

144 FERC ¶ 61,204  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony Clark.

ISO New England Inc., et al.	ER13-1851-000
	ER13-1851-001
	ER13-1851-002

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS

(Issued September 16, 2013)

1. On June 28, 2013, ISO New England Inc. (ISO-NE) and the New England Power Pool (NEPOOL) Participants Committee filed, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> proposed revisions to Market Rule 1<sup>2</sup> of its Transmission, Markets and Services Tariff (Tariff), intended to aid ISO-NE in maintaining reliability during the 2013-2014 winter (the Winter Reliability Program, or Program). On August 9, 2013, ISO-NE filed amendments to the pending Winter Reliability Program, and on August 12, 2013 ISO-NE filed errata to those amendments.<sup>3</sup> In this order, we conditionally accept the proposed Tariff revisions<sup>4</sup> regarding demand response, oil inventory, and dual-fuel

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<sup>1</sup> 16 U.S.C. § 824(d) (2006).

<sup>2</sup> ISO-NE Transmission, Markets and Services Tariff, § III (Market Rule 1).

<sup>3</sup> The amended rules changed the penalty structure of the Winter Reliability Program to encourage bidder participation, and the errata corrected certain typographical errors in the amended rules filing.

<sup>4</sup> While ISO-NE and NEPOOL jointly filed the original proposal on June 28, 2013, ISO-NE filed the August 9, 2013 amendments and August 12, 2013 errata without NEPOOL's support due to exigent circumstances. NEPOOL subsequently submitted comments to the amendments explaining that it did not sponsor that filing because the exigent circumstances did not allow NEPOOL to consider the amendments through a proper stakeholder process. Because ISO-NE is the only party to propose all of the Tariff revisions in this proceeding, in this order we will refer to ISO-NE as the filing party;

(continued...)

testing to become effective September 6, 2013 through February 28, 2014, as requested, and the proposed tariff provisions regarding market monitoring to become effective September 6, 2013, as requested, subject to ISO-NE submitting revised tariff records in a compliance filing within 30 days of the date of this order, as discussed below.

## **I. Summary of ISO-NE's Filing**

2. ISO-NE states that two of New England's most pressing reliability risks are (1) increased reliance on natural gas-fired generation, and (2) resource performance during periods of stressed system conditions. ISO-NE states that it is working with its stakeholders to address these risks in the longer term, but events during winter 2012-2013 made it apparent that interim short-term action is required to aid ISO-NE in maintaining reliability during winter 2013-2014. ISO-NE states that it intends to use the Winter Reliability Program proposed here to procure up to 2.4 million MWh of energy for winter 2013-2014, from a combination of oil-fired generators, dual-fuel generators, and demand response assets.

3. The Winter Reliability Program contains four components: (1) demand response; (2) oil inventory service; (3) dual-fuel testing; and (4) market monitoring changes.<sup>5</sup> The first three components are presented in a new Appendix K to Market Rule 1 of the Tariff, which would be effective from September 6, 2013 through February 28, 2014. The fourth component, the market monitoring changes, is comprised of provisions in Appendix K and changes to existing Appendix A of the Tariff. These changes would be indefinite, effective September 6, 2013.<sup>6</sup> The Winter Reliability Program's four components are described below.

### **A. Demand Response**

4. The Winter Reliability Program's demand response program would solicit bids for demand reductions and net supply from demand response assets. The demand response program is open to market participants with new demand response assets that are not otherwise participating in the wholesale markets, as well as market participants

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however, we note that NEPOOL jointly proposed most aspects of the Winter Reliability Program.

<sup>5</sup> ISO-NE June 28, 2013 Transmittal at 4 (ISO-NE June 28 Transmittal).

<sup>6</sup> ISO-NE states that it will make a separate filing at the end of the Winter Reliability Program to relocate the market monitoring changes contained in Appendix K to elsewhere within Market Rule 1. June 28 Transmittal Letter at 20, n.64.

participating in the Forward Capacity Market (FCM) that have capacity in excess of that needed to meet their Capacity Supply Obligations (CSO). ISO-NE will use the demand response assets selected to participate in the Winter Reliability Program to help maintain 30-minute operating reserves.<sup>7</sup>

5. Demand response assets selected to participate in the Winter Reliability Program are required to respond to dispatch signals no more than 10 times during the Program's duration and are dispatchable between 5:00 a.m. – 11:00 p.m. A demand response asset selected for the Program is not required to install meter telemetry, unless the asset is mapped to a Real-Time Demand Response Resource in the FCM.

6. ISO-NE proposes to implement the demand response program manually, stating that there is insufficient time to complete software changes before this winter. To allow for this manual implementation, ISO-NE proposes to limit participation to a maximum of 200 demand response assets. The Program requires a minimum demand response asset size of 100 kW; however, an asset can be an aggregate of multiple demand response facilities if the facilities are within the same dispatch zone.

7. Demand response participants will be compensated through a monthly payment derived from the resources' as-bid price, as well as energy payments for demand reductions. The monthly payment will be equal to the resource's as-bid price multiplied by the asset's average MW achieved during the month. The demand reduction payment will be the greater of either (1) \$250/MWh; or (2) the locational marginal price in the load zone where the asset is located multiplied by the MWh reduction, then multiplied by an avoided energy loss factor.<sup>8</sup>

8. Demand response participants will be subject to non-performance charges. A demand response asset will lose its entire monthly payment if it fails to achieve at least 75 percent of its committed MW quantity for a month. A resource is charged a fixed price of \$250/MWh multiplied by the MWh shortfall for any demand reductions an asset fails to deliver.<sup>9</sup>

#### **B. Oil Inventory Service**

9. Under the Winter Reliability Program's oil inventory service, selected oil-fired and dual-fuel generators will take on certain obligations in exchange for monthly

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<sup>7</sup> ISO-NE June 28 Transmittal at 8.

<sup>8</sup> ISO-NE August 12, 2013 Filing at Appendix K, § III.K.8.

<sup>9</sup> *Id.* at Appendix K, § III.K.9(b).

payments. The oil inventory service is only available to oil-fired generators and dual-fuel generators that can switch to run on oil within five hours.<sup>10</sup> Generators whose bids are accepted are expected to establish an initial block of fuel inventory in their tanks prior to December 1, 2013, and, in the case of some dual-fuel generators, to replenish their fuel inventory. Dual-fuel generators that have offered one or more initial block(s) that together are equal to their full tank size are eligible to offer up to three replenishment blocks, up to the size of the full tank, and are required to replenish their oil supply until the resource's total commitment is satisfied. A dual-fuel resource's total commitment is satisfied on the earlier of March 1, 2014, or the date on which the energy produced and the oil in the tank is equal to the resource's initial block plus any replenishment blocks. Generators providing the oil inventory service are also required to submit supply offers into the day-ahead and real-time markets for each hour of the operating day at their economic max limits and those supply offers must be at or above the generator's reference level on oil. Since oil prices are typically high relative to natural gas, this means that units will run "in merit" only when energy prices are relatively high.<sup>11</sup>

10. Program participants will be compensated through a monthly payment derived from the resources' "as-bid" price. This payment is in addition to payments made for capacity (in the FCM), energy, ancillary services, or other services, none of which will be changed by the Winter Reliability Program.<sup>12</sup>

11. If generators fail to perform they are subject to two different charges: (1) they will lose a pro rata portion of their monthly payment when they are unavailable or have inadequate oil inventory and (2) beginning on January 1, 2014, they will be assessed a per-barrel charge for committed oil that is not in inventory.<sup>13</sup> There are certain exemptions for each of these charges. The unavailability charges will be excused only if the resource's unavailability is the result of a transmission line outage. The per-barrel charge is excused if the failure to have committed inventory was due to a force majeure

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<sup>10</sup> According to ISO-NE, dual-fuel units that use oil as a back-up fuel face certain limitations and constraints, such as environmental restrictions on the amount of oil they can burn. These restrictions are unaffected by the Program.

<sup>11</sup> ISO-NE June 28 Transmittal at 15-16.

<sup>12</sup> *Id.* at 16.

<sup>13</sup> Market participants are required to provide the logs, fuel inventory levels, and other relevant documentation, including fuel inventory receipts and documents, to ISO-NE upon request, and have to allow ISO-NE staff or designees on-site to verify reported fuel levels, with reasonable prior notice.

event, the missing oil was used for energy production on or after November 15, 2013, or the market participant provides evidence of a binding contract for the delivery of oil entered into on or before December 1, 2013, for delivery of oil on or before January 1, 2014.<sup>14</sup>

**C. Dual-Fuel Testing**

12. Dual-fuel resources that are selected to participate in the Winter Reliability Program must test their unit's ability to switch within five hours or less. A dual-fuel unit must submit a plan for testing when it submits its Program bid sheet, and the test must be completed before December 1, 2013. A successful test is one that demonstrates switching within five hours, at the end of which the resource is operating at its economic minimum level. A generator whose test is successful will be compensated for the test<sup>15</sup> via Net Commitment Period Compensation (NCPC) credits, calculated according to the unit's testing plan.<sup>16</sup>

**D. Market Monitoring Changes**

13. Under existing Appendix A to Market Rule 1, the Internal Market Monitor (IMM) assigns a reference level for each resource in New England. If a resource's supply offer exceeds an applicable mitigation threshold based upon that resource's reference level, the IMM will mitigate the offer.<sup>17</sup> The IMM calculates the reference level for dual-fuel resources based upon those resources' least-cost fuel, and if a resource switches fuels, the resource must obtain the IMM's prior approval in order for its supply offer to be evaluated on the higher-cost fuel.

14. In the instant filing, ISO-NE proposes to increase fuel-switching flexibility by removing the requirement that a resource seek the IMM's approval before switching fuels. The Winter Reliability Program instead allows a resource to simply notify the IMM of its intention to switch fuels. The IMM will then evaluate the resource's supply

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<sup>14</sup> ISO-NE August 12, 2013 Filing at Appendix K, § III.K.9(a).

<sup>15</sup> In order to limit the Program's costs, ISO-NE requires that a resource's supply offer during the test must be at or below the unit's reference level for operating on oil.

<sup>16</sup> ISO-NE June 28 Transmittal at 17-18.

<sup>17</sup> Mitigation thresholds sometimes vary by mitigation type but they are based upon the resource's reference level.

offer based upon the higher-cost fuel. However, the resource must provide an ex post justification for its switch to the higher-cost fuel.<sup>18</sup>

## **II. Notice of Filings and Responsive Pleadings**

15. Notice of the June 28, 2013 filing was published in the *Federal Register*, 78 Fed. Reg. 40,735 (2013), with interventions and protests due on or before July 19, 2013. Notice of the August 9, 2013 filing was published in the *Federal Register*, 78 Fed. Reg. 50,406 (2013), with interventions and protests due on or before August 19, 2013. Notice of the August 12, 2013 filing was published in the *Federal Register*, 78 Fed. Reg. 50,408 (2013), with interventions and protests due on or before August 19, 2013.

16. Numerous parties filed timely motions to intervene and some of those parties filed comments.<sup>19</sup> The Vermont PSB filed a notice of intervention. The Maine PUC and Mass. DPU filed notices of intervention and comments. Some parties filed motions to intervene out of time.<sup>20</sup>

17. On August 1, 2013, TransCanada filed an answer to National Grid and CLF's joint protest. On August 5, 2013, RESA filed an answer to United Illuminating's protest and National Grid and CLF's joint protest. On August 5, 2013, NEPOOL Participants Committee filed an answer to several commenters.<sup>21</sup> On August 6, 2013, ISO-NE filed an answer to the comments filed on July 19, 2013. On August 8, 2013, GDF Suez filed an answer to the answers of ISO-NE and NEPOOL Participants Committee. On August 15, 2013, National Grid filed an answer to the answers of ISO-NE, TransCanada, NEPOOL Participants Committee, and RESA. On August 16, 2013, Vitol filed an answer to ISO-NE's August 6, 2013 answer. On August 23, 2013 ISO-NE filed an answer to the comments filed on August 19, 2013.

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<sup>18</sup> ISO-NE June 28 Transmittal at 18-22.

<sup>19</sup> *See* Appendix A.

<sup>20</sup> *Id.*

<sup>21</sup> NEPOOL Participants Committee filed its answer specifically to address the comments of GDF Suez, CLF, National Grid, United Illuminating, NEPGA, Exelon, PSEG, Maine PUC, and Vitol.

### **III. Discussion**

#### **A. Procedural Matters**

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

19. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2013), the Commission will grant the late-filed motions to intervene given the parties' interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

20. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept TransCanada's, RESA's, NEPOOL Participants Committee's, ISO-NE's, GDF Suez's, National Grid's, and Vitol's answers because they provided information that assisted us in our decision-making process.

#### **B. Substantive Matters**

21. For the reasons discussed below, we conditionally accept the proposed demand response, oil inventory, and dual-fuel testing provisions contained in new Appendix K, to become effective September 6, 2013 through February 28, 2014, as requested, and the proposed market monitoring provisions contained in Appendix K and Appendix A, to become effective September 6, 2013, as requested.<sup>22</sup> Considering the particular challenges to reliability this coming winter and the interim nature of the Program (save for the indefinite market monitoring provisions), we find that the Program is an appropriate solution for the fixed period requested, subject to ISO-NE submitting revised tariff records in a compliance filing within 30 days of the date of this order, as discussed below. We next turn to specific concerns regarding the Program.

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<sup>22</sup> We expect ISO-NE to fulfill its commitment to make a separate filing at the end of the Winter Reliability Program to relocate the market monitoring changes contained in Appendix K to elsewhere within Market Rule 1.

## 1. Reliability Needs, Resource Selection, and Cost

### a. ISO-NE's Proposal

22. In support of the Program, ISO-NE explains that it conducted a needs assessment to calculate the incremental energy needs for the system during the upcoming winter using temperatures from winter 2003-2004, which ISO-NE states was the coldest weather in the last 10 years. ISO-NE assumed that the generation fleet this coming winter would have the same level of fuel as in winter 2012-2013 and then simulated the dispatch of the 2012-2013 generation fleet against 2013-2014 forecasted demand, based on temperatures experienced during the 2003-04 winter. ISO-NE concluded that New England would need about 2.4 million MWh from oil-fired generation, or 4.2 million barrels of oil, for the winter of 2013-2014.<sup>23</sup>

23. For purposes of selecting resources, ISO-NE states that it will assess resources' bids based on several factors, including cost, historical availability and performance, ability to respond to contingencies and other changed conditions, diversity of location and sensitivity to locational constraints, dual-fuel capability, and oil replenishment capability.<sup>24</sup> In addition, ISO-NE targeted a minimum energy output of 4,000 MW per hour from units providing oil inventory service to ensure that the Program does not rely on a small group of resources to provide all of the oil inventory service.

### b. Comments

24. The Maine PUC challenges the need for the Winter Reliability Program and disputes ISO-NE's analysis using winter 2003-2004 rather than the probabilistic approach normally used in resource adequacy analyses.<sup>25</sup>

25. The Maine PUC, PSEG, and EPSA state that the Program lacks objective standards for bid selection, vests ISO-NE with too much discretion to choose resources in out-of-merit order and set prices, and lacks sufficient transparency.<sup>26</sup> The Maine PUC

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<sup>23</sup> To convert MWh to barrels of oil, ISO-NE assumed that, in aggregate, the generation to meet the additional demand for next winter has a heat rate of 10,000 Btu/kWh and fuel heat content of 137,000 BTU/gallon. *See* ISO-NE June 28 Transmittal at 5-6; Ethier/Brandien Test. at 17-18.

<sup>24</sup> ISO-NE August 12, 2013 Filing at Appendix K, § III.K.6.

<sup>25</sup> Maine PUC Comments at 5-8.

<sup>26</sup> PSEG Comments at 8; Maine PUC Comments at 9.

further argues that the subjective selection criteria leave too much uncertainty regarding the Program's possible cost impacts and states that ISO-NE should establish standards for determining when to purchase less than the "target" amount of MWh.<sup>27</sup>

26. NESCOE also expresses concerns about the possible cost of the program but states that its support of the Winter Reliability Program is based in part on ISO-NE's ability to procure less than the full 2.4 million MWh; NESCOE expects that ISO-NE will, in fact, procure less than the full amount solicited if that would result in costs significantly above the projected costs.<sup>28</sup>

27. Vitol states that ISO-NE's proposal does not specify how ISO-NE will evaluate whether other market options, such as dispatching natural gas units or coordinating with contiguous independent system operators for additional supply, could more efficiently avoid or resolve a particular reliability constraint than an oil asset.<sup>29</sup>

**c. Answer**

28. ISO-NE states that it did not conduct a probabilistic analysis, which is typically used in determining resource adequacy, because resource adequacy is not the relevant consideration in this instance. ISO-NE states that resource *performance* is the cause of ISO-NE's concerns for the upcoming winter. ISO-NE states that, because fuel availability is the primary driver of the winter reliability problems, the use of traditional resource adequacy analysis is problematic for two reasons. First, there are very limited data on the probability of fuel shortages. Second, traditional methods typically assume that outages occur independently of one another, whereas outages resulting from fuel shortages tend to be highly correlated across resources. ISO-NE states that, as a result of these problems, it conducted a scenario-based analysis rather than the traditional approach to assessing resource adequacy.<sup>30</sup>

29. Regarding the selection of winning bids, ISO-NE reiterates that it will consider several factors, in addition to cost. ISO-NE states that it provided information about, and examples of, bid selection criteria at its stakeholder meetings,<sup>31</sup> explaining that ISO-NE

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<sup>27</sup> Maine PUC Comments at 9-10.

<sup>28</sup> NESCOE Comments at 8.

<sup>29</sup> Vitol Comments at 11.

<sup>30</sup> ISO-NE August 6 Answer at 5-6.

<sup>31</sup> ISO-NE August 6 Answer at 7 (citing Slide 27 *et seq.* of the PowerPoint presentation at A3.0,

will arrange bids by price and initially select the lowest-priced resource bid blocks that meet the 2.4 million MWh maximum that can be procured in the Program. After stacking the offers economically, ISO-NE will then consider reliability issues, such as resource parameters and performance. ISO-NE states that, at this stage, it may adjust the bid stack by, for example, replacing inflexible generators at the upper end of the economic bid stack with more flexible resources or demand response assets that fall just outside the economic bid stack. ISO-NE asserts that this methodology will allow for the procurement of reasonably-priced units that meet reliability needs. ISO-NE emphasizes that its discretion under the Program remains subject to Commission review, as the Commission will have an opportunity to review the bid results.<sup>32</sup>

**d. Commission Determination**

30. We agree with ISO-NE that, for purposes of conducting a needs assessment, ISO-NE's deterministic approach is reasonable. As ISO-NE explains, there is a distinction between resource adequacy and resource performance, and we find that ISO-NE has reasonably considered resource performance during prolonged cold weather events, given the region's increased reliance on natural gas-fired generation and recent problems with resource performance during periods of stressed system conditions.<sup>33</sup> ISO-NE's deterministic approach is specifically tailored to consider resource unavailability caused by fuel shortages, whereas a traditional probabilistic resource adequacy analysis would be unlikely to address such events due to the unpredictability of fuel shortages and the likelihood that outages resulting from fuel shortages will simultaneously affect multiple resources.

31. We acknowledge the assertions that the Program's bid selection criteria give ISO-NE substantial discretion in setting prices. While the criteria do give ISO-NE discretion to determine which resources to include in the Program, appropriate discretion is necessary under these circumstances. ISO-NE's bid selection criteria allow it to consider factors of location, performance history, and flexibility, as well as cost. We agree with ISO-NE that these criteria are sufficiently specific to guide participants in developing their bids.<sup>34</sup>

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[http://www.isone.com/committees/comm\\_wkgrps/mrktts\\_comm/mrktts/mtrls/2013/may302013/index.html](http://www.isone.com/committees/comm_wkgrps/mrktts_comm/mrktts/mtrls/2013/may302013/index.html)).

<sup>32</sup> ISO-NE August 6 Answer at 6-7.

<sup>33</sup> See ISO-NE August 6 Answer at 6.

<sup>34</sup> See ISO-NE August 6 Answer at 7.

32. To the extent that commenters are concerned that ISO-NE will use its discretion to procure energy at a total cost far exceeding the estimate mentioned in the filing, we note that ISO-NE cannot procure greater than the Program target of 2.4 million MWh. Furthermore, ISO-NE may purchase less than the full 2.4 million MWh, and ISO-NE has stated that it may opt to do so if costs are very high. Additionally, ISO-NE's procurement decisions under the Winter Reliability Program remain subject to Commission review. ISO-NE is required to file, and has filed on August 26, 2013, the results of the bid submission and selection process. That filing is currently pending before the Commission in Docket No. ER13-2266-000.

## 2. Out-of-Market Solution

### a. ISO-NE's Proposal

33. According to ISO-NE, a number of longer-term market-based solutions are underway to address the problems that have necessitated the Winter Reliability Program; however, many of those solutions cannot be implemented in time for the upcoming winter. According to ISO-NE, the need for a solution that procured incremental energy by this winter, with minimal market distortions, limited the options available and effectively precluded solutions that required significant software or market changes. Thus, ISO-NE proposed the Winter Reliability Program as a time-limited, discrete, out-of-market solution.<sup>35</sup>

### b. Comments

34. IECG, Exelon, Hess, and NESCOE support the need for the out-of-market solution given the time constraint and reliability concerns for winter 2013-2014. Many other commenters support the Winter Reliability Program, but condition their support on the Commission requiring ISO-NE to make certain changes to the Program or ISO-NE's existing market rules.<sup>36</sup>

35. IECG GDF Suez, Exelon, Hess, NEPGA, NESCOE, PSEG, TransCanada, Vitol, Capital Power, CLF, and Algonquin identify or propose methods for addressing alleged shortcomings in ISO-NE's market rules outside of the Winter Reliability Program. Hess, NESCOE, and NEPGA urge ISO-NE to avoid out-of-market, cost-based, stop-gap

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<sup>35</sup> ISO-NE Transmittal at 2-8.

<sup>36</sup> Exelon Comments at 3-4; Hess Comments at 6; NESCOE Comments at 7; IECG Comments at 5

solutions in the future.<sup>37</sup> Algonquin and TransCanada assert that ISO-NE's current market rules are dysfunctional and there has been a lack of progress in updating power market pricing since the winter 2004 reliability problems.

36. TransCanada, EPSA, NEPGA, NESCOE, Exelon, CLF, and Capital Power urge ISO-NE to promptly start the stakeholder process for a winter 2014-2015 program.

37. Vitol suggests that ISO-NE should be directed to clarify certain details about the Winter Reliability Program, such as whether or how ISO-NE will avoid interfering with accurate locational marginal price formation when dispatching demand response assets.<sup>38</sup>

**c. Answers**

38. NEPOOL states that the overwhelming majority of its members and NESCOE agreed that, given the circumstances, the Winter Reliability Program is an appropriate transitional measure through the upcoming winter while stakeholders continue to focus on longer-term, market-based solutions to address the risks associated with New England's increased reliance on natural gas.<sup>39</sup>

39. ISO-NE responds to Vitol's concerns about the demand response portion of the Program by explaining that it is not a new issue because dispatch of demand resources in the existing markets affects price formation and will continue to do so until demand response resources are fully integrated into the energy markets on June 1, 2017.

40. ISO-NE states that it intends to propose a fuel-neutral, winter-based reliability product for the winters of 2014-2015 through 2017-2018, which will bridge the gap between the Winter Reliability Program and the proposed changes to the FCM that are planned to be effective in the 2018-2019 Capacity Commitment Period. ISO-NE also agrees that a robust process to consider the design of the program for winters 2014-2015 through 2017-2018 is necessary and plans to initiate discussion of the program in the late fall with the NEPOOL Markets Committee, thereby giving stakeholders at least six months to discuss the issues.<sup>40</sup>

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<sup>37</sup> NEPGA Comments at 4; Hess Comments at 6-8; NESCOE Comments at 10.

<sup>38</sup> Vitol Comments at 7-11.

<sup>39</sup> NEPOOL Answer at 6.

<sup>40</sup> ISO-NE August 6 Answer at 17-18.

41. The Natural Gas Supply Association supports the comments of others that call for promptly starting the stakeholder process for planning a winter 2014-2015 program. PSEG requests that ISO-NE discard its penalty-driven design philosophy and implement market rules where efficient price signals properly incentivize market participants to compete to provide services. Vitol states that ISO-NE has still not adequately addressed all of its earlier concerns and asks that the Commission require ISO-NE to address them.<sup>41</sup>

**d. Commission Determination**

42. We find that, as a general matter, market-based solutions are preferable to out-of-market solutions like the Winter Reliability Program. However, given the importance of ensuring reliability in New England this coming winter and the late date at which ISO-NE has developed this proposed solution to the particular challenges ISO-NE faces this coming winter, such as increased reliance on natural gas-fired resources, we accept the Program for the limited period requested. In this regard, ISO-NE has stated a commitment to commence a stakeholder process for its anticipated 2014-2015 winter program, and we encourage ISO-NE to consider market-based solutions as part of that process and to start that process as soon as possible to avoid having to seek expedited review of any resulting proposal.

43. As to the comments proposing additional Tariff changes to address alleged shortcomings in the ISO-NE markets, we find those comments to be beyond the scope of this proceeding, which is focused on a short-term solution for the coming winter. We note that ISO-NE has commenced a number of market design initiatives to address many of the issues that commenters raised in this proceeding. Furthermore, the Commission has already approved certain market changes that will address some of the commenters' concerns when those changes become effective.

**3. Resource Types Allowed to Participate**

**a. ISO-NE's Proposal**

44. Under the Winter Reliability Program, ISO-NE will solicit bids only from oil-fired generators, dual-fuel generators, and demand response resources. ISO-NE contends that it could not create a fuel-neutral program for this winter due to the short time frame and the requirement to minimize market distortions, but states that it intends for future winter programs to be fuel-neutral.

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<sup>41</sup> Natural Gas Supply Association August 19 Answer at 2; PSEG August 19 Answer at 4; Vitol Answer at 2-5.

45. ISO-NE asserts that a fuel-neutral program design, or one that includes liquefied natural gas (LNG), is preferable to a more limited program design but would conflict with ISO-NE's goal to minimize market distortions. ISO-NE states that compensating natural gas resources for incremental natural gas could reduce opportunity costs, and thus wholesale electric prices, at times of high natural gas demand, thereby sending the wrong signal during times of natural gas scarcity. ISO-NE also states that, due to the complexity of the natural gas supply chain, a natural gas solution would pose a risk of unintended consequences. For example, ISO-NE contends that providing incentives for additional LNG supply would reduce natural gas released from other sources or displace use of pipeline natural gas when it is economic.<sup>42</sup>

46. Conversely, because oil has a relatively simple supply chain and is infrequently the marginal resource in New England, ISO-NE asserts that compensation to fuel oil resources will minimize the frequency of potential distortions to locational marginal prices. Unlike natural gas, a resource's fuel oil inventory can be stored in a fuel tank that is within that resource's control. Further, while the Program compensates resources for their entire winter fuel oil inventory, ISO-NE states that a solution that compensated resources for an entire winter natural gas inventory would be much larger and more expensive.

**b. Comments and Protests**

47. CLF states that it does not seek to delay implementation of the Winter Reliability Program, but requests that the Commission either reject the oil inventory service aspect of the program or condition program approval on ISO-NE designing a fuel-neutral MWh procurement. CLF states that including LNG in the Winter Reliability Program is consistent with the program's goals—incremental supply, in time for winter, with minimal market distortions—and CLF has worked with LNG suppliers and gas-fired generators to design an LNG proposal that can be implemented by this winter.<sup>43</sup> Under CLF's proposal, resources would offer "reliability energy" generated from LNG supplies in exchange for monthly payments from ISO-NE. The proposal then would have ISO-NE determine, on a daily basis, whether to utilize the MWh procured. CLF also alleges that ISO-NE's oil inventory service abandons the goal of procuring incremental supply by failing to establish a baseline inventory.

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<sup>42</sup> ISO-NE June 28 Transmittal at 7.

<sup>43</sup> CLF Comments at 5-6.

48. Multiple parties state that the Program is discriminatory because it is limited to certain types of resources and a single fuel, and that lack of time is not a valid excuse for proposing a program that is not fuel-neutral.

49. Algonquin argues that ISO-NE's fuel oil solution will result in higher electricity prices than would occur with a natural gas solution. Algonquin states that a natural gas solution would reduce the opportunity costs priced into the natural gas market during times of high natural gas demand, and therefore would reduce overall electricity costs to New England customers.<sup>44</sup>

**c. Commission Determination**

50. We find that, under these circumstances, limiting participation to certain resource types is not unduly discriminatory but is a reasonable response to the challenge of balancing the competing goals of procuring incremental energy in time for this winter while attempting to reduce any resulting market distortions to the extent possible. As ISO-NE notes, because oil sets the locational marginal price in New England less frequently than natural gas, a program relying on oil and demand response assets<sup>45</sup> can reasonably be expected to have a less distortive effect on locational marginal prices than a program that incorporated natural gas. Furthermore, as was mentioned above, ISO-NE proposed the Winter Reliability Program as an interim solution to address New England's increased reliance on natural gas and an increase in resource nonperformance. The Winter Reliability Program was proposed on short notice after the aforementioned issues of increasing reliance on natural gas-fired generation and resource nonperformance raised concerns with reliability this past winter. While we expect that, with more advance planning, ISO-NE and stakeholders will be able to design a more inclusive, market-based program for future winters—as ISO-NE has stated it plans to do—we are not persuaded that ISO-NE could develop and implement such a program as a viable alternative in time for this winter (and without also distorting fuel and electricity prices). Furthermore, we find that, for this winter, the Program's use of a fuel (oil) that can be stored and controlled by a generator onsite, and demand response assets that can be dispatched at times when generator availability risks due to fuel uncertainty are highest, may help ISO-NE avoid resource unavailability due to natural gas pipeline constraints which, in part, is what has precipitated the Winter Reliability Program at issue here.

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<sup>44</sup> Algonquin Comments at 3.

<sup>45</sup> Demand response assets cannot currently set the locational marginal prices in ISO-NE.

#### **4. Payment Mechanism**

##### **a. ISO-NE's Proposal**

51. Under the Winter Reliability Program, selected resources will be compensated based on their “as-bid” price for demand response and oil inventory service.<sup>46</sup> ISO-NE states that since its assessment of bids will not depend solely on price, applying a uniform price is inappropriate because all of the selected resources will not be providing the same fungible service.<sup>47</sup>

##### **b. Comments and Protests**

52. Exelon, NEPGA, and PSEG request that the pay “as-bid” mechanism be replaced with a uniform clearing price mechanism. Exelon and NEPGA state that a uniform clearing price mechanism is consistent with Commission precedent, provides an incentive for sellers to place bids that reflect their marginal opportunity costs, allows a market operator to select the most economically efficient units in an auction, and would lead to the most economically efficient outcome. Exelon and NEPGA state that the “as-bid” methodology gives each bidder an incentive to bid the highest price it believes will be accepted in the auction, because a resource will only be paid as much as it bids.<sup>48</sup> Exelon and PSEG state that each resource is, in fact, providing the same service: energy inventory that may be called upon by ISO-NE when necessary.<sup>49</sup> Further, Exelon, and NEPGA state that the Winter Reliability Program is similar to other ISO-NE markets, such as the day-ahead energy market, which ISO-NE clears based on geography and grid topology<sup>50</sup> and in which ISO-NE can choose out-of-merit units to displace economic units for reliability reasons.<sup>51</sup>

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<sup>46</sup> ISO-NE June 28 Transmittal at 7.

<sup>47</sup> Ethier/Brandien Test. at 18; *see also* ISO-NE June 28 Transmittal at 7-8.

<sup>48</sup> Exelon Comments at 4-5; NEPGA Comments at 5-6.

<sup>49</sup> Exelon Comments at 5; PSEG Comments at 9.

<sup>50</sup> Exelon Comments at 4-6.

<sup>51</sup> NEPGA Comments at 6-7.

**c. Answers**

53. ISO-NE states that, while a uniform clearing price is appropriate for “market-based procurement with a uniform commodity-like product,” the mechanism “works only where there is a strict commitment to economic merit order.”<sup>52</sup> ISO-NE asserts that the Winter Reliability Program is not procuring a homogenous product, and not all resources are necessarily equal in the Program, which could cause ISO-NE to deviate from strict economic merit order when selecting bids. Regarding similarities to its other markets, ISO-NE states that even in those markets a clearing price is only uniform within “each subarea where [megawatts] are in fact homogenous.”<sup>53</sup>

**d. Commission Determination**

54. We accept ISO-NE’s proposal to use an “as-bid” compensation methodology for the Winter Reliability Program. As explained above, resources selected for the Program will be chosen based on both price and non-price factors, including historical availability and performance, ability to respond to contingencies, diversity of location, and sensitivity to transmission constraints. Because the selected resources will provide resource-specific levels of reliability benefits, they are not similarly situated and it is reasonable that they be paid different (non-uniform) prices as well. Ideally, ISO-NE would have developed a proposal that would have allowed it to distinguish between resources within a market-based construct. However, given the urgency of the need to protect reliability, and the interim nature of the Winter Reliability Program, we find ISO-NE’s proposed compensation mechanism just and reasonable.

**5. Cost Allocation**

**a. ISO-NE’s Proposal**

55. ISO-NE proposes to allocate the costs of the Winter Reliability Program to Regional Network Load, which is paid for by transmission owners, rather than to Real-Time Load Obligation, which is paid for by load-serving entities (LSEs).<sup>54</sup> ISO-NE

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<sup>52</sup> ISO-NE August 6, 2013 Answer at 15.

<sup>53</sup> *Id.* at 16.

<sup>54</sup> ISO-NE and NEPOOL Participants Committee explain that, in New England, the load-serving entities are generally suppliers that enter into contracts with local distribution companies and end-users to serve load. ISO-NE and NEPOOL Participants Committee state that those suppliers are compensated through their contracts, while the transmission owners pass their costs through via Regional Network Service charges.

states that the costs of the Winter Reliability Program “do not fit neatly in either bucket[,]” but that allocating to Regional Network Load is more appropriate because the Program is “an out-of-market, discrete program to address reliability concerns.”<sup>55</sup> ISO-NE states that, “in general, all market and generation-related costs should be allocated to the suppliers[,]” and, therefore, ISO-NE intends to allocate the costs of future market-based winter programs to Real-Time Load Obligation.”<sup>56</sup> However, ISO-NE asserts that, in this instance, it is appropriate to allocate costs to Regional Network Load due to the unique circumstances of the Program, such as the lack of notice and the out-of-market nature of the solution.

**b. Comments and Protests**

56. Several commenters support allocating the Program costs to Regional Network Load.<sup>57</sup> Exelon and Hess argue that, given the timing of the development of the Program, LSEs would not have anticipated the costs of the program in time to price those costs into their supply contracts for the coming winter. Exelon and Hess also argue that the program is an out-of-market solution, further complicating any efforts to factor in its costs.<sup>58</sup>

57. Hess also states that the Program costs are not the type of commodity costs that can be hedged by LSEs and, therefore, the costs of the Program should be borne by Regional Network Load. Hess asserts that, because these costs will be difficult to measure, LSEs will have to build in larger risk premiums, which will ultimately be paid by ratepayers. Hess also states that, should ISO-NE propose another out-of-market solution for future winter seasons, those costs should also be allocated to Regional Network Load.<sup>59</sup> TransCanada argues that the proposed cost allocation method is appropriate and should be maintained for future winters.<sup>60</sup>

58. RESA asserts that it is important to have predictability and rate certainty for retail suppliers offering products in competitive markets because, unlike traditional utilities,

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<sup>55</sup> ISO-NE June 28 Transmittal at 25.

<sup>56</sup> *Id.*

<sup>57</sup> Hess, Exelon, RESA, and TransCanada.

<sup>58</sup> Exelon Comments at 7.

<sup>59</sup> Hess Comments at 3-6.

<sup>60</sup> TransCanada Comments at 8-11.

retail suppliers cannot recover or defer for later collection unanticipated costs like those of the Winter Reliability Program; RESA states that, in contrast, Regional Network Load has a mechanism to recover such costs. RESA states that it and its members will continue to work with stakeholders on a permanent, market-based solution to winter reliability issues that can be implemented in the near term, but it does not oppose the Winter Reliability Program as long as the costs are allocated to Regional Network Load.<sup>61</sup>

59. National Grid and CLF argue that costs should be allocated to Real-Time Load Obligation. While National Grid and CLF strongly support ISO-NE's agenda to prepare for potential fuel inventory and energy production shortfalls over the winter months, they argue that the cost allocation mechanism is contrary to Commission precedent, departs from ISO-NE's usual practice, and is inadvisable from a policy perspective. National Grid and CLF assert that allocating the Program costs to Real-Time Load Obligation is consistent with cost causation principles and would provide certainty to LSEs and local distribution companies that their contracts will not be upset arbitrarily.

60. National Grid and CLF explain that ISO-NE made a filing similar to the Winter Reliability Program in 2005, seeking temporary Tariff changes to address generation shortfalls during winter 2005-2006 (2005-2006 Winter Package). National Grid and CLF state that the 2005-2006 Winter Package was also an out-of-market solution, and was proposed with even less notice than the 2013-2014 Winter Reliability Program,<sup>62</sup> yet the Commission allocated the costs of the 2005-2006 Winter Package to Real-Time Load Obligation. National Grid and CLF assert that, in light of the Winter 2005-2006 Order, LSEs should not now claim that they could not anticipate that costs like those of the Winter Reliability Program might arise and be allocated to them. United Illuminating states that the 2005-2006 Winter Package was designed to mitigate the reliability issues from shortages in natural gas and other generation fuels. United Illuminating explains that, at the time, certain LSEs objected to the ruling, but, on rehearing, the Commission affirmed the finding that the principle of cost causation supports cost allocation to Real-Time Load Obligation.<sup>63</sup>

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<sup>61</sup> RESA Comments at 4-5.

<sup>62</sup> National Grid and CLF Comments at 19.

<sup>63</sup> See *ISO New England Inc., et al.*, 113 FERC ¶ 61,220 (2005) (Winter 2005-2006 Order), *order on reh'g*, 115 FERC ¶ 61,145 (2006).

61. National Grid and CLF also acknowledge but distinguish the Gap RFP Order,<sup>64</sup> in which the Commission accepted ISO-NE's proposal to issue requests-for-proposals (RFP) and allocate costs to Regional Network Load. National Grid and CLF argue that the GAP RFP provisions address transmission system constraints, while, here, ISO-NE has identified no transmission system problems giving rise to the Winter Reliability Program. They posit that ISO-NE has explicitly stated that the Program is necessary due to potential fuel inventory and energy production shortfalls. Similarly, United Illuminating asserts that the Winter Reliability Program has no correlation with transmission service, and the main purpose of the Program is generation adequacy for Real-Time Load Obligation.

62. National Grid and CLF argue that charging generation-specific costs to transmission customers would be a fundamental misallocation and would likely result in distortions undermining the economic efficiency of the markets. Regarding the argument that LSEs cannot pass through the costs while transmission owners can, National Grid and CLF state that this can impact LSEs in two ways: they can receive a windfall (e.g., if power prices drop below forecasts), or they can see losses from higher than forecast prices.<sup>65</sup> In addition, National Grid and CLF state that if cost anticipation is a criterion for cost allocation, then it is even more appropriate to allocate the costs of the Program to LSEs, because LSEs have much more information and expertise regarding likely developments in the energy and capacity markets than end-use customers paying Regional Network Service charges.<sup>66</sup>

**c. Answers**

63. In response to National Grid and CLF, TransCanada states that cost allocation to Real-Time Load Obligation would produce an inefficient and costly result for ratepayers. TransCanada argues that there is no merit to the contractual arrangements or business model proffered by National Grid and CLF as support for their request to have the Commission modify the cost allocation proposed by ISO-NE.<sup>67</sup> TransCanada states that customers of LSEs require fixed-price contracts, and it is not representative of the actual marketplace to expect that LSEs can obtain agreements with floating prices or after-the-

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<sup>64</sup> *ISO New England Inc., et al.*, 106 FERC ¶ 61,190 (2004) (Gap RFP Order).

<sup>65</sup> National Grid and CLF Comments at 6.

<sup>66</sup> Regional Network Service charges, which are different from Regional Network Load charges, are charges that transmission providers assess to end-use customers.

<sup>67</sup> TransCanada Answer at 6.

fact surcharges to recover the costs of a program with unknown costs that are ascertainable on a post hoc basis. TransCanada also argues that allocating costs to Real-Time Load Obligation would lead to higher consumer costs to account for a risk that could be avoided entirely if costs are allocated to Regional Network Load.

64. RESA states that cost causation and economic efficiency principles require allocation of costs for the Winter Reliability Program to Regional Network Load. RESA concedes that in the 2005-2006 Winter Package costs associated with posturing of resources were allocated to Real-Time Load Obligation. However, RESA asserts that costs for the demand response component of the 2005-2006 Winter Package were allocated to Regional Network Load. RESA states that, in the 2013-2014 Winter Reliability Program, ISO-NE is procuring additional supply-side resources similar to the supplemental demand response resources in the 2005-2006 Winter Package, therefore the costs for the 2013-2014 Winter Reliability Program should be allocated in the same manner they were in 2005-2006 – i.e., to Regional Network Load.<sup>68</sup>

65. ISO-NE states that allocating costs to Regional Network Load is based on precedent, because Regional Network Load is the cost allocator for Gap RFPs issued pursuant to Section III.11 of the Tariff. ISO-NE argues that allocating to Regional Network Load reflects a consideration of the costs to consumers, because allocating to Real-Time Load Obligation may cause suppliers to build risk premiums into future contracts, thereby increasing consumer rates. ISO-NE further asserts that section 205 of the FPA requires that a proposed rate schedule be reasonable, not the most reasonable, and that it has made that showing here.<sup>69</sup>

66. NEPOOL states that there are good arguments for cost allocation to both Regional Network Load and to Real-Time Load Obligation, and either allocator could be just and reasonable. NEPOOL states that, in order to achieve the broad support necessary to move forward with the Winter Reliability Program, there was agreement to choose between two reasonable alternatives and to allocate transitional, out-of-market program costs to Regional Network Load, but only for the limited, three-month winter period. NEPOOL states that, given the significant challenges to the region and the unique circumstances presented here, the broadly supported cost allocation to Regional Network Load is just and reasonable and should be approved.<sup>70</sup>

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<sup>68</sup> RESA Answer at 6.

<sup>69</sup> ISO-NE August 6 Answer at 9-12.

<sup>70</sup> NEPOOL Answer at 8-9.

67. In National Grid's response to the answers filed by ISO-NE, TransCanada, and NEPOOL, National Grid states that it is significant that those parties did not attempt to refute the argument that real-time load—not transmission—is the cause of the Winter Reliability Program. National Grid argues that well-established cost-causation principles should result in the costs of the Program being allocated to Real-Time Load Obligation.<sup>71</sup>

68. With regard to the argument that LSEs will impose risk premiums if costs are allocated to Real-Time Load Obligation, National Grid argues that this argument is not new and an LSE's decision whether or not to include risk premiums in contract prices is the result of its own business judgment. National Grid also posits that, if LSEs already included risk premiums in their supply contracts in the years since the 2005-2006 Winter Package, then LSEs would be compensated for any risks in the Winter Reliability Program. Conversely, National Grid states that if LSEs did not include risk premiums following the 2005-2006 Winter Package, then there is no reason to believe they will incorporate a risk premium going forward. In either case, according to National Grid, consumers should not be asked to "rescue" the LSEs from the consequences of their business decisions.<sup>72</sup>

69. National Grid states that if costs must be allocated so as to avoid risk premiums in supply contracts, the logical conclusion is that New England's competitive supply markets should be dismantled because such an approach would allow consumers to avoid *all* LSE contract risk premiums by simply having all ISO-NE wholesale market costs passed directly to the end-user. National Grid argues that if one believes that market forces and competition among LSEs will ultimately lower costs for consumers, then cost allocation to Real-Time Load Obligation is appropriate because it shifts risk to the more sophisticated LSEs and away from the end-user.<sup>73</sup>

**d. Commission Determination**

70. We find that allocating costs to Real-Time Load Obligation is appropriate in this case, and we will therefore condition our acceptance of the Winter Reliability Program on ISO-NE submitting revised tariff records in a compliance filing that allocate costs to Real-Time Load Obligation. Long-standing cost-causation and benefits/burdens principles provide that costs should be allocated to those who benefit from the incurrence

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<sup>71</sup> National Grid Answer at 5.

<sup>72</sup> *Id.* at 8-11.

<sup>73</sup> *Id.* at 9.

of the costs.<sup>74</sup> As discussed below, ISO-NE proposed the Winter Reliability Program to address generation-related reliability concerns, not transmission-related concerns, through an interim program designed to ensure sufficient energy supply to meet real-time load during the coming winter. Because real-time load is the primary beneficiary, and the primary cost-driver, of the Winter Reliability Program, we find that costs of the Program should be allocated to Real-Time Load Obligation.

71. As many of the parties point out, the Commission previously addressed this cost allocation issue in the context of a similar winter reliability program that ISO-NE proposed for winter 2005-2006.<sup>75</sup> In that proceeding, ISO-NE and NEPOOL jointly proposed to allocate the costs of the resource posturing component<sup>76</sup> of the 2005-2006 Winter Package to Real-Time Load Obligation, and multiple protesters argued that the costs should instead be allocated to Regional Network Load. In the Winter 2005-2006 Order, the Commission accepted ISO-NE and NEPOOL's proposal, finding the cost allocation to Real-Time Load Obligation to be just and reasonable. In the instant proceeding, ISO-NE once again asserts that market and generation-related costs generally should be allocated to Real-Time Load Obligation, and that ISO-NE intends to do so for future market-based winter programs. However, ISO-NE asserts that it is more appropriate to allocate costs of the 2013-2014 Winter Reliability Program to Regional Network Load, arguing that (1) the Program is a discrete, out-of-market solution similar to a Gap RFP, and (2) the timing of the Program is such that it would have been difficult for LSEs to anticipate the costs and include them in their contracts. We do not find those arguments persuasive.

72. The instant proceeding and the Winter 2005-2006 proceeding are similar in that they are both time-limited, out-of-market mechanisms that are appropriately considered reliability measures directly benefitting real-time load. The 2005-2006 Winter Package was designed to "protect reliability by ensuring that sufficient energy will be available to

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<sup>74</sup> *E.g.*, Winter 2005-2006 Order, 113 FERC ¶ 61,220 at P 34, *order on reh'g*, 115 FERC ¶ 61,145.

<sup>75</sup> Winter 2005-2006 Order, 113 FERC ¶ 61,220 at P 34.

<sup>76</sup> Posturing, in this context, refers to ISO-NE's authority to constrain or hold off-line pool-scheduled resources in order to maintain operating reserves during, or in anticipation of, shortage conditions. As part of the 2005-2006 Winter Package, ISO-NE proposed rule changes to expand its posturing authority "to manage day-to-day energy availability (due to fuel constraints) and maintain reliability [during the 2005-2006 winter]." *Id.* P 7.

satisfy the needs of entities that are obligated to serve load in New England.”<sup>77</sup> The same can be said for the 2013-2014 Winter Reliability Program. Whereas the 2005-2006 Winter Package proposed to protect reliability through demand response and out-of-market resource posturing, the 2013-2014 Winter Reliability Program proposes use of demand response and out-of-market payments to ensure adequate fuel inventory. While the mechanisms differ, the goal of both programs is the same: to improve reliability by ensuring that adequate electric energy supply is available to meet real-time load during the winter.

73. We acknowledge RESA’s argument that the costs of the demand response component of the 2005-2006 Winter Package were allocated to Regional Network Load. However, a supervening change in ISO-NE’s Tariff altered the cost allocation mechanism for demand response programs in New England. When the 2005-2006 Winter Package was proposed, demand response market costs – specifically costs from the Real-Time Price Response Program and the Day-Ahead Load Response Program – were allocated to Regional Network Load. However, when those programs expired on June 1, 2012 and the Commission approved ISO-NE’s subsequent demand response programs, the Commission also accepted ISO-NE’s proposal to allocate costs of the new programs to Real-Time Load Obligation.<sup>78</sup> Thus, we conclude that it is both appropriate and consistent with Commission precedent to allocate the costs of the demand response component of the 2013-2014 Winter Reliability Program to Real-Time Load Obligation.

74. We disagree with ISO-NE that the Winter Reliability Program is akin to a Gap RFP and that the Gap RFP Order is, therefore, the applicable Commission precedent for resolving the cost allocation issue. The Gap RFP provisions were added to the Tariff specifically to address transmission-related concerns.<sup>79</sup> The Winter Reliability Program does not address, nor was it intended to address, a transmission-related concern. ISO-NE proposed the Winter Reliability Program specifically to address concerns related to resource performance coupled with the region’s increased dependence on natural gas, both of which are generation-related concerns.

75. We are also unpersuaded by ISO-NE’s argument that the timing of the Program warrants allocating the costs to Regional Network Load. At the crux of ISO-NE’s argument is a concern that the timing of the Program is unfair to LSEs because it imposes

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<sup>77</sup> *Id.* P 32.

<sup>78</sup> *ISO New England Inc.*, 138 FERC ¶ 61,042, at PP 42-43 (2012).

<sup>79</sup> *See New England Power Pool*, 106 FERC ¶ 61,190, at P 5 (2004); *see also, e.g., NEPOOL*, Transmittal, Docket No. ER04-335-000, at 2 (filed Dec. 23, 2003).

unavoidable costs on short notice. The Commission was similarly unpersuaded by this argument in the 2005-2006 Winter Package proceeding. While ISO-NE's timing of its filing is not ideal, and we encourage ISO-NE to plan for future winters further in advance, that timing and admonition has no bearing upon the appropriate application of cost causation principles here. As the Commission previously explained in the Winter 2005-2006 proceeding, LSEs "voluntarily assume Real-Time Load Obligation when entering into bilateral contracts with end-use customers[;]" those "contracts contain inherent risk associated with unforeseeable future costs, and we would expect that risk to be captured in bilateral contracts between LSEs and end-use customers."<sup>80</sup>

76. ISO-NE and some commenters are concerned that, because LSEs often cannot pass costs through to their customers, allocating costs to Real-Time Load Obligation will cause LSEs to include risk premiums in their contracts, which will raise rates for consumers. Those parties argue that this possibility warrants allocating costs to Regional Network Load. The Commission has rejected this argument in the past, and for the same reasons we do so here.<sup>81</sup>

## **6. Regulatory Due Process**

### **a. ISO-NE Proposal**

77. On August 12, 2013, ISO-NE filed amendments to the proposed Winter Reliability Program that were intended, in part, to increase regulatory certainty for those resources submitting bids to participate in the Program. As one of those amendments, ISO-NE changed section III.K.2 of Appendix K to require that, following ISO-NE's submission of the bid results, "[i]nterested parties will have until September 9 to file comments and protests; and the Commission will issue an order by September 20."<sup>82</sup>

### **b. Commission Determination**

78. We further condition our acceptance of the Winter Reliability Program on ISO-NE submitting revised tariff records, in a compliance filing within 30 days of the date of this order, to remove the referenced dates from section III.K.2 of Appendix K. While we recognize the urgency of winter reliability concerns in New England, the record does not

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<sup>80</sup> *ISO New England Inc., et al.*, 115 FERC ¶ 61,145 at P 15 (2006) (Order on Rehearing of Winter 2005-2006 Order).

<sup>81</sup> *See* Winter 2005-2006 Order, 113 FERC ¶ 61,220 at P 35.

<sup>82</sup> ISO-NE August 12, 2013 Filing at Appendix K, § III.K.2.

support a tariff provision that seeks to bind the Commission to issuing an order by September 20 or any other specific date. Further, as noted above, ISO-NE has submitted the bid results in Docket No. ER13-2266-000, and that filing is currently pending before the Commission.

The Commission orders:

(A) The proposed tariff provisions regarding demand response, oil inventory, and dual-fuel testing contained in new Appendix K, are hereby accepted for filing to become effective September 6, 2013 through February 28, 2014, subject to condition, as discussed in the body of this order.

(B) The proposed tariff provisions regarding market monitoring contained in Appendix K and Appendix A are hereby accepted for filing to become effective September 6, 2013, subject to condition, as discussed in the body of this order.

(C) ISO-NE is hereby directed to submit revised tariff records in a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

**Appendix A**

<b>Motions to Intervene</b>	
Algonquin Gas Transmission, LLC and Maritimes & Northeast Pipeline, L.L.C. (Joint)	New England Power Generators Association Inc.
Brookfield Energy Marketing, LP	New England States Committee on Electricity
Calpine Corp.	Northeast Utilities Service Co.
Capital Power Corp.	NRG Companies*
Conservation Law Foundation	PPL EnergyPlus, LLC*
Consolidated Edison Energy, Inc.	PSEG Companies
Dominion Resources Services, Inc.	Repsol Energy North America Corp.
Electric Power Supply Association	Retail Energy Supply Association
Entergy Nuclear Power Marketing	Shell Energy North America (U.S.), L.P.
Exelon Corp.	TransCanada Power Marketing Ltd.
GDF Suez Energy Marketing NA, Inc.	The United Illuminating Company
Hess Corp.	Verso Paper Corp.
H.Q. Energy Services (U.S.) Inc.	Vitol Inc.
Industrial Energy Consumer Group	
National Grid USA	
Natural Gas Supply Association	
NEPOOL Industrial Customer Coalition	
New England Local Distribution Companies	

<b>Comments</b>	
Algonquin Gas Transmission, LLC and Maritimes & Northeast Pipeline, L.L.C. (together, Algonquin)~	Retail Energy Supply Association (RESA)~†
Capital Power Corp. (Capital Power)~	TransCanada Power Marketing Ltd. (TransCanada)~
Conservation Law Foundation (CLF)~	The United Illuminating Company (United Illuminating)~
Electric Power Supply Association (EPSA)~	
Exelon Corp. (Exelon)~†	
GDF Suez Energy Marketing NA, Inc. (GDF Suez)~	
Hess Corp. (Hess)~	
Industrial Energy Consumer Group~	
Maine Public Utilities Commission (Maine PUC)~	
Massachusetts Department of Public Utilities (Mass. DPU)~	
National Grid USA (National Grid)~	
Natural Gas Supply Association•	
New England Power Generators Association Inc. (NEPGA)~†	
New England Power Pool Participants Committee (NEPOOL)†	
New England States Committee on Electricity (NESCOE)~†	
PSEG Companies~†	
	<p>* Denotes filing made out-of-time.  ~ Denotes comments submitted in ER13-1851-000.  † Denotes comments submitted in ER13-1851-001.  • Denotes comments submitted in ER13-1851-002.</p>