

154 FERC ¶ 61,133  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Cheryl A. LaFleur, Tony Clark,  
and Colette D. Honorable.

ISO New England Inc.  
New England Power Pool Participants  
Committee

Docket No. ER15-2208-001

ORDER DENYING REHEARING

(Issued February 24, 2016)

1. By order issued September 11, 2015,<sup>1</sup> the Commission accepted, subject to condition, New England Power Pool Participants Committee's (NEPOOL) proposed revisions<sup>2</sup> to Market Rule 1 of ISO New England Inc.'s (ISO-NE) Transmission, Markets and Services Tariff (Tariff), intended to aid ISO-NE in maintaining reliability during winters 2015-2016, 2016-2017, and 2017-2018 (2015-2018 Winter Reliability Program, or Program). On October 13, 2015, Entergy Nuclear Power Marketing, LLC (Entergy) filed a request for rehearing of the September 11, 2015 Order. As discussed below, we deny rehearing.

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<sup>1</sup> *ISO New England Inc. and New England Power Pool Participants Committee*, 152 FERC ¶ 61,190 (2015) (September 11, 2015 Order).

<sup>2</sup> Section 11.1.5 of the Participants Agreement, commonly referred to as the "jump ball" provision, provides, in pertinent part, that if a Market Rule proposal that differs from that proposed by ISO-NE is approved by a Participants Committee vote of 60 percent or more, ISO-NE "shall, as part of any required Section 205 filing," describe the alternate Market Rule proposal in sufficient detail to permit reasonable review by the Commission and also explain its reasons for not adopting the alternate proposal and why it believes its own proposal is superior. Section 11.1.5 provides that the Commission may "adopt any or all of ISO[-NE]'s Market Rule proposal or the alternate Market Rule proposal as it finds...to be just and reasonable and preferable." ISO-NE Participants Agreement, § 11.1.5.

## I. Background

2. On September 9, 2014, the Commission accepted ISO-NE's proposed temporary, out-of-market solution to ensure adequate fuel supplies for the winter of 2014-2015 (2014-2015 Winter Reliability Program).<sup>3</sup> In accepting the 2014-2015 Winter Reliability Program, the Commission noted that, while it would prefer a long-term, market-based solution, it recognized the particular challenges to reliability for the coming winter and the temporary nature of the proposed Tariff provisions in making its determination.<sup>4</sup> The Commission stated that it "expect[s] ISO-NE to abide by its commitment to develop a long-term, market-based solution to address winter reliability issues."<sup>5</sup>

3. On October 9, 2014, the New England Power Generators Association, Inc. (NEPGA) asked the Commission to clarify that the September 9, 2014 Order required ISO-NE to develop and implement a market-based solution to address winter reliability issues in time for the 2015-2016 winter.<sup>6</sup> On January 20, 2015, the Commission granted NEPGA's motion for clarification, explaining that "the Commission intended that ISO-NE would determine whether a winter reliability solution is necessary for the 2015-2016 winter and future winters, and, if so, develop an appropriate market-based solution through the stakeholder process that can be implemented beginning with the 2015-2016 winter."<sup>7</sup> The Commission recognized that, while ISO-NE's implementation of its two-settlement market design could help address winter reliability concerns in the future,<sup>8</sup> the design would not be fully implemented until the 2018-2019 Capacity Commitment Period.<sup>9</sup>

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<sup>3</sup> *ISO New England Inc. and New England Power Pool Participants Committee*, 148 FERC ¶ 61,179 (2014) (September 9, 2014 Order), *clarification granted*, *ISO New England Inc. and New England Power Pool Participants Committee*, 150 FERC ¶ 61,029 (2015) (January 20, 2015 Order), *reh'g granted*, *ISO New England Inc. and New England Power Pool Participants Committee*, 151 FERC ¶ 61,052 (2015) (April 17, 2015 Order).

<sup>4</sup> September 9, 2014 Order, 148 FERC ¶ 61,179 at PP 39-41.

<sup>5</sup> *Id.* P 41.

<sup>6</sup> NEPGA October 9, 2014 Motion for Clarification at 1.

<sup>7</sup> January 20, 2015 Order, 150 FERC ¶ 61,029 at P 10.

<sup>8</sup> The impending two-settlement market design is intended to incent generator performance. Under that mechanism, a resource that produces energy or provides

4. ISO-NE requested rehearing of the January 20, 2015 Order's clarification that any future winter reliability solution must be market-based. On April 17, 2015, the Commission granted ISO-NE's request for rehearing "to allow the possibility that ISO-NE may file additional out-of-market winter reliability programs until the two-settlement capacity market design becomes effective in 2018" finding that "an expanded version of the current winter program might better produce the desired results in terms of reliability than the introduction, at this point in time, of the market-based solutions examined by ISO-NE."<sup>10</sup> However, the Commission stated that it "expects ISO-NE to abide by its commitment to work with stakeholders to expand any future out-of-market winter reliability program to include 'all resources that can supply the region with fuel assurance,' such as nuclear, coal, and hydro resources."<sup>11</sup> The Commission also stated that, if any future out-of-market program is not fuel neutral, it "expects that ISO-NE would provide a detailed description of the options it considered to make the program fuel neutral and why those options were ultimately not included."<sup>12</sup>

5. On July 15, 2015, ISO-NE and NEPOOL jointly submitted two alternative proposals<sup>13</sup> to establish a program to maintain reliability during winters 2015-2016, 2016-2017, and 2017-2018. ISO-NE explained that, according to ICF International, winter peak day gas supplies will be barely adequate or slightly in deficit through 2020, as long as there are no major contingencies, such as an outage to gas supplies, loss of electrical sales to New England from the north due to extreme weather, or a nuclear unit tripping offline.<sup>14</sup> Both proposals were modeled on the 2014-2015 Winter Reliability Program and are intended to address the reliability challenges created by New England's

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reserves during capacity scarcity conditions in excess of a pro rata share of its capacity supply obligation will receive additional revenue, while a resource that produces less than its pro rata share will face penalties. *ISO New England Inc.*, 147 FERC ¶ 61,172 (2014).

<sup>9</sup> January 20, 2015 Order, 150 FERC ¶ 61,029 at P 10.

<sup>10</sup> April 17, 2015 Order, 151 FERC ¶ 61,052 at P 17.

<sup>11</sup> *Id.* (quoting ISO-NE's Request for Rehearing).

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

<sup>13</sup> These proposals will be referred to respectively as the ISO-NE Proposal and the NEPOOL Proposal.

<sup>14</sup> ISO-NE Transmittal at 5.

increased reliance on natural gas-fired generation. The main difference between the proposals related to the types of resources eligible for compensation under the program.

6. Like the 2014-2015 Winter Reliability Program, both proposals included end-of-season compensation to offset generators' carrying costs of unused firm fuel—specifically, unused oil inventory and unused liquefied natural gas (LNG) contract volumes—at the end of each winter period, thereby creating an incentive for generators to secure fuel at the beginning of the winter. In addition, the resource auditing, performance monitoring, cost allocation, settlement, and financial assurance rules for oil and LNG resources remained the same as in the 2014-2015 Winter Reliability Program in both proposals. However, ISO-NE stated that its proposal provided for compensation not only for fuel oil and LNG, but also for nuclear, hydro, biomass and coal-fired resources, to reflect the Commission's requirement that ISO-NE work to expand any winter reliability program to include all resources that can supply the region with fuel assurance. ISO-NE also stated that its proposal eliminated the demand response component included in prior years because including demand response would not further the program's fuel assurance objective.<sup>15</sup>

7. In the September 11, 2015 Order, the Commission conditionally accepted the NEPOOL Proposal, noting that it was essentially identical to the 2014-2015 program and was widely supported in the region by a substantial majority of stakeholders representing all six NEPOOL stakeholder sectors. The Commission recognized that the ISO-NE Proposal was an attempt to comply with the Commission's request to work with stakeholders to expand the types of resources eligible to participate in future winter reliability programs. However, the Commission explained that ISO-NE was not obligated to expand the program, but rather, the Commission intended to encourage ISO-NE to work to expand the program while still affording ISO-NE and regional stakeholders a reasonable amount of discretion to design a program that would adequately address the region's needs. The Commission found that while ISO-NE expanded the types of resources eligible to participate in the program, the record did not reflect that including the additional resource types under the same general program principles would incentivize any additional fuel procurement.<sup>16</sup> The Commission further found that any potential incentive for the additional resources to invest in their assets more generally is beyond the scope of the program, which is designed particularly to

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<sup>15</sup> ISO-NE Transmittal at 10.

<sup>16</sup> September 11, 2015 Order, 152 FERC ¶ 61,190 at P 47.

ensure reliability *during the winter* by incentivizing market participants to provide additional reliability services that they would not have provided otherwise.<sup>17</sup>

## II. Rehearing Request

8. Entergy seeks rehearing of the September 11, 2015 Order's acceptance of the NEPOOL Proposal as just and reasonable, and preferable to the ISO-NE Proposal. Entergy argues that one of the goals of the Winter Reliability Program is to provide fuel assurance, not merely incremental fuel procurement or additional reliability services. Entergy argues that, if "incremental fuel procurement" was ever the sole objective of the program, then payments for dual-fuel commissioning and additional compensation for demand response and LNG resources would have been unnecessary.<sup>18</sup> Entergy further argues that "additional reliability services" is not a correct characterization of the objective of the program.<sup>19</sup> Entergy asserts that the problem ISO-NE faces each winter is an over-reliance on natural gas resources that often have limited ability to obtain fuel during peak periods and that the remedy is to ensure sufficient availability of other types of resources that rely upon fuels other than natural gas. According to Entergy, oil, dual-fuel, LNG, nuclear, coal and hydro resources all have the capability of storing fuel on-site, and additional payments recognize the increased value of these resources that can ensure fuel availability during peak winter periods when gas is scarce.<sup>20</sup>

9. Entergy also argues that the NEPOOL Proposal perpetuates market distortions because of alleged price discrimination against nuclear, coal, and hydro resources, and results in premature retirements of the non-subsidized resources. Entergy asserts that the Commission did not respond to record evidence that market distortion from the Winter Reliability Programs is changing market dynamics. Entergy states that the region now relies more upon oil units, LNG injections have increased, and energy prices are lower as subsidized resources clear in merit more often, displacing higher-priced resources or becoming the marginal unit and setting the price. Entergy asserts that the ISO-NE

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<sup>17</sup> *Id.* (emphasis in original).

<sup>18</sup> Entergy Rehearing Request at 3.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 2-4.

Proposal would minimize market distortions, and that the Commission should not have departed from its prior directive to ISO-NE to adopt a fuel-neutral program.<sup>21</sup>

10. Entergy further asserts that nuclear, coal, and hydro resources are similarly situated to other resources because they provide fuel diversity and fuel assurance. Entergy asserts that nuclear units, in particular, are critical for winter reliability because of their high capacity factors and on-site fuel. Entergy states that one nuclear unit, Vermont Yankee, recently retired, and other resources also either have retired or are planning to retire. Entergy further asserts that nuclear, coal, and hydro resources would likely take incremental measures to ensure performance during the winter if eligible for payments under the Program.<sup>22</sup>

### **III. Discussion**

11. We deny Entergy's request for rehearing. We first address Entergy's assertion that the Commission's alleged mischaracterization of the objective of the Program led it to the incorrect result. We disagree. As the Commission stated on rehearing of the order accepting the 2013-2014 Winter Reliability Program, "the purpose of the Program was to aid ISO-NE in maintaining reliability in the face of pressing reliability risks, including increased reliance on natural gas-fired generation and a history of problems with resource performance during periods of stressed system conditions."<sup>23</sup> Thus, the purpose of the Program is to incentivize additional reliability services to ensure reliability during the winter months.

12. To achieve that overall goal, all of the components of the NEPOOL Proposal contribute to reliability during the winter through the provision of incremental reliability services. For instance, the oil and LNG components ensure reliability during the winter through incremental fuel procurement. The demand response component of the program ensures reliability through enhanced demand reduction participation thereby helping ISO-NE to avoid resource unavailability at times when the system is stressed. The dual-fuel component of the program contributes to ensuring reliability during the winter by enhancing the ability of generators to operate on more than one type of fuel. Thus, each of the Program components provides an additional winter reliability benefit to the region that would not have been provided absent the Program.

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<sup>21</sup> *Id.* at 4-6, 9.

<sup>22</sup> *Id.* at 7-9.

<sup>23</sup> *ISO New England Inc.*, 147 FERC ¶ 61,026, at P 16 (2014).

13. Coal, nuclear, and hydro resources are not similarly situated to the resources included in the NEPOOL Proposal as the record reflects that including such resources in the Program would not provide any additional winter reliability benefit to the region. While Entergy argues that additional payments to coal, nuclear, and hydro resources would likely incentivize these resources to take incremental measures to ensure performance during the winter, this assertion is contradicted by substantial expert testimony supporting the NEPOOL Proposal. Indeed, the testimony avers that these resources are not likely to change their behavior in response to the particular payments outlined in the ISO-NE Proposal.<sup>24</sup> We are not persuaded by Entergy's argument that nuclear, coal, and hydro resources are similarly situated with respect to the Winter Reliability Program merely because they are capable of storing on-site fuel. Because the purpose of the Program is to ensure reliability during the winter, we do not find it necessary to include resources that do not provide any additional benefit to winter reliability for the sake of fuel neutrality alone.

14. Entergy also argues that the Commission did not respond to record evidence that market distortion from out-of-market solutions, like the Winter Reliability Programs, is changing market dynamics. We do not believe there is sufficient evidence on the record to support the existence of this direct causal link, as market dynamics are driven by complex and varied forces. The Commission recognized in the September 11, 2015 Order that the 2015-2018 Winter Reliability Program is not market-based, and the Commission stated that it continues to prefer market-based mechanisms as a means of ensuring just and reasonable rates. However, the Commission found, and we reaffirm here, that an out-of-market program is appropriate in this particular instance until the two-settlement market design is implemented in 2018.

15. We further note that, while Entergy supports the ISO-NE proposal, it too was an out-of-market solution. The record reflects that NEPOOL's proposal, by narrowing

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<sup>24</sup> See, e.g., Bentz Testimony at 20 ("According to the Nuclear Energy Institute, 'because nuclear plants refuel every 18-24 months, they are not subject to fuel price volatility like natural gas and oil power plants.' Moreover, nuclear units typically have limited ability to vary their electrical output and, due to low marginal costs, often operate at very high capacity factors for extended periods of time."); Flumerfelt Testimony at 5 ("It is difficult to see how providing a seasonal subsidy to baseload nuclear resources will have any impact on a nuclear power plant's fueling strategy or its ability to operate reliably during the winter."); Trotta Testimony at 3 ("I am not aware of any credible evidence provided by ISO-NE or market participants that demonstrates that these types of resources would be expected to provide incremental fuel inventory to the region in response to program compensation.").

eligible resources to those providing incremental reliability, minimizes the total amount of out-of-market payments while still providing the same level of reliability as the 2014-2015 program and the ISO-NE Proposal. Further, while Entergy cites potential retirements of nuclear resources as a reason to include them in the Program, subsidization of certain resources aimed solely at maintaining their viability reaches far beyond the limited scope of ensuring reliability during the winter season.

16. Finally, we reiterate that the April 17, 2015 Order did not require ISO-NE to adopt an expanded program. Instead, the Commission requested that ISO-NE explain the reasons for departing from a fuel-neutral program if it made such a choice. Although ISO-NE proposed an expanded program, the Commission nonetheless determined that NEPOOL provided ample evidence and testimony to support the conclusion that ISO-NE's expanded program was neither ideal nor appropriate.

The Commission orders:

Entergy's request for rehearing of the September 11, 2015 Order is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.