

164 FERC ¶ 61,003
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;
Cheryl A. LaFleur, Neil Chatterjee,
Robert F. Powelson, and Richard Glick.

ISO New England Inc.

Docket Nos. ER18-1509-000
EL18-182-000

ORDER DENYING WAIVER REQUEST, INSTITUTING SECTION 206
PROCEEDING,
AND EXTENDING DEADLINES

(Issued July 2, 2018)

1. On May 1, 2018, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure,¹ ISO New England Inc. (ISO-NE) filed a petition for waiver of multiple provisions of its Transmission, Markets and Services Tariff (ISO-NE Tariff or Tariff).² According to ISO-NE, its request for waiver of several tariff provisions would permit ISO-NE to retain two retiring generating units owned by Exelon Generation Company, LLC (Exelon), Mystic 8 and 9, for fuel security purposes. For the reasons discussed below, we deny the waiver request.

2. We also institute a proceeding under section 206 of the Federal Power Act (FPA)³ in Docket No. EL18-182-000 because we preliminarily find that ISO-NE's Tariff may be unjust and unreasonable, based on ISO-NE's demonstration in this proceeding that its Tariff fails to address specific regional fuel security concerns identified in the record that could result in reliability violations as soon as year 2022. Accordingly, pursuant to FPA section 206, we direct ISO-NE either: (1) to submit within 60 days of the date of this order interim Tariff revisions that provide for the filing of a short-term, cost-of-service agreement to address demonstrated fuel security concerns and to submit by July 1, 2019

¹ 18 C.F.R. § 385.207(a)(5) (2017).

² ISO-NE May 1, 2018 Petition for Waiver at 1 (Petition for Waiver).

³ 16 U.S.C. § 824e (2012).

permanent Tariff revisions reflecting improvements to its market design to better address regional fuel security concerns; or (2) within 60 days of the date of this order, to show cause as to why the Tariff remains just and reasonable in the short- and long-term such that one or both filings is not necessary. We further act *sua sponte* to extend the deadline in two tariff provisions to enable Exelon to postpone its retirement decision regarding Mystic 8 and 9.

I. Background

A. Mystic Generation Station and Distrigas Facility

3. Exelon owns four units located in Boston, Massachusetts referred to as Mystic 7, 8, 9, and Mystic Jet (collectively, Mystic Generation Station). Mystic 8 and 9 are combined-cycle generators with a combined winter seasonal capacity rating of just over 1,700 MW. ISO-NE states that the only fuel source for Mystic 8 and 9 is natural gas purchased from the Distrigas Liquefied Natural Gas (LNG) terminal (Distrigas Facility) located adjacent to the Mystic Generation Station.⁴ Relevant here, the Distrigas Facility provides Mystic 8 and 9 with a fuel source that is not subject to the region's historical interstate natural gas pipeline constraints. Exelon recently announced that it is in the process of purchasing the Distrigas Facility. Exelon states that, through that transaction, it seeks to ensure a continued reliable fuel supply for Mystic 8 and 9 while the units remain operational until their retirement.⁵

B. New England Fuel Security

4. ISO-NE has long recognized that maintaining fuel security in the New England region - ensuring that power plants have or can obtain the fuel needed to run - is particularly challenging in winter when natural gas pipeline capacity is generally more constrained than in other seasons.⁶ In January 2018, ISO-NE published an Operational

⁴ See Petition for Waiver at 2.

⁵ Exelon plans to retire the four units at the Mystic Generating Station, as discussed below.

⁶ See, e.g., *ISO New England Inc.*, 144 FERC ¶ 61,204 (2013) (conditionally accepting ISO-NE's Tariff revisions to provide out-of-market compensation for demand response, oil inventory, and dual-fuel testing services for the 2013-2014 Winter Reliability Program), *reh'g denied*, 147 FERC ¶ 61,026 (2014), *rev'd in part by TransCanada Power Marketing Ltd. v. FERC*, 811 F.3d 1 (2015); see also *ISO New England Inc.*, 147 FERC ¶ 61,172 (2014) (accepting Pay-for-Performance proposal to

Fuel-Security Analysis (OFSA),⁷ which evaluated the level of operational risk posed to the bulk power system under various fuel-mix scenarios.⁸ The study quantifies operational risks by reporting the number of hours when ISO-NE would be forced to implement Operating Procedure 4 (Action During a Capacity Deficiency)⁹ (i.e., depletion of 30-minute reserves, load relief, and emergency import), the number of hours when ISO-NE would deplete its 10-minute operating reserves, and the number of hours and days when ISO-NE would be required to implement Operating Procedure 7 (Action in an Emergency)¹⁰ (i.e., load shed).¹¹

5. The OFSA, which was completed prior to the Mystic 8 and 9 Retirement De-List Bids, shows that the loss of both the Distrigas Facility and Mystic 8 and 9 would lead to 87 hours of depletion of 10-minute operating reserves and 24 hours of load shedding. In general, this study supports the need for Mystic 8 and 9 for the 2024-2025 winter period.¹² Subsequent to the OFSA and Exelon's submission of Retirement De-List Bids

improve generator performance and reliability in New England), *reh'g denied*, 153 FERC ¶ 61,223 (2015), *aff'd sub nom.*, *NEPGA v. FERC*, 879 F.3d 1192 (D.C. Cir. 2018).

⁷ ISO-NE, *Operational Fuel-Security Analysis* (Jan. 2018), https://iso-ne.com/static-assets/documents/2018/01/20180117_operational_fuel-security_analysis.pdf.

⁸ See Petition for Waiver at 7-9. ISO-NE states that New England's generation fleet relies primarily on fuels imported from elsewhere in the United States or from overseas to produce power. As a result, fuel procurement, transportation, and storage play a pivotal role in power system operations. *Id.* ISO-NE states that this is particularly true during winter when fuel for nearly half the region's generating capacity may become inaccessible due to priority demand for natural gas from the heating sector. *Id.*

⁹ See *ISO New England Operating Procedure No. 4 - Actions During a Capacity Deficiency*, ISO New England Inc. (June 1, 2018), https://www.iso-ne.com/static-assets/documents/rules_proceeds/operating/isone/op4/op4_rto_final.pdf.

¹⁰ See *ISO New England Operating Procedure No. 7 - Action in an Emergency*, ISO New England Inc. (Jan. 8, 2018), https://www.iso-ne.com/static-assets/documents/rules_proceeds/operating/isone/op7/op7_rto_final.pdf.

¹¹ See Testimony of Peter T. Brandien on Behalf of ISO New England, Inc., Petition for Waiver, Ex. ISO-1 at 22-23 (Brandien Testimony).

¹² See *id.* at 12.

for Mystic 8 and 9, ISO-NE performed additional studies (using the same OFSA model) to evaluate operational risks associated with the retirement of Mystic 8 and 9 during the 2022-2023 and 2023-2024 winter periods (Mystic Retirement Studies).¹³ In these subsequent studies, ISO-NE presented 18 scenarios covering a range of possible system operation circumstances if Mystic 8 and 9 were to retire.¹⁴ Seventeen of the 18 scenarios showed that ISO-NE will deplete its 10-minute operating reserves (for between 1 to 72 hours), and eight of the 18 scenarios demonstrated that ISO-NE will need to shed load (for between 1 to 8 hours). ISO-NE highlights that depletion of 10-minute reserves is a violation of NERC reliability criteria. ISO-NE also presented an additional 16 scenarios that showed both the number of hours when 10-minute reserves would be depleted and that the need for ISO-NE to shed load would increase if the Distrigas Facility were to close as a result of the Mystic 8 and 9 retirements.¹⁵

C. Retirement De-List Bids

6. ISO-NE operates a Forward Capacity Market (FCM) to procure capacity.¹⁶ Every year, ISO-NE conducts a Forward Capacity Auction (FCA) in which capacity suppliers compete to provide capacity to the New England region on a three-year forward basis. The capacity suppliers that clear the FCA receive capacity supply obligations that commit them to provide capacity for a year-long delivery period (the capacity commitment period) that runs from June 1, three years after the FCA, through the following May 31. A resource whose capacity clears the FCA receives monthly capacity payments during

¹³ See Petition for Waiver at 9-15. See also Brandien Testimony at 4-5, 30-31. ISO-NE states that the Mystic Retirement Studies were undertaken in response to Exelon's Retirement De-List Bids. Petition for Waiver at 9.

¹⁴ See Brandien Testimony, Table 2 at 43 (for 2022-2023 winter period) and Table 5 at 45 (for 2023-2024 winter period). Each Table considered 9 scenarios. In total, these 9 scenarios for each winter period covered import power ranging from 2,500 MW to 3,500 MW, Oil Tank fills between 1 to 2 times and LNG capacity ranging from 1 Bcf/day to 1.2 Bcf/day.

¹⁵ See *id.* at 42-47.

¹⁶ See generally *Devon Power LLC*, 115 FERC ¶ 61,340 (2006), *order on reh'g*, 117 FERC ¶ 61,133 (2006), *aff'd in relevant part sub nom. Maine Pub. Util. Comm'n v. FERC*, 520 F.3d 464 (D.C. Cir. 2008), *order on remand, Devon Power LLC*, 126 FERC ¶ 61,027 (2009).

the relevant capacity commitment period in return for which it must offer its capacity into the day-ahead and real-time energy markets on a daily basis.¹⁷

7. The ISO-NE Tariff specifies rules and procedures for existing FCM resources that seek to retire. Specifically, a resource must submit a Retirement De-list Bid 11 months before the associated auction (e.g., by March 2018 for FCA 13, which is scheduled to be held in February 2019). The Retirement De-List Bid specifies the minimum capacity price that a resource must receive from the FCM for it to stay in the market, rather than retire.¹⁸ The Internal Market Monitor (IMM) reviews all Retirement De-List Bids greater than 20 MW that are at or above the Dynamic De-List Bid Threshold.¹⁹ In some instances, the IMM mitigates bids (i.e., replaces the resource's bid with the IMM's own estimate) to ensure the bids reflect that resource's going forward and opportunity costs.²⁰

8. Once the IMM has made its determination on a resource's Retirement De-List Bid, the resource has 10 business days to either choose to accept the IMM-authorized Retirement De-List Bid or to unconditionally retire, in which case it does not participate in the FCA. The resource owner may request that the resource be reviewed for reliability (i.e., to evaluate whether the resource's capacity is needed to address a local transmission need).²¹ In preparation for FCA 13, the IMM is expected to make its mitigation determinations for Retirement De-List Bids on June 21, 2018. ISO-NE states that its

¹⁷ Currently ISO-NE is in capacity commitment period 9 (June 1, 2018 – May 31, 2019) for which capacity was procured in FCA 9.

¹⁸ ISO-NE Tariff § III.13.1.2.3.1.5 (55.0.0); *see* Petition for Waiver at 18.

¹⁹ The Dynamic De-List Bid Threshold is the price below which existing resources can opt to leave the auction (e.g., de-list) without having their offers subject to a market power review by the IMM. The Dynamic De-List Bid Threshold was \$5.50/kW-month for FCA 12 and will be \$4.30/kW-month for FCA 13.

²⁰ ISO-NE Tariff § III.13.1.2.3.2.1.1.2.; *see* Petition for Waiver at 18.

²¹ ISO-NE Tariff § III.13.1.2.4; *see* Petition for Waiver at 18-19. The resource may request that it be reviewed for reliability to evaluate whether the resource's capacity is needed to address a local transmission need. In addition, ISO-NE must perform a reliability review if the IMM-accepted Retirement De-List Bid is above the FCA starting price.

Tariff requires market participants to make their decision to unconditionally retire a resource before FCA 13 by July 6, 2018.²²

D. Reviews of Retiring Resources for Local Reliability Needs

9. By mid-August of each year (six months before the FCA), ISO-NE must complete its reliability review to identify violations of local reliability criteria that would occur if a resource were to retire.²³ If ISO-NE determines that a resource is needed for local reliability, it may request that the resource stay in service. The resource owner has 10 days after the determination (i.e., until late August) to choose whether it will remain in service or retire.²⁴ If the resource owner chooses to remain in service, it may choose either to receive the Commission-approved Retirement De-List Bid²⁵ or to file a cost-of-service rate with the Commission under FPA section 205.²⁶ Under the ISO-NE Tariff, a resource owner's decision to file for a cost-of-service rate must be made within approximately six months following the auction.²⁷ Finally, under the ISO-NE Tariff, once the reliability need is resolved, the resource will retain its capacity supply obligation through the end of the capacity commitment period for which it was retained for reliability and then must retire.²⁸

²² ISO-NE Tariff §§ III.13.1.2.4.1, III.13.1.2.3.1.5.1(d); *see* Petition for Waiver at 6.

²³ ISO-NE Tariff § III.13.1.2.3.1.5.1(b); *see* Petition for Waiver at 19.

²⁴ ISO-NE Tariff § III.13.1.2.3.1.5.1(d); *see* Petition for Waiver at 19.

²⁵ Under ISO-NE's FCM rules, the capacity resource seeking to retire submits its Retirement De-List Bid to the IMM; the IMM reviews that bid before either accepting the bid or replacing it with the IMM's own estimate of that resource's Retirement De-List Bid. The IMM files that Retirement De-List Bid with the Commission as the IMM-accepted Retirement De-List Bid for that resource. In turn, the Commission either accepts the Retirement De-List Bid as calculated by the IMM or replaces it with the Commission's own recalculated Retirement De-List Bid, which becomes the Commission-approved Retirement De-List Bid. *See* ISO-NE Tariff § III.13.8.1.

²⁶ 16 U.S.C. § 824d; ISO-NE Tariff § III.13.1.2.3.1.5.1(b); *see* Petition for Waiver at 20.

²⁷ ISO-NE Tariff § III.13.1.2.3.1.5.1(b); *see* Petition for Waiver at 20 n.49.

²⁸ ISO-NE Tariff § III.13.2.5.2.5(f); *see* Petition for Waiver at 18-21.

II. ISO-NE's Waiver Request

A. Requested Waiver

10. On March 23, 2018, Exelon submitted Retirement De-List Bids for the Mystic Generation Station to ISO-NE, proposing to retire all four of the Mystic units as of June 1, 2022.²⁹ In response, ISO-NE conducted the Mystic Retirement Studies and determined that the loss of Mystic 8 and 9 presented “unacceptable fuel security risks.”³⁰ ISO-NE’s analyses found that the retirement of Mystic 8 and 9 would cause ISO-NE to deplete 10-minute operating reserves (a violation of mandatory NERC reliability standards)³¹ on numerous occasions and to instigate load shedding - rolling blackouts - during the New England winters of 2022-2023 and 2023-2024.³² Under its Tariff, ISO-NE may retain retiring resources in order to resolve local transmission security issues, as discussed above, but the Tariff does not contemplate retaining resources for reliability risks related to fuel security.³³ On May 1, 2018, ISO-NE filed the instant request with the Commission to waive multiple provisions of its Tariff in order to permit ISO-NE to retain Mystic 8 and 9 for fuel security purposes.³⁴

11. In support of its waiver request, ISO-NE provides expert testimony that explains the reliability risks faced by the region. In addition to the risks posed by the retirement of Mystic 8 and 9, ISO-NE explains that, because the Distrigas Facility is economically reliant on the continued operation of Mystic 8 and 9, its largest customers, the retirement of these units could set in motion a series of events that would endanger the continued operation of the Distrigas Facility and further compound fuel security risks in the region.³⁵ ISO-NE claims that, if the Distrigas Facility also retires, the region’s risk of

²⁹ See Petition for Waiver at 1.

³⁰ See *id.* at 3.

³¹ See Brandien Testimony at 46.

³² See Petition for Waiver at 3; Brandien Testimony at 31.

³³ See Petition for Waiver at 4.

³⁴ See *id.* at 4.

³⁵ See Testimony of Richard L. Levitan and Sara Wilmer on Behalf of ISO New England, Inc., Petition for Waiver, Ex. ISO-2 at 7, 11-12 (Levitan Testimony); Petition for Waiver at 3.

operating reserves depletion and load shedding would increase, as would the length and severity of such events.³⁶

12. ISO-NE requests waiver of several its Tariff provisions in order to meet the region's fuel security needs during the capacity commitment periods associated with FCA 13 and FCA 14 (June 2022 through May 2024).³⁷ ISO-NE explains that this waiver is necessary (1) to allow ISO-NE to retain Mystic 8 and 9 for region-wide fuel security and to avoid NERC reliability violations; (2) to exempt Mystic 8 and 9 from the ISO-NE Tariff's local reliability review requirement for FCA 13 and FCA 14; and (3) to permit Exelon to delay the date that it must submit its decision of whether to retire Mystic 8 and 9 prior to FCA 13 from July 6, 2018 until January 2019.³⁸ ISO-NE requests waiver of the following provisions:³⁹

- i. Reliability Review of Retirement De-List Bid (section III.13.1.2.3.1.5.1): Under this section, ISO-NE may only conduct a reliability review of a Retirement De-List Bid after the IMM has issued a determination on that bid. ISO-NE requests waiver to allow it to render its reliability determination of the Mystic 8 and 9 Retirement De-List Bids now, despite the fact that the IMM has not yet issued its determination regarding those bids.
- ii. Local Reliability Analysis (section III.13.2.5.2.5): Under this section, ISO-NE's reliability review of a Retirement De-List Bid must address whether the resource is needed for local reliability. Because ISO-NE has identified Mystic 8 and 9 as needed for a region-wide fuel security rather than local reliability, ISO-NE requests waiver of the local reliability evaluation contemplated under the tariff.
- iii. Planning of Transmission Upgrades (section III.13.2.5.2.5): Under this section, ISO-NE is obligated to pursue any transmission upgrades to address those reliability needs identified in its local reliability analysis of a Retirement De-List Bid. ISO-NE states that the region would realize little benefit from planning a transmission solution, should it exist, to a problem that is likely to change and may be resolved in the years while Mystic 8 and 9 remain in operation under the

³⁶ See Brandien Testimony at 5.

³⁷ See Petition for Waiver at 15.

³⁸ See *id.* at 20. Note that, regardless of the actual date by which Exelon must submit its retirement decision for Mystic 8 and 9, if Exelon chooses to retire Mystic 8 and 9 prior to FCA 13, those units would not actually retire until June 1, 2022 – the start of the capacity commitment period associated with FCA 13.

³⁹ See *id.* at 6.

anticipated cost-of-service agreement. Therefore, ISO-NE requests waiver of its obligation to plan such transmission upgrades.

- iv. Compensation of Capacity Resources Needed for Reliability (sections III.13.2.5.2.5, III.13.2.5.2.5.1): Under these sections, a resource proposing to retire but needed for reliability may be retained for the one-year Capacity Commitment Period for which the resource submitted its Retirement De-List Bid and thereafter until the underlying reliability need is addressed. ISO-NE seeks waiver of these provisions to allow it enter into a cost-of-service agreement to retain Mystic 8 and 9 for a two-year term (2022-2024).
- v. Treatment of Resources Retained for Reliability in the FCA (section III.13.2.3.2(c)): Under this section, resources that do not have a Static, Permanent, or Retirement De-List Bid may still submit a Dynamic De-List Bid in the FCA. If Mystic 8 and 9 are retained for reliability, ISO-NE intends to enter these units into the FCA as price takers. Therefore, ISO-NE requests waiver to prohibit Exelon from submitting Dynamic De-List Bids for these units during the term of the contemplated cost-of-service agreement.
- vi. Election of Cost-of-Service Agreement (section III.13.2.5.2.5.1(b)): Under this section, a resource that has its Retirement De-List Bid rejected for reliability may elect compensation under a cost-of-service agreement. This election must be made within six months following ISO-NE's filing of the FCA results. Although not expressly prohibited, ISO-NE requests waiver to the extent necessary to permit Exelon to elect cost-of-service treatment prior to FCA 13.
- vii. Submission of Section 205 Filing Regarding Capital Expenditures (section III.13.2.5.2.5.2): Under this section, if a resource retained for reliability elects cost-of-service compensation and must make capital improvements in order to continue to meet the identified reliability need, the supplier must submit those capital expenditures in an FPA section 205 filing separate from the supplier's cost-of-service filing. For administrative efficiency, ISO-NE requests waiver to permit Exelon to include in the Mystic cost-of-service agreement any capital expenditures that Exelon believes necessary to continue to provide service.
- viii. Deadline to Elect Unconditional Retirement Treatment (sections III.13.1.2.4.1, III.13.1.2.3.1.5.1(d)): Under these sections, a resource that submits a Retirement De-List Bid and is identified as needed for reliability must decide whether it will allow ISO-NE to retain it for reliability or whether to retire unconditionally. For FCA 13, these decisions must be made by August 31, 2018 and July 6, 2018, respectively. Exelon has indicated that it will retire Mystic 8 and 9, unless it can obtain certainty prior to the auction regarding the cost-of-service the Commission will accept for these units. Therefore, ISO-NE requests waiver of these deadlines to permit Exelon to decide whether it will agree to reliability retention or

unconditionally retire Mystic 8 and 9 by the earlier of five business days after the Commission's order on Mystic's cost-of-service agreement, including its Annual Fixed Revenue Requirement, or January 4, 2019.⁴⁰

13. ISO-NE requests Commission action no later than July 2, 2018, because Exelon must decide by July 6, 2018 whether to elect unconditional retirement according to the ISO-NE Tariff retirement deadlines described above.⁴¹

B. Related Market Rules and ISO-NE Stakeholder Process

14. ISO-NE states that it remains committed to ensuring the efficiency, fairness, and efficacy of the wholesale electricity markets it administers. It states that it is therefore requesting this waiver only as a last resort to ensure reliable electric service in New England during the 2022-2024 capacity commitment periods.⁴² While ISO-NE highlights the pay-for-performance capacity market model as the most significant contribution to the region's efforts to improve fuel security,⁴³ it argues that pay-for-performance cannot resolve the region's fuel security challenges by itself, particularly in light of significant opposition to investments in fuel supply infrastructure in the region.⁴⁴

⁴⁰ *See generally id.* at 20-29.

⁴¹ *See id.* at 4.

⁴² *See id.* at 5.

⁴³ *See id.* at 16. In 2014, the Commission largely approved ISO-NE's proposal to implement a two-settlement capacity market design, often referred to as pay-for-performance, which is intended to incent capacity suppliers to provide energy during scarcity conditions. *See ISO New England Inc.*, 147 FERC ¶ 61,172 at PP 5-6. The pay-for-performance mechanism involves two settlements. Under the first settlement, resources that take on a capacity supply obligation will receive a capacity base payment, which is determined for each resource by multiplying the amount of MW associated with its capacity supply obligation by the FCA clearing price. The second settlement entails a capacity performance payment determined for each resource by measuring its performance against its forward position (i.e., its share of the system's requirements at the time of each capacity scarcity condition).

⁴⁴ *See* Petition for Waiver at 16, n.37 ("In filing the [pay-for-performance] market rules, [ISO-NE] addressed fuel diversity concerns, and the failure of the then-prevailing capacity market design to provide sufficient incentives for suppliers to enter into short notice and firm fuel contracts and to maintain much-needed dual fuel capability... Since that time, however, the region has faced continued opposition to the development of

15. ISO-NE states that, in addition to requesting this waiver as a short-term, out-of-market solution to retain Mystic 8 and 9 for fuel security purposes for two additional years beyond their planned retirement, ISO-NE has commenced a regional stakeholder process to produce a market-based fuel security solution over the long-term.⁴⁵

III. Notice of Filing and Responsive Pleadings

16. Notice of the filing was published in the *Federal Register*, 83 Fed. Reg. 20,809 (2018), with interventions and protests due on or before May 23, 2018. Entities listed in Appendix A submitted notices of intervention, timely motions to intervene, and/or comments and/or protests to this order. Eversource, Exelon, ISO-NE, NEPGA and NEPOOL filed answers to the protests and comments. Algonquin and Citizens Energy Corporation individually filed motions to intervene out of time and comments. FirstEnergy Solutions filed a request for emergency action, to which Eversource filed an answer. Cavus Energy, Maine PUC, Massachusetts AG, NEPGA and NextEra filed answers to ISO-NE's answer. ISO-NE filed an answer to Cavus Energy's answer.

A. Summary of Comments and Answers

1. Legality of Waiver Request

17. Commenters argue that ISO-NE's waiver petition is not an appropriate waiver request because it is overly broad and seeks to make substantive tariff changes that should have been made through an FPA section 205 filing.⁴⁶ Commenters express concerns that the waiver request significantly departs from the current ISO-NE Tariff rules that only allow for the use of reliability-must-run (RMR) agreements when a transmission constraint exists.⁴⁷ Commenters note that the ISO-NE Tariff does not address fuel security, much less the pricing treatment of resources retained for fuel

additional natural gas pipeline capacity, and added environmental restrictions have degraded the potential value of new investments in dual fuel capability.”).

⁴⁵ See *id.* at 17 n.38 (explaining that stakeholder proceedings formally began to address fuel security risks in January 2018).

⁴⁶ See CEIA Comments at 10; Massachusetts AG Comments at 3, 7-8; Massachusetts AG Answer at 3-5; NextEra Comments at 9; PIO Comments at 28-29.

⁴⁷ See, e.g., CEIA Comments at 6; EPSA Comments at 3-4; Maine Governor's Energy Office at 2; NextEra Comments at 8-10; PIO Comments at 28-29.

security.⁴⁸ Commenters urge the Commission to act pursuant to its FPA section 206 authority to order ISO-NE to change its Tariff to address the fuel security issue, rather than granting a waiver of existing ISO-NE Tariff provisions.⁴⁹ NRG states that ISO-NE stakeholders have already begun discussions of a market-based solution that could be implemented as early as 2020.⁵⁰ NRG further states that, if a market-based solution proves inadequate, FPA section 202(c) provides a reliability “fail safe” that could be utilized at a later date and that the section 202(c) mechanism is preferable because it can be issued and implemented quickly, can compel continued operation of Mystic 8 and 9 and the Distrigas Facility during the pendency of the emergency, and will only require consumers to pay the cost-of-service for those facilities for the duration of the emergency.⁵¹

18. ISO-NE responds that a waiver request is an appropriate mechanism for it to seek relief because both a waiver request and tariff changes are reviewed under the same FPA section 205 just and reasonable standard.⁵² ISO-NE argues that the difference between its waiver request and an FPA section 205 filing is that its waiver request only applies to Mystic 8 and 9 and, thus, would not be generally applicable like an FPA section 205 tariff modification.⁵³

19. Commenters also argue that the waiver request does not meet the four-factor test that the Commission uses to evaluate waiver requests.⁵⁴ ISO-NE responds that its waiver

⁴⁸ See, e.g., FirstLight Comments at 7-8; NEPGA Comments at 5-6.

⁴⁹ See NextEra Comments at 1-6, 20-21; NRG Commenters at 7-13; Verso Comments at 14-16 (noting that, contrary to ISO-NE’s representations, it is unlikely that the Distrigas Facility will close if Mystic 8 and 9 close because, if the demand is present in the market, other customers will seek to purchase LNG from the Distrigas Facility).

⁵⁰ See NRG Comments at 7.

⁵¹ See *id.* at 7-9.

⁵² See ISO-NE June 7, 2018 Answer at 23 n.82 (citing *PJM Interconnection, L.L.C.*, 152 FERC ¶ 61,151, at P 15 (2015) (approving Tariff waiver as “just and reasonable”) and *Westar Energy, Inc.*, 131 FERC ¶ 61,189, at P 8 (2010) (“The Commission finds that granting this one-time waiver is just and reasonable”).

⁵³ See *id.* at 23-24.

⁵⁴ See, e.g., NextEra Comments at 10-20; PIO Comments at 19-29; Taunton Comments at 3-4.

request does satisfy the Commission's criteria for granting waiver because it acted in good faith and the waiver is of limited scope, remedies a concrete problem, and does not have undesirable consequences, such as harming third parties.⁵⁵

2. Fuel Security Risks in the New England Region

20. Some commenters agree with ISO-NE's assessment of the fuel security risk if Mystic 8 and 9 were to retire in 2022. Many of these commenters do not oppose granting waiver as a limited, stop-gap measure to ensure reliable operations during the 2022-2023 and 2023-2024 capacity commitment periods.⁵⁶ Potomac Economics, ISO-NE's external market monitor, supports the waiver and filed its own analysis that generally supports ISO-NE's concerns regarding fuel security.⁵⁷

21. Other commenters argue, however, that the regional fuel security risks identified by ISO-NE should be addressed in other ways. For example, some commenters argue that the Commission should take action, including holding a technical conference, to address the natural gas supply issue in the region.⁵⁸ Several commenters also note that some New England states have opposed past attempts to expand natural gas supply in the region through pipeline expansion.⁵⁹ ISO-NE responds that natural gas infrastructure development is outside of its authority and that a variety of state policies and other conditions have thwarted efforts to improve regional fuel security.⁶⁰ Specifically, ISO-NE states that multiple initiatives to build natural gas pipeline infrastructure have failed, reliance on oil is limited by environmental policies that restrict emissions, the limited

⁵⁵ See Petition for Waiver at 30-34.

⁵⁶ See Connecticut Parties at 5; Eversource Comments at 3; Massachusetts DPU at 3.

⁵⁷ See Potomac Economics Comments at 1-9.

⁵⁸ See, e.g., Algonquin Comments at 6; Eversource Comments at 9-10; Industrial Energy Consumer Comments at 12; Maine Governor's Energy Office Comments at 3 (suggesting ISO-NE enter an RMR agreement for natural gas supply).

⁵⁹ See, e.g., Maine Governor's Energy Office Comments at 3 (noting Maine's implementation of policy initiatives to bring additional natural gas into the region, in comparison to other states that have blocked access to natural gas infrastructure and, instead, focused on promoting other generation resources such as solar and wind).

⁶⁰ See ISO-NE June 7 Answer at 14-16.

LNG infrastructure has either proven unreliable or begun seeking retirement, and no large-scale renewable project has so far overcome the necessary regulatory hurdles.

22. Other commenters emphasize the importance of the Distrigas Facility for maintaining regional fuel security.⁶¹ Some argue that the retirement of the Distrigas Facility, not Mystic 8 and 9, presents the fuel security risk and maintaining the Distrigas Facility will resolve the fuel security concerns.⁶² For example, CEIA argues that, as long as there is generation to replace Mystic 8 and 9's MWs, then there would not be a system reliability problem, at least theoretically.⁶³ Furthermore, some commenters assert that ISO-NE has crossed the line from ensuring reliability to ensuring sufficient fuel security, which, according to commenters, is the generator's responsibility rather than the responsibility of ISO-NE.⁶⁴

23. Some commenters dispute the urgency and severity of the fuel security problem. Commenters note that, even if Mystic 8 and 9 are needed to ensure fuel security, action may not be needed until closer to the 2022-2023 capacity commitment period.⁶⁵ ISO-NE responds that waiting to enter into a cost-of-service agreement until 2021 or 2022 cannot guarantee the retention of Mystic 8 and 9 because Exelon may not accept an agreement at that time. ISO-NE also argues that Mystic 8 and 9 may not be able to arrange for firm fuel deliveries to the Distrigas Facility because these deliveries must be negotiated well in advance of the delivery period. ISO-NE asserts that a last-minute contract could create other problems because Exelon may not have made the investments necessary for long- or even medium-term operation, which could result in the over-procurement of capacity in the market at significant expense to the region.⁶⁶

24. In its answer, Cavus Energy disputes the magnitude and existence of the identified fuel security problem. Cavus Energy asserts that key aspects of expert testimony and ISO-NE's analysis are inaccurate and based upon several incorrect and false

⁶¹ See, e.g., Northeast Gas Association Comments at 2-3.

⁶² See LS Power Comments at 8.

⁶³ See CEIA Comments at 13.

⁶⁴ See Maine PUC Comments at 20; NGSA Comments at 5.

⁶⁵ See Calpine Comments at 1; LS Power Comments at 8.

⁶⁶ See ISO-NE June 7 Answer at 17-18.

assumptions.⁶⁷ Cavus Energy states that ISO-NE does not demonstrate a compelling need for out-of-market action, in part, because the Mystic 8 and 9 retirements do not reduce natural gas deliverability to the region.⁶⁸ Cavus Energy also argues that the Distrigas Facility would be financially viable even if Mystic 8 and 9 were to retire, claiming that the Levitan Testimony to the contrary is unsupported by market data.⁶⁹ Cavus Energy contends that the retirement of Mystic 8 and 9 could improve regional fuel security if, rather than the Distrigas Facility providing fuel primarily to Mystic 8 and 9, its fuel inventory were maintained and reserved during low load periods so that more fuel could be available during cold weather events.⁷⁰ Cavus Energy claims that ISO-NE's out-of-market action would be an ineffective remedy with negative consequences that are understated on the record, including reduced fuel security due to potential disincentives for increased capacity, imports and other resources.⁷¹ Cavus Energy also argues that the waiver request does not meet the Commission's waiver criteria.⁷²

25. ISO-NE challenges Cavus Energy's answer on procedural and substantive grounds. ISO-NE contends that the argument that the loss of Mystic 8 and 9 can be addressed through additional sendouts from the Distrigas Facility onto the natural gas pipeline system is unsupported and thus speculative.⁷³ ISO-NE also argues that, even if it were possible for the natural gas pipelines to fully absorb the LNG from the Mystic units, Exelon has stated that it has no interest in operating the Distrigas Facility as a merchant fuel supplier and there is no evidence that other generators will make advance commitments to purchase LNG from the Distrigas Facility.⁷⁴

⁶⁷ See Cavus Energy Answer at 3.

⁶⁸ See *id.* at 3-10 (citing Petition for Waiver at 47; Brandien Testimony at 27:3, 30; Levitan Testimony at 8:14; Resource Report 1, Docket No. CP11-485-000 at 4).

⁶⁹ See *id.* at 6-7.

⁷⁰ See *id.* at 8-10.

⁷¹ See *id.* at 10-11 (citing Repsol Comments at 4; Vistra Comments at 5; Vitol Comments at 9).

⁷² See Cavus Energy Answer at 3.

⁷³ See ISO-NE June 26, 2018 Answer at 3-4, n.12 (citing Levitan Testimony at 8:1-16).

⁷⁴ See *id.* at 4.

3. ISO-NE's Assessment of Fuel Security in OFSA and Mystic Retirement Studies

26. Certain commenters challenge the OFSA and Mystic Retirement Studies. Massachusetts AG notes that stakeholders have not seen the model or been given the opportunity to run alternative scenarios with different variables or assumptions.⁷⁵ Several commenters argue that the models used in the OFSA and Mystic Retirement Studies are deterministic and a probabilistic analysis may be more appropriate.⁷⁶ PIO asserts that deterministic modeling explains the consequences of a certain event occurring (i.e., the consequences of the concurrent loss of Mystic 8 and 9 and the Distrigas Facility, which ISO-NE states could result in reserve depletion and load shedding).⁷⁷ Commenters argue that a deterministic analysis merely demonstrates that this outcome is *possible* under certain conditions and does not explain the likelihood of the conditions identified by ISO-NE or subsequent load shedding or reserve depletion actually occurring.⁷⁸ Some commenters also contend that ISO-NE's conclusion, based on its deterministic analysis, creates a standard of zero hours of allowable 10-minute reserve depletion or load shedding when the acceptable standard for other planning studies, based on probabilistic analysis, is shedding firm load one-day-in-10-years.⁷⁹ Further, Maine PUC notes that ISO-NE, in its calculation of the Installed Capability Responsibility, has recognized that it may be necessary to deplete 10-minute reserves to meet its resource adequacy responsibilities.⁸⁰

27. Several commenters criticize the OFSA and the Mystic Retirement Studies because they do not take into account how the market will respond to the retirement of Mystic 8 and 9. Commenters argue that market participant behavior would adapt in

⁷⁵ See Massachusetts AG Comments at 9.

⁷⁶ See *id.* at 9; New Hampshire PUC Comments at 3.

⁷⁷ See PIO Comments at 38-39.

⁷⁸ See *id.* at 38-39.

⁷⁹ See Potomac Economics Comments at 9-10; *see also* Maine PUC Comments at 18-19.

⁸⁰ See Maine PUC Comments at 19.

response to changes in fuel costs, emission constraints, greater risk of pay-for-performance penalties, and bonus payments.⁸¹

28. Certain commenters state that they asked ISO-NE to modify its OFSA reference case variables to reflect what they considered to be more realistic assumptions, including changes to the gross load forecast, retail natural gas demand growth, energy efficiency measures, active demand response, electricity imports, LNG flow, solar photovoltaic installations, and onshore and offshore wind development.⁸² Commenters state that the results of this requested supplemental analysis, which was published on April 26, 2018, indicates that there is substantially lower regional fuel security risk than was indicated in ISO-NE's initial analysis.⁸³ Some commenters request that the Commission order ISO-NE to perform additional analyses to restudy the fuel security risks it examined under the OFSA and Mystic Retirement Studies using different scenarios.⁸⁴

29. In addition, commenters argue that the Commission should not waive the requirement to conduct the local area reliability analysis prescribed in the ISO-NE Tariff.⁸⁵ Noting the differences between the OFSA and the analysis required by the ISO-NE Tariff for local reliability review, some commenters argue that granting waiver would set a precedent that ISO-NE may use the OFSA to justify future market and policy decisions.⁸⁶

30. In response, ISO-NE states that the use of a deterministic analysis is consistent with other needs assessments such as the transmission security analysis performed to assess the need to retain resources for local reliability needs. ISO-NE argues that

⁸¹ See, e.g., ENECOS Comments at 11; Maine PUC Comments at 18; New Hampshire PUC Comments at 7.

⁸² See New Hampshire PUC Comments at 8-9 n.18 (citing to ISO-NE, *Addendum to ISO Operational Fuel-Security Analysis: Results of Additional Scenarios and Sensitivities Requested by NEPOOL Stakeholders* (April 2018), <https://www.iso-ne.com/static-assets/documents/2018/04/addendum-to-iso-operational-fuel-security-analysis.pdf>); see also Massachusetts AG Comments at 13; PIO Comments at 38-39.

⁸³ See Massachusetts AG Comments at 13; New Hampshire PUC Comments at 9.

⁸⁴ See Massachusetts AG Comments at 4.

⁸⁵ See Maine PUC Comments at 13-14, 21; Massachusetts AG Comments at 9; Verso Comments at 11.

⁸⁶ See, e.g., EDF Comments at 9-10.

commenters offer no evidence to counter the methodology used in the OFSA.⁸⁷ ISO-NE asserts that the assumptions underlying the OFSA reflect the best data available to ISO-NE at the time and represent observed historical data or well-established projections. ISO-NE adds that it used assumptions that effectively lessened the fuel security constraints.⁸⁸

4. Market Dynamics

a. Price Suppression

31. If the Commission grants the waiver request, some commenters (including Connecticut Parties and NESCOE) urge the Commission to require ISO-NE to enter Mystic 8 and 9 into the FCA as price takers.⁸⁹ Other commenters, however, express concerns that, if the Commission requires these facilities to offer into the FCA as price takers, it will negatively affect the operation of the markets by dampening the price signals necessary for a market response to the region's fuel-security challenges.⁹⁰ Some commenters argue that granting waiver could lead to price suppression in FCA 13 and FCA 14.⁹¹ NEPGA suggests that the capacity of Mystic 8 and 9 should be offered into the FCA at its de-list price (subject to normal mitigation rules) and, if it fails to clear the

⁸⁷ See ISO-NE June 7 Answer at 7-9 (citing ISO-NE Tariff § III.13.2.5.2.5). ISO-NE states that, under the ISO-NE Tariff, a resource is deemed needed for reliability if it is necessary to address a local reliability issue, and the resource's retirement would result in a violation of reliability criteria or ISO New England System Rules.

⁸⁸ See ISO-NE June 7 Answer at 10 (referencing ISO's assumption related to LNG injection levels, a key input into the studies, as being significantly higher than observed historical levels because the study assumes injection levels ranging from 0.8 Bcf/day to 1.2 Bcf/day versus an observed 5-year winter average of 0.226 Bcf/day). Similarly, the Mystic Retirement Studies assume a range of 2,500 MW to 3,500 MW of imports, the higher end of which is also greater than the observed five year winter average of 2,938 MW. *Id.*; see also Brandien Testimony at 33-34.

⁸⁹ See Connecticut Parties Comments at 8; NESCOE Comments at 4.

⁹⁰ See, e.g., LS Power Comments at 5-6; Maine Governor's Energy Office Comments at 2; NextEra Answer at 3-6; NGSAs Comments at 4; Taunton Comments at 3-4; Verso Comments at 2.

⁹¹ See, e.g., FirstLight Comments at 9, 11; NEPGA Comments at 2-3; NextEra Comments at 3, 16-20, 25; NRG Comments at 11-13; NEPGA June 7, 2018 Answer at 2 (NEPGA June 7 Answer).

auction, it should be retained for fuel security and subsequently allowed to participate in the Annual Reconfiguration Auctions as supply.⁹² Other commenters express concerns that granting waiver could create an uneven playing field and unduly discriminate against other LNG or natural gas suppliers or generation resources in the region, which may result in the retirement of resources that provide ISO-NE with similar fuel security benefits.⁹³ Some commenters argue that these market distortions can be minimized in some fashion by limiting the cost-of-service agreement's duration, by mitigating Mystic 8 and 9's participation in the market rather than allowing Mystic 8 and 9 to participate as price takers, or by removing Mystic 8 and 9 from the FCM and addressing any action outside of the market.⁹⁴

32. NextEra argues that the Commission must mitigate the Mystic 8 and 9 capacity offer price to avoid price suppression. NextEra asserts that Mystic 8 and 9 could be withheld from FCA 13 and FCA 14, Mystic 8 and 9 could be included in FCA 13 and FCA 14 at a price reflecting its actual net avoidable going-forward cost pursuant to a static de-list bid, or the Commission could direct ISO-NE to use the already submitted priced Retirement De-List Bid for Mystic 8 and 9.⁹⁵ NRG asserts that, unlike retaining a resource for a local reliability need, when there is no competition for meeting that need, fuel security needs represent a pool-wide constraint that any fuel secure unit anywhere in New England could alleviate. NRG contends that, until a market mechanism exists, any resource retained for emergency reliability needs should participate in ISO-NE's markets in a way that minimizes its price-suppressing effect. NRG argues that, to prevent price suppression, Mystic 8 and 9 should be entered into the FCM at the FCA starting price and should offer into the energy market at the \$1,000/MWh energy offer cap.⁹⁶ In its answer, NEPGA requests that the Commission reject Connecticut Parties' and NESCOE's proposal to enter Mystic 8 and 9 into FCA 13 and FCA 14 as price takers because doing

⁹² See NEPGA Comments at 3 (incorporating by reference NEPGA, Complaint, Docket No. EL18-154-000, at 6 (filed May 23, 2018)).

⁹³ See EDF Comments at 17; NGSAs Comments at 5; NextEra Comments at 3, 16-20, 25; Repsol Comments at 4.

⁹⁴ See, e.g., Connecticut Parties Comments at 8; EDF Comments at 17; FirstLight Comments at 11; NGSAs Comments at 2, 5.

⁹⁵ See NextEra Comments at 3, 16-20, 25.

⁹⁶ See NRG Comments at 11-13.

so would result in unjust and unreasonable price suppression and significant displacement of otherwise economic resources.⁹⁷

33. NextEra asserts that the Commission should consider whether additional protections are also needed to ensure just and reasonable rates in the energy and ancillary services markets. NextEra contends that one way to analyze this issue is to treat Mystic 8 and 9 as an energy limited resource and then have ISO-NE direct Mystic 8 and 9 to produce energy and 10-minute reserves whenever needed for reliability.⁹⁸

34. ISO-NE states that, if the Commission grants the requested waiver and allows ISO-NE to retain Mystic 8 and 9 for fuel security needs, then the Tariff provisions regarding pricing a retained resource will automatically apply to Mystic 8 and 9, thus requiring ISO-NE to enter the units into the FCA as a price taker.⁹⁹ However, ISO-NE asks the Commission to reject commenters' requests to deny the waiver request due to potential price suppression and allow ISO-NE to further evaluate this issue with ISO-NE stakeholders through ISO-NE's normal market design and stakeholder processes. ISO-NE acknowledges the price suppression concerns but states that there is no known acceptable solution to the problem. ISO-NE notes that the Commission has previously approved cost-of-service contracts that were justified by a reliability need, despite concerns over price suppression.¹⁰⁰ ISO-NE alleges that NEPGA's proposed remedy is based on a faulty analytical premise and would produce the very outcome NEPGA says should be avoided. In response to NextEra's assertion that Mystic 8 and 9 should offer in at a Retirement De-List Bid, ISO-NE states that NextEra has offered no explanation as to why its proposal would produce a just and reasonable outcome. ISO-NE states that, while it is worth assessing whether and how the impacts of retaining resources for fuel security can be better addressed, there is not a simple or straightforward solution to the issue. Therefore, ISO-NE requests that the Commission permit it to undertake its normal design process followed by a full stakeholder process, where any solution can be vetted by all interested participants.¹⁰¹

⁹⁷ See NEPGA June 7 Answer at 2.

⁹⁸ See NextEra Comments at 26.

⁹⁹ See ISO-NE June 7 Answer at 25-26 (citing ISO-NE Tariff §§ III.13.1.2.3.1.5.1(c), III.13.2.3.2(c)).

¹⁰⁰ See *id.* at 21 (citing *Milford Power Co.*, 112 FERC ¶ 61,154, at P 31 (2005); *Devon Power LLC*, 103 FERC ¶ 61,082, at P 29 (2003)).

¹⁰¹ See *id.* at 21-22.

35. In its June 19, 2018 answer, NEPGA asserts that ISO-NE's conclusion that its Tariff will require ISO-NE to offer Mystic 8 and 9 into FCA 13 and FCA 14 as price takers if the Commission approves the waiver request relies on Tariff language that only applies to resources retained for local transmission security needs. NEPGA argues that, because the Tariff does not address the pricing treatment of resources retained for fuel security, it does not require ISO-NE to re-price Mystic 8 and 9 as price takers in FCA 13 and FCA 14.¹⁰²

b. Impact on Other Market Rules

36. Several commenters note that ISO-NE's pay-for-performance market enhancements were designed to address fuel security issues and that pay-for-performance has not been given sufficient opportunity to work as designed.¹⁰³ LS Power argues that Exelon's own actions demonstrate that pay-for-performance is working as designed, noting that Exelon has chosen to purchase the Distrigas Facility to provide a firm fuel supply to meet its existing capacity supply obligations through May 31, 2022.¹⁰⁴ Massachusetts AG argues that ISO-NE has not conducted sufficient analysis of the impact of its request for waiver on the operation of pay-for-performance.¹⁰⁵ Other commenters argue that pay-for-performance cannot solve the region's fuel security problems by itself because other issues such as insufficient pipeline capacity will persist.¹⁰⁶ Massachusetts AG also raises concerns about the waiver's impact on ISO-NE's recently approved two-stage capacity market pricing proposal, Competitive Auctions with Sponsored Policy Resources (CASPR),¹⁰⁷ which is contingent upon existing uneconomic resources retiring in order for new state-sponsored resources to enter.¹⁰⁸ Massachusetts AG argues that retaining an uneconomic resource under a cost-

¹⁰² NEPGA June 19, 2018 Answer at 1-5 (NEPGA June 19 Answer).

¹⁰³ See, e.g., LS Power Comments at 5, 16; Maine PUC Comments at 6; New Hampshire PUC Comments at 15; NGSAs Comments at 2-3; Massachusetts AG Comments at 15; Vitol Comments at 1-2, 11-12.

¹⁰⁴ See LS Power Comments at 5.

¹⁰⁵ See Massachusetts AG Comments at 4.

¹⁰⁶ See Maine Governor's Energy Office Comments at 2.

¹⁰⁷ See Massachusetts AG Comments at 14 (citing *ISO New England Inc.*, 162 FERC ¶ 61,205 (2018)).

¹⁰⁸ See *id.* at 14-15.

of-service contract will block the entry of new sponsored resources and undermine CASPR.

37. In reply, ISO-NE explains that, ever since a 2004 cold snap that exposed the limitations of the natural gas infrastructure, ISO-NE has used its available tools (e.g., market design changes, improved operating procedures, and increased coordination with natural gas pipelines) to address the region's fuel security concerns. However, ISO-NE avers that the decisions regarding regional natural gas infrastructure and other decisions that impact regional fuel security are not within its authority.¹⁰⁹ ISO-NE contends that solutions that rely on the expansion of the natural gas pipeline system in the region depend on state support within and outside of New England for the siting of new pipeline infrastructure and, to date, multiple attempts at developing and finding creative funding mechanisms for additional pipeline capacity have failed despite ISO-NE's support for such efforts. Further, according to ISO-NE, reliance on oil to backfill for non-firm natural gas fuel arrangements is limited by state environmental policies that increasingly restrict emissions from oil-fired generators and ISO-NE indicates that, if dual-fueled resources were to replace any meaningful part of the Mystic's output, the region would need to modify these restrictions to ensure the availability of these resources when the system is fuel-constrained.¹¹⁰

38. ISO-NE agrees that pay-for-performance creates incentives for generators to improve performance, including by firming up their fuel supplies. But ISO-NE states that it cannot determine whether these improvements will be sufficient to replace the output of Mystic 8 and 9, particularly given compromises made in the pay-for-performance design, including the six-year transition to the full pay-for-performance payment rate and the stop loss mechanisms.¹¹¹ ISO-NE states that it is confident that, along with pay-for-performance, a market-based fuel security solution can be developed but that it will take time to develop the solution and any necessary additional fuel

¹⁰⁹ See ISO-NE June 7 Answer at 5 (“Nonetheless, the reality is that the gas infrastructure is outside of [ISO-NE’s] authority, and attempts to improve gas transportation capacity within New England have failed. Likewise, siting and state contract support for preferred supply resources—including offshore wind, hydro imports, and photo-voltaic resources—and the transmission to deliver them are also outside of [ISO-NE’s] jurisdiction, and many of the choices that have been made in those areas have not served to improve the region’s fuel security.”).

¹¹⁰ See ISO-NE June 7 Answer at 13, nn.50-51.

¹¹¹ See *id.* at 11.

infrastructure. ISO-NE states that it cannot provide reasonable assurance that necessary changes to replace Mystic 8 and 9 will be in place in the 2022-2024 timeframe.¹¹²

c. Short-Term versus Long-Term Solutions

39. Some commenters question the wisdom of granting waiver as a temporary measure without addressing the region's long-term fuel security issues.¹¹³ Many of these commenters request that the Commission order ISO-NE to devise and implement a long-term, market-based solution either in conjunction with or in place of pay-for-performance.¹¹⁴ Potomac Economics recommends that the Commission direct ISO-NE to file a market-based longer-term fuel security solution by a date certain to ensure that the cost-of-service agreements will only be a temporary measure.¹¹⁵ Potomac Economics adds that, in order to design a market mechanism to ensure fuel security, ISO-NE must determine the precise planning standard (e.g., a firm energy product that must be deliverable for up to 14 consecutive days during the winter) and that procurement of a prompt, seasonal product has advantages over a three-year ahead product (e.g., the product procured via the FCM).¹¹⁶ Eversource disagrees with Potomac Economics' assertion that procurement of a prompt seasonal product alone could sufficiently resolve the region's fuel security risks, arguing that such a solution would send a short-term price signal that would not alter the existing lack of incentive for natural gas-fired generators to make long-term investment in new natural gas pipeline infrastructure.¹¹⁷ Eversource asserts that the Commission must address the fundamental problem of infrastructure deficiency (i.e., lack of firm fuel supply infrastructure), otherwise the region will continue to attempt short-term fixes to hold the market together.¹¹⁸

¹¹² See *id.* at 12; see also Exelon Answer at 4-5.

¹¹³ See Algonquin Comments at 4-5; Maine Governor's Energy Office Comments at 2; Vitol Comments at 1-2.

¹¹⁴ See EDF Comments at 9; ESPA Comments at 2; NESCOE Comments at 3; New Hampshire PUC Comments at 17.

¹¹⁵ See Potomac Economics at 13-14.

¹¹⁶ See *id.* at 10-11.

¹¹⁷ See Eversource June 13, 2018 Answer at 4.

¹¹⁸ See *id.* at 4-5; see also Eversource June 27, 2018 Answer at 3-5.

40. Commenters disagree over whether ISO-NE's request for waiver is needed as an interim step and whether a cost-of-service agreement for Mystic 8 and 9 can be avoided until closer to the FCA 13 delivery year.¹¹⁹ FirstEnergy argues that ISO-NE's waiver request is the consequence of Commission inaction, particularly its failure to ensure that RTO/ISO markets contain just and reasonable rules that provide adequate compensation for needed generation. FirstEnergy asks the Commission to immediately adopt the proposal that it filed in Docket No. RM18-1-000 to ensure the continued operation of critical nuclear and coal-fired generators while a long-term solution is developed.¹²⁰ Other commenters raise concerns about expanding RMR agreements based on the system's fuel security because it would inappropriately divert focus to controlling upstream fuel issues rather than focusing on market design solutions.¹²¹ NGSA contends that imposing market distortions to correct other market imperfections will result in a vicious cycle of more market distortions and the need for out-of-market fixes until ISO-NE no longer has a market.¹²² Exelon argues that short-term, out-of-market solutions are sometimes necessary, as they are here, to provide bridges to more lasting market modifications that are being developed and implemented. Exelon notes that the Commission has accepted such short-term interim measures in the past.¹²³ NEPOOL asks the Commission not to curtail its stakeholder process addressing this issue.¹²⁴

d. Distrigas Facility

41. Some commenters suggest that, if the Commission approves the waiver request, it should require additional mitigation measures and safeguards to prevent the exercise of market power or undue discrimination due to Exelon's ownership of both Mystic 8 and 9 and the Distrigas Facility.¹²⁵ Several commenters question whether the Distrigas Facility

¹¹⁹ See EPSA Comments at 1; NRG Comments at 7; PIO Comments at 34-36.

¹²⁰ See FirstEnergy Comments at 2 (citing *Grid Reliability and Resilience Pricing*, Docket No. RM18-1-000).

¹²¹ See NGSA Comments at 3; NextEra Comments at 6, 21.

¹²² See NGSA Comments at 2-3.

¹²³ See Exelon Comments at 6-7, 11-12 (citing *Norwalk Power, LLC*, 120 FERC ¶ 61,048, at P 64 (2007); *Bridgeport Energy, LLC*, 113 FERC ¶ 61,311, at P 39 (2005); *Milford Power Co.*, 112 FERC ¶ 61,154 at P 32).

¹²⁴ See NEPOOL Answer at 6.

¹²⁵ See ENECOS Comments at 4, 12; EDF Comments at 13-16; Massachusetts AG

will no longer be economically viable and speculate that these claims are exaggerated in order to obtain a cost-of-service agreement that includes recovery of fuel costs.¹²⁶ Commenters argue that, by compensating Mystic 8 and 9 for their fuel supplied exclusively by the Distrigas Facility, ISO-NE is creating an uneven playing field for other natural gas suppliers in the region and potentially cross-subsidizing Distrigas Facility's supply to Mystic 8 and 9 and Distrigas Facility's supply to its other customers.¹²⁷ Massachusetts AG argues that ISO-NE's request for waiver is primarily concerned with the retirement of Distrigas, not Mystic 8 and 9, and that the Commission's authority to retain the Distrigas Facility is questionable.¹²⁸ Massachusetts AG points to the fact that ISO-NE did not raise fuel security concerns about Mystic's Dynamic De-List Bid in FCA 12 and, instead, retained Mystic Units 7 and 8 for transmission issues, not fuel security concerns.¹²⁹ New Hampshire PUC questions whether the costs of an LNG import terminal with multiple customers can be legally recovered through a wholesale electricity tariff under the FPA.¹³⁰ ISO-NE disputes these claims and equates the Distrigas Facility with oil storage, tanks, pipelines, fuel warmers, and similar facilities at a dual-fuel generator.¹³¹ In addition, Exelon states that recovery of fuel costs are within the Commission's authority and supported by general cost-of-service ratemaking principles. ISO-NE notes that Exelon has filed a two-year cost-of-service agreement for Mystic 8 and 9 in Docket No. ER18-1639-000 and argues that the terms of the cost-of-service agreement are outside the scope of this proceeding.

5. Mystic 8 and 9 Cost-of-Service Agreement

42. Some commenters do not believe that Mystic 8 and 9 meet the threshold for obtaining a cost-of-service agreement. PIO states that the Commission's longstanding

Comments at 12; NextEra Comments at 26.

¹²⁶ See, e.g., ENECOS Comments at 12-13 (arguing that there is no publicly available evidence to suggest the Distrigas Facility will not continue to be economically viable and ISO-NE's assumption is based on back-casting from FERC Form No. 2 data last filed by the Distrigas Facility between 2006 and 2008); PIO Comments at 49-52.

¹²⁷ See Repsol Comments at 4-5.

¹²⁸ See Massachusetts AG Comments at 19.

¹²⁹ See *id.* at 19.

¹³⁰ See New Hampshire PUC Comments at 17.

¹³¹ See ISO-NE June 7 Answer at 26-27.

practice is to approve RMR agreements only to address local reliability issues and only in the limited instances when the loss of a unit would cause a violation of a defined reliability requirement. According to PIO, the instant waiver request does not conform to this practice because Mystic 8 and 9 provide a region wide energy service and do not support any defined reliability criteria.¹³² Further, commenters disagree over the allocation of costs in the Mystic 8 and 9 cost-of-service agreement.¹³³ Massachusetts AG argues that it is inappropriate and premature to grant waiver of the cost recovery provisions of the ISO-NE Tariff.¹³⁴ ISO-NE argues that there is no waiver request of any cost allocation provision and that, therefore, requests for the Commission to allocate these costs in this proceeding are beyond its scope. Nevertheless, ISO-NE states that its objective is to file a cost allocation methodology for fuel-security retentions of resources that will also apply to the Mystic cost-of-service agreement with the Commission by the end of 2018.¹³⁵

43. Some commenters object to the two-year duration of the proposed cost-of-service agreement.¹³⁶ ISO-NE responds that the Commission has repeatedly rejected contentions that cost-of-service contract agreements be limited to one year, including a prior contract agreement for the same Mystic 8 and 9.¹³⁷

44. NextEra contends that, once the fuel security concern is resolved the Commission should find that Mystic 8 and 9 must retire. NextEra asserts that nothing prevents Exelon from seeking to re-enter Mystic 8 and 9 into the capacity market as a new capacity resource under the terms of the existing ISO-NE Tariff. NextEra claims that ISO-NE's silence on this issue implies that Mystic 8 and 9 would be free to re-enter the capacity

¹³² See PIO Comments at 31-33.

¹³³ See Connecticut Parties Comments at 7; Maine Governor's Energy Office Comments at 1, 3; Maine PUC Comments at 9-10, 13; Maine PUC Answer at 3-4; New Hampshire Consumer Advocate Comments at 1; New Hampshire PUC at 15.

¹³⁴ See Massachusetts AG Comments at 11.

¹³⁵ See ISO-NE June 7 Answer at 19; NEPGA June 19 Answer at 3-5.

¹³⁶ See EPSA Comments at 6-7; NGSAs Comments at 2, 5.

¹³⁷ See ISO-NE June 7 Answer at 28; *see also* Exelon Comments at 5 (arguing that denial of the two-year term would necessitate a second waiver filing and new cost-of-service agreement filing next year, which would increase the regulatory burden and uncertainty for Mystic 8 and 9 and other market participants).

market as an existing capacity resource, which is a troubling precedent that devalues the meaning of a priced retirement bid.¹³⁸

IV. Discussion

A. Procedural Matters

45. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2017), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. In addition, given their interest in the proceedings, the early stage of the proceedings, and the absence of undue prejudice or delay, we grant the unopposed, late-filed motions to intervene and late-filed comments of those listed in the appendix to this order.

46. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2017), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept answers from the parties listed in the appendix to this order because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

47. We deny ISO-NE's request for waiver. We find that ISO-NE's requested waiver is an inappropriate vehicle for allowing Mystic 8 and 9 to submit a cost-of-service agreement in response to the identified fuel security need. A typical waiver seeks to suspend a tariff provision. By contrast, ISO-NE's request would not only suspend tariff provisions but also alter the existing conditions upon which a market participant could enter into a cost-of-service agreement (for a transmission constraint that impacts reliability) and allow for an entirely new basis (for fuel security concerns that impact reliability) to enter into such an agreement. Although ISO-NE attempts to frame its filing as a request for waiver of existing ISO-NE Tariff provisions, its request effectively creates an entire process that is not in the ISO-NE Tariff in order to allow for a cost-of-service agreement to meet regional fuel security concerns. Such new processes may not be effectuated by a waiver of the ISO-NE Tariff; they must be filed as proposed tariff provisions under FPA section 205(d).¹³⁹

¹³⁸ See NextEra Comments at 6, 21.

¹³⁹ 16 U.S.C. § 824d(d) (2012).

48. Moreover, even if we applied the Commission's waiver criteria here,¹⁴⁰ we would deny ISO-NE's proposed waiver request because it is not sufficiently limited in scope. As noted above, the proposed waiver request reflects a departure from ISO-NE's Tariff in that it would create a process to allow Mystic 8 and 9 to enter into a cost-of-service agreement in response to fuel security concerns, which is not currently permitted under the ISO-NE Tariff.¹⁴¹

49. Although we deny ISO-NE's waiver request, we institute a proceeding under section 206 of the FPA in Docket No. EL18-182-000 because we preliminarily find that the ISO-NE Tariff may be unjust and unreasonable based on ISO-NE's demonstration in this proceeding that its Tariff fails to address specific regional fuel security concerns identified in the record. We find ISO-NE's methodology and assumptions in the OFSA and Mystic Retirement Studies reasonable and accept ISO-NE's conclusions that the retirement of Mystic 8 and 9, under current ISO-NE Tariff provisions, could cause ISO-NE to violate mandatory reliability standards as soon as 2022. We disagree with Cavus Energy's contention that ISO-NE does not demonstrate a compelling need for out-of-market action. ISO-NE performed the Mystic Retirement Studies to evaluate operational risks associated with the retirement of Mystic 8 and 9 prior to the 2022-2023 and 2023-2024 winter periods.¹⁴² In these Mystic Retirement Studies, ISO-NE presented 18 scenarios covering a range of possible circumstances if Mystic 8 and 9 were to retire. Seventeen of the 18 scenarios showed that ISO-NE will deplete its 10-minute operating reserves, which is a violation of NERC reliability criteria. In addition, eight of the 18 scenarios demonstrate that ISO-NE will need to shed load. Thus, the OFSA and Mystic Retirement Studies indicate that the ISO-NE Tariff may be unjust and unreasonable because it contains no mechanism to address these pressing concerns.

50. Commenters challenge ISO-NE's use of a deterministic analysis rather than a probabilistic analysis in both the OFSA and Mystic Retirement Studies, as well as the underlying assumptions in both studies. We find that the studies are reasonable and support our preliminary findings in this order. Turning first to whether ISO-NE should

¹⁴⁰ The Commission has granted waiver of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties. *See, e.g., Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 14 (2016); *Calpine Energy Servs., L.P.*, 154 FERC ¶ 61,082, at P 12 (2016); *New York Power Auth.*, 152 FERC ¶ 61,058, at P 22 (2015).

¹⁴¹ *See Midwest Indep. System Operator Inc.*, 136 FERC ¶ 61,212, at P 29 (2011); *Bayonne Energy Ctr., LLC*, 163 FERC ¶ 61,095, at P 30 (2018).

¹⁴² *See* Petition for Waiver at 9-15; *see also* Brandien Testimony at 4-5, 30-31.

have used a probabilistic analysis in both the OFSA and Mystic Retirement Studies, we find that it was reasonable for ISO-NE to use a deterministic analysis in this instance. In particular, we agree with ISO-NE that a deterministic analysis allows for assessing the reliability impact of the loss of an individual resource (here, Mystic 8 and 9) and also for identifying potential violations of reliability standards. Although there are other, commonly used ways to conduct predictive analyses, deterministic analysis is far from novel. Use of a deterministic analysis also is consistent with the type of analysis that ISO-NE uses to determine if a resource is needed for local reliability needs. The Commission has previously accepted deterministic analyses in other circumstances, such as in the ISO-NE Winter Reliability Program, which addressed a similar need.¹⁴³

51. Next, commenters challenge the assumptions used by ISO-NE in the OFSA and Mystic Retirement Studies. We recognize that it is indeed possible to achieve different results in a study by changing assumptions in the model used for that study. ISO-NE conducted several model runs for different scenarios in both the OFSA and the Mystic Retirement Studies using a variety of assumptions.¹⁴⁴ As noted above, 17 of the 18 Mystic Retirement Studies showed that ISO-NE would violate NERC reliability criteria. We find that ISO-NE has used a reasonable methodology to analyze the available data under a rational set of assumptions to arrive at its conclusions in the OFSA and Mystic Retirement Studies.

52. We note that fuel security analyses do not currently have an established methodological framework and that there are no industry standards or best practices for

¹⁴³ See *ISO New England Inc.*, 144 FERC ¶ 61,204 at P 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. 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”), *reh’g denied*, 147 FERC ¶ 61,026 (2014).

¹⁴⁴ ISO-NE identified a possible fuel security emergency resulting from the outages of Mystic 8 and 9 and the Distrigas Facility several months prior to the instant proceeding when it first published the OFSA in January 2018. ISO-NE’s subsequent analysis in the Mystic Retirement Studies, undertaken in response to Exelon’s Retirement De-List Bid, confirmed this prior finding. See Brandien Testimony at 43-45.

conducting such an analysis. The fact that stakeholders can modify a model and/or a set of assumptions to achieve different outputs that show a less severe fuel security outcome does not necessarily render ISO-NE's analyses for the OFSA and Mystic Retirement Studies unreasonable. We find that Cavus Energy's argument that the retirement of Mystic 8 and 9 could, in fact, improve the region's fuel security by rerouting natural gas from the Distrigas Facility into the region's natural gas pipelines is not adequately supported. ISO-NE states that the input assumptions it used when conducting the Mystic Retirement Studies reflected the best available data at the time it conducted its analysis, and the inputs represented either observed historical data or well-established projections. Further, according to ISO-NE, its input assumptions were sometimes even biased towards showing reduced fuel security concerns.¹⁴⁵ In sum, we are persuaded that the record evidence supports the conclusion that, due largely to fuel security concerns, the retirement of Mystic 8 and 9 may cause ISO-NE to violate NERC reliability criteria.

53. We reaffirm our support for market solutions as the most efficient means to provide reliable electric service to New England consumers at just and reasonable rates. ISO-NE has recently implemented important steps to further strengthen its markets, with new market rules designed to help address the fuel security issues that underlie this proceeding.¹⁴⁶ For example, while pay-for-performance was not solely intended to address fuel security, it sends a price signal that can spur market participants to make investments that address ISO-NE's fuel security needs. The pay-for-performance rules are a market-based mechanism intended to ensure that resources reliably perform, particularly when the system is under stress.¹⁴⁷ By design, that construct rewards

¹⁴⁵ See ISO-NE June 7 Answer at 9-10 (“[ISO-NE] has given these stakeholders and the Commission all the information needed to assess these assumptions by providing the bases for each of them in Mr. Brandien’s testimony. As indicated therein, the input assumptions were based on the best data available to the ISO at the time the respective studies were performed, and represent observed historical data or well-established projections. Further, rather than biasing the results toward finding a fuel security risk, in some instances [ISO-NE] made assumptions that would have the effect of lessening the fuel security constraints”).

¹⁴⁶ See, e.g., ISO New England Inc., 147 FERC ¶ 61,172; ISO New England Inc., 149 FERC ¶ 61,009 (2014). The pay-for-performance capacity market rule changes were accepted by the Commission in 2014. These market rules were first in effect in FCA 9, the auction conducted in February 2015, with a capacity commitment period spanning June 1, 2018 through May 31, 2019.

¹⁴⁷ See *ISO New England Inc.*, 147 FERC ¶ 61,172 at P 63 (“ISO-NE’s two-settlement capacity market design replicates the performance incentives that would exist in an uncapped energy market by linking payments to performance during scarcity

resources, regardless of fuel type, that ensure they have reliable fuel supplies and can operate when needed. The pay-for-performance construct also sends a price signal to spur investment in such resources, including existing resources bolstering their fuel availability.¹⁴⁸ However, the existing market rules might not provide a full solution to the fuel security problems identified in the OFSA and Mystic Retirement Studies.

54. First, there is a timing problem. While pay-for-performance went into effect June 1, 2018, ISO-NE explains that it “cannot assert that these improvements will be sufficient to replace the output of [Mystic 8 and 9] during the period of their proposed retention, particularly given the compromises that were made in the [pay-for-performance] design, including the six-year transition to the full payment rate and the stop loss mechanisms.”¹⁴⁹ Second, the New England states play an important role in maintaining the region’s fuel security. As several commenters have emphasized, new and expanded energy infrastructure projects face challenges in some New England states.¹⁵⁰ As a practical matter, even if the ISO-NE market sends a price signal indicating

conditions”); *see also id.* P 109 (explaining that “resources will be incentivized to ensure they are deliverable during a Capacity Scarcity Condition”).

¹⁴⁸ *See id.* P 109 (“Additionally, because the immediacy of energy market price signals provides strong incentives to gas-fired generators to bolster fuel availability, the Reserve Constraint Penalty Factor changes should help address in the near-term the gas-electric coordination issues that have contributed to resource non-performance.”). *See also* ISO-NE, Peter Brandien Aff. Ex.I-1b, Docket No. ER14-1050-000, at 11:12-15 (filed Jan. 17, 2014) (“In fact, in terms of ensuring reliable fuel service, the Analysis Group has stated that implementation of dual fuel capability is likely the lowest-cost option to ensure fuel security, when compared to procuring firm gas pipeline transportation or LNG”), n.7 (citing to Assessment of the Impact of ISO-NE’s Proposed Forward Capacity Market Performance Incentives); *see also* ISO-NE, Matthew White Aff. Ex. I-1c, Docket No. ER14-1050-000, at 10:5-7 (filed Jan. 17, 2014) (“Many types of technologies and contractual arrangements may be technologically feasible to reduce gas supply risks, such as adding and maintaining dual-fuel capability, securing back-up LNG supply, or contracting for firm gas transport”).

¹⁴⁹ *See* ISO-NE June 7 Answer at 11-12.

¹⁵⁰ *See, e.g.*, IECG Comments at 12 (“Several of the New England states have been supportive of additional gas pipeline capacity, but to date no such permanent solution has been realized, in large part because certain state stakeholders in the region, particularly Massachusetts, have blocked such alternatives due to state-specific public policy initiatives that continue to thwart a regional solution at a reasonable cost.”) (citing *ENGIE Gas & LNG LLC v. Dep’t of Pub. Util.*, 475 Mass. 191 (2016)); Maine

that investment is needed, the states have the authority to control whether, and which, infrastructure gets built in response to that price signal. Indeed, ISO-NE explains factors such as infrastructure limitations,¹⁵¹ environmental regulations,¹⁵² and the lack of transmission development to accommodate large scale renewable projects¹⁵³ as collectively leading to the current regional fuel security concerns. In short, if a state, through policy or permitting authority, prevents investors from adequately responding to the price signals sent by the market, there may be instances where the market alone does not fully address the problem. As a result, in some circumstances, it may be necessary to consider reliance upon short-term, out-of-market mechanisms to retain certain existing units, while ISO-NE continues to develop longer-term market solutions.

55. Based on the evidence in this proceeding, including ISO-NE's OFSA and Mystic Retirement Studies, we are concerned that ISO-NE's Tariff does not sufficiently address the fuel security issues currently facing the region, which could result in a violation of

Governor's Energy Office Comments at 3 (noting Maine's implementation of policy initiatives to bring additional natural gas into the region, in comparison to other states that have blocked access to natural gas infrastructure).

¹⁵¹ See e.g., ISO-NE June 7 Answer at 13 n.50 (explaining that projects and proposals to significantly expand pipeline capacity into New England, such as Kinder Morgan's Northeast Energy Direct project, the Access Northeast project, the Williams/Cabot Constitution Pipeline project, and a proposal by the New England states to include a mechanism in the Tariff to fund pipeline expansion projects, have all been unsuccessful due to significant regulatory hurdles, lack of support, or legal challenges striking them down).

¹⁵² See *id.* at 12-13 n.51 (explaining that Massachusetts recently enacted greenhouse gas regulations that reduces CO² emissions limits for in-state fossil-fueled generators, and under the current caps, the effective capacity of the resources subject to these regulations will decline from approximately 9,500 MW in 2018 to approximately 7,900 MW in 2024, and will continue to decline each year thereafter until 2050 at a rate of approximately 4.9 percent); see also *id.* at 5 (explaining that "siting and state contract support for preferred supply resources—including offshore wind, hydro imports, and photo-voltaic resources—and the transmission to deliver them are also outside of the ISO's jurisdiction, and many of the choices that have been made in those areas have not served to improve the region's fuel security").

¹⁵³ See *id.* at 14-15 n.54 (explaining that regulatory approvals for transmission projects to interconnect large-scale renewable projects have resulted in protracted delays, and state laws supporting investment in renewable projects does not necessarily mean such projects will be built).

mandatory reliability standards. Accordingly, pursuant to FPA section 206, we direct ISO-NE either: (1) to submit within 60 days of the date of this order interim Tariff revisions that provide for the filing of a short-term, cost-of-service agreement to address demonstrated fuel security concerns and to submit by July 1, 2019 permanent Tariff revisions reflecting improvements to its market design to better address regional fuel security concerns; or (2) within 60 days of the date of this order, to show cause as to why the Tariff remains just and reasonable in the short- and long-term such that one or both filings is not necessary.

56. Commission proceedings established for the determination of just and reasonable cost-of-service rates can be lengthy and may not align with the various Tariff deadlines set forth in the FCM rules. Therefore, if ISO-NE opts to submit Tariff revisions providing for short-term, cost-of-service agreements to address demonstrated fuel security concerns, those revisions should address the possibility that the owner of a resource that needs to be retained for fuel security reasons may need to decide, prior to receiving approval of its cost-of-service agreement, whether to unconditionally retire the resource. For example, the Tariff revisions could allow ISO-NE to retain such a resource outside of the FCM construct, even though it has opted to retire, and allow the resource to retain its interconnection rights through the term of the cost-of-service agreement.

57. In addressing a possible solution, we note that there appear to be material differences between retaining resources through cost-of-service agreements for local transmission needs and retaining resources through cost-of-service agreements for regional fuel security concerns.¹⁵⁴ Therefore, it may be reasonable for resources retained for fuel security purposes to be offered into the FCM at an offer price that is above zero, but still subject to mitigation by the IMM. For example, if a resource was retained for fuel security purposes, the IMM could submit a de-list bid on its behalf that reflects the IMM's estimate of that resource's net going-forward costs.¹⁵⁵ If ISO-NE enters the resource into the FCM at a price that is above zero but still subject to IMM review, and the resource clears the FCA (i.e., it receives a capacity supply obligation), it would be

¹⁵⁴ While local transmission security needs are typically too granular to be handled by the current FCM design, fuel security was one of the major drivers of the adoption of ISO-NE's pay-for-performance revisions. Commenters have expressed concerns that allowing out-of-market compensation to reduce capacity market revenues will undermine pay-for-performance's ability to drive other investments necessary to meet fuel security needs. *See, e.g.*, FirstLight Comments at 9, 11; NEPGA Comments at 2-3; NEPGA June 7 Answer at 2; NextEra Comments at 3, 16-20, 25; NRG Comments at 11-13.

¹⁵⁵ Or in the case of a retiring resource, that resource's net present value of its expected cash flows, reasonable expectations about its capacity performance payments, and its reasonable opportunity costs. *See* ISO-NE Tariff § III.13.1.2.3.2.1.

treated as any other capacity resource with a capacity supply obligation while still receiving additional out-of-market revenues to make it whole per the terms of its cost-of-service contract. If the resource does not clear the FCA (i.e., it does not receive a capacity supply obligation), the resource would be compensated under a cost-of-service agreement and would also be subject to the performance and penalty risks pursuant to the terms of that agreement.¹⁵⁶ If ISO-NE proposes to revise its Tariff, its proposal should include a mechanism that addresses how resources retained for fuel security (e.g., under cost-of-service agreements) would be treated in the FCM.

58. Additionally, if ISO-NE proposes to revise its Tariff, such proposal should include an *ex ante* cost allocation proposal for resources retained under fuel security cost-of-service agreements. We note that, unlike the costs of resources retained for reliability, which are allocated to Regional Network Load of the affected reliability region,¹⁵⁷ ISO-NE explains that fuel security is a regional, rather than a local problem.¹⁵⁸ We would expect any cost allocation proposal to adhere to our cost causation precedent and appropriately identify the beneficiaries of the service rendered.¹⁵⁹

¹⁵⁶ While we considered commenters' arguments related to the appropriate remedy, we find they are premature at this stage and therefore outside of the narrow scope of this specific order.

¹⁵⁷ See ISO-NE Tariff § III.13.2.5.2.5.1(c).

¹⁵⁸ See Brandien Testimony at 4-5 ("The retirement of Mystic 8 & 9 presents an unacceptable fuel security risk to New England, particularly during the winter months. The loss of these resources further stresses the region's fuel supply infrastructure because Mystic 8 & 9 produce significant energy without reliance on the gas pipeline system, which is particularly constrained in the winter months"). See also *id.* at 5 (explaining that the reductions in service potentially caused by the retirement of Mystic 8 and 9 could result in "load shedding (controlled outages or rolling blackouts around the New England region – not just in the Boston area)").

¹⁵⁹ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,045 (2015), *on reh'g*, 153 FERC ¶ 61,247 (2015); *reh'g denied*, 154 FERC ¶ 61,227 (2016), *aff'd sub nom. Ameren Servs. Co. v. FERC*, D.C. Cir. No. 16-1150, slip op. at 13-16 (June 22, 2018) (upholding cost allocation determination for an inter-regional area); *Sw. Power Pool, Inc.*, 127 FERC ¶ 61,283, at PP 28-29 (2009) (allocating 33 percent of costs associated with wind generation to interconnection customers and assigning 67 percent of costs to the entire Southwest Power Pool, Inc. region "as a cost allocation methodology that appropriately addresses the issues created by these location-constrained wind resources, even if it is dissimilar to the allocation methodology for other resources"); *ISO New England, Inc.*, 100 FERC ¶ 61,287, at P 61 (2002) ("Allocation of RMR costs to

59. In order to provide time for ISO-NE to propose tariff provisions to address fuel security issues, as required by this order, and to avoid foreclosing a cost-of-service agreement for Mystic 8 and 9 as a solution to the identified fuel security concerns, we act *sua sponte* to provide Exelon with a limited extension of the deadline in ISO-NE Tariff sections III.13.1.2.4.1 and III.13.1.2.3.1.5.1(d), which would otherwise require Exelon to decide by July 6, 2018 whether to retire unconditionally Mystic 8 and 9 rather than enter the units into FCA 13. Although we note above that ISO-NE could consider allowing a resource to retire while retaining its interconnection rights through a cost-of-service agreement, the decision to retire should still be extended from the July 6, 2018 date. Therefore, we will allow Exelon to postpone its retirement decision regarding Mystic 8 and 9 to and including January 4, 2019, approximately one month prior to the February 4, 2019 start-date of FCA 13. We will also continue to evaluate Mystic's cost-of-service agreement filing, which includes the capital expenditures, in Docket No. ER18-1639-000.

60. In cases where, as here, the Commission institutes a proceeding on its own motion under section 206 of the FPA, section 206(b) requires that the Commission establish a refund effective date that is no earlier than the date of the publication by the Commission of notice of its intention to initiate such proceeding nor later than five months after the publication date. In such cases, in order to give maximum protection to customers, and consistent with our precedent, we have historically tended to establish the section 206 refund effective date at the earliest date allowed by section 206, and we do so here as well.¹⁶⁰ That date is the date of publication of notice of initiation of the section 206 proceeding in Docket No. EL18-182-000 in the Federal Register.

61. Section 206(b) of the FPA also requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision. To the extent that ISO-NE files revisions to the ISO-NE Tariff to allow for consideration of cost-of-service agreements to address fuel security concerns, we estimate that we would be able to render a decision on any proposed short-term, interim Tariff revisions that ISO-NE files in response to this order before ISO-NE runs FCA 13.

local reliability areas is consistent with the principle that efficiency is enhanced when entities that cause costs to be incurred pay these costs ... [L]ocalized allocation is consistent with the tenets underlying LMP, i.e. proper price signals are necessary for markets to run efficiently”).

¹⁶⁰ See, e.g., *Idaho Power Co.*, 145 FERC ¶ 61,122 (2013); *Canal Elec. Co.*, 46 FERC ¶ 61,153, *order on reh'g*, 47 FERC ¶ 61,275 (1989).

The Commission orders:

(A) ISO-NE's waiver request is hereby denied, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and the FPA, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), the Commission hereby institutes a proceeding in Docket No. EL18-182-000 concerning the justness and reasonableness of the ISO-NE Tariff.

(C) The Secretary shall promptly publish in the Federal Register a notice of the Commission's initiation of the proceeding under section 206 of the FPA in Docket No. EL18-182-000.

(D) The refund effective date in Docket No. EL18-182-000 established pursuant to section 206 of the FPA shall be the date of publication in the Federal Register of the notice discussed in Ordering Paragraph (C) above.

(E) Any interested person desiring to be heard in Docket No. EL18-182-000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214, within 21 days of the date of issuance of this order. The Commission encourages electronic submission of interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and three copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

(F) Pursuant to FPA section 206, we hereby direct ISO-NE either: (1) to submit within 60 days of the date of this order interim Tariff revisions that provide for the filing of a short-term, cost-of-service agreement to address demonstrated fuel security concerns and to submit by July 1, 2019 permanent Tariff revisions reflecting improvements to its market design to better address regional fuel security concerns; or (2) within 60 days of the date of this order, to show cause as to why the Tariff remains just and reasonable in the short- and long-term such that one or both filings is not necessary, as discussed in the body of this order.

(G) The deadline for Exelon to submit its retirement decision regarding Mystic 8 and 9, as set forth in ISO-NE Tariff sections III.13.1.2.4.1 and III.13.1.2.3.1.5.1(d), is hereby extended to and including January 4, 2019, as discussed in the body of this order.

By the Commission. Commissioners LaFleur and Chatterjee, are concurring with separate statements attached.
Commissioners Powelson and Glick are dissenting in part with separate statements attached.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix A**Entities filing interventions, protests and/or comments, and answers are as follows:**

Algonquin Gas Transmission, LLC (Algonquin)
American Council on Renewable Energy**
American Public Power Association*
American Wind Energy Association**
Avangrid Networks, Inc.*
Brookfield Energy Marketing LP*
Calpine Corporation (Calpine)
Cavus Energy LLC (Cavus Energy)±
Citizens Energy Corporation†
Connecticut Department of Energy and Environmental Protection**
Connecticut Municipal Electric Energy Cooperative**
Connecticut Office of Consumer Counsel**
Connecticut Public Utilities Regulatory Authority**
Consolidated Edison Energy, Inc.*
CPV Towantic, LLC*
Direct Energy Companies*
Dominion Energy Services, Inc.*
Energy Storage Association**
Eastern New England Consumer-Owned Systems (ENECOS)
EDP Renewables North America LLC†
Electric Power Supply Association (EPSA)
Emera Energy Services, Inc.*
ENGIE Gas & LNG LLC*
Environmental Defense Fund (EDF)
Eversource Energy Service Companies (Eversource) ±
Exelon Corporation (Exelon) ±
FirstLight Power Resources, Inc. (FirstLight)
FirstEnergy Solutions Corp. (FirstEnergy) ‡
H.Q. Energy Services U.S. Inc.*
Industrial Energy Consumer Group (Industrial Energy Consumer)
ISO New England Inc. (ISO-NE) ±
LS Power Associates, L.P (LS Power)
Maine Governor's Energy Office
Maine Public Advocate Office*
Maine Public Utilities Commission (Maine PUC) ±
Massachusetts Attorney General Maura Healey (Massachusetts AG) ±
Massachusetts Department of Public Utilities (Massachusetts DPU)
Massachusetts Municipal Wholesale Electric Company**

Monitoring Analytics, LLC
National Grid
Natural Gas Supply Association (NGSA)
Natural Resources Defense Council**
New England Power Generators Association Inc. (NEPGA) ±
New England Power Pool Participants Committee (NEPOOL) ±
New England States Committee on Electricity (NESCOE)
New Hampshire Electric Cooperative, Inc.**
New Hampshire Office of Consumer Advocate (New Hampshire Consumer Advocate)
New Hampshire Public Utilities Commission (New Hampshire PUC)
NextEra Companies (NextEra) ±
Northeast Gas Association‡
NRG Power Companies (NRG)
Potomac Economics, Ltd.
PSEG Power Companies (PSEG)
Public Citizen, Inc.
RENEW Northeast, Inc.**
Repsol Energy North America Corporation (Repsol)
Shell Energy North America (US), L.P.
Sierra Club**
Solar Energy Industries Association**
Solar RTO Coalition
Sustainable FERC Project**
Taunton Municipal Lighting Plant (Taunton)†
Verso Corporation (Verso)
Vistra Companies (Vistra)
Vitol Inc. (Vitol)

* Entities submitting interventions only

** Entities submitting comments or interventions as part of a coalition

± Entities submitting answers

† Entities submitting motions to intervene out of time

‡ Entities submitting comments and no motion to intervene

List of Coalitions' Individual Members:

Clean Energy Industry Associations (CEIA)

American Council on Renewable Energy

American Wind Energy Association

Energy Storage Association

RENEW Northeast, Inc.

Solar Energy Industries Association

Connecticut Parties

Connecticut Public Utilities Regulatory Authority
Connecticut Department of Energy & Environmental Protection
Connecticut Office of Consumer Counsel

Public Systems*

Massachusetts Municipal Wholesale Electric Company
New Hampshire Electric Cooperative, Inc.
Connecticut Municipal Electric Energy Cooperative

Public Interest Organizations (PIO)

Sierra Club
Natural Resources Defense Council
Sustainable FERC Project

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England Inc.

Docket Nos. ER18-1509-000
EL18-182-000

(Issued July 2, 2018)

LaFLEUR, Commissioner *concurring*:

Today's order rejects ISO-NE's request for waiver of various provisions in its tariff to address regional fuel security concerns, but nonetheless concludes that the New England region is facing serious fuel security challenges that must be addressed. Specifically, today's order directs ISO-NE to either submit tariff revisions that provide for a short term cost-of-service agreement, and a long-term market solution for the fuel security challenges facing the region, or show cause why the existing tariff remains just and reasonable without such revisions. I write separately today to elaborate on my support for this approach.

As I have noted repeatedly over the past several years, the New England region has unique challenges with respect to the availability of fuel in the region. Since 2000, the region's resource mix transitioned very quickly to natural gas-fired generation, but has not seen commensurate investment in natural gas infrastructure to support the regional need for gas. Moreover, large-scale development of renewables and transmission intended to offset the reliability impacts of the gas constraints has been delayed. Reasonable people can certainly debate the reasons for the lack of infrastructure development in New England, and I am optimistic about the region's long-term prospects to transition to a clean and secure energy future. However, as this transition occurs, it is the Commission's responsibility to ensure that reliability is maintained, including, as necessary, making adjustments to our wholesale markets. I believe that today's action is a difficult but necessary step to achieve that end.

ISO-NE's waiver request is driven by concerns surrounding the economic viability of Mystic Units 8 and 9, 1700 MW of natural gas-fired generation, and the Distrigas Liquefied Natural Gas (LNG) import terminal, the sole fuel source for Mystic. While I support today's decision to reject ISO-NE's waiver request, in my view, the record in this case demonstrates how critically important both of these facilities are to ensuring regional reliability, including fuel security, for the coming years.

I recognize that today's order will be injected into the national debate regarding the asserted need for subsidization of certain "fuel secure" resources to ensure that our

nation's electric grid remains resilient. In my view, today's order does not lend credence to a generic or national resilience need, or an approach to address that need. Rather, today's order rightly responds to documented and specific regional challenges in New England, including its dependence on a unique generation facility that can be served only by imported LNG.¹ Our responsibility to oversee regional efforts to ensure continuous reliable service to customers requires that we address specific situations as needed, but not draw inaccurate generalizations when they are not justified.

Finally, while it appears that a short-term, out-of-market approach to ensure fuel security might be necessary, I continue to strongly believe market-based solutions are the best means to ensuring reliability in the region at the lowest cost for customers. Thus, I urge ISO-NE and stakeholders to work expeditiously to identify a market-based approach that will hopefully obviate, or at least limit, the need for out-of-market solutions that are more costly for customers.

Accordingly, I respectfully concur.

Cheryl A. LaFleur
Commissioner

¹ To my knowledge, this is the only such facility in the nation.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England Inc.

Docket Nos. ER18-1509-000
EL18-182-000

(Issued July 2, 2018)

CHATTERJEE, Commissioner, *concurring*:

Since early in my tenure at the Commission, I have consistently voiced my support for evaluating the resilience of the nation's bulk power system in light of significant changes within the energy sector. When the Commission unanimously concluded that bulk power system resilience, including fuel security, is an issue worthy of careful examination, it highlighted the centrality of the RTOs/ISOs in that effort.¹ As such, the January Order identified ISO-NE's then-pending effort to evaluate the fuel security risks within its footprint as exemplary of the type of RTO/ISO-led, proactive measures on resilience that the Commission had in mind.²

I am encouraged that the Commission is responding to ISO-NE's evaluation of its fuel security risks by directing "prompt, proactive, and decisive measures" similar to what I called for in my concurrence to the January Order.³ ISO-NE's Operational Fuel-Security Analysis is robust, painting a dismal picture of the effects on bulk power system reliability in Boston and the surrounding area should Mystic Units 8 and 9 retire. I believe the aggressive deadlines specified within today's order should position ISO-NE to deploy timely measures to address the concerns identified in its analysis.

But even more importantly, today's order signals the Commission's endorsement of ISO-NE's proposed two-pronged approach to addressing those fuel security concerns. ISO-NE has concluded that its existing market-based, reliability-centered framework is unable to ensure adequate fuel security.⁴ In particular, fuel security risks beyond the

¹ *Grid Reliability and Resilience Pricing & Grid Resilience in Regional Transmission Organizations and Independent System Operators*, Order Terminating Rulemaking Proceeding, Initiating New Proceeding, and Establishing Additional Procedures, 162 FERC ¶ 61,012 (2018) (January Order).

² *See id.* at P 28 & n. 44.

³ *Id.* (Chatterjee, Comm'r, *concurring*).

⁴ *See* ISO-NE May 1, 2018 Petition for Waiver at 4 (explaining that ISO-NE's tariff permits financial support to retain retiring resources to resolve transmission security

control of market participants may demand near-term, out-of-market support until any long-term, market-based solutions that are identified as necessary can be implemented. Similar logic animated my preference for the consideration of interim out-of-market measures to support at-risk, resilience-critical generation resources pending the conclusion of the Commission's resilience proceeding in Docket No. AD18-7-000.⁵ As underscored by today's order, had a majority of my colleagues supported that position, we could by now have measures in place to address near-term fuel security and resilience risks in ISO-NE and other RTOs/ISOs.

Nevertheless, I appreciate the Commission's willingness to consider ISO-NE's conclusion that the near-term fuel security risks it has identified demand interim out-of-market measures to support particular generation resources. I understand that this may be a difficult position for some to endorse. Indeed, I share my colleagues' preference for market-based, fuel-neutral approaches to ensuring resilience within FERC-jurisdictional organized markets. But, in supporting today's order, I acknowledge that ISO-NE has not lightly arrived at its conclusion that interim measures to support these particular generation resources are necessary. Further, I emphasize that any interim measures undertaken will occur in parallel with ongoing efforts to develop fuel-neutral, market-based approaches to ensure long-term fuel security within the region.

Finally, I also commend other RTOs/ISOs that have undertaken or will undertake similar proactive efforts to evaluate and address fuel security and other elements of resilience within their footprints. Timely completion of those initiatives should ensure that market-based (rather than out-of-market) mechanisms are implemented soon enough to preserve any at-risk, resilience-critical resources identified.

For the reasons stated above, I respectfully concur.

Neil Chatterjee, Commissioner

issues — but not the reliability risks associated with fuel security); 16 n. 37 (noting that pay-for-performance's effectiveness in addressing fuel security concerns has been restricted by government action limiting the utility of dual-fuel capability and resistance to natural gas transportation infrastructure).

⁵ See January Order, 162 FERC ¶ 61,012 (Chatterjee, Comm'r, *concurring*) (“[C]urrent RTO/ISO market design mechanisms are intended to incent generation resource owners to manage the fuel supply risks they can control — not the spectrum of fuel supply risks beyond their control.”).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

ISO-New England Inc.

Docket Nos. ER18-1509-000
EL18-182-000

(Issued July 2, 2018)

POWELSON, Commissioner, *dissenting in part*:

I partially support today's order because it seeks to find a legitimate, just and reasonable solution to a real problem in the New England region. I strongly support the decision to reject the waiver of certain ISO-New England tariff provisions, which, if granted, would have amounted to an end-run around the ISO-New England stakeholder process. I cannot, however, support prematurely clearing a path towards out-of-market, cost-of-service payments to generators without having fully exhausting all other alternatives. Accordingly, I respectfully dissent in part.

In order to evaluate the potential reliability risks associated the potential lack of sufficient fuel supply to meet the regions electricity demand and maintain system reliability throughout an entire winter, ISO-New England commissioned an Operational Fuel Security Analysis (the Study) in early 2018. The Study highlighted several potential risks in the ISO-New England footprint that could materialize if certain generators or other facilities are taken out of service. According to the Study, potential reliability risks due to the retirement of the Mystic resource could begin to materialize in the 2024-2025 timeframe.

With Exelon's announced retirement of the Mystic units in 2022, ISO-New England is again at a pivotal moment where it must decide, *with its stakeholders*, whether the current challenges can be addressed through market-based solutions or whether more drastic action is warranted. In either case, all stakeholders, including the states, should work together to evaluate and answer this question. Unfortunately, rather than working through the stakeholder process, ISO-New England acceded to the demands of Exelon and chose to file a tariff waiver.

While the majority appropriately denies ISO-New England's waiver request, I disagree with the first part of the Order's show cause directive: an interim short-term, cost-of-service agreement to be filed within 60 days of the date of this order, and

permanent tariff revisions reflecting improvements to its market design to better address regional fuel security constraints.¹

As justification for this directive, the order notes that states, through policy or permitting authority, have effectively prevented investors from adequately responding to price signals sent by the market. While I agree that states have certainly interfered with market outcomes, by no means is this indicative of a market failure, nor does it justify a logical leap to the conclusion that out-of-market support to retain certain existing resources may be necessary.

As noted above, the reliability concerns identified in the Study could materialize in the 2024 and 2025 delivery years, more than five years from today. This is more than enough time for stakeholders in the region to address the problem through the standard processes. The Study should be viewed for what it is: a good-faith effort by ISO-New England to inform all interested stakeholders on potential concerns the region could face in years to come. The region needs to have a serious conversation about the future of competitive electricity markets and the direction stakeholders feel is most appropriate to address the region's needs. The Study provides the foundation for that discussion.

It is important that stakeholders not rule out changes to existing market-based mechanisms, such as Pay-for-Performance, if they find such changes necessary and sufficient to address the problem. While I recognize that Pay-for-Performance only recently became effective, the very essence of the Pay-for-Performance market design was to provide financial incentives to market participants to ensure they would be available to perform during stressed system conditions, the same conditions ISO-New England's waiver is supposed to address. The New England region has yet to either test, or see the benefits of, the Pay-for-Performance reforms. As ISO-New England has correctly noted, additional fuel-security will likely come with a price. However, market participants should be able to compete to provide necessary services to ensure winter preparedness or fuel-security, passing the benefits of competition – lower costs – ultimately to consumers.

Absent additional natural gas infrastructure in the New England region, I do not want to preclude the potential that the fix may ultimately require an out-of-market mechanism. However, the region should thoroughly identify, analyze, and accurately estimate the costs of any and all alternative solutions. It has not been adequately demonstrated that an interim, short-term cost-of-service mechanism is necessary to meet the region's needs. While I support the majority's finding that within 60 days of the order, ISO-New England must show cause as to why its tariff remains just and reasonable

¹ *ISO New England, Inc.*, 164 FERC ¶ 61,003, at P 2 (2018).

in the short- and long-term such that one or more tariff revisions is unnecessary, I would have preferred a more narrow show cause order directing ISO-New England to show why its current tariff is just and reasonable in light of potential fuel-security issues.

Finally, the New England region appears to have competing interests. On one hand, increasing amounts of renewable resources are seeking to gain access to the wholesale electric markets. On the other hand, ISO-New England appears to be reluctant to let older resources leave the market due to a perceived lack “fuel security.” Given this, I am further concerned that the recently approved Competitive Auctions with Sponsored Policy Resources (CASPR) will not work.² The Mystic resource appears to be the perfect candidate resource for exit through the CASPR mechanism, potentially making room for a large amount of state-supported renewable energy resources. I recognize that CASPR rules are not in effect yet, so the mechanism could not address this particular situation. However, I am concerned that conflicting interests will ultimately frustrate market mechanisms intended to incorporate state-preferred resources, leading to more tariff revisions down the road.

As I have said on many occasions, the New England region would benefit from additional natural gas infrastructure. Such infrastructure would relieve constraints on the region’s electric grid and natural gas distribution systems. I still believe such an outcome would represent the least-cost option. However, in light of the political climate in the New England region and New York, such an outcome is unlikely at this time. Nonetheless, we should not rush to an out-of-market solution. Rather, the region should collectively engage in constructive dialogue to seek market-based mechanisms that address the future reliability concerns.

Accordingly, I respectfully dissent in part.

Robert F. Powelson
Commissioner

² *ISO New England Inc.*, 162 FERC ¶ 61,205 (2018) (Powelson, Comm’r, dissenting).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England Inc.

Docket Nos. ER18-1509-000
EL18-182-000

(Issued July 2, 2018)

GLICK, Commissioner, *dissenting in part*:

Few, if any, of the Commission's responsibilities are more important than ensuring the reliable operation of the bulk power system. That is certainly true during the winter months in New England when the loss of electricity can have dire consequences. But the importance of reliability does not transform every reliability concern into an immediate emergency. To the contrary, because reliability considerations are so important—and, often, so complex—we do everyone a disservice when, absent an emergency, we rush to judgment rather than thoroughly assess the problem and identify the solutions that will best solve it.

I dissent in part from today's order because it is a rush to judgment.¹ As the Commission itself recognizes, the concern underlying today's order will not manifest itself for at least four years, even under conservative assumptions.² Instead of rushing to install new tariff provisions years before the fuel security concern *may* arise, the Commission, ISO-NE, and stakeholders should engage in a thorough process to evaluate potential fuel security problems and identify durable solutions rather than another series of band-aids.

This is particularly important in this proceeding because the Commission has not clearly defined the fuel security problem that it believes will be triggered by Mystic's retirement³ or taken even the first tentative steps toward developing a framework for

¹ I agree with the decision to deny ISO-NE's waiver request. A waiver request is an inappropriate vehicle for developing what the Commission correctly describes as "an entire process that is not in the ISO-NE Tariff." *ISO New England Inc.*, 164 FERC ¶ 61,003 at P 47.

² *ISO New England Inc.*, 164 FERC ¶ 61,003, at P 49 (2018) ("accept[ing] ISO-NE's conclusions that the retirement of Mystic 8 and 9, under current ISO-NE Tariff provisions, could cause ISO-NE to violate mandatory reliability standards as soon as 2022").

³ *Id.* P 52 (noting that "fuel security analyses do not currently have an established

evaluating the nature of the fuel security problem. Instead, the Commission relies entirely on ISO-NE's contested fuel security analysis—which identified five critical facilities, only two of which are electric generators—to conclude that ISO-NE's Tariff appears to be unjust and unreasonable because it does not include generic provisions to permit ISO-NE to retain resources that may be needed for fuel security. As an initial matter, the parties to this proceeding have identified several potential flaws with the assumptions underlying ISO-NE's analysis⁴ that deserve more careful consideration than today's order provides. In addition, a number of parties point out that ISO-NE performed this analysis to “provide[] directional guidance” and begin a discussion of fuel security in the region, not with any intention of creating generic tariff provisions for bailing out any generator that the ISO believes is needed for fuel security.⁵

Although the Commission technically offers ISO-NE the opportunity to show cause why its existing Tariff is not unjust and unreasonable, taking the rationale in

methodological framework and that there are no industry standards or best practices for conducting such an analysis”).

⁴ See, e.g., CEIA Comments at 16-19 (challenging assumptions about the growth of LDC gas usage, LNG imports, new renewable resources expected as a result of state policy, and exclusion of 500 MW of existing demand response, not to mention expected growth); Massachusetts AG Comments at 13 (arguing that many assumptions were biased in favor of finding a fuel security risk, including assuming high LDC gas demand growth, low LNG availability, and that New England states fail to meet their clean energy mandates, and failing to account for existing levels of interconnected renewable generation); New Hampshire PUC Comments at 7-9 (pointing out stakeholder disagreement over ISO-NE's assumption that New England states will not meet their clean energy mandates and the failure to consider the effect of market responses); PIO Comments at 44-48 (arguing that the following assumptions are flawed: high annual LDC demand for natural gas; low LNG imports; low electricity imports; and exclusion of demand response resources).

⁵ See New Hampshire PUC Comments at 6 (“The ISO has conceded that the OFSA [i.e., ISO-NE's fuel security analysis] merely ‘provides directional guidance; it is not a forecast or prediction of actual future events,’” and “is not capable of modeling state emissions limitations or goals, local constraints on the electric transmission or gas transportation systems, or market response to pricing or state-mandated purchases.”); PIO Comments at 41 (“The lack of transparency and clarity around the OFSA was less of a problem when the ISO was presenting it only as ‘a deterministic analysis that provides directional guidance . . .,’ but now that the OFSA model is being used to justify a reliability agreement and cost-of-service contract, a higher standard of evidence is needed.”).

today's order seriously, it is clearly a show cause order in name only. In so doing, the Commission cuts off an opportunity for a real debate about what the ISO-NE analysis actually tells us about fuel security. We can expect that ISO-NE will submit Tariff revisions based on that same analysis, without any further discussion of how that analysis should be used or how it could be improved.

Ultimately, I suspect that the most likely outcome of today's order will be a parade of uneconomic generators seeking cost-of-service rate treatment under the guise of fuel security. In addition to imposing tremendous costs on ratepayers, by framing the fuel security issue as a series of one-off determinations regarding the need to keep particular resources, this approach will short circuit more serious efforts to fundamentally reform the ISO-NE market to address the drivers of whatever fuel security problem may exist.

I am also troubled by the fact that the Commission is seizing control of the fuel security debate without a clear understanding of where that debate can or should go. Fuel security is a multi-faceted issue, only certain aspects of which fall under the Commission's jurisdiction. By preliminarily determining that ISO-NE's Tariff is unjust and unreasonable, the Commission is prematurely focusing the conversation on the wholesale rates subject to its jurisdiction, potentially cutting off other, potentially more fruitful avenues for addressing fuel security concerns. This might include an examination of the misalignment between gas and electric markets. It could also include reforms to improve the utilization of existing pipeline capacity, which could potentially include additional hourly nomination service to increase both the transparency of market demand and provide improved price discovery. Or it might also include reforms to ISO-NE's transmission planning process in order to incorporate fuel security considerations. As a result of today's order, however, I am concerned that the region may be heading down a path of second-best solutions that are overly focused on the wholesale rate and will ultimately raise as many economic, legal, and policy questions as they answer.

Mystic is a case in point. The record indicates that Mystic's value lies not so much in the capacity it can provide or in its ability to address transmission constraints, but rather in the fact that Mystic is the largest customer of the Distrigas LNG import facility and the concern that Mystic's retirement could lead to the loss of Distrigas's import capacity.⁶ Exelon Corporation—Mystic's ultimate parent company—is in the process of purchasing Distrigas. Although not the subject of today's order, Mystic has filed with the Commission a cost-of-service agreement that would permit Mystic to

⁶ The External Market Monitor for ISO-NE conducted an evaluation of fuel security issues and found that the key variable is LNG availability, not specific generation units. *See* Potomac Economics Comments at 4-9.

recover the costs of operating the Distrigas Facility.⁷ But whether the costs of *operating* an LNG facility can be recovered through the electric generator's tariff is, so far as I am aware, an issue of first impression that implicates a range of legal and economic questions—which, as a result of today's order, the Commission realistically has no choice but to answer on an expedited timeline. Although I hope that stakeholders will have a chance to fully address these and other complex issues implicated by ISO-NE's fuel security analysis, I fear that today's order makes that considerably less likely.

A better course of action would have been for the Commission to institute a proceeding to thoughtfully examine the potential fuel security problem in ISO-NE rather than rush to impose immediate solutions. I would convene a technical conference or other process to explore fuel security in ISO-NE in order to understand the causes and contours of the issue before dictating solutions.⁸ Such a proceeding would provide for a full discussion of the analysis and assumptions that underlie ISO-NE's fuel security analysis.⁹ As noted, several parties have raised fundamental concerns about ISO-NE's analysis and I believe we do all stakeholders—other than Exelon, Mystic's parent company—a disservice by concluding that the study demonstrates that the ISO-NE Tariff is unjust and unreasonable, without addressing those fundamental concerns.

Additional proceedings would also provide time to evaluate whether market elements, such as ISO-NE's recent retirement reforms and Pay for Performance construct, can be updated to address fuel security concerns in ISO-NE.¹⁰ The Commission approved Pay for Performance in 2014 and, in the same order, directed ISO-NE to increase the Reserve Constraint Penalty Factors for 30-minute operating reserves and 10-minute non-spinning reserves to improve price signals during reserve shortage

⁷ Constellation Mystic Power, LLC, Filing, Docket No. ER18-1639-000, at 17-21 (filed May 16, 2018) (describing the proposed monthly fuel supply charge).

⁸ See Potomac Economics Comments at 3 (“[W]e believe it is essential to clearly define the reliability requirements related to fuel security, and to design market-based solutions to procure the necessary resources to satisfy the requirement.”).

⁹ See *supra* note 3.

¹⁰ Rather than waiting to see if the retirement reforms and Pay for Performance could work, the order supports an out-of-market solution to prop up Mystic that would undermine these recent market design changes by granting Exelon a waiver of the date it must indicate its intent to retire Mystic and reducing, if not eliminating, the number of shortage events in ISO-NE.

events.¹¹ These changes, which have not even fully taken effect, were designed to provide suppliers with additional incentives to invest in fuel security¹² and improve resource performance. ISO-NE now maintains that Pay for Performance “cannot be expected to resolve the region’s fuel security challenges by itself, especially given the significant opposition in the region to investments in fuel supply infrastructure.”¹³ But neither ISO-NE nor the Commission adequately explains (1) how the circumstances have changed such that either can conclude that these reforms cannot have their intended effect or (2) why the Pay for Performance design cannot be updated to more effectively address fuel security in the four years before the potential closure of Distrigas could pose a reliability concern. It may ultimately be the case that an out-of-market solution is necessary to address fuel security, but the Commission should reach that conclusion only after a thorough process to examine its market-based options, not before that process has even started.¹⁴

Finally, I agree with my colleague, Commissioner Powelson, that today’s order will impair the long-term viability of ISO-NE’s Forward Capacity Market (FCM) and its Competitive Auctions with Sponsored Policy Resources (CASPR) construct, which the Commission approved this past March. As I explained in my separate statement accompanying that order, “CASPR’s success will ultimately depend on whether it facilitates the entry of state supported resources into the FCM.”¹⁵ Under the CASPR design, that can happen only if ISO-NE, and the Commission, permit a sufficient amount of older, uneconomic resources to exit the market so that new, cleaner resources can take their place. Today’s order risks upsetting the careful balance needed to make CASPR

¹¹ *ISO New England Inc.*, 147 FERC ¶ 61,172, at PP 36-40, 107-110 (2014).

¹² New Hampshire PUC Comments at 10 n.23 (“In a 2013 assessment of [Pay for Performance] conducted on behalf of the ISO, Analysis Group, Inc. found that increased dual-fuel capability provides the most cost-effective option for mitigating fuel security risk. Contracting with existing LNG storage resources and procuring new pipeline capacity dedicated to electricity generation were found to be at least twice as costly and therefore less likely to be a factor in the success of [Pay for Performance].”) (citations omitted).

¹³ Petition for Waiver at 16.

¹⁴ LS Power Comments at 1 (“When the issue is properly framed as a fuel security issue on a December 2022 timeline, it becomes apparent that ISO-NE’s fuel reliability concerns are not yet ripe for a waiver or other action by the Commission.”).

¹⁵ *ISO New England Inc.*, 162 FERC ¶ 61,205, at 7 (2018) (Glick, Comm’r, dissenting in part and concurring in part).

work. By requiring ISO-NE to develop generic tariff provisions for cost-of service treatment for resources needed for fuel security, the order provides an incentive for resources to seek that treatment rather than retire once uneconomic. At a minimum, we should expect that retiring resources will use the prospect of a full cost-of-service arrangement as little more than leverage in order to extract a large ransom payment for exiting the market.

Furthermore, in focusing on the need to maintain the existing “fuel-secure” fleet in ISO-NE, the Commission assumes that the replacement resources will not provide comparable fuel security benefits.¹⁶ In fact, however, the state-sponsored resources that CASPR was designed to accommodate can provide a fuel security profile at least comparable to a resource such as Mystic. For example, the Massachusetts clean energy procurement that prompted CASPR will result in the new entry of 1,200 MW of dispatchable hydroelectric capacity from Canada, which is, if anything, more fuel secure than an LNG import facility that depends on the ability of LNG tankers to arrive and successfully offload their cargo. The Commission should be striving to develop a regime that facilitates the introduction of new, innovative approaches to ensuring fuel security rather than one that rewards old, outdated means of ensuring reliability.

Accordingly, I respectfully dissent in part from today’s order.

Richard Glick
Commissioner

¹⁶ In fact, ISO-NE assumed in its fuel security analysis that states will fail to meet their clean energy goals, whether in renewable portfolio standards or legislatively enacted procurement mandates.