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June 15, 2009

VIA ELECTRONIC FILING

Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

**Re: ISO New England Inc., Docket No. ER09-1051-000;
Motion for Leave to Answer and Answer of ISO New England Inc.**

Dear Ms. Bose:

Transmitted electronically for filing is the Motion for Leave to Answer and Answer of ISO New England Inc. in the above-captioned docket.

If there are any questions concerning this filing, please call me at (202) 661-2212.

Very truly yours,

/s/ Daniel R. Simon

Daniel R. Simon
Counsel for
ISO New England Inc.

Enclosure

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

ISO New England Inc.

)

Docket No. ER09-1051-000

MOTION FOR LEAVE TO ANSWER AND ANSWER OF ISO NEW ENGLAND INC.

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. §§ 385.212 & 385.213 (2008), ISO New England Inc. (“ISO-NE” or the “ISO”)¹ hereby submits this motion for leave to answer and answer (“Answer”) to comments filed in response to the April 28, 2009 Order No 719 compliance filing submitted by ISO-NE and joined by the New England Power Pool Participants Committee (“NEPOOL”) (“Compliance Filing”).

I. MOTION FOR LEAVE TO ANSWER

Because an answer is not normally permitted in response to protests or comments, ISO-NE hereby moves, pursuant to Rule 212 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.212 (2008), for leave to file this Answer. The Commission has the authority to waive the prohibition against answers to protests and comments for good cause.² The Commission has found good cause to permit answers where they are otherwise prohibited in various circumstances, including where the answer would assure a complete record in the

¹ Capitalized terms used but not defined in this answer are intended to have the same meaning given to such terms in ISO-NE's Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3 (the “ISO Tariff”).

² See 18 C.F.R. § 385.101(e) (2008).

proceeding,³ provide information helpful to the disposition of an issue,⁴ permit the issues to be narrowed or clarified,⁵ or aid the Commission in understanding and resolving issues.⁶ ISO-NE believes that its answer will assure a more complete record in this proceeding and otherwise assist the Commission in understanding and resolving the issues presented.

II. ANSWER

A. Response to Comments on Demand Response Provisions

1. The Commission Should Allow ISO-NE to Continue to Pursue Its Plans With Stakeholders to Improve Its Demand Response Market Rules

The stakeholder comments on demand response address important issues regarding the ongoing efforts to provide comparable treatment of generation and Demand Resources in the wholesale markets and address barriers to the increased participation of Demand Resources in the markets. ISO-NE and its stakeholders, including state regulators, are actively engaged in discussions that are designed to ultimately address the issues raised in the stakeholder comments. Comments appear to reflect a general consensus that the ongoing stakeholder review process should continue to be the primary forum for addressing the future structure of price-responsive demand in New England, including those commenters most forcefully requesting more market

³ See, e.g., *Pacific Interstate Transmission Co.*, 85 FERC ¶ 61,378, at 62,443 (1998), *reh'g denied*, 89 FERC ¶ 61,246 (1999).

⁴ See, e.g., *CNG Transmission Corp.*, 89 FERC ¶ 61,100, at 61,287 n.11 (1999).

⁵ See, e.g., *PJM Interconnection, LLC*, 84 FERC ¶ 61,224, at 62,078 (1998); *New Energy Ventures, Inc. v. Southern California Edison Co.*, 82 FERC ¶ 61,335, at 62,323 n.1 (1998).

⁶ See, e.g., *Tennessee Gas Pipeline Co.*, 92 FERC ¶ 61,009, at 61,016 (2000).

rule changes.⁷ Any additional market rule changes for New England’s demand response programs should be developed through this stakeholder process.

ISO-NE and stakeholders are already actively exploring ways to improve New England’s demand response programs. On October 22, 2008, ISO-NE initiated a stakeholder process to consider whether: (i) to allow the current Real-Time Price Response Program (“RTPRP”) and Day-Ahead Load Response Program (“DALRP”) to expire (as currently set for June 1, 2010), (ii) to continue the programs in their current forms, or (iii) to implement modified programs or market designs. As explained in a March 27, 2009 report with NEPOOL to the Commission, ISO-NE recommended extending the present RTPRP and DALRP for an interim period of at least one year so that some form of price-responsive demand programs will continue uninterrupted until a new or revised approach can be implemented.⁸

Since submitting the March 27 report, ISO-NE and NEPOOL have continued to use the stakeholder process to explore next steps for improving New England’s demand response programs. The NEPOOL Markets Committee discussed whether to extend the RTPRP and DALRP at its April 7, April 23, May 12, and June 9, 2009 meetings. Market rule changes are currently being developed and reviewed through the normal stakeholder review process that would allow the RTPRP and DALRP to continue relatively unchanged for at least a one-year

⁷ See, e.g., Comments of the Consumer Demand Response Initiative at 16 (May 26, 2009) (“CDRI Comments”) (“[T]he ongoing stakeholder process in New England is the appropriate place to address other specific market design issues concerning DR on a going forward basis in New England.”); Demand Response Supporters Comments at 2 (asking the Commission to “require ISO-NE to develop, in consultation with stakeholders, changes to both the Tariff and Market Rules to enable greater demand response participation by requiring comparable treatment of demand response resources and eliminating the numerous barriers to demand response participation that exist in New England”).

⁸ Report of ISO New England Inc. and New England Power Pool Regarding Treatment of Price-Responsive Demand in the New England Markets at 11-12, Docket No. ER08-830-001 (Mar. 27, 2009) (“Price-Responsive Demand Report”).

period, with one exception: a modification to allow Real-Time Demand Response Resources participating in the Forward Capacity Market (“FCM”) to participate in the DALRP.

ISO-NE also has worked with stakeholders to discuss approaches to achieve price responsive demand in the region. At the April 23, May 13, May 29, and June 10, 2009 Markets Committee meetings, various stakeholders and ISO-NE presented their recommended approaches. The presentations included supply-side approaches in which price responsive demand is encouraged through payments for load reductions, and demand-side options in which price-responsive demand is encouraged through rate designs such as real-time pricing. At the May 13 meeting, ISO-NE presented the results of its analysis.

Regarding Demand Resource participation in the Forward Capacity Market (“FCM”), the Internal Market Monitor reported that, in the FCM, “demand and generation resources have comparable performance requirements and penalty structures but that generation has stronger performance incentives.”⁹ In particular, “[g]eneration resources that do not respond during shortage conditions face losses of both capacity and energy revenues” and “are subject to a *peak energy rent* (PER) deduction whereby their capacity payments are reduced by the difference between the locational marginal price (LMP) and the PER threshold (i.e., strike) price for all hours when the LMP exceeds the threshold price.”¹⁰ In contrast, “demand resources do not currently participate in the electric energy markets, and the capacity payments to demand resources are not reduced by the PER deduction.”¹¹ For these reasons, “the [Internal Market Monitoring Unit (“INTMMU”)] recommend[ed] adopting the PER deduction for all demand

⁹ Internal Market Monitoring Unit Review of the Forward Capacity Market Auction Results and Design Elements at 7 (June 5, 2009), available at http://www.iso-ne.com/regulatory/ferc/filings/2009/jun/er09-____-000_06-05-09_market_monitor_report_for_fcm.pdf.

¹⁰ *Id.*

¹¹ *Id.*

resources and enabling these resources to participate in the electric energy market.”¹² The Internal Market Monitor’s recommendation, and any subsequent market rule proposals for adopting the PER deduction for all Demand Resources and enabling these resources to participate in the wholesale electricity market, will be reviewed through the stakeholder process.

In addition, ISO-NE and stakeholders have explored the need for a load reconstitution methodology for FCM Demand Resources at the April 7, May 12, and June 9, 2009 Markets Committee meetings. While the issue of load reconstitution may initially seem peripheral to the price-responsive demand discussions, the decision whether or not to reconstitute loads for FCM Demand Resources will potentially impact the comparability of payments and incentives among different Demand Resources that participate in a demand-side approach versus a supply-side approach in the energy market, as well as and other resources participating in the FCM. ISO-NE has recommended to stakeholders that the final decision on load reconstitution be deferred until the stakeholder process for the price responsive demand issue is completed. Deferral will allow any load reconstitution decision to be made within the broader context of price responsive demand design and FCM Demand Resource participation in the energy market.

ISO-NE and NEPOOL are expecting to file a joint report with the Commission in Docket No. ER08-830 by July 31, 2009 on price responsive demand issues and on September 1, 2009 on reconstitution issues, including any areas of consensus.

¹² *Id.*

2. ISO-NE and Stakeholders Are Addressing Barriers to Demand Response Entry

The “Demand Response Supporters”¹³ assert that the Dispatchable Asset Related Demand rules do not satisfy the Order No. 719 comparability requirement because they are “unduly restrictive.”¹⁴ For instance, the rules require a 5 MW minimum to participate; prohibit aggregation of resources less than 5 MW; impose a 12-month commitment period; require the submission of Demand Bids into the Real-Time Energy Market; and require a financial assurance posting as a wholesale asset, unlike most retail customers.

The Compliance Filing addressed these concerns. For instance, the Compliance Filing explained that ISO-NE “cannot unilaterally remove” the existing minimum size (5 MW) and aggregation requirements that are applied to Dispatchable Asset Related Demand because “the local distribution companies are responsible for performing several of the administrative functions associated with Dispatchable Asset Related Demand registration, such as identifying the nodes from which a retail customer receives electricity service.”¹⁵ Regarding the requirement to remain as a Dispatchable Asset Related Demand for 12 months, the Compliance Filing explained that this requirement was technical and could not be addressed by ISO-NE.¹⁶ Specifically, the 12-month requirement “provides greater assurance that the wholesale market system is stable for the purpose of trading and procuring FTRs, capacity, energy and reserves, as well as allowing ISO-NE to incorporate the Dispatchable Asset Related Demand’s expected

¹³ The “Demand Response Supporters” consist of the NEPOOL Industrial Customer Coalition; EnerNOC, Inc.; EnergyConnect, Inc.; CPower, Inc.; Viridity Energy, Inc.; and Comverge Inc.

¹⁴ Comments and Protest of NEPOOL Industrial Customer Coalition; EnerNOC, Inc.; EnergyConnect, Inc.; CPower, Inc.; Viridity Energy, Inc.; and Comverge Inc. at 9 (May 26, 2009) (“Demand Response Supporters Protest”).

¹⁵ Compliance Filing at 54.

¹⁶ *Id.*

demand elasticity into Installed Capacity Requirement calculations for the Forward Capacity Market.”¹⁷

ISO-NE plans to begin stakeholder discussions of issues associated with specific barriers to increased participation of Demand Resources in the New England markets, including those mentioned above, in the coming months. ISO-NE plans to work through the stakeholder process to resolve these issues.¹⁸

3. The Commission Should Not Impose an Arbitrary Deadline That Will Interfere With the Stakeholder Process

The Demand Response Supporters “request that the Commission require ISO-NE to engage the stakeholder process to develop and implement these initiatives, and report by a date set by the Commission in order to demonstrate progress on these issues.”¹⁹ In particular, the Demand Response Supporters ask the Commission to require ISO-NE by February 1, 2010 to “either: (1) propose the continuation of existing programs as is or (2) file modifications and continuation of existing programs.”²⁰

ISO-NE opposes this request. ISO-NE and stakeholders have developed a timeframe for this process that has been calibrated to recognize other existing regional priorities, and ISO-NE wishes to respect and to act consistently with those priorities. Notably, though, the Markets Committee is completing its review of the extension of the current RTPRP and DALRP, and ISO-NE expects to file changes to accomplish this goal by the end of the year.²¹ The

¹⁷ *Id.* at 55.

¹⁸ ISO-NE is planning to notify stakeholders of its future proposed plans to address specific barriers to increased participation of Demand Resources in the New England markets at the summer NEPOOL Participants Committee meeting.

¹⁹ Demand Response Supporters Protest at 3.

²⁰ *Id.* at 15.

²¹ Price-Responsive Demand Report at 11-12.

Commission explained that Order No. 719 was not intended to disrupt any ongoing stakeholder process and time frames for developing and implementing such market rule changes:

[T]he [Order No. 719] compliance requirement is not meant to displace the timelines of any market improvements that RTOs or ISOs are currently undertaking. Each RTO and ISO should include in its compliance filing an update on the status of any relevant market design changes that are in the process of being implemented and address any remaining issues not addressed by the ongoing changes. It need not change the schedule for implementing these other market design changes as a result of this Final Rule.²²

Furthermore, Commission policy “typically allow[s] the stakeholder process to establish those priorities, especially when there are other significant issues for the stakeholders to address.”²³

ISO-NE asks that, consistent with these policy pronouncements, the Commission refrain from imposing any artificial deadlines on implementing demand response-related changes. ISO-NE will continue to address these issues through the stakeholder process in a manner consistent with other regional priorities.

4. ISO-NE Encourages the Public Systems to Propose Demand Response Certification Rules Through the Stakeholder Process

The Connecticut Municipal Electric Energy Cooperative, Massachusetts Municipal Wholesale Electric Company and New Hampshire Electric Cooperative, Inc. (collectively, “Public Systems”) protest ISO-NE’s failure to comply with the Order No. 719 requirement “to permit an ARC [aggregator of retail customers] to bid demand response on behalf of retail customers directly into the RTO’s or ISO’s organized markets, unless the laws or regulations of

²² Order No. 719 at P 579.

²³ *ISO New England Inc.*, 126 FERC ¶ 61,180 at P 23 (2009) (citing *ISO New England Inc.*, 119 FERC ¶ 61,045 at P 69 (2007)).

the relevant electric retail regulatory authority do not permit a retail customer to participate.”²⁴ Public Systems demand that ISO-NE amend the existing demand response asset registration process “by requiring the submission of a certification of compliance, issued by the relevant electric retail authority.”²⁵ Public Systems also raise concerns that ISO-NE’s procedures do not ensure that ISO-NE will remove any improperly registered assets from the load response program.²⁶

As the Compliance Filing explained, “[i]n the case of a municipal or cooperative utility that believes a demand response provider has inappropriately registered an asset within its service territory, the municipal utility can then take all appropriate legal or other actions available to them with respect to the retail customer that is associated with the demand response program asset or the enrolling participant.”²⁷ Nevertheless, ISO-NE does not necessarily oppose the Public Systems’ suggestion that a “certification” process be established for the registration of Demand Resources that are located within the service territory of a public power utility. The use of a certification process, however, was not specifically proposed (by Public Systems or anyone else) during the stakeholder review process that developed the Compliance Filing. If the Public Systems wish to propose the use of a certification process, they can and should submit such a proposal through the stakeholder process as an initial matter so that details of the certification process can be appropriately vetted and resolved.

²⁴ Motion For Leave To Intervene and Limited Protest of Connecticut Municipal Electric Energy Cooperative, Massachusetts Municipal Wholesale Electric Company, and New Hampshire Electric Cooperative, Inc. at 16 (*quoting* Order No. 719 at P 154) (“Public Systems Protest”).

²⁵ *Id.* at 18.

²⁶ *Id.* (“ISO-NE’s procedures do not even make clear that the ISO will remove the improperly registered asset from its load response program.”).

²⁷ Compliance Filing at 38.

B. Response to Long-Term Contracting Comments

1. ISO-NE Expects to Complete Its Long-Term Contract Bulletin Board By End of 2009

Regarding the Order No. 719 requirement that each RTO “dedicate a portion of their web sites for market participants to post offers to buy or sell power on a long-term basis,”²⁸ the NEPOOL Industrial Customer Coalition (“NICC”) advocates that ISO-NE accept PJM’s invitation to all ISO/RTO Council members to utilize the PJM-administered bulletin board, at little or no cost, which is expected to be ready in September 2009.²⁹ ISO-NE believes such a step to be unnecessary. ISO-NE has made more progress in creating its own bulletin board than it expected when the Compliance Filing was submitted April 28, 2009. In this regard, ISO-NE recently issued a Request for Proposal to retain a vendor to create such a billboard.

ISO-NE now believes that a New England bulletin board could be operational as early as the fourth quarter of 2009, which would be only a few months later than the expected September 2009 launch of the PJM-operated bulletin board. Moreover, it is expected that ISO-NE’s bulletin will include additional features the PJM-operated bulletin board will not include. This additional functionality will provide additional benefits to stakeholders. If the Request for Proposal responses are not satisfactory or do not result in significant added functionality, ISO-NE will reconsider participation in the PJM-operated bulletin board effort.

C. Response to Comments on Proposed Market Monitoring Reforms

The Connecticut Department of Public Utility Control (“CT DPUC”) outlines a litany of purported deficiencies with ISO-NE’s market monitoring structure and posits a number of

²⁸ Order No. 719 at P 4.

²⁹ Limited Protest and Comments of NEPOOL Industrial Customer Coalition at 7-9 (May 26, 2009).

reforms that it asserts are necessary for compliance with Order No. 719.³⁰ The Connecticut Office of Consumer Counsel (“CT OCC”) and the Connecticut Attorney General (“CT AG”) filed separate comments in support of the CT DPUC positions, and their collective arguments essentially mimic issues raised in their complaints filed in Docket Nos. EL09-47-000 and 09-48-000.³¹ The CT DPUC’s positions are therefore attributed herein to all three entities, referred to herein collectively as the “CT Parties.” Each of the purported deficiencies and each of the proposals put forth by the CT Parties addresses market monitoring features that were addressed by the Commission in Order No. 719, and were never raised by the CT Parties during the Order No. 719 stakeholder process. In many instances, the Commission expressly declined to include as an Order No. 719 mandate the recommendation that the CT Parties now assert is necessary for compliance with Order No. 719, and therefore the CT Parties’ opposition to portions of the Compliance Filing constitutes a prohibited collateral attack on Order No. 719.

1. Consistent with Order No. 719, the ISO-NE Market Monitoring Structure Vests Significant Responsibility in Both the Internal and External Market Monitors

The CT Parties’ primary criticism on market monitoring is the assertion that the Order No. 719 changes have transferred primary responsibility for performing the core market monitoring functions to the Internal Market Monitor and, in doing so, have effectively removed the External Market Monitor from the equation.³² They argue that this transfer of responsibilities

³⁰ Notice of Intervention and Comments of the Connecticut Department of Public Utility Control at 24-29 (May 26, 2009) (“CT DPUC Comments”).

³¹ Motion to Intervene and Comments of the Connecticut Office of Consumer Counsel (filed May 26, 2009) (“CT OCC Comments”); Motion to Intervene and Comments of Richard Blumenthal, Attorney General for the State of Connecticut (filed May 26, 2009) (“CT AG Comments”).

³² CT DPUC Comments at 4 (“As proposed and implemented, ISO-NE’s version of a hybrid market monitoring structure will not function to assure just, reasonable, and competitive wholesale rates, and the Commission should require modifications to strengthen the role of the external market monitor.”); CT DPUC Comments at 16 (“*First*, ISO-NE designates its own business unit as primarily responsible for the
(continued...)”)

heightens independence and conflict-of-interest issues that are inherent in an internal division of ISO-NE having primary responsibility for market monitoring.³³

These criticisms of ISO-NE's hybrid market monitoring structure are based on a fundamental misunderstanding of how the Internal Market Monitor and External Market Monitor function as a market monitoring unit. In fact, as part of the Order No. 719 stakeholder process, NEPOOL and ISO-NE agreed that ISO-NE would preserve the existing division of functions as it is documented in the Participants Agreement to the extent that division is consistent with Order No. 719's mandates, and would simply reflect that division (with as few changes as feasible to the actual language in Section 9.4 of the Participants Agreement) in Appendix A.³⁴ As a result, Sections III.A.2.2 and III.A.2.3 of Appendix A incorporate (virtually verbatim) the division of functions from Section 9.4 of the Participants Agreement. Any additional functions addressed in Sections III.A.2.2 and III.A.2.3 of Appendix A (or revisions from Section 9.4 of the Participants Agreement) were either necessary to comply with Order No. 719 or were functions already allocated to the Internal Market Monitor or External Market Monitor in Appendix A.

The External Market Monitor plays an expansive and critical role in performing core market monitoring functions and is critical to ensuring the competitiveness of the markets and

(...continued)

major functions established by Order No. 719, as well as responsible for subjective determinations in the first instance whether market participants are acting competitively."); CT AG Comments at 4 ("ISO-NE's proposed reforms are also inadequate to cure the external market monitor's isolation from day-to-day market operations, which prevent it from competently fulfilling even its limited duties.").

³³ CT DPUC Comments at 16; CT AG Comments at 4.

³⁴ See item A4 - ISO Memo March 6, 2009 Appendix A Revisions for Order 719 - Overview of significant changes - From David LaPlante, available at http://www.iso-ne.com/committees/comm_wkgrps/mrks_comm/mrks/mtrls/2009/mar102009/index.html. Pages 3-4 of the memo address incorporation of all market monitoring requirements into Appendix A, and discuss in the first bullet on page 4 incorporation of the detailed division of functions from Sections 9.4.2 and 9.4.3 of the Participants Agreement.

the appropriateness of market participant conduct. As reflected in new Section III.A.2.2 of Appendix A, the External Market Monitor is tasked with a number of market monitoring responsibilities, including:

- reviewing the competitiveness of the New England Markets, the impact that market rules and/or changes to market rules will have on the New England Markets, and the impact that ISO-NE's actions have had on the New England Markets;
- performing independent evaluations and preparing annual and ad hoc reports on the competitiveness and efficiency of the New England Markets;
- monitoring and reviewing the quality and appropriateness of the mitigation conducted by the Internal Market Monitor;
- preparing recommendations to the ISO-NE Board of Directors ("ISO-NE Board" or "Board") and Market Participants on how to improve the competitiveness and efficiency of the markets and on how to increase liquidity and efficient trade between regions; and
- reviewing ISO-NE filings with the Commission for effects of such filings on the competitiveness and efficiency of the New England Markets.

To accomplish these functions, the External Market Monitor utilizes automated processes that generate daily reports and e-mail alerts based on analyses of downloaded market data.³⁵

This information provides the basis for the External Market Monitor's daily, monthly and annual assessment of market performance. The External Market Monitor produces reports from the processing and analysis of fuel prices, unit reference prices, production costs and the results of conduct/impact tests and other withholding screens. These reports are used to identify times when ISO-NE operations or market participant conduct affect market efficiency, to identify uncompetitive behavior that is not sufficiently addressed by the provisions of Market Rule 1 or

³⁵ This data includes virtually all input data and results on ISO-NE's markets each day; each day's offers and bids, the final day-ahead market results, the results of each five-minute dispatch run and each run of the Locational Marginal Price calculator, transmission constraint data and operator logs.

the Internal Market Monitor's administration of mitigation measures, and to evaluate the effectiveness of the ISO-NE mitigation measures and the Internal Market Monitor's administration of those measures. The External Market Monitor initiates investigations when it observes (through its market analyses and assessments) anomalous market outcomes that could be the result of uncompetitive market participant conduct (e.g., resource withholding or gaming), ISO-NE operations that affect market efficiency, or inefficient market rules.

Under the ISO-NE's hybrid market monitoring structure, the External Market Monitor's analyses and investigations are supplemented by the Internal Market Monitor administering the market power mitigation functions, coupled with the Internal Market Monitor's regular review and analysis of market performance data. The daily review and monitoring of market participant bidding conduct that is required for implementation of the market power mitigation functions³⁶ informs the Internal Market Monitor's review and analysis of market performance data, and the market performance review in turn serves as a check on the effectiveness of the mitigation programs in ensuring that Market Participants are properly offering their resources into the markets.

Investigations of suspect market participant behaviors, market design issues, or market operations concerns are conducted by the Internal Market Monitor based upon the review of various market performance and bidding behavior reports generated by the Internal Market Monitor, and concerns brought to the attention of the Internal Market Monitor by parties both

³⁶ Each operating day, the Internal Market Monitor monitors and evaluates various conduct and impact threshold test failures stipulated under Appendix A. Conduct tests are used to determine whether a generation resource's offers exceed a reference price threshold which may indicate the existence of market power and/or economic withholding. The Internal Market Monitor also reviews the results of automated conduct test results, control room operator logs, and Operations personnel to determine whether generation resources may have physically withheld generation from the real-time market.

internal and external to ISO-NE. In certain cases, the Internal Market Monitor may consult with Commission staff on an informal basis about technical issues associated with these investigations. In other cases, ongoing investigations and the results of investigations performed by the Internal Market Monitor are discussed with the External Market Monitor to seek another perspective. Investigations may result in proposed changes to market rules or enforcement actions.

In carrying out their functions, the Internal Market Monitor and External Market Monitor regularly consult with each other, and, when appropriate, the Internal Market Monitor consults with representatives of the Commission's Office of Enforcement. In addition, the Internal Market Monitor and External Market Monitor each prepare and present monthly market performance reports for the ISO-NE Board. While these reports are prepared independently by each entity, the Internal Market Monitor and External Market Monitor will consult on the results of these reports to discuss any discrepancies and the significant issues that may require additional attention through investigation or market design modification.

Accordingly, and contrary to the CT Parties' assertions, the Compliance Filing does not "remove[] the external market monitor even further from day-to-day involvement"³⁷ in market monitoring. There is, therefore, little merit to the CT Parties' contention that the ISO-NE hybrid structure raises independence and conflicts-of-interest concerns because, as a part of the ISO-NE organization, the Internal Market Monitor has a stake in defending the market rules and "is more likely to be co-opted by ISO-NE's institutional interests."³⁸ As demonstrated above, while the Internal Market Monitor performs important mitigation, market performance analysis and

³⁷ CT DPUC Comments at 19.

³⁸ *Id.* at 18-19.

investigatory functions, the External Market Monitor also plays a critical role in ensuring competitive markets, and in monitoring market efficiency as well as the effectiveness of the market rules. Under this structure, independence is fostered by the Internal and External Market Monitors performing parallel market performance analyses, by the Internal and External Market Monitors independently providing monthly reports to the ISO-NE Board on the competitiveness of the markets, and by the External Market Monitor and Internal Market Monitor regularly consulting on issues such as the adequacy of the market power mitigation programs, market participant conduct, and the competitiveness and efficiency of the markets.³⁹

2. The Events Surrounding ISO-NE's Competitive Imports Rule Filing and Related Proceedings Have No Bearing on Whether the Compliance Filing Satisfies Order No. 719

The CT Parties assert, in so many words, that ISO-NE's actions with respect to certain market rule changes on competitive offer requirements for capacity imports (the "Competitive Imports Rules Filing") cast complete doubt on its compliance with Order No. 719's market monitoring provisions.⁴⁰ For instance, the CT DPUC complains about human errors in the

³⁹ The Commission should reject the CT DPUC's assertion that ISO-NE's contract with the External Market Monitor "does not assure that the external market monitor can act independently." As the CT DPUC explicitly recognizes, the External Market Monitor Services Agreement permits termination of the External Market Monitor only with Commission approval. This is intended as the ultimate form of protection against undue influence on the External Market Monitor – a point that is effectively recognized by the Commission in Order No. 719. *See* Order No. 719 at P 344 (noting that four RTOs and ISOs have "voluntarily consented to" Commission review of market monitor contract termination or dismissal of key personnel but declining to adopt "a blanket requirement that RTOs and ISOs make their MMU's contractual and employment arrangements subject to Commission review").

⁴⁰ *See, e.g.*, CT DPUC Comments at 10-13. By way of background, on March 20, 2009, ISO-NE submitted the Competitive Imports Rules Filing in Docket No. ER09-873-000. In testimony submitted with the Competitive Import Rules Filing (the "March 20 Testimony"), the Internal Market Monitoring Unit stated that, "[f]rom January 2005 to January 2009, the ISO requested high-priced energy associated with capacity imports during a total of 108 hours..." and that "[o]n none of these occasions was the requested energy delivered." March 20 Testimony at 13 (original emphasis deleted). The testimony also noted, separately, that "New England electricity customers have paid a total of \$85.8 million in ICAP Payments for capacity imports for which Market Participants offered energy above \$660/MWh over the period from December 2006 through January 2009." *Id.* In response to the Competitive Import Rules Filing, the CT DPUC and others filed complaints against ISO-NE to determine which capacity importers had committed these

(continued...)

Internal Market Monitor’s March 20 Testimony in Docket No. ER09-873-000⁴¹ and alleges a failure to timely report to the Commission or state regulators the “high-offer bidding scheme of capacity importers.”⁴² The CT Parties go on to argue that “ISO-NE’s version of the hybrid structure” permitted the erroneous statements and alleged reporting delay to occur.⁴³ To remedy these concerns, they assert that the External Market Monitor should be responsible for carrying out the primary market monitoring functions, and the Internal Market Monitor should be relegated to performing “administrative mitigation and data gathering functions.”⁴⁴

ISO-NE disagrees. Neither the commission of human error in a single piece of testimony,⁴⁵ nor any alleged and unsupported claims of delay in developing the Competitive

(...continued)

delivery failures and to disgorge the ICAP Payments they received. *See* The Connecticut Department of Public Utility Control and the Connecticut Office of Consumer Counsel, The Connecticut Representatives’ Complaint Seeking an Investigation, Hearing, Disgorgement, and Penalties, Docket No. EL09-48-000 (Apr. 23, 2009); Richard Blumenthal, Attorney General for The State of Connecticut v. ISO New England Inc., Certain Unidentified Market Participant Importers of Installed Capacity, Complaint Requesting Investigation, Hearing, Disgorgement and Other Appropriate Penalties, Docket No. EL09-47-000 (Apr. 20, 2009). On May 6, 2009, ISO-NE filed an answer to the complaints, as well as corrections to the March 20 Testimony, as the Internal Market Monitoring Unit’s further review revealed that none of the 108 External Transaction offers cleared the real-time energy market, nor did ISO-NE confirm next-hour delivery of the External Transactions through the next-hour checkout process. On May 20, 2009, ISO-NE corrected the \$85.8 million figure reflected in the Competitive Import Rule Filing to \$56.9 million. On May 22, 2009, the CT DPUC, CT AG, and CT OCC filed a consolidated amended complaint. The Connecticut Department of Public Utility Control; the Connecticut Office of Consumer Counsel; and Richard Blumenthal, Attorney General for The State of Connecticut, The Connecticut Representatives’ Consolidated Amended Complaint Seeking an Investigation, Hearing, Disgorgement, and Penalties, Docket Nos. EL09-47-000 and EL09-48-000 (May 22, 2009). On June 12, ISO-NE answered the amended complaint in a supplement to its May 6 answer. *See* ISO New England Inc., Supplement to Answer of ISO New England Inc. to Amended Complaint, Docket Nos. EL09-47-000 and EL09-48-000 (June 12, 2009) (“ISO-NE Supplemental Answer”).

⁴¹ CT DPUC Comments at 10-12.

⁴² *Id.* at 12.

⁴³ *Id.* at 15-17.

⁴⁴ *Id.* at 16.

⁴⁵ To be clear, ISO-NE and the Internal Market Monitor regret the errors in the March 20 Testimony. The ISO Board is currently working with a consultant seeking to reach a mutual understanding on potential terms of engagement to examine the underlying reasons for the errors and recommend processes, controls and other steps to mitigate the risk of future errors.

Imports Rules Filing, warrants market monitoring unit restructuring.⁴⁶ The CT Parties provide no factual basis or logical nexus for the assertions that the ISO-NE hybrid market monitoring structure or the ISO-NE Board's governance and oversight of the market monitoring functions are somehow responsible for the errors or the alleged reporting delay.

For instance:

- The CT Parties have not alleged any facts suggesting that the independent ISO-NE Board, or the management of ISO-NE, had any motivation for ISO-NE or the Internal Market Monitor to do other than administer the rules appropriately and based on data and analysis, pursue improvements in a reasonable and timely manner, as occurred with the Competitive Imports Rules Filing.
- The CT Parties have not alleged any facts suggesting that the existing relationship between the ISO-NE Board and the Internal or External Market Monitors somehow inhibited any of their actions in relation to the Competitive Imports Rules Filing.
- The CT Parties have not alleged any facts suggesting a conflict of interest among ISO-NE or either of the Internal or External Market Monitors with respect to the development of the Competitive Import Rules Filing.

Simply put, there is no factual or logical nexus between any issues with the development and filing of the Competitive Imports Rules Filing and ISO-NE's market monitoring structure.

That conclusion is consistent with the Commission's finding in Order No. 719 of a lack of

⁴⁶ As explained in the ISO-NE Supplemental Answer (at 19-24), the CT DPUC's argument regarding undue delay in reporting or addressing the capacity import bidding strategy issues is baseless. ISO-NE explains how the Internal Market Monitor did not unreasonably delay in addressing the high-priced bidding strategy pursued by certain capacity importers. For instance, efforts began during 2007 to harmonize rules for imported and internal ICAP, as required in the FCM Settlement. At the October 9, 2007 meeting of the NEPOOL Markets Committee, the discussion reflected an understanding that under the current rules and the rules being developed, a capacity importer could "park a \$1000 offer at the Control Area boundary" and that could result in "phantom capacity." During the summer of 2008, the Internal Market Monitor began its work to develop information necessary to initiate the stakeholder process for additional reforms, and the Internal Market Monitor presented its analysis at the October 21, 2008 and November 12, 2008 NEPOOL Markets Committee meetings. This second meeting included detailed analysis, which turned out to be erroneous, regarding 104 hours during which capacity importers apparently failed to deliver associated high-priced energy at the Roseton Node.

evidence that any ISOs/RTOs are experiencing problems with their market monitoring units due to organizational structure.⁴⁷

Nor do the CT Parties provide any basis for believing that transferring even more responsibility to the External Market Monitor would be more effective in avoiding the errors or the alleged delay at issue in the Competitive Imports Rules Filing. The existing External Market Monitor already has broad authority and access to data, and the CT DPUC Comments do not suggest that the External Market Monitor has had any motivation to carry out its broad existing functions with less than full intensity. Consistent with the actions of the Internal Market Monitor, the External Market Monitor did not identify concerns regarding high-priced energy offers by capacity importers or suggest any alteration of the ICAP Import Rules in its annual market report for 2008, which addressed the operation of the markets for calendar year 2007 (*i.e.*, the early portion of the ICAP Transition Period). The CT Parties identified no motivation for the External Market Monitor to be less than candid with the ISO-NE Board, or with the Market Participants and other stakeholders that review its annual reports. Accordingly, there is no reason to believe that the development of the Competitive Imports Rules Filing would have been accelerated had the role of the External Market Monitor been any different during the pertinent period.

Even assuming that the errors relating to the Competitive Imports Rules Filing raise questions about ISO-NE's market monitoring structure, the CT DPUC should have utilized the Order No. 719 Compliance Filing stakeholder process to advance its suggestions, but inexplicably failed to do so. The Order No. 719 stakeholder process began after ISO-NE

⁴⁷ Order No. 719 at P 327 (“Neither Industrial Consumers nor other commenters have presented examples of dysfunctional MMUs, much less a dysfunction that can be attributed to a particular organizational

(continued...)

informed stakeholders, including the CT DPUC, of high-priced energy offers by capacity resources over the Northern New York intertie (through their attendance at NEPOOL meetings in the fall of 2008), and thus provided ample opportunity for pursuit of any restructuring they wished to pursue in light of the capacity importers' conduct and the Internal Market Monitor's response thereto.⁴⁸ Yet, Connecticut representatives expressed no concern about the New England hybrid market monitoring structure at any time during the Order No. 719 stakeholder discussions.

In short, the events surrounding the Competitive Imports Rules Filing are irrelevant to whether the Compliance Filing satisfies the requirements of Order No. 719 or whether the Compliance Filing is just and reasonable.

3. The Commission Should Not Allow the CT Parties to Make An End-Run Around the Stakeholder Process

Although many of the CT Parties' concerns relate to issues of central importance to the Commission throughout the Order No. 719 rule-making process,⁴⁹ the CT Parties provided none of the suggestions or criticisms set forth in their comments during ISO-NE's lengthy Order No. 719 Compliance Filing stakeholder discussions. The Order No. 719 requirements pertaining to market monitoring, as well as ISO-NE's proposed reforms to comply with these requirements,

(...continued)
structure.”).

⁴⁸ For an explanation of ISO-NE's lengthy stakeholder discussions regarding the issues surrounding the competitive offer requirements for capacity imports that culminated in the Competitive Imports Rules Filing, *see supra* n.46.

⁴⁹ In particular, the CT DPUC has raised concerns about the following issues addressed by Order No. 719, albeit by recommending tariff amendments not required by Order No. 719, including: the hybrid market monitoring structure, the oversight and governance of the Internal Market Monitor and External Market Monitor, the balance of functions between the Internal Market Monitor and the External Market Monitor, the market monitor's control of its data, the market monitor's participation in the stakeholder process, the role of the Internal Market Monitor and External Market Monitor in carrying out market power mitigation, the market monitor reporting functions, and the responsiveness of the market monitor to state information requests.

were discussed during the NEPOOL Markets Committee meetings on February 10, 2009, February 27, 2009, March 10, 2009 and March 25, 2009, and during the meeting of the NEPOOL Participants Committee on April 3, 2009. ISO-NE also prepared and circulated numerous documents explaining the actions being taken for ISO-NE to comply with Order No. 719, which received significant stakeholder input.⁵⁰

Despite very active stakeholder discussions regarding Order No. 719, at which ISO-NE explained in detail its proposals for compliance with Order No. 719, the CT Parties failed to raise any concerns whatsoever regarding ISO-NE's compliance with Order No. 719's market monitoring functions prior to the current comments. Nevertheless, the CT Parties would now have the Commission: (i) reject ISO-NE's proposals regarding market monitoring reform – despite their compliance with Order No. 719; (ii) impose significant changes unilaterally

⁵⁰ For instance, at the December 9-11, 2009 NEPOOL Markets Committee meeting, Market Participants received an overview of Order No. 719's compliance requirements. ISO-NE then circulated a memo on February 4, 2009 (and discussed it during the February 10, 2009 NEPOOL Markets Committee meeting) explaining ISO-NE's analysis of its current compliance with Order No. 719's mandates on the market monitor's independence, oversight of the market monitor by the ISO-NE Board and management, the core market monitoring functions, market power mitigation, conduct standards for the market monitor and its employees, how the market monitor handles information requests from state regulators, and the Commission's protocols on market monitoring referrals to the Commission. This memo and discussion were followed by a draft table of contents for Appendix A of Market Rule 1 showing how ISO-NE would propose to restructure Appendix A to address each of the Order No. 719 requirements, which was circulated to stakeholders on February 23, 2009 and presented for discussion at the February 27, 2009 Markets Committee meeting. For the March 10, 2009 Markets Committee meeting, ISO-NE circulated a redlined draft of Appendix A for Order No. 719 compliance, which contained extensive annotations explaining the basis for each of the changes. This draft was accompanied by a memorandum presenting an overview of certain significant changes, which included a discussion of the division of market monitoring functions between the Internal Market Monitor and External Market Monitor (noting in particular that the functions are either already provided for in the Participants Agreement or the current version of Appendix A or are mandated by Order No. 719) and the enhanced information sharing provisions for sharing information with state regulators. ISO-NE provided a memo on March 19, 2009 (updated and redistributed on March 24, 2009) discussing further revisions to Appendix A and the Participants Agreement to address comments and concerns raised by stakeholders in earlier discussions (none of which addressed the independence of the market monitor, the hybrid structure, the division of functions, or any other matters raised by the CT DPUC in its comments) and further changes required for compliance with Order No. 719. This memorandum was discussed with stakeholders at the March 25, 2009 Markets Committee meeting, at which the Markets Committee voted to support the Order 719 compliance changes regarding market monitoring.

proposed by the CT Parties in this proceeding; and (iii) establish “hearing procedures” to now address the very same issues about which the Commission and interested stakeholders have been in dialogue (via rulemaking and compliance activities) for almost two years. Adoption of, or even a Commission proceeding on, these unilaterally offered changes would have the effect of disenfranchising those that participated in the stakeholder process.

For these reasons alone, the Commission should reject the CT Parties’ proposed changes, their request for hearing procedures, and their arguments against the Compliance Filing. Furthermore, the CT Parties’ suggestions that fall outside the scope of Order No. 719 or are otherwise requested in light of events occurring subsequent to the Order No. 719 stakeholder proceedings, do not warrant bypassing the stakeholder processes that are used to consider such changes.

4. The Untimely Market Monitoring Reforms Proposed by the CT Parties Do Not Cast Doubt on the Justness and Reasonableness of ISO-NE’s Proposed Order No. 719 Market Monitoring Reforms

The CT Parties posit a number of reforms that they assert are necessary for ISO-NE’s compliance with Order No. 719.⁵¹ In fact, none of the proposed reforms are required for compliance with Order No. 719, and the CT Parties’ arguments regarding these reforms cast no doubt on the justness and reasonableness of the Compliance Filing’s proposals. In many instances, the Commission expressly declined to include as an Order No. 719 mandate the recommendation that the CT Parties now assert is necessary for compliance with Order No. 719,

⁵¹ CT DPUC Comments at 24-29.

and therefore the CT Parties' opposition to portions of the Compliance Filing constitutes a prohibited collateral attack on Order No. 719.⁵²

a. The CT Parties' Suggested Reforms on Market Monitor Independence, Governance and Oversight Conflict with Order No. 719

The CT Parties assert that, to “assure the necessary independence” for the market monitor, the “external market monitoring function must have principal authority and must be fully independent from ISO-NE.”⁵³ ISO-NE “may retain the internal market monitor,” but “the role of the internal market monitor should be limited to administrative mitigation and other data collection and reporting functions,” and “the internal market monitor should report directly to the external market monitor.”⁵⁴ The CT Parties also call for significant restrictions on the independent ISO-NE Board's oversight of the market monitoring function and call for Commission approval of changes to significant aspects of the External Market Monitor's relationship with the ISO-NE Board.⁵⁵

These assertions are largely in conflict with the Commission's express findings in Order No. 719 and do not cast doubt on ISO-NE's compliance with Order No. 719's findings on the hybrid structure, division of market monitoring functions, or governance. In the first instance, the Commission explicitly rejected in Order No. 719 suggestions to prohibit the internal market monitor from carrying out the core market monitoring functions, finding instead that, if the internal market monitor carries out any or all of the core market monitoring functions,

⁵² *Acadia Power Partners, LLC*, 106 FERF ¶ 61,215 (2004) (“[C]ollateral attacks on Commission orders may not be made through protests to compliance filings.”).

⁵³ CT DPUC Comments at 25.

⁵⁴ *Id.* at 25-26.

⁵⁵ *Id.* at 26.

independence from management can be achieved by requiring the internal market monitor to report to the ISO/RTO board.⁵⁶ The Commission also rejected various requests to further regulate the details of the governance and oversight of the internal market monitor and external market monitor. In particular, the Commission rejected requests to require that: (1) the market monitor report to a Federal-State Joint Board on Market Monitor Oversight and (2) to require that significant changes in the ISO/RTO and Market Monitoring Unit (“MMU”) relationship be made subject to Commission review.⁵⁷ In any event, Commission precedent prohibits ISO-NE from incorporating the CT Parties’ recommended changes in the Compliance Filing, as they fall outside the scope of the requirements imposed by Order No. 719.⁵⁸

Instead, noting that the MMU structure is not indicative of independence or quality of performance, the Commission determined that ISOs and RTOs are free to adopt their own structure.⁵⁹ The Commission also determined that (as with ISO-NE), if an ISO/RTO adopts a

⁵⁶ Order No. 719 at P 341. (“[W]e decline to adopt TAPS’s suggested solution of requiring the external market monitor to assume responsibility for the core MMU duties spelled out in this order (identifying ineffective market rules, reviewing the performance of the markets, and making referrals to the Commission)... Instead, we will require that if the internal market monitor is responsible for carrying out any or all of the above-cited core MMU functions, it must report to the board (as must the external market monitor). This solution allows the RTO or ISO to structure its MMU function in the way it deems most suitable, while also ensuring that the market monitor that performs the core MMU functions enjoys the independence from management that reporting to the board accomplishes.”)

⁵⁷ *Id.* at PP 342-344.

⁵⁸ *See, e.g., AES Huntington Beach, LLC*, 111 FERC ¶ 61,079 at P 60 (2005) (“The Commission has long established that compliance filings must be limited to the specific directives ordered by the Commission.”); *see also New York Independent System Operator, Inc.*, 125 FERC ¶ 61,206 at P 58 (2008) (taking no action on provisions included in the compliance filing for being outside the scope of compliance requirements ordered by the Commission).

⁵⁹ Order No. 719 at PP 326-327.

hybrid structure in which the internal market monitor performs any or all of the core functions, then both the internal and external market monitors must report to the ISO/RTO board.⁶⁰

Under these principles, ISO-NE's proposal with respect to the division of functions between its Internal Market Monitor and External Market Monitor, as well as the proposed governance and oversight structure, comports with Order No. 719's mandates.⁶¹ "The Commission's focus in reviewing a compliance filing is to determine whether the changes proposed comply with the Commission's previously stated directives,"⁶² and the Compliance Filing clearly satisfies the market monitoring unit requirements of Order No. 719.⁶³

⁶⁰ *Id.* at PP 339-341. The Commission did note that management representatives on the board should be excluded from oversight of market monitoring, although the internal market monitor may report to management for purely administrative functions. *Id.* at P 339.

⁶¹ It is worth noting that the CT Parties appear to be alone among stakeholders in voicing anything less than full support for ISO-NE's hybrid market monitoring structure and its proposed ISO Tariff revisions on division of functions and governance and oversight structure for Order No. 719 compliance. No other stakeholder raised objections during the Order No. 719 stakeholder process or in responsive pleadings to the Compliance Filing to ISO-NE's continued use of a hybrid market monitoring structure or its tariff reforms for compliance with Order No. 719.

The hybrid structure has enjoyed broad support throughout its history in New England. Through the entire RTO formation process, no pleadings were filed by the CT Parties to challenge the merits of this approach. In fact, the CT OCC joined in a pleading *embracing* the hybrid approach, stating that: "The RTO Participants Agreement describes a dual market monitoring function that relies on an internal market monitoring unit and an external independent market monitoring unit. *This dual approach will increase stakeholder confidence in the ability of the RTO-NE to monitor market activities effectively and appropriately.*" See Protest and Comments of the Attorney General of the Commonwealth of Massachusetts, the Connecticut Office of Consumer Counsel, the Maine Public Advocate and the New Hampshire Office of Consumer Advocate, Docket No. RT04-2-000, at 15 (filed December 8, 2003) (footnote omitted). In the RTO proceeding, the Commission found that "the Filing Parties' RTO proposal satisfies the market monitoring requirements established by the Commission in Order No. 2000. [ISO]-NE will have the ability through the internal and external Market Monitoring Units, to evaluate market rules, market functions, and market procedures and will be authorized to make the appropriate reports and recommendations to the RTO and the Commission. See *ISO New England Inc., et al.*, 106 FERC ¶ 61,280 at P 187 (2004). In particular, the Commission stated that it rejected certain intervenors' argument "that the Internal Market Monitoring Unit should be fully independent of [ISO]-NE." *Id.* at P 188.

⁶² *New York Independent System Operator, Inc.*, 127 FERC ¶ 61,042 at P 28 (2009).

⁶³ The CT DPUC appears to promote adoption of the PJM market monitoring structure, which is not a hybrid structure, but fails to demonstrate why this structure would be preferable to ISO-NE's hybrid structure. Notably, in Order No. 719 the Commission refused to accept the suggestion to adopt the PJM structure as a "best practice." Order No. 719 at P 330 ("We decline to adopt as 'best practices' the provisions of the
(continued...)

b. The Proposed Market Monitoring Reforms on Data Control and Reports Comply with Order No. 719; The CT Parties' Suggested Reforms Are Unnecessary

The CT Parties assert that the External Market Monitor should have exclusive control of its data, analyses and conclusions.⁶⁴ The Compliance Filing, however, does not interfere with the External Market Monitor's control over its analyses and conclusions. The Compliance Filing proposes to amend Market Rule 1's Appendix A to provide the External Market Monitor the discretion to decide "whether and to what extent to share drafts of any report or portions thereof with the Commission, the ISO, one or more state public utility commission(s) in New England or Market Participants for input and verification before the report is finalized."⁶⁵ Explicitly recognizing the External Market Monitor's right to seek such input can help improve the quality and accuracy of its reports, but it does not interfere with its control over its final conclusions and reports. The External Market Monitor will have the full discretion to determine what input to solicit and what input to incorporate. This discretion provides the External Market Monitor with sufficient control over its reports to avoid being subject to undue influence by ISO-NE or other parties.⁶⁶

(...continued)

recent settlement agreement entered into by PJM and a number of interested parties concerning the structure, function and independence of PJM's MMU (PJM/MMU Settlement Agreement).").

⁶⁴ See, e.g., CT DPUC Comments at 27.

⁶⁵ Compliance Filing, Revised ISO Tariff § III.A.12.4.

⁶⁶ The CT DPUC suggests that the Compliance Filing is deficient because, pursuant to Exhibit A, Scope of Work, § A of the External Market Monitor Services Agreement, the "[External Market Monitor] shall submit to the Office of the General Counsel for distribution to the Markets Committee, eight (8) days in advance of each regularly-scheduled meeting of the Markets Committee or at such other interval as the parties may agree, a set of PowerPoint slides in a form to be agreed by the parties." This provision provides ISO-NE with no basis for or authority to revise or influence the External Market Monitor's reports to the ISO-NE Board, and is intended only to ensure (given the longstanding role of the Office of General Counsel in compiling materials for the ISO-NE Board) that the ISO-NE Board receives the External Market Monitor's monthly reports sufficiently in advance of meetings.

Regarding control over data, nothing in Order No. 719 mandates that the External Market Monitor have exclusive control over the data it creates. To effectively perform market monitoring functions, it is beneficial for the External Market Monitor and Internal Market Monitor to share exclusive control over the data these two entities create, and that is what the Compliance Filing proposes.⁶⁷ In particular, such sharing and exchange of data promotes accuracy and increases the likelihood that both entities will utilize the best data that is developed during the course of their combined efforts. Moreover, the CT Parties have not pointed to any evidence or reason to believe that sharing exclusive control over data poses any threat to independence, quality of performance or other goals.

c. The Compliance Filing Ensures the Market Monitor’s Responsiveness to State and other Stakeholder Concerns, and the CT Parties’ Suggested Reforms in this Area Were Not Mandated by Order No. 719

The CT Parties recommend a number of reforms relating to the External Market Monitor’s communications with stakeholders, the states and the Commission. They assert that the External Market Monitor should: (i) provide “independent advice and opinions in Commission and NEPOOL forums;” (ii) chair a “Market Monitoring Advisory Committee to enhance communications between the external market monitor and interested parties;” (iii) “meet regularly and otherwise as necessary with the New England Conference of Public Utilities Commissioners (‘NECPUC’)” to discuss market monitoring; (iv) report on and provide opinions on the functionality and design of the markets and provide requested information or analysis; and

⁶⁷ See Compliance Filing, Revised ISO Tariff § III.A.1.3 (“[T]he Internal Market Monitor and External Market Monitor shall have full access to the ISO’s electronically generated information and databases and shall have exclusive control over any data created by the Internal Market Monitor or External Market Monitor.”).

(v) upon request of NECPUC or individual state commissions, “provide studies or reports on wholesale market issues relevant to their jurisdiction.”⁶⁸

ISO-NE takes no position on the appropriateness of the substance of these recommendations, but observes that the Commission did not require any of the suggested changes for compliance with Order No. 719.⁶⁹ While ISO-NE recognizes the importance of providing appropriate information to state regulatory agencies, to the extent that the CT Parties’ recommendations seek to place oversight and authority for market monitoring with state regulators, it is important to recognize that the Commission, not the states, regulate wholesale electricity markets, and the ultimate responsibility for their efficient operation and monitoring lies with the Commission. Meanwhile, the Compliance Filing provides the New England states more access to the Internal and External Market Monitors than required by Order No. 719. Specifically, the Compliance Filing provides for regular and significant interaction between stakeholders (including the states) and ISO-NE’s Internal Market Monitor. It also provides states with a vehicle for requesting information and reports from the External Market Monitor.

The ISO Tariff changes in the Compliance Filing incorporate into Appendix A of Market Rule 1 a provision from the Participants Agreement that expressly grants the External Market Monitor the authority to prepare *ad hoc* reports on the competitiveness and efficiency of the markets or particular aspects of the markets “on its own initiative or pursuant to requests by the

⁶⁸ CT DPUC Comments at 27-29.

⁶⁹ ISO-NE notes, however, that aspects of the CT DPUC recommendations could be in conflict with Commission policy. Order No. 719 warned against turning a market monitor into an investigatory arm of state regulatory agencies, and therefore declined to broaden the scope of information requests to which the market monitor must respond beyond those “limited to information regarding general market trends and the performance of the wholesale market.” Order No. 719 at P 446. The Compliance Filing clearly satisfies this requirement by ensuring state regulatory agencies will be provided access to this type of information. Compliance Filing at 92-96.

ISO, state public utility commissions or one or more Market Participants.”⁷⁰ While it is ultimately in the External Market Monitor’s discretion to determine whether to complete a requested report,⁷¹ this discretion cannot be wielded arbitrarily or unreasonably.

The ISO Tariff changes in the Compliance Filing also provide that a representative of the Internal Market Monitor will be available for “regular conference calls, which may be attended, telephonically or in person, by Commission and state commission staff, by representatives of the ISO, and by Market Participants,” to provide “a review of market data and analyses of the type regularly gathered and prepared by the Internal Market Monitor in the course of its business.”⁷² These conference calls will provide stakeholders, including state regulators, with a forum for raising questions or concerns about the analyses provided by the Internal Market Monitor in its annual and quarterly reports, as well as for addressing other issues of concern to stakeholders.

The CT Parties also assert that “ISO-NE’s proposal frequently excludes state regulators from its internal market monitor’s reporting obligations about the state of the market.”⁷³ This assertion is false. Section III.A.12.2.2 of Appendix A to Market Rule 1, which addresses the Internal Market Monitor’s preparation and dissemination of quarterly market reports, states that the reports will be disseminated to the state public utility commissions.⁷⁴ Section III.A.12.3 of Appendix A, which addresses the Internal Market Monitor’s preparation and dissemination of

⁷⁰ Compliance Filing, Revised ISO Tariff § III.A.12.4.

⁷¹ *Id.*

⁷² Compliance Filing, Revised ISO Tariff § III.A.2.3(h) (satisfying Order No. 719 at P 424 (“MMUs are also to make one or more of their staff members available for regular conference calls, which may be attended, telephonically or in person, by Commission and state commission staff, by representatives of the RTO or ISO, and by market participants.”)).

⁷³ CT DPUC Comments at 28.

⁷⁴ Compliance Filing, Revised ISO Tariff § III.A.12.2.2.

the annual market report, states that the Internal Market Monitor will hold a public forum to discuss the report, as well as a non-public meeting with “appropriate state or federal governmental agencies, including the Commission and state regulatory bodies, attorneys general, and others with jurisdiction over the competitive operation of electric power markets.”⁷⁵

d. There Is No Evidence That the Market Monitors’ Reports Have Been Untimely or of Poor Quality

The CT Parties assert that the External Market Monitor should “improve the quality of the market analyses and reports it produces and ensure all materials (redacted if necessary) that it produces are timely published on its website or a dedicated page of ISO-NE’s website.”⁷⁶

Despite these assertions, ISO-NE has found no evidence that either the Internal Market Monitor’s reports or External Market Monitor’s reports have been published or maintained on the web (either the ISO-NE website or the External Market Monitor’s website) in an untimely manner.⁷⁷ Nor have the CT Parties provided any evidence or illustrations suggesting a lack of quality in the analyses and reports produced by its market monitors. The proper forum to have raised concerns regarding the substance or availability of the market monitor’s reports was in the Order No. 719 stakeholder process, so that all interested stakeholders could have an opportunity to provide input on concerns regarding the market monitor’s reporting and so that ISO-NE could

⁷⁵ Compliance Filing, Revised ISO Tariff § III.A.12.3.

⁷⁶ CT DPUC Comments at 29.

⁷⁷ The Internal Market Monitor’s Annual Markets Report and ad-hoc reports (FCM report, Cold Snap Report, presentations by the Internal Market Monitor) are posted at <http://www.iso-ne.com/markets/mktmonmit/rpts/index.html> (in the market monitoring section of the website). Annual Markets Report for 2008 (both INTMMU and IMMU) are generally not made public until the following June/July timeframe due to the need to modify report data to reflect the completion of the market settlement process. The Internal Market Monitor’s quarterly reports are posted at http://www.iso-ne.com/markets/mkt_anlys_rpts/qtrly_mktops_rpts/index.html. The External Market Monitor’s reports are posted in the “special reports” section of the ISO-NE website, at http://www.iso-ne.com/pubs/spcl_rpts/index.html. Note that the report dated June 2008 is located in the 2007 archive because the report is an assessment of 2007 market performance. The External Market Monitor’s reports are also currently available at: <http://www.potomaceconomics.com/index.php/documents/C8&C10>.

determine how best to address such issues. No stakeholder raised concerns regarding the adequacy of market monitor reporting during the Order No. 719 stakeholder process.

5. The Compliance Filing’s Proposals on Enhanced Information Dissemination and Tailored Requests for Information Are Just and Reasonable and Comply with Order No. 719’s Requirements

The CT Parties assert that the Compliance Filing is deficient with respect to the Internal and External Market Monitor’s reporting obligations and their compliance with Order No. 719’s Enhanced Information Dissemination requirements. To the contrary, the obligations of the Internal and External Market Monitors regarding reporting and responsiveness to stakeholders comply with not only the letter, but the spirit, of Order No. 719’s mandates to ensure that stakeholders have appropriate access to the market monitor.

The CT Parties assert that the Internal Market Monitor’s reports “do not reflect the type of candid, independence market performance assessments that would be useful to the Commission, state regulators, and stakeholders.”⁷⁸ In order to effectively address any concerns about the content or usefulness of the market monitor’s reports, ISO-NE would request that concerned stakeholders provide, via the NEPOOL stakeholder process, significantly greater detail regarding what, specifically, they would like the market monitor to address and the failings of the current reports. ISO-NE and its Internal Market Monitor believe that such reports have reflected candid, independent, and useful market performance assessments.

The CT Parties also assert that the ISO Tariff should include broad protections incorporating Order No. 719’s prohibition on ISO-NE interference with the market monitor’s reports, including periodic reports, market rule evaluations, testimony and comments filed with

⁷⁸ CT DPUC Comments at 21. The CT DPUC notes as an example the fact that the most recent internal market monitor’s annual report “concluded that its energy markets were competitive and made no mention (continued...) ”

the Commission.⁷⁹ The ISO Tariff clearly and completely describes the obligations on the Internal Market Monitor and External Market Monitor to develop and disseminate reports and information, and nothing in the ISO tariff suggests that ISO-NE has the authority to dictate the conclusions of these reports or that the market monitor cannot disregard ISO-NE's suggestions regarding any reports.⁸⁰ Furthermore, contrary to the CT Parties' assertions, nothing in the External Market Monitor Services Agreement permits ISO-NE to modify the External Market Monitor's reports,⁸¹ and the primary purpose for the requirement that the External Market Monitor submit presentations to ISO-NE's General Counsel eight days prior to each ISO-NE Board meeting is to ensure timely dissemination of the reports to its directors. Finally, Appendix A provides the Internal and External Monitor with authority to decide, subject to confidentiality restrictions "whether and to what extent to share drafts of any report or portions thereof with the Commission, the ISO, one or more state public utility commission(s) in New England or Market Participants for input and verification before the report is finalized."⁸²

The CT Parties further assert that ISO-NE failed to revise its tariff to comply with Order No. 719's requirement that ISOs/RTOs ensure that "the data they include [in annual and quarterly market monitoring reports] meets the anticipated needs of the extended community that

(...continued)

at all of the Northern New York capacity importers' high-offer bidding strategy that affected energy market prices throughout this period." *Id.*

⁷⁹ *Id.* at 22.

⁸⁰ Compliance Filing, Revised ISO Tariff § III.A.12.

⁸¹ In fact, provisions of the External Market Monitor Services Agreement prevent ISO-NE from interfering with the External Market Monitor's reports. Section 6.7 of the External Market Monitor Services agreement states: "As required by Section 9.4.5 of the Participants Agreement, the parties agree that the IMMU [*i.e.*, the External Market Monitor] shall have reasonable access to ISO-NE's data and personnel, including ISO-NE management responsible for market monitoring, operations and billing." Also, Section 5.1 provides that "control of the Work Product shall comply with the regulatory requirements of the Commission."

⁸² Compliance Filing, Revised ISO Tariff at §§ III.A.12.2.2 and III.A.12.4.

will make use of them,”⁸³ and did not include a provision requiring the market monitor to consider state regulators’ requests that it report on particular issues.⁸⁴ ISO-NE has every intent of ensuring that the Internal Market Monitor’s and External Market Monitor’s reports meet the anticipated needs of the extended community. Consistent with Order No. 719, ISO-NE has not included “specific details of the types of information that an MMU might find useful to provide” out of recognition that the nature of the information may evolve over time.⁸⁵ However, Appendix A requires that reports be disseminated to the states⁸⁶ and that the Internal Market Monitor make a representative available for regular meetings with stakeholders, including the states, to address market monitoring issues and listen to stakeholder concerns.⁸⁷

Finally, ISO-NE respectfully disagrees that it failed to comply with an Order No. 719 compliance obligation to include in its tariff, as the CT Parties assert, either (1) the statement that the Internal Market Monitor and External Market Monitor must include in their reports “sufficient data to enable users of their reports to reasonably test the validity of their conclusions,” or (2) that the External Market Monitor alone have exclusive control over the data it creates, as opposed to sharing that exclusive control with the Internal Market Monitor.⁸⁸ While ISO-NE fully anticipates that its Internal Market Monitor and External Market Monitor would either include underlying data in its reports or make that data available upon request (consistent

⁸³ Order No. 719 at P 360.

⁸⁴ CT DPUC Comments at 22-23.

⁸⁵ Order No. 719 at P 414 (“We also hesitate to require RTOs and ISOs to include in their tariffs specific details of the types of information that an MMU might find useful to provide, or that stakeholders might request. The nature of the information that may be helpful may vary from region to region, and may well evolve over time.”).

⁸⁶ Compliance Filing, Revised ISO Tariff §§ III.A.12.2.2, III.A.12.2.3 and III.A.12.2.4.

⁸⁷ Compliance Filing, Revised ISO Tariff §§ III.A.2.3(h).

⁸⁸ CT DPUC Comments at 23-24.

with any confidentiality obligations), Order No. 719 does not require that such an obligation be included in the ISO Tariff. Furthermore, ISO-NE's proposal to allow the Internal and External Market Monitors to share control over market monitor-created data is not inconsistent with the Commission's requirement that "RTOs and ISOs include provisions in their tariffs ... granting MMUs exclusive control over any MMU-created data."⁸⁹ The hybrid market monitoring structure functions properly when both the Internal Market Monitor and External Market Monitor are engaged in performing regular market analysis and oversight, and to effectively carry out these functions both monitors must have unfettered access to market monitoring data.⁹⁰

D. Response to Comments on RTO Responsiveness

In Order No. 719, the Commission required compliance filings in two areas regarding RTO responsiveness: board responsiveness and posting of a mission statement.⁹¹ The Compliance Filing outlined ISO-NE's current practices and, while noting that ISO-NE's existing practices comply with Order No. 719, proposed a number of enhancements.⁹²

⁸⁹ Order No. 719 at P 328.

⁹⁰ See Section III.C.4.b, *supra*.

⁹¹ Order No. 719 at PP 502 and 556, respectively.

⁹² Compliance Filing at 99. The Maine Public Utilities Commission stated in its comments (at 3) that ISO-NE's position that it was in compliance with Order No. 719 before making any enhancements "inhibited the opportunity for comprehensive change." ISO-NE believes that the proposed enhancements speak for themselves, and that most stakeholders believe that ISO-NE listened, responded and followed through with concrete enhancements to its existing practices. See, e.g., Public Systems Protest at 6-7 ("Public Systems shares ISO-NE's observation that in the course of those discussions 'it listened to [stakeholder concerns] and made real and substantive changes in response thereto' (citations omitted)); Motion To Intervene of Central Maine Power Company and Comments on ISO New England's Order No. 719 Compliance Filing at 2 (May 26, 2009) ("Central Maine Power Comments") ("[Central Maine Power ("CMP")] commends ISO-NE and the numerous stakeholders that participated in the RTO Responsiveness and Governance Working Group established by ISO-NE as part of its Order 719 compliance process. Through collaboration, discussion and compromise, significant positive reforms were achieved"); Notice of Intervention and Comments by The Massachusetts Department of Public Utilities at 3 (May 26, 2009) ("MA DPU Comments") ("In general, Mass DPU agrees that ISO-NE has already had in effect many policies and programs that the Commission is seeking to implement nation-wide and only a few changes to its practices and governing documents are needed. Further, Mass DPU supports the changes ISO-NE proposes"); CT AG Comments at 8 (May 26, 2009) ("[T]he Working Group was open to consumer concerns Significant effort was put forth by all parties to reach a set of mutually-agreeable compromises.").

ISO-NE explained that it had convened a working group of stakeholders and formed a new special committee of its Board.⁹³ After significant consultation and exchange of ideas and proposed language, ISO-NE agreed to adopt a number of enhancements to its practices, including posting agendas for Board Committee meetings (in addition to the existing practice of posting Board meeting agendas), enhancing the CEO's report regarding Board activities, clarifying that any stakeholder can post written documents to the Board's or a committee's attention, facilitating creation of a Consumer Liaison Group and creating a designated point of contact for that group, providing more information to consumer representatives through a structure similar to that used for state regulators, and inviting consumer representatives to meet with the Board. ISO-NE also proposed a revised mission statement to the Commission.⁹⁴ These enhancements build upon a solid framework of existing practices (described at pages 99-107 in the Compliance Filing), which meet the Commission's four stated goals for transparency and responsiveness.

As ISO-NE noted in its Compliance Filing, the most heavily discussed topic at the RTO Governance and Responsiveness Working Group was the mission statement, and two versions were developed.⁹⁵ Both were presented to the NEPOOL Participants Committee for a vote. ISO-NE's proposal garnered approximately 80% of the vote and was presented to the Commission in the Compliance Filing. The alternative received less than 60% of the vote -- an insufficient threshold to be deemed supported by NEPOOL.⁹⁶

⁹³ Compliance Filing at 8, 107.

⁹⁴ *Id.* at 85.

⁹⁵ *Id.* at 116.

⁹⁶ *Id.*

Given the amount of debate regarding the mission statement, it is not surprising that most of the comments regarding the Compliance Filing come from the proponents of the alternative. Below, ISO-NE addresses the specific comments, including those relating to the alternative proposal's "just and reasonable" and "lowest reasonable cost" components. ISO-NE also addresses the few comments that were received on other topics.

1. Mission Statement

In Order No. 719, the Commission obligated each ISO/RTO to "post on its web site a mission statement or organizational charter," and encouraged "each RTO and ISO to include in its mission statement, among other things, the organization's purpose, guiding principles, and commitment to responsiveness to customers and other stakeholders, and ultimately to the consumers who benefit from and pay for electricity services."⁹⁷ The mission statement or organizational charter "may include additional information, such as elements from the RTO or ISO governing documents."⁹⁸

The Compliance Filing explained that ISO-NE's current objectives are set forth, in substantially identical form, in the Restated NEPOOL Agreement, the Tariff and the Participants Agreement, and are posted on ISO-NE's website.⁹⁹ The Compliance Filing noted that these objectives resulted from the negotiations to amend the regional arrangements to permit ISO-NE to assume status as an RTO.¹⁰⁰

Through the proposed revisions, the Compliance Filing attempted to address stakeholder concerns while leaving intact the balance struck in the aforementioned negotiations. The new

⁹⁷ Order No. 719 at P 556.

⁹⁸ *Id.*

⁹⁹ Compliance Filing at 105.

¹⁰⁰ *Id.*

language commits ISO-NE to strive to be cost-effective, and ISO-NE also commits to provide quantitative and qualitative information that will allow all stakeholders to evaluate the implications of ISO-NE's major initiatives. Additionally, the objectives have been recast as a "mission," and ISO-NE agreed to delete the provision that precluded an independent cause of action based thereon.

ISO-NE's proposed changes were supported by most stakeholders, but some felt that the changes did not go far enough and proposed an alternative mission statement. During the stakeholder process, the alternative version received support from representatives of four New England states, but failed to win NEPOOL's support and was opposed by two other states. Specifically, at its meeting on April 3, 2009, the Participants Committee, which must approve circulation of an amendment to the Participants Agreement with a 70% vote, approved circulation of ISO-NE's version with a vote of approximately 80%.¹⁰¹ The alternative mission statement failed, with a vote of 57%.¹⁰²

The primary differences between ISO-NE's version and the alternative are the use of the terms "just and reasonable" and "lowest reasonable cost" in the alternative version, as opposed to ISO-NE's use of the term "cost-effective." The comments on the mission statement largely involve these concepts, and are addressed below.

¹⁰¹ The vote tabulation in favor of the ISO-NE version of the mission statements that passed was as follows: Generation sector – 17.16%; Transmission sector – 11.44%; Supplier sector – 17.16%; Alternative Resources sector – 14.18%; Publicly Owned Entity – 17.16%; and End User – 3.43%.

¹⁰² The vote tabulation in favor of the alternative mission statements was as follows: Generation sector – 0%; Transmission sector – 8.58%; Supplier sector – 3.12%; Alternative Resources sector – 12.67%; Publicly Owned Entity sector – 17.16%; and End User sector – 15.84%.

a. The “Just and Reasonable” Component of the Alternative Mission Statement Refers to a Legal Standard of Which ISO-NE Is Not the Final Arbiter

As discussed in the Compliance Filing, ISO-NE did not support the inclusion of the “just and reasonable” concept in the mission statement because it views determination of justness and reasonableness as the Commission’s role.¹⁰³ A number of commenters, including the Consumer Demand Response Initiative (“CDRI”), argued that ISO-NE should include a commitment to provide services at just and reasonable rates in the mission statement.¹⁰⁴

ISO-NE objects to the addition of the words “just and reasonable” to the mission statement because they represent a legal standard of which ISO is not the final arbiter. In its filings with the Commission, ISO-NE describes what it believes to be just and reasonable rates, terms, and conditions; however, the purpose of the filing is to present the issues to the Commission for its determination. ISO-NE can advocate, but is not in a position to guarantee – in a mission statement or otherwise – that an ISO Tariff change is just and reasonable, since only the Commission can rule definitively on that issue.

This filing practice is not a “parody,” as the CDRI Comments argue, because ISO-NE does not include the words “just and reasonable” in its mission statement.¹⁰⁵ CDRI further argues that ISO-NE’s failure to adopt the standard in its mission statement is a “significant threat to the public interest.”¹⁰⁶ This statement is, on its face, hyperbolic. ISO-NE has no “different

¹⁰³ Compliance Filing at 119.

¹⁰⁴ The Consumer Demand Response Initiative states, “[t]hat ISO believes this objective is ‘inapposite’ to its intentions and purpose, [sic] is a significant threat to the public interest as defined under the Federal Power Act.” CDRI Comments at 6. This statement misrepresents the Compliance Filing. ISO-NE did not state that the just and reasonable standard is inapposite to its “intentions and purpose”; it merely stated that the standard is “inapposite” (*i.e.*, not pertinent).

¹⁰⁵ CDRI Comments 14.

¹⁰⁶ *Id.* at 6.

agenda” or intent to use its resources “for the broader purpose of regulating the economy generally,” as CDRI alleges.¹⁰⁷ Rather, ISO-NE’s mission statement, as contained in its Compliance Filing, is ISO-NE’s stakeholder-approved “agenda.”

b. The “Lowest Reasonable Cost” Component of the Alternative Mission Statement Reflects a Misunderstanding of ISO-NE’s Role

Comments submitted by representatives of Maine,¹⁰⁸ Connecticut¹⁰⁹ and Vermont,¹¹⁰ as well as the NEPOOL Industrial Customer Coalition, specifically supported the reference to “lowest reasonable cost” in the alternative proposal. The Compliance Filing articulated ISO-NE’s rationale for excluding this concept from the mission statement. Specifically, ISO-NE expressed its concern that the motivation for the inclusion of this language is the desire to minimize transmission costs and to require ISO-NE to identify the “lowest reasonable cost” alternative that meets the identified system need. While these goals are worthwhile, ISO-NE is concerned that this attribution of responsibility to ISO-NE reflects a misunderstanding of the ISO Tariff and ISO-NE’s role in the region. As the Compliance Filing explained, the ISO Tariff gives ISO-NE responsibility only to plan the transmission system and require transmission construction if a reliability need exists.¹¹¹ If the market meets the identified need, through generation, demand response or otherwise, the transmission need determination will be withdrawn. *Again, the ISO Tariff does not grant ISO-NE the authority to determine the relative*

¹⁰⁷ *Id.* at 11 & 12-13 (citations omitted).

¹⁰⁸ Notice of Intervention of the Maine Public Utilities Commission and Comments of the Maine Public Utilities Commission and the Industrial Energy Consumers Group on ISO New England’s Order No. 719 Compliance Filing at 8-10 (May 26, 2009) (“MEPUC Comments”).

¹⁰⁹ CT DPUC Comments at 29-33.

¹¹⁰ Amended Motion To Intervene of The Vermont Department of Public Service, Motion To Intervene Out of Time of The Vermont Public Service Board and Comments at 3-5 (May 28, 2009) (“Vermont Agencies Comments”).

¹¹¹ Compliance Filing at 118.

costs and benefits of alternatives to transmission and advocate for the alternative with the “lowest reasonable cost.”

ISO-NE’s concern is validated by the comments. For example, the Maine Public Utilities Commission (“MEPUC”) states that ISO-NE should be required to identify demand response solutions if they are less expensive than transmission.¹¹² Again, identification of alternatives is not identified in the ISO Tariff as ISO-NE’s responsibility, and its implementation would require a complex change in ISO-NE’s responsibilities, essentially converting it into the body responsible for integrated resource planning with the decisional authority over regional resource needs, procurements, and decisions. Furthermore, imposing the “lowest reasonable cost” requirements on ISO-NE could thwart state decisions on important policy issues, such as renewable energy resources and demand response. If, for example, a state imposes a renewable resource standard that dictates development of these resources rather than a less-expensive gas-fired generation solution, ISO-NE, using the lowest reasonable cost standard, should reject the renewable resources that meet the state’s goals. This is simply a decision ISO-NE does not believe it should make and one that the states advocating for the alternative language should equally reject.

ISO-NE’s position finds support in the comments of the Massachusetts Department of Public Utilities (“MA DPU”). The MA DPU notes its “strong concerns” with proposals that would give ISO-NE responsibility for making these types of policy decisions, noting that such a grant of authority would “fundamentally and inappropriately change the role of ISO-NE.... ISO-NE must remain neutral with respect to market outcomes.”¹¹³ The MA DPU concludes that

¹¹² MEPUC Comments at 8.

¹¹³ MA DPU Comments at 10.

decisions to balance transmission costs, reliability, market structures and other matters related to the public interest are policy decisions that should remain the responsibility of the federal and state commissions.¹¹⁴

c. ISO-NE Will Work with Stakeholders to Develop Procedures to Implement Economic Analysis Aspect of Mission Statement

Public Systems also commented on the economic analysis feature of the revised mission statement. Specifically, Public Systems states its belief that the effectiveness of ISO-NE's commitment to provide quantitative and qualitative information on major initiatives requires a definition of "major" initiative, and will depend on the quality of the information provided. Public Systems wants the Commission to require ISO-NE to provide a written explanation of the bases for any determination that a proposed market rule change is "non-major."¹¹⁵

ISO-NE agrees that the language in the mission statement is nonspecific and, accordingly, is in the process of developing procedures to implement the new language. ISO-NE intends to work with stakeholders on this development effort, with the intention of reaching consensus on both the concepts of "major" and the information to be provided. Therefore, ISO-NE does not believe that it is necessary for the Commission to take any action at this point.

2. Executive Compensation Is Appropriately Influenced by a Broad Customer Survey

In Order No. 719, the Commission stated that it would "encourage, but not require, each RTO and ISO to ensure that its management programs, including executive compensation, give appropriate weight to responsiveness to customers and other stakeholders."¹¹⁶ In its Compliance Filing, ISO-NE noted that the compensation of all employees is tied to customer satisfaction

¹¹⁴ *Id.*

¹¹⁵ Public Systems Protest at 7-8.

¹¹⁶ Order No. 719 at P 556.

through an annual bonus program that uses as a metric the results on the annual customer survey.¹¹⁷

Although stakeholders were encouraged to raise topics in the RTO Governance and Working Group process, this topic was not included in stakeholders' list of issues to be discussed.¹¹⁸ Nonetheless, MEPUC argues that the Commission should require that cost concerns be added to the customer survey and the incentive payment mechanism.¹¹⁹ MEPUC also argues that state regulators and consumer advocates should be "given" the survey.¹²⁰

Regarding the last point, ISO-NE interprets MEPUC's comment to mean that MEPUC wants the states to respond to the survey as do market participants.¹²¹ In fact, ISO-NE has approached NECPUC to secure state participation (as recently as last year) but the states have declined. ISO-NE will revisit this issue with stakeholders before the next survey is issued.

Regarding the content of the survey questions, the questions are purposely kept at a high level to elicit wide-ranging comments. They include, for example, a question about ISO-NE's performance in managing congestion and operation of the bulk power system, and an inquiry about levels of satisfaction with stakeholder input and consensus building in developing regional

¹¹⁷ Compliance Filing at 107.

¹¹⁸ Central Maine Power notes:

The [MEPUC] also recommends that the compensation of ISO-NE executives be linked to their performance in fulfilling the cost related provisions of its mission statement. This proposal may be an additional worthwhile reform, but to the best of CMP's knowledge it was not the subject of any significant stakeholder discussions at ISO-NE. CMP accordingly recommends that this issue be first vetted through an appropriate stakeholder process before Commission consideration of it.

Central Maine Power Comments at 2 n.2.

¹¹⁹ MEPUC Comments at 14.

¹²⁰ *Id.*

¹²¹ This is the only interpretation that makes sense, as the survey results are already shared with NECPUC annually and, at the request of the stakeholder working group formed to consider responsiveness issues, were posted on the working group's website.

solutions. Each of these questions has elicited stakeholder comments about cost concerns in the past. However, ISO-NE will raise this issue with its survey firm to ensure that the survey provides a mechanism for stakeholders to raise cost concerns.

Last, as indicated above, ISO-NE has a bonus program that ties awards to a number of corporate goals, including customer satisfaction. The Board determines the parameters of the program, and the goals to be measured, on an annual basis.

3. The Compliance Filing Increases ISO-NE Board Transparency

As outlined in the Compliance Filing, the ISO-NE Board employs a number of means to foster transparency and responsiveness. Currently, the Board has four formal meetings a year with stakeholders – two each with NEPOOL members and NECPUC. Furthermore, ISO-NE Board members attend NEPOOL meeting, the NECPUC annual symposium and members hold individual meetings with state regulators. The Participants Agreement also requires posting the agendas of ISO-NE Board meetings with a link for stakeholders to post information, and requires the CEO to report on certain ISO-NE Board activities.

The Compliance Filing includes a number of enhancements to increase ISO-NE Board transparency, including a requirement to post the agendas of Board Committee meetings, in addition to ISO-NE Board meetings, clarify that any stakeholder can submit written materials on any topic, and include more detail in the CEO's reports of Board and Committee actions in the monthly reports to the Participants Committee.

In their comments, MEPUC and the Vermont Agencies reiterated their support for open meetings of the Board, publication of Board minutes, and written submission by management to

the Board or Committee regarding any position differing from that recommended by management if supported by a majority of one sector or any state regulatory commission.¹²²

Regarding the proposals to require open Board meetings and publication of minutes, as indicated in the Compliance Filing, ISO-NE believes that these decisions are the prerogative of a private corporation, which is the vehicle specifically chosen by stakeholders for ISO-NE when it was formed in 1997. Again, while ISO-NE recognizes that the fulfillment of its purpose has an indisputable impact on the public, it is a private corporation, not a government agency or a regulator.

Regarding the proposal to require written management summaries of minority positions, ISO-NE has informed stakeholders that the provision of information to the Board on minority positions is part of management's obligation to the Board and is an existing business practice. Moreover, stakeholders are free to reinforce their positions in their own words by posting written statements or in discussions at one of the many meetings with the Board in the context of the Regional System Plan, director nominating process or regularly scheduled meetings with NEPOOL and state regulators.

4. The Consumer Liaison Group Will Be Open and Transparent, and Stakeholders Generally Did Not Support Creating a Regional Consumer Advocate

In the Compliance Filing, ISO-NE committed to establish a point of contact for the newly-formed Consumer Liaison Group, as well as facilitate information flow to and from the

¹²² MEPUC Comments at 11; Vermont Agencies Comments at 6-7. The Vermont Agencies also cite ISO-NE's status as a "public utility" under the FPA, but this is hardly determinative as many publicly and privately held entities are also public utilities and few of them open their Board meetings to the public. As support for its position, MEPUC alleges that "in discussions with ISO-NE about the need for a more direct link with the Board, it became clear that [MEPUC]'s and NECPUC's position regarding double recovery of reactive service payments (in Docket Nos. EL07-38 and ER07-397) was never even brought to the Board for consideration in developing ISO-NE's position that there is no double recovery." MEPUC Comments (continued...)

group. In their comments on the Compliance Filing, Public Systems expressed its belief that ISO-NE should post on its website any documents, reports or other written information that is shared with NECPUC, the consumer advocates, or the Consumer Liaison Group.¹²³ As stated in the Compliance Filing, all meetings of the Consumer Liaison Group will be open to stakeholders, and all materials will be publicly available.¹²⁴ ISO-NE has committed to post these comments on its website. Regarding materials provided to other groups, including NECPUC, ISO-NE does not think that a change in long-standing practices is warranted.

MEPUC believes that a regional consumer advocate, rather than the Consumer Liaison Group, should be appointed for New England. MEPUC argues that expert representation of consumers and regulators is required for full and productive participation in the ISO-NE stakeholder process.¹²⁵ This does not account for the New England States Committee on Electricity, which is intended to provide regulators with “expert representation,” at least on certain issues. Moreover, while a regional consumer advocate may be desirable, there was a distinct lack of support for it among the stakeholders who would ultimately foot the bill, at least as measured by the reaction of the RTO Governance and Responsiveness Working Group. ISO-NE responded by offering to facilitate the activities of the Consumer Liaison Group. Should this Group prove not to be sufficient, ISO-NE urges MEPUC to engage the stakeholders in additional discussion.

(...continued)

at 11. This is simply not true. In fact, the Markets Committee of the Board was made aware of this issue on a number of occasions.

¹²³ Public Systems Protest at 15.

¹²⁴ Compliance Filing at 109.

¹²⁵ MEPUC Comments at 13 (emphasis added).

III. CONCLUSION

For the foregoing reasons, ISO-NE respectfully requests that the Commission grant the motion for leave to answer, accept ISO-NE's position as expressed herein, and unconditionally accept the Compliance Filing as submitted April 28, 2009.

Respectfully submitted,

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Dated: June 15, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 15th day of June, 2009.

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