

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

**ISO New England Inc.**

)  
) **Docket No. ER19-1428-001**  
)

**PROTEST OF THE  
MAINE PUBLIC UTILITIES COMMISSION**

Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission<sup>1</sup> (“Commission”) and the Commission’s June 6, 2019 Combined Notice of Filings #1, the Maine Public Utilities Commission (“MPUC”) hereby files this Protest to the June 6, 2019 Response (“Deficiency Response”) filed by ISO New England Inc (“ISO-NE”) to the Commission’s May 8, 2019 letter<sup>2</sup> finding the ISO’s Inventoried Energy Program (“IEP”), proposed on March 25, 2019<sup>3</sup> is deficient. As discussed below, the ISO-NE Deficiency Response fails to address the deficiencies identified in the Deficiency Letter.

**I. BACKGROUND**

The March 25 Filing follows a series of filings and Commission orders relating to fuel security. These include ISO-NE’s Waiver Petition in which it sought a waiver of multiple provisions of the ISO-NE Open Access Transmission Tariff (“OATT”) to allow ISO-NE to enter into a cost of service (also known as a Reliability-Must-Run (“RMR”)) contract with the owners

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<sup>1</sup> 18 C.F.R. § 385.211 (2019).

<sup>2</sup> *ISO New England Inc.*, Deficiency Letter, Docket No. ER19, 1428-000 (issued May 8, 2019) (“Deficiency Letter”).

<sup>3</sup> *ISO-New England Inc.*, Inventoried Energy Program, Docket No. ER19-1428-000 (filed March 25, 2019 (“March 25 Filing”).

of Mystic Units 8 and 9 for the purpose of addressing fuel security concerns; the Commission Show Cause Order in which it denied ISO-NE's petition and instituted a proceeding under section 206 of the FPA concerning the justness and reasonableness of the ISO-NE Tariff; ISO-NE's August 31, 2018 compliance filing in which it proposed provisions allowing it to retain resources for fuel security reasons, as well as provisions for short-term cost-of-service agreements for retained units, and the Commission's December 3, 2019 order<sup>4</sup> on the August 31, compliance filing. The March 25 Filing proposed the IEP as an interim program for the winters of 2023-2024 and 2024-2025. According to ISO-NE, the program "will provide incremental compensation to resources that maintain inventoried energy during cold periods when winter energy security is most stressed."<sup>5</sup>

Numerous parties, including the MPUC, filed protests to the IEP, and on May 8, 2019, the Commission issued its Deficiency Letter, stating that the ISO-NE's March 25 filing is deficient and requesting additional analysis and explanation. On June 6, 2019, ISO-NE filed its Deficiency Response.<sup>6</sup>

#### **IV. PROTEST**

##### **A. ISO-NE Has Failed to Provide the Requested Explanation on Why the IEP Is Needed, Given the Commission's Approval of Fuel Security Retention Provisions.**

One of the interesting aspects of the IEP is that the Commission *never* directed ISO-NE to develop such a program. Rather, ISO-NE unilaterally committed to establish an interim

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<sup>4</sup> See, *ISO New England, Inc.* 165 FERC ¶ 61,202 (2018) ("December 3 Order") (Rehearing Pending) (Approving ISO-NE's compliance filing proposing a fuel security short-term cost-of-service mechanism to be effective for FCA 14 and FCA 15).

<sup>5</sup> March 25 Filing, Transmittal Letter at 1.

<sup>6</sup> *ISO New England Inc.*, ISO-NE Response to Deficiency Letter, Docket No. ER19, 1428-000, filed on June 6, 2019) ("Deficiency Response").

program for the same time period (FCA 14 and FCA 15) during which the short-term fuel security cost-of-service provisions will operate. ISO-NE proposed the IEP in the hope that that the program may deter “resources that provide winter energy security during stressed winter conditions from pursuing retirement, thereby reducing the likelihood that such resources and their reliability attributes exit the market or are retained through out-of-market actions that may adversely impact the wholesale markets.”<sup>7</sup>

In light of the fact that there is already an interim fuel security program in effect and that the Commission never required ISO-NE to develop the IEP, the Deficiency Letter asks ISO-NE to explain among other things why the program is necessary and specifically asks for an explanation of how identified fuel security concerns for the winters of 2023-2024 and 2024-2025 are not adequately addressed by the existing interim fuel security program approved in the December 3 Order.

ISO-NE’s Deficiency Response does not answer the question, presumably because it cannot. The IEP does not propose to replace the existing interim fuel security program. The IEP is simply an additional and unnecessary interim program that ISO-NE *hopes* may prevent retention of units and resulting RMRs in addition to the Mystic units’ retention and RMR.

**B. ISO-NE Failed to Justify the Absence of Any Quantitative Analysis to Support the Proposal.**

The Deficiency Letter asks ISO-NE for quantitative analysis to support its proposal.<sup>8</sup> In its response, ISO-NE states that all of its analysis is contained within its filing and that because this is an interim program, detailed analysis regarding the need for and efficacy of the program

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<sup>7</sup> March 25 Filing, Geissler Testimony at 7.

<sup>8</sup> Deficiency Letter, question 1.

was not warranted. This argument amounts to suggesting that the burden to demonstrate that a rate is just and reasonable is somehow lessened if the rate will be in effect for a limited time-frame, in this case two years. This argument is unsupportable and has been rejected by the Commission.<sup>9</sup> Simply stating that the program is “directionally correct,” or an “interim step” or stating the ISO’s hopes for what the project may accomplish does not meet ISO-NE’s burden to provide support for its proposal. Here ISO-NE has provided insufficient analysis to determine whether its proposed tariff provisions are just and reasonable.<sup>10</sup>

ISO-NE has also failed to answer more specific requests for quantitative analysis. The Deficiency Letter requests quantitative analysis regarding the impact of the program on energy and ancillary services market prices, quantities and revenues<sup>11</sup> and on fuel availability.<sup>12</sup>

Regarding price impacts, ISO-NE responds that there was not sufficient time to develop such analysis. For example, it states,

As the ISO explained in its answer, the estimation of this impact would have required the development of a production cost model, detailed assumptions about demand and available supply in the winters of 2023/24 and 2024/25, and expectations of how the program will impact resource inventoried energy decisions, availability, and bidding behavior. The development of such a model would have been a significant undertaking for an interim program that is slated to last for two winters and was not possible in the timeframe necessary to have the program finalized and understood by stakeholders before

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<sup>9</sup> See, *Westar Energy, Inc.*, 137 FERC ¶ 61,142 at P30 (2011) (finding that the Commission's recognition of the potentially temporary nature of the need for the proposal should not be misconstrued as the Commission using a lower standard for evaluating the proposal); see also, *PJM Interconnection, LLC*, 157 FERC ¶ 61, 235 at P 11 (2016) (stating that temporary solutions are not subject to a lower standard of evaluation).

<sup>10</sup> See *ISO New England, Inc.*, 113 FERC ¶ 61,055 at P 22 (2005) (Under section 205 of the Federal Power Act, the applicant bears the burden of demonstrating that its proposed rate change is just and reasonable).

<sup>11</sup> Deficiency Letter, question 6.

<sup>12</sup> *Id.*, question 7.

retirement decisions were made for the upcoming Forward Capacity Auction (scheduled for February 2020).<sup>13</sup>

Regarding the program's likely impact on fuel availability, ISO-NE responds:

The ISO did not conduct any specific analysis that sought to estimate how much additional fuel would have been available during previous cold weather events if the program were in place. As with other forms of quantitative analysis, such analysis would require the development of a model that includes assumptions about how resources modify their behavior under the program and change their bid prices to account for the new opportunity costs associated with converting energy to fuel. Further complicating such an analysis, these previous cold weather events occurred under a range of market rules, including various iterations of the winter reliability program that compensated resources for certain types of inventoried energy. It would be extremely difficult to adjust the historical observed behavior to account for the effects of those different market rules in order to predict the impact of the inventoried energy program on past winter periods relative to current rules (for which no winter reliability program is in place). As discussed in previous answers, to build such a model would have required significant time and effort from the ISO and its stakeholders, which the ISO does not believe is warranted for an interim program and that could be better spent working on the long-term market-based approach.<sup>14</sup>

In short, ISO-NE has proposed an unnecessary and unsupported interim program. It provides a number of excuses for its lack of analysis: it can't look ahead in developing quantitative impact analysis because projections have too many variables, and it can't look back in determining whether the program would have been successful in providing fuel availability because building a model to perform such an analysis requires more time than was warranted for an interim program. These excuses do not relieve ISO-NE from its burden to provide support for the IEP. Because ISO-NE has failed to meet that burden, the IEP should be rejected.

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<sup>13</sup> Deficiency Response at 7-8. ISO-NE also suggests that such analysis may not have very much value, because of changing variables and difficulty of future predictions, but this excuse, if accepted could obviate the need for all quantitative analyses which typically rely on some type of predictive methodologies.

<sup>14</sup> *Id.* at 8-9.

## V. CONCLUSION

For the reasons discussed above and in its protest of April 19, 2019, the MPUC protests ISO-NE's Deficiency Response and the March 25 Filing and respectfully requests that the Commission reject ISO-NE's proposed IEP.

Dated: June 27, 2019

Respectfully submitted,

/s/ Lisa Fink \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing document either by first class mail or electronic service upon each party on the official service list compiled by the Secretary in this proceeding.

Dated at Hallowell, Maine, this 27<sup>th</sup> day of June, 2019.

/s/ Lisa Fink

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