09_10_ccm_without_mopr_emm_inputs.zip. As noted in the Filing letter, this component is not included in the MOPR filing due to the transition, but ISO-NE intends to propose updated CONE, Net CONE and PPR adjustments prior to FCA 19. Filing letter at 44-46.

to assess the impacts on auction clearing prices of MOPR removal and the adjustment of Net CONE.⁴⁶ With respect to the mitigation mechanism of the MOPR reform proposal, ISO-NE's Market Development group evaluated historical data and conducted an impact analysis to support the appropriate threshold for its *de minimus* mitigation exception⁴⁷ and worked with the IMM on the proper scope and wording of the "Lane 3" provision.⁴⁸ ISO-NE's Internal Market Monitor also independently evaluated the proposed MOPR reform mitigation mechanism and suggested adjustments, which were incorporated.⁴⁹

C. Components of the Transition Mechanism

As contained in the MOPR reform filing, the transition mechanism consists of:

1. Retention of the MOPR until FCA 19.
2. A "two year" (two capacity commitment period) Transition Period.
3. Revival of the RTR exemption.
 - Base RTR exemptions for each FCA will be:
 - FCA 17: Up to 300 MW with carry forward of unused RTR MW into FCA 18
 - FCA 18: Up to 400 MW minus MW cleared through FCA 17 CASPR Substitution Auction.
4. Retention of CASPR with elimination of the CASPR Test Price.

⁴⁶ See, ISO-NE, "Competitive Capacity Markets without a Minimum Offer Price Rule", at 10-16 (Sept. 13-14, 2021), available at https://www.iso-ne.com/static-assets/documents/2021/09/2021_09_13_14_mc_a02b_iso_presentation.pptx; ISO-NE, "Competitive Capacity Markets without a Minimum Offer Price Rule (MOPR)", at 9-15 (Oct. 13-14, 2021), available at https://www.iso-ne.com/static-assets/documents/2021/10/a03b_mc_2021_10_13_14_iso_ne_competitive_capacity_market_without_mopr_presentation.pptx

⁴⁷ McCarthy BSMR testimony at 23-28.

⁴⁸ ISO-NE, *Memo re Competitive Capacity Markets without a Minimum Offer Price Rule – Further Updates to Tariff Revisions at 1-2*.

⁴⁹ ISO-NE, Internal Market Monitor, *Memo re: Preliminary Views on ISO's Post-MOPR Self-Certification Proposal* (Oct. 12, 2021), available at https://www.iso-ne.com/static-assets/documents/2021/10/a03b_mc_2021_10_13_14_iso_ne_memo_preliminary_views_post_mopr_self_certification_proposal.pdf.

5. Updated definition of Sponsored Policy Resource⁵⁰

A number of these components and the evidence supporting them will be discussed in more detail below.

III. ARGUMENT

The ISO-NE MOPR is unjust and unreasonable and unduly discriminatory and it should be reformed as soon as possible, in time for FCA 17 in March 2023. The MOPR interferes with the New England states' authority to determine their resource mixes, it leads to over-procurement of capacity, it creates uncompetitive markets and it is costly for consumers. Two members of this Commission appear to share the same concerns, recently suggesting that the ISO-NE MOPR "appears to be unjust and unreasonable" and observing that :

[T]he MOPR appears to act as a barrier to competition, insulating incumbent generators from having to compete with certain new resources that may be able to provide capacity at lower cost. Such overbroad barriers are the antithesis of market competition, in that they divorce "capacity market clearing prices from the actual net going forward costs of would-be capacity suppliers" and serve "only to prop up capacity prices, protect incumbent generators, and increase the costs of state policies." The end result is [*sic*] "is doubly bad for consumers, as they will be forced to pay for more capacity than is actually needed, and to do so at a higher price than they should, because the MOPR will allow a relatively high-cost resource to set the capacity price for the entire set of resources procured⁵¹

As discussed below, the transition portion of the MOPR reform filing simply extends the incumbent generator protections and their attendant higher costs for the next two FCAs, without the proper evidentiary basis that would support doing so.

⁵⁰ Filing letter at 63-68; *see also*, "Testimony of Ryan McCarthy on behalf of ISO-New England Inc. Regarding the Need for a Transition" (McCarthy Transition testimony), ISO-NE and NEPOOL Filing at 1287.

⁵¹ *Order Accepting Informational Filing and Directing Modification*, 178 FERC ¶ 61,050 (2022), Glick-Clements Concurrence at P 4 (internal quotations and citations omitted).

A. Burden of Proof and Standard of Review

In reviewing Section 205 filings, the Commission must determine whether the proposed rates are just and reasonable.⁵² As the applicants, ISO-NE and NEPOOL bear the burden of establishing that the MOPR reform filing is just and reasonable.⁵³ The Commission's determinations as to whether electric rates are just and reasonable receive deference but must be "supported by substantial evidence" and the method of determination must be "consistent with past practice or adequately justified."⁵⁴ 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."⁵⁵ Ultimately, a reviewing court seeks to "ensur[e] that the Commission has made a principled and reasoned decision supported by the evidentiary record."⁵⁶ As demonstrated below, ISO-NE and NEPOOL have not met their burden of providing substantial evidence in support of the transition mechanism. Without such evidence there is insufficient basis on which the Commission could base a determination that it is just and reasonable.

B. The transition mechanism lacks data-based evidentiary support

A transition, like any other component of a rate design, must be "supported by substantial evidence" and must be "adequately justified."⁵⁷ The Commission has also held that it must reject proposals where the proponent has not provided the Commission with sufficient information to determine the effects of its proposed revisions.⁵⁸ Customarily, the effects of

⁵² *ISO New England, Inc.*, 113 FERC ¶ 61,055 at P 22 (2005).

⁵³ *NorthWestern Corp.*, 155 FERC ¶ 61,158, at PP 27–29 (2016), *rev. denied*, 884 F.3d 1176 (2018).

⁵⁴ *Emera Maine v. FERC*, 854 F.3d 9, 22 (D.C. Cir. 2017) (internal quotations and citations omitted).

⁵⁵ *Id.* at 23 (internal quotations and citations omitted).

⁵⁶ *Id.* at 22 (internal quotations and citations omitted).

⁵⁷ *Id.* (internal quotations and citations omitted).

⁵⁸ See *N. Me. Indep. Sys. Adm'r., Inc.*, 119 FERC ¶ 61,231 at PP 17-18 (2007) (rejecting filing of proposed Tariff and Market Rules revisions finding that the Northern Maine Independent System Administrator "has not provided

market design changes are most effectively determined by data-driven methodologies like probabilistic modeling or an impact analysis. In cases similar to the instant one, where transitions have been proposed to address potential price volatility or harm to the market, the Commission has approved them on the basis of analytical evidence⁵⁹ and has rejected them for lacking it.⁶⁰ Unlike in the instant case, the transitions cited with approval by ISO-NE and NEPOOL in the Filing letter were all supported by ample analytical evidence. For example, in the order approving ISO-NE's adoption of the sloped MRI system and zonal demand curves, 155 FERC ¶ 61,319, the transition of up to three years utilizing a hybrid demand curve was supported by a quantitative assessment (modeling) and was analyzed and supported by the IMM.⁶¹ In the order cited in the Filing letter approving a six-year phase-in of the Capacity Performance Payment Rate, 147 FERC ¶ 61,172,⁶² the initial transitional Performance Payment Rate (PPR) and the final, full PPR were supported by an impact analysis conducted by an outside consultant.⁶³ The three year RTR exemption that accompanied ISO-NE's initial adoption of a

the Commission with sufficient information to determine the effects of its proposed revisions...[and] has failed to demonstrate that the proposed tariff revisions are just and reasonable, and, accordingly, has failed to satisfy its burden of proof under section 205 of the FPA."); see also, *Puget Sound Energy, Inc.*, 132 FERC ¶ 61,128 at PP 31-35 (2010) (rejecting proposed tariff revisions upon finding that the filing party had not demonstrated that its proposed rate was just and reasonable."); *N.Y. Indep. Sys. Operator, Inc.*, 131 FERC ¶ 61,074 (2010) (rejecting proposed tariff sheets on the basis that the filing party had not shown the proposed revisions were just and reasonable).

⁵⁹ See *N.Y. Indep. Sys. Operator, Inc.*, 156 FERC ¶ 61,039 at P 20 (2016) (approving transition collar mechanism). In this case a stakeholder proposed a transition "collar" temporarily limiting the amount of yearly change in demand curve reference point prices. The stakeholder proposal was evaluated by NYISO's outside consultant and was found to be reasonable based on its consistency with values resulting from the consultant's backcasting analysis. See NYISO, "Affidavit of Paul J. Hibbard", at PP 16, 28 (May 20, 2016), available at <https://elibrary.ferc.gov/eLibrary/filedownload?fileid=01E042D6-66E2-5005-8110-C31FAFC91712>

⁶⁰ *N.Y. Indep. Sys. Operator, Inc.*, 158 FERC ¶ 61,064 at P 55 (2017) (transition mechanism "lacked analytical basis" and was rejected due to lack of power flow analysis to show effect).

⁶¹ *ISO New England Inc. & NEPOOL Participants Comm.*, 155 FERC ¶ 61,319 at PP 7, 11, 21, 57. (2016) (approving demand curve and zonal demand curves based on the Marginal Reliability Impact (MRI) of capacity and approving a transition of no more than three years).

⁶² *ISO-NE, Inc.*, 147 FERC ¶ 61,172 at P 73 (2014).

⁶³ ISO-NE, *Memo re: FCM Pay for Performance – Revised Elements*, at 3 (Oct. 2, 2013), available at https://www.iso-ne.com/static-assets/documents/committees/comm_wkgrps/mrkt comm/mrkt/mtrls/2013/oct892013/a03a_iso_memo_10_02_13.pdf.

sloped demand curve, approved by the Commission in 147 FERC ¶ 61,173, was supported by Monte Carlo probabilistic simulation modeling.⁶⁴ There is no such substantial evidence or analytical support of the transition in this case. The only evidence proffered by ISO-NE and NEPOOL in support of the transition is the testimony of Dr. Chadalavada and Mr. McCarthy.⁶⁵ Neither contains the missing quantitative evidence to demonstrate that a transition is necessary or will be effective in protecting against the reliability concerns discussed in their testimony.

Supporting evidence “requires not mere fears for the future but facts and findings, a statement of reasons that is supported by concrete inferences from substantial evidence, and is not to be snatched from the air on a purely hypothetical ‘worst case’ analysis”⁶⁶ Further, the Commission has been clear that stakeholder approval of a proposal is insufficient to carry the burden of proof that a rate is just and reasonable.⁶⁷ The Filing letter notes that the filing was approved by a “supermajority.”⁶⁸ However, as ISO-NE once observed, “the Commission must not be swayed by the frequently repeated cry that the ... proposal is supported by a “super-majority” of stakeholders. There is no legal or regulatory authority holding that popularity is in any way correlated to whether a set of rule changes is just and reasonable.”⁶⁹ ISO-NE’s

⁶⁴ *ISO New England Inc. & NEPOOL Participants Comm.*, 147 FERC ¶ 61,173 at PP 30-33, 81–88 (2014), *clarif. granted, r’hg denied*, 150 FERC ¶ 61,065 (2015), *order on remand*, 155 FERC ¶ 61,023 (2016), *r’hg denied*, 158 FERC ¶ 61,138 (2017), *rev. denied, NextEra Energy Res., LLC v. FERC*, 898 F.3d 14, 26 (D.C. Cir. 2018).

⁶⁵ See “Testimony of Vamsi Chadalavada on behalf of ISO-New England Inc. Regarding the Need for a Transition”, ISO-NE and NEPOOL filing at 1239 (Chadalavada testimony); *see also*, McCarthy Transition testimony, ISO-NE and NEPOOL Filing at 1287.

⁶⁶ *Memphis Light, Gas & Water Div. v. FPC*, 504 F.2d 225, 234 (D.C. Cir. 1974) (rejecting increase in depreciation rates due to evidentiary lack of relevant analysis and projections). *See also, Farmers Union Cent. Exch., Inc. v. FERC*, 734 F.2d 1486, 1503 (D.C. Cir.1984), *cert. denied*, 469 U.S. 1034 (1984) (faulting FERC for allowing increased rates on generalized premise of need for more pipeline capacity and holding that FERC “did not even attempt to calibrate the relationship between increased rates and the attraction of new capital.”).

⁶⁷ *American Electric Power Service Corp. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,083 at P 172 (2008), *r’hg denied*, 125 FERC ¶61,341 (2008). (stakeholder support is relevant but cannot alone prove that a rate design is just and reasonable).

⁶⁸ Filing letter at 6.

⁶⁹ ISO-NE, Motion for Leave and Answer, Docket No. ER14-1050 at 3 (March 3, 2014)..

statement is particularly true here, where the stand-alone transition amendment barely passed at the Participants Committee. Thus stakeholder approval of the transition in this case cannot be a substitute for evidence that is sufficient to support a finding of justness and reasonableness.

In this case there are no “facts and findings” about the effects of or benefits of the transition mechanism.⁷⁰ ISO-NE “*anticipates* that a more graduated transition to the BSMR Reforms would minimize the reliability risks to the region.”⁷¹ ISO-NE and NEPOOL argue that “The transition proposal sets a steady pace for new, sponsored technologies to displace existing resources over two auction cycles”⁷² Dr. Chadalavada believes there is a *potential* for inefficient retirements without the transition.⁷³ He testifies that “with the proposed two-year transition, the potential reliability risk from new resource development delays *should be* manageable—but without the proposed transition, it *may not be*.”⁷⁴ There is no analytical evidence to support any of these points.

In contrast to the careful, data-driven design of ISO-NE’s original MOPR reform proposal without the transition, the transition mechanism is comprised of a hodgepodge of unsubstantiated and subjective design elements whose efficacy has not been evaluated in any way. The lack of sufficient supporting evidence for the transition is the result of both ISO-NE and the transition amendment sponsors’ failure to perform meaningful quantitative or even detailed qualitative analysis on any element of the transition mechanism.

⁷⁰ *Memphis Light, Gas & Water Div.*, 504 F.2d at 234.

⁷¹ Filing letter at 39 (emphasis added).

⁷² *Id.*

⁷³ Chadalavada testimony at 5 (emphasis added).

⁷⁴ *Id.* at 33 (emphasis added).

Whether and To What Extent the Transition Alleviates Reliability Risks

Consumer Advocates are familiar with the concerns that ISO-NE has been raising for a number of years regarding reliability. However Consumer Advocates question whether the transition will successfully address them and what impact the transition will have on rates. ISO-NE's filing does not answer those questions with any data-derived proof. The filing does not disclose to what extent the various possible inefficient retirement consequences raised by ISO-NE—summer reliability problems, winter reliability problems, reliability concerns caused by delays in development of new resources—will be remedied by the limitation of new entry of sponsored policy resources over the next two FCAs.⁷⁵ There is simply no evidence in the record evaluating or quantifying any transition effects or benefits. A memorandum submitted by stakeholder RENEW Northeast (RENEW memo) in advance of the February 3 Participants Committee vote cogently argues that inefficient retirements and their attendant effects can be caused by a large amount of new resource entry of *any* type, merchant or sponsored, into the capacity market, and that any delay in the development of either could also cause the reliability problems that ISO-NE fears.⁷⁶ The logical response to this concern would be to limit the amounts of all new entry for the next two FCAs. Singling out only new sponsored policy resources for such limitation is illogical and amounts to undue discrimination.

The Term of the Transition

There is also no data-based evidence supporting a two-FCA transition term. The testimonial evidence establishes that ISO-NE intends to work on capacity reaccreditation and Day-Ahead Ancillary Services reforms during that time period. Both are intended to enhance

⁷⁵ For an enumeration of ISO-NE's reliability fears arising from inefficient retirements, see ISO-NE, *Memo from Chadalavada to NECPUC, NESCOE and NEPOOL* at 2-4; Chadalavada testimony at 5-30.

⁷⁶ RENEW Northeast, *Memo to NEPOOL Participants Committee Members* at 2-3 (Feb. 1, 2022) (RENEW memo), available at https://nepool.com/wp-content/uploads/2022/01/NPC_2022.02.03_Composite4.pdf at 1275.

system reliability, during that time period. However, although the absence of these market reforms is used to justify the need for the transition, ISO-NE does not guarantee that those reforms will be completed by the end of the transition⁷⁷ and it has been clear that they are not linked to accomplishment of MOPR reform.⁷⁸ Moreover, during the many months when ISO-NE advocated for MOPR reform effective for FCA 17, it was clearly aware of the importance of these projects and that they would not be completed by FCA 17. Until recently, ISO-NE did not appear to consider that fact to be a valid reason to delay MOPR reform. For these reasons, the two-FCA term of the transition appears to be arbitrary and unsupported by sufficient evidence and it should be rejected.

RTR Exemption Amounts

No effort was made by ISO-NE or the amendment's sponsors to quantitatively analyze whether the amounts selected for the annual RTR exception were well-founded and would fairly enable entry of sponsored policy resources during the transition period. To the contrary, it seems that the annual MW quantities subject to the RTR exemption were arrived at by eye-balling historical RTR exemption amounts and CASPR Substitution Auction supply offers and then "guestimating" some additional amount to add on top.⁷⁹ ISO-NE and NEPOOL tout the RTR exemption caps as "stakeholder-derived" amounts.⁸⁰ Dr. Chadalavada's testimony gives some insight into what that means when he explains "representatives of many of the generating

⁷⁷ Filing letter at 41("It is important to underscore that the proposed package of Tariff revisions in this filing is not contingent upon completion of either of these market reforms [RCA and Day Ahead Ancillary Services] or filings.") (bracketed material added, emphasis in original); *See also*, Chadalavada testimony at 46.

⁷⁸ *Id.*

⁷⁹ Vistra, "MOPR Transition Proposal" at 3 (Oct. 21, 2021), available at https://www.iso-ne.com/static-assets/documents/2021/10/a02a_ii_mc_2021_10_21_vistra_draft_proposal.pptx; McCarthy Transition testimony at 8-10.

⁸⁰ Filing letter at 42. The Filing letter explains that "The 700 MW value was proposed by the proponents of the Transition Mechanism during the stakeholder process as a reasonable amount of capacity to exempt from the MOPR for the two-year period leading up to its elimination." *Id.* (internal citation omitted). As previously mentioned, the proponents of the transition were fossil fuel generators.

companies that rely on wholesale markets and deploy private capital affected by the entry of these resources, have generally agreed with the proposed quantity of resources in the renewed renewables exemption”⁸¹ In other words, “stakeholder-derived” means fossil-fuel-generator derived. While fossil fuel generators apparently found 700 MW to be a “reasonable” amount,⁸² there has been no analysis to determine that 700 MW is an appropriate amount that will lessen the effects on consumers and on sponsored policy resources of continuation of the MOPR. Relatedly, there has been no analysis of what amount may be likely to clear through the exemption. The transition provisions will allow “up to 700 MW” of capacity from sponsored policy resources to clear in FCAs 17 and 18 using the RTR exemption.⁸³ But market entry is not automatic. The amounts qualified under the exemption must also clear the FCA. As pointed out in the RENEW memo, “the RTR exemption rules allow for potentially significant portions of the RTR cap to go unused should resources qualify for the RTR exemption and then, for whatever reason, not continue to clear in the FCA.”⁸⁴ Accordingly, the purported benefit of the 700 MW RTR allowance may be significantly overstated. There is no data-derived evidence in the record evaluating the impact on sponsored policy resources of the proposed RTR exemption amounts. ISO-NE and NEPOOL have not provided the Commission with “sufficient information to determine the effects of its proposed revisions” with respect to the transition’s RTR exemption amounts and the MOPR reform filing should be rejected on that basis.⁸⁵

⁸¹ Chadalavada testimony at 40-41.

⁸² Filing letter at 42.

⁸³ Chadalavada testimony at 30.

⁸⁴ RENEW memo at 2-3.

⁸⁵ *N. Me. Indep. Sys. Adm’r., Inc.*, 119 FERC ¶ 61,231 at PP 17-18.

Retention of CASPR/ Removal of CASPR Test Price

The transition's retention of the spectacularly unsuccessful CASPR program, accompanied by removal of the CASPR test price, is similarly unsupported by any analytical evidence. The test price rule provides that an existing generator cannot retire in the CASPR Substitution Auction if the FCA clearing price is below the competitive price that the existing resource would need to continue operating. The rule is intended to deter existing generators from submitting artificially low bids in the FCA so that they can clear and then participate in the Substitution Auction.⁸⁶ Will retention of CASPR with removal of the test price have no effect, allow measured entry of sponsored policy resources or open the floodgates to them? There is no data-based evidence in the record to answer these questions. ISO-NE concedes that it does not know if removal of the test price will facilitate greater clearing in the Substitution Auction, but nonetheless it "does not believe removal of the test price mechanism will cause any harm to the FCM."⁸⁷ Conversely, the RENEW memo argues persuasively that removal of the CASPR test price could exacerbate inefficient retirements rather than preventing them: "If the test price is removed, the volumes that could clear in the Substitution Auction could eclipse the RTR exemption cap, leading to the same outcome ISO stated a desire to avoid"⁸⁸ This result is possible because, unlike the transition's RTR exemption, there is no limit on the amount of sponsored policy MW that can enter through the CASPR Substitution Auction. The removal of the test price creates a two-FCA window where generators will be paid to retire.⁸⁹ This brief opportunity to receive a severance payment could prove very attractive to some generators, but because ISO-NE and NEPOOL have not provided the Commission with any data-based evidence

⁸⁶ Filing letter at 66-67.

⁸⁷ Filing letter at 68.

⁸⁸ RENEW memo at 3.

⁸⁹ *Id.* at 2.

of the potential effects of removal of CASPR test price, the ultimate effect of this transition provision is unknown. Rather than easing reliability concerns, the transition mechanism may in fact amplify them. Any resource owner that is considering retirement will rationally choose to do so in the pre-defined two-year window where it can receive a severance payment, potentially creating a large number of retirements over a short timeframe. This is the very scenario that ISO-NE fears, but it did not quantitatively evaluate this possibility.

Impacts on Consumers

ISO-NE made no attempt to analyze or quantify the consumer impacts of the transition, either negative impacts, in the form of higher prices, or positive impacts, in the form of claimed potential cost savings.⁹⁰ Without fact-based evidence of the effects of the transition on ratepayers, ISO-NE and NEPOOL cannot meet their burden of proving that the rates created by the transition are just and reasonable.

The testimony of ISO-NE witnesses Chadalavada and McCarthy in support of the transition is not a substitute for the rigor of analyses of the key issues identified above. The McCarthy testimony simply details the features of the transition mechanism and the prior history of some of the elements. Dr. Chadalavada's testimony is basically an expansion of the arguments in his January 26 memo and may be aptly characterized as ISO-NE's "fears for the future" and a "worst case scenario".⁹¹ He explains the reasons for ISO-NE's short term reliability concerns, many of which have not been probabilistically evaluated, and he offers his opinions that the transition will, may or should address them. There is no quantitative evidence in the testimony or in the filing to demonstrate whether or how the transition will address the

⁹⁰ ISO-NE, *Memo from Chadalavada to NECPUC, NESCOE and NEPOOL* at 3-4.

⁹¹ *Memphis Light, Gas & Water Div. v. FPC*, 504 F.2d at 234.

potential risks cited or that the transition will address those risks better than reform of the MOPR for FCA 17.

IV. CONCLUSION

Consumer Advocates respectfully request that the Commission reject ISO-NE's MOPR filing because it will result in unjust and unreasonable rates due to the inclusion of the transition mechanism. The transition provisions "lack analytical basis and will delay efficient market signals",⁹² in contravention of Commission precedent. There is also no record evidence of the effect of transition's various provisions. Under such circumstances the Commission has held that the proponents of tariff changes have not met their burden of proof under Section 205.⁹³

ISO-NE's sudden adoption of the transition mechanism must be viewed for what it is: an attempt to disincent legal challenges to MOPR reform by fossil fuel generators. In choosing to support the transition, ISO-NE's stated reasons for the necessity of MOPR reform—consumer cost, system overbuild and sending the wrong price signals—have fallen by the wayside, at least until 2025. Instead, protecting capacity market revenues for incumbent generators is paramount. Sponsored policy resources will continue to experience undue discrimination and consumers will continue to overpay for capacity. Consumer Advocates also fear that the transition could delay MOPR reforms for more than two FCAs. Many things could change by February 2025 and if ISO-NE or fossil generators were to claim that a longer transition was desirable or necessary, based on changed circumstances or a delay in achieving capacity reaccreditation or Day Ahead Ancillary Services reforms, neither the New England states or NEPOOL might be able to prevent it.

⁹² *N.Y. Indep. Sys. Operator, Inc.*, 158 FERC ¶ 61,064 at P 55.

⁹³ *N. Me. Indep. Sys. Adm'r., Inc.*, 119 FERC ¶ 61,231 at PP17-18.

For these reasons, Consumer Advocates respectfully request that the Commission reject, without prejudice, the MOPR filing as unjust and unreasonable due to inclusion of the transition and remand it with guidance. If the Commission rejects this filing, FCA 17, to be held in March 2023, acts as a strong incentive for ISO-NE to refile a revised proposal without the transition as soon as possible. Otherwise, the FCA 17 auction results risk being found to be unjust and unreasonable due to the continued application of the MOPR. ISO-NE has previously conceded that implementation of MOPR reform is feasible for FCA 17.⁹⁴ Further, it has a stand-alone, completed and stakeholder-vetted design at the ready in the form of its original MOPR reform design approved by the Markets Committee in January 2022. These facts should facilitate expedited filing of an amended MOPR reform design that omits the transition. In the alternative, should the Commission institute a proceeding pursuant to FPA Section 206 on a preliminary finding of unjustness and unreasonableness due to the inclusion of the transition, Consumer Advocates respectfully request that ISO-NE be ordered to make an amended filing removing the transition within 30 days, to be effective for FCA 17. An expedited compliance period is appropriate based on the full stakeholder process that has occurred and the existence of a completed MOPR reform design that does not contain the transition.

Respectfully Submitted,

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⁹⁴ ISO-NE, *Memo from Chadalavada to NECPUC, NESCOE and NEPOOL* at 5.

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April 21, 2022

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 at Boston, Massachusetts this 21 day of April, 2022.

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Document Content(s)

AGO Comments and Partial Protest final 4-21-22.pdf.....1