170 FERC ¶ 61,099
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

ISO New England Inc. — Docket No. ER20-645-000
New England Power Pool Participants Committee

ORDER REJECTING TARIFF REVISIONS

(Issued February 14, 2020)

1. On December 19, 2019, pursuant to section 205 of the Federal Power Act (FPA),[1] ISO New England Inc. (ISO-NE) and the New England Power Pool (NEPOOL) Participants Committee (together, Filing Parties) submitted proposed revisions to the ISO-NE Transmission, Markets and Services Tariff (Tariff) to sunset the mechanism in the Forward Capacity Market rules that allows ISO-NE to retain a resource for fuel security reasons (Fuel Security Reliability Retention Mechanism) one year earlier than currently specified in the Tariff,[2] so resources cannot be retained for fuel security beyond May 31, 2024. As discussed below, we reject the filing without prejudice.

I. Background

2. On May 1, 2018, ISO-NE filed a petition for waiver of certain Tariff provisions to allow ISO-NE to retain two retiring generating units owned by Exelon Generation Company, LLC, Mystic Units 8 and 9 (Mystic 8 and 9), for the 2022-2023 and 2023-2024 Capacity Commitment Periods[3] to maintain fuel security.[4] In support of its waiver request, ISO-NE pointed to a series of studies that showed a high level of operational risk, under a variety of scenarios, associated with the retirement of Mystic 8 and 9 and the

[1] 16 U.S.C. § 824d (2018).

[2] *See* ISO-NE Tariff, § III.13.2.5.2.5A.

[3] Capitalized terms not defined herein are used as they are defined in the Tariff. *See id.* § I.2 Rules of Construction; Definitions.

[4] ISO-NE, Petition for Waiver, Docket No. ER18-1509-000 (filed May 2, 2018) (Petition for Waiver).

Everett Marine Terminal (Everett).[5] These studies indicated that the loss of both Mystic 8 and 9 and Everett[6] would lead to the depletion of operating reserves and load shedding.

3. On July 2, 2018, the Commission rejected ISO-NE's petition for waiver and preliminarily found that the Tariff may be unjust and unreasonable because it fails to address specific regional fuel security concerns identified in the studies presented by ISO-NE.[7] Pursuant to its authority under FPA section 206, the Commission directed ISO-NE to either: (1) submit by August 31, 2018 interim Tariff revisions that provide for the filing of a short-term, cost-of-service agreement to address demonstrated fuel security concerns and to submit by July 1, 2019 permanent Tariff revisions reflecting improvements to its market design to better address regional fuel security concerns (Permanent Market Solution); or (2) by August 31, 2018 show cause as to why the Tariff remains just and reasonable absent those filings.[8]

4. On December 3, 2018, the Commission accepted ISO-NE's Fuel Security Reliability Retention Mechanism, which allows ISO-NE to retain resources for fuel security that seek to retire in the thirteenth, fourteenth, or fifteenth Forward Capacity Auctions (FCAs 13, 14, or 15), corresponding to the Capacity Commitment Periods of 2022-2023, 2023-2024, and 2024-2025, respectively.[9] In the December 3 Order, the Commission stated that it anticipated that the Permanent Market Solution would obviate the need for the Fuel Security Reliability Retention Mechanism and required that ISO-NE's Permanent Market Solution filing remove the Fuel Security Reliability Retention Mechanism from the Tariff, if accepted.[10] On March 18, 2019, the Commission granted an extension of the July 1, 2019 deadline for ISO-NE to submit its proposed Permanent Market Solution to

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[5] *Id.* at 3 n.6. Everett is also known as the Distrigas Liquefied Natural Gas (LNG) terminal.

[6] The only fuel source for Mystic 8 and 9 is natural gas purchased from Everett, which is located adjacent to the Mystic Generation Station.

[7] *ISO New England Inc.*, 164 FERC ¶ 61,003, at P 49 (2018) (July 2 Order).

[8] *Id.* P 55.

[9] *ISO New England Inc.*, 165 FERC ¶ 61,202 (2018) (December 3 Order).

[10] *Id.* P 97 ("ISO-NE's [Permanent Market Solution] filing must contain language that will remove from its tariff the [Fuel Security Reliability Retention Mechanism] short-term solution, if accepted").

October 15, 2019.[11] On August 30, 2019, the Commission granted a second extension of time, extending the filing deadline to April 15, 2020.[12]

II. **Filing**

5. Filing Parties contend that sunsetting the Fuel Security Reliability Retention Mechanism a year early is just and reasonable for two reasons. First, they state that it prevents the potential overlap of the Fuel Security Reliability Retention Mechanism with the Permanent Market Solution, which ISO-NE intends to implement by the start of the FCA 15 Capacity Commitment Period in June 2024. Second, they assert that it helps achieve the Commission's and ISO-NE's objective of limiting the unnecessary use of out-of-market actions that can adversely impact the integrity of the wholesale markets.[13]

6. Filing Parties explain that, at the time ISO-NE filed the Fuel Security Reliability Retention Mechanism in 2018, ISO-NE was unable to predict the design of the Permanent Market Solution or how long it would take to develop and implement. Thus, they contend that it was prudent to initially propose a three-year term for the Fuel Security Reliability Retention Mechanism. Filing Parties state that, since then, ISO-NE has made significant progress toward developing the Permanent Market Solution[14] and intends to file it by April 15, 2020, for implementation by June 1, 2024. Filing Parties state that these developments obviate the need to maintain the Fuel Security Reliability Retention Mechanism for the third year (i.e., for FCA 15).[15]

7. Moreover, Filing Parties contend that, even if ISO-NE cannot implement the Permanent Market Solution by June 1, 2024, ISO-NE could use other temporary options to resolve any reliability needs that cannot be resolved through the available market

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[11] Notice of Extension of Time, Docket No. EL18-182-000 (Mar. 18, 2019).

[12] Notice of Extension of Time, Docket No. EL18-182-000 (Aug. 30, 2019).

[13] Transmittal at 6-7 (citing *Grid Reliability and Resilience Pricing, Grid Resilience in Regional Transmission Organizations and Independent System Operators, Order Terminating Rulemaking Proceeding, Initiating New Proceeding, and Establishing Additional Procedures*, 162 FERC ¶ 61,012 at P 11 & n.14 (2018); July 2 Order, 164 FERC ¶ 61,003 at P 53).

[14] Filing Parties state that the Permanent Market Solution will propose new products that procure energy call options to satisfy three categories of operational need, as detailed in pages 19-30 of ISO-NE's presentation at the Commission's July 15, 2019 technical conference. *Id.* at 6.

[15] *Id.*

constructs. Specifically, Filing Parties state that the Inventoried Energy Program,[16] operational actions,[17] and the gap request for proposals (RFP) provisions of the Tariff[18] can address any reliability needs that might emerge. Filing Parties state that relying upon a gap RFP is preferable to the Fuel Security Reliability Retention Mechanism, which must be utilized well before ISO-NE would learn of any delay in the implementation of the Permanent Market Solution.[19]

8. Filing Parties propose to effectuate the sunset of the Fuel Security Reliability Retention Mechanism for FCA 15 through revisions to Tariff section III.13.2.5.2.5A and Appendix L to Market Rule 1.[20] Filing Parties request a February 17, 2020 effective date.[21]

III. Notice of Filing and Responsive Pleadings

9. Notice of the filing was published in the Federal Register, 84 Fed. Reg. 71,403 (2019), with interventions and protests due on or before January 9, 2020. Calpine Corporation; Dominion Energy Services, Inc.; Eversource Energy Service Company; Exelon Corporation (Exelon); FirstLight Power Inc.; Massachusetts Municipal Wholesale Electric Company; National Grid; New England States Committee on Electricity;

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[16] *Id.* at 7 (citing Tariff, Market Rule 1, Appendix K, Inventoried Energy Program for 2023-2024 and 2024-2025 Winter Seasons). ISO-NE states that, in its forthcoming Permanent Market Solution filing, it intends to propose to sunset the Inventoried Energy Program for the second winter it is in place (i.e., the winter of 2024-2025), if the Commission accepts a June 2024 implementation date for the Permanent Market Solution. *Id.* at 7 n.23.

[17] *Id.* at 7 (citing ISO-NE, *ISO Operating Procedures*, https://www.iso-ne.com/participate/rules-procedures/operating-procedures).

[18] *Id.* at 8 (citing Tariff § III.11). Filing Parties explain that, under this provision, ISO-NE may solicit "load response and other supplemental supply to maintain near-term reliability." ISO-NE must first consult with stakeholders, receive approval from the Commission prior to issuing the RFPs, and explain why market incentives were unable to solicit a market response in the absence of the gap RFP. Filing Parties state that bidders that are awarded contracts under the RFP must file the contracts with the Commission for approval of the rates. *Id.* at 8 n.25.

[19] *Id.* at 7-8.

[20] *Id.* at 8.

[21] *Id.* at 2.

New Hampshire Electric Cooperative, Inc.; and NRG Power Marketing LLC filed timely motions to intervene. Exelon filed a protest. On January 24, 2020, ISO-NE and NEPOOL filed separate answers to Exelon's protest.

10. Exelon argues that sunsetting the Fuel Security Reliability Retention Mechanism early is premature and would unnecessarily limit ISO-NE's options for addressing fuel security needs when it is not clear that the Permanent Market Solution will be in place by FCA 15. Exelon also contends that Filing Parties' reliance on other Tariff mechanisms does not fully address the fuel security problem that the Commission directed ISO-NE to solve. Specifically, Exelon explains that the gap RFP option was already in the Tariff when the Commission found the Tariff unjust and unreasonable for failure to include fuel security measures and argues that the Inventoried Energy Program is complementary to and does not replace the need for the Fuel Security Reliability Retention Mechanism. Thus, Exelon contends that it is not just and reasonable to remove a Commission-accepted Tariff mechanism to address fuel security without an adequate substitute in place to ensure reliability.[22]

11. In its answer, ISO-NE states that Order No. 693 provides it discretion to determine how best to comply with the North American Electric Reliability Corporation reliability standards and that sunsetting the Fuel Security Reliability Retention Mechanism prior to FCA 15 will allow ISO-NE to meet its reliability obligations in a more balanced, cost-effective manner.[23] ISO-NE also argues that retaining the Fuel Security Reliability Retention Mechanism for FCA 15 increases uncertainty and will interfere with and undermine the effectiveness of the Permanent Market Solution.[24] More specifically, ISO-NE warns that retaining a resource for FCA 15 could undermine the efficacy of the Permanent Market Solution because it would mute the energy and reserve price signals associated with ISO-NE's intended Permanent Market Solution design. ISO-NE contends that the instant filing would place a singular focus on ensuring that a market mechanism is available by June 2024 to support the region's fuel security, which will provide market participants with greater certainty that, come June 2024, they will not be competing with a resource that has received an out-of-market contract to provide fuel security services that all others must provide through a market mechanism.[25]

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[22] Exelon Protest at 7-8.

[23] ISO-NE Answer at 4-5 (citing *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 118 FERC ¶ 61,218, at P 30 n.35, *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007)).

[24] *Id.* at 6-10.

[25] *Id.* at 7-10.

12. ISO-NE adds that Commission precedent supports acceptance of the instant filing, even though ISO-NE will not file the Permanent Market Solution until April 2020. Specifically, ISO-NE points to the Commission acceptance of the settlement agreement between ISO-NE and New England stakeholders that terminated reliability-must-run (RMR) agreements to address capacity needs starting June 1, 2010, the planned start of the Forward Capacity Market, even though the Forward Capacity Market rules had not yet been filed with the Commission.[26] ISO-NE states that the general circumstances presented in the Forward Capacity Market proceeding is similar to the current fuel security proceedings: the Commission had found the wholesale markets to be unjust and unreasonable and criticized the region's reliance on RMR agreements but accepted them until ISO-NE could implement a market solution.[27] ISO-NE states that the Commission agreed to the termination of RMR agreements despite the fact that the actual market solution would not be filed for another eight months thereafter.[28] Based on this precedent, ISO-NE contends that the Commission is not prohibited from accepting the instant filing simply because the Permanent Market Solution has not been filed.

13. NEPOOL disputes Exelon's argument that the Filing Parties have not sufficiently justified their proposal. NEPOOL points to the initial analysis supporting ISO-NE's waiver request to retain Mystic 8 and 9, which found that the units were only needed through May 2024 (i.e., through FCA 14), and not May 2025 (i.e., through FCA 15).[29] NEPOOL notes that its members overwhelming prefer to procure reliability services through competitive solutions and limit non-market mechanisms where feasible, as reflected by NEPOOL's unanimous support of the instant filing, but for Exelon's abstention.[30]

14. NEPOOL argues that the instant filing is also consistent with the Commission's guidance that the Fuel Security Reliability Retention Mechanism only serve as an interim, stop-gap measure to address fuel security concerns while the region works to develop and implement longer-term, market-based solutions.[31] NEPOOL contends that

[26] *Id.* at 10 (citing *Devon* Power LLC, 115 FERC ¶ 61,340, at PP 32, 166 (2006) (FCM Order)).

[27] *Id.* (citing FCM Order, 115 FERC ¶ 61,340 at PP 7, 166).

[28] *Id.* at 10-11 (citing FCM Order, 115 FERC ¶ 61,340 at PP 7, 166).

[29] NEPOOL Answer at 3-4.

[30] *Id.* at 1, 4.

[31] *Id.* at 5 (citing December 3 Order, 165 FERC ¶ 61,202 at P 96; July 2 Order, 164 FERC ¶ 61,003 at P 55).

the instant filing is therefore just and reasonable because the region has made significant progress toward developing its Permanent Market Solution.

IV. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept ISO-NE's and NEPOOL's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

17. We reject Filing Parties' proposal without prejudice. We find that the instant filing is unjust and unreasonable because it would prematurely terminate the Fuel Security Reliability Retention Mechanism prior to ISO-NE submitting its Permanent Market Solution to the Commission for review. While the Commission aims to limit the unnecessary use of out-of-market actions, the Permanent Market Solution is not yet before us. Therefore, we cannot ensure that the Permanent Market Solution will be implemented on or before the sunset date proposed in the instant filing.

18. We disagree with Filing Parties' arguments that the instant filing is just and reasonable because it is necessary to implement Filing Parties' and the Commission's stated preference for a competitive fuel security solution, ensure the efficacy of the Permanent Market Solution's intended price signals, or to provide market participants with greater certainty.[32] These arguments ignore that the Commission directed ISO-NE to file interim Tariff provisions because it found that the Tariff may be unjust and unreasonable because it failed to address specific regional fuel security concerns identified in the studies presented by ISO-NE.[33] As the Commission explained in the December 3 Order accepting the Fuel Security Reliability Retention Mechanism, "this interim solution is solely a stop-gap measure to address fuel security challenges facing

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[32] *See* Transmittal at 6-7; ISO-NE Answer at 6-10; NEPOOL Answer at 4-6.

[33] July 2 Order, 164 FERC ¶ 61,003 at PP 49, 55; December 3 Order, 165 FERC ¶ 61,202 at P 3.

the region while ISO-NE develops its long-term market-based approach."[34] Given the Commission's previous finding that the Tariff may be unjust and unreasonable without provisions that address regional fuel security concerns, we find it would be unjust and unreasonable to sunset the Fuel Security Reliability Retention Mechanism before ISO-NE implements the Permanent Market Solution.

19. We anticipate that ISO-NE will address the transition from the Fuel Security Reliability Retention Mechanism to the Permanent Market Solution in its proposed Permanent Market Solution, due on April 15, 2020. As the Commission specified in the December 3 Order, ISO-NE must propose to remove the Fuel Security Reliability Mechanism from its Tariff if the Permanent Market Solution is accepted.[35]

20. We disagree with Filing Parties' claim that the Inventoried Energy Program, operating procedures, and/or the gap RFP provisions in the Tariff would be sufficient to resolve any fuel security issues that may arise due to a gap in timing between the acceptance of the instant filing and a possible delay in ISO-NE's implementation of the Permanent Market Solution by the start of the FCA 15 Capacity Commitment Period in June 2024. We note that the operating procedures and the gap RFP provisions were in place at the time the Commission determined in the July 2 Order that the Tariff may be unjust and unreasonable without provisions that address regional fuel security concerns. We continue to find that these mechanisms do not fully address our concerns with sunsetting the Fuel Security Reliability Retention Mechanism prior to implementation of the Permanent Market Solution. As for the Inventoried Energy Program, ISO-NE has stated that the Inventoried Energy Program is designed to serve alongside, rather than in place of, the Fuel Security Reliability Retention Mechanism.[36] Based upon this representation, we find that the Inventoried Energy Program does not on its own resolve fuel security issues that may arise in the possible gap in timing between the early sunset of the Fuel Security Reliability Retention Mechanism proposed in this filing and the implementation of the Permanent Market Solution.

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[34] December 3 Order, 165 FERC ¶ 61,202 at P 96.

[35] *Id.* P 97.

[36] ISO-NE, Answer, Docket No. ER19-1428-000, at 28 (filed Apr. 30, 2019) ("The ISO has never asserted that the inventoried energy program would fully obviate the ISO's potential need to retain resources for fuel security in the near term while the longer-term market-based approach is developed, as articulated in the ISO's original filing. The Commission only recently approved the provisions that allow the ISO this authority, and the inventoried energy program was designed to serve alongside, rather than in place of, this backstop").

21. We disagree with NEPOOL's argument that the proposed early sunset of the Fuel Security Reliability Retention Mechanism is sufficiently supported by the initial analysis provided in ISO-NE's waiver request that showed that Mystic 8 and 9 were only needed through May 2024, not May 2025. On the contrary, the OFSA demonstrated that there would be load shedding and depletion of operating reserves during the winter 2024-2025 if Mystic 8 and 9 and Everett retired.[37] In addition, ISO-NE will perform the Fuel Security Reliability Review prior to FCA 15, which will then determine whether there is still a need to retain Mystic 8 and 9, or any other resource, for the Capacity Commitment Period of 2024-2025. If no resources are needed for fuel security in the FCA 15 Capacity Commitment Period, none will be retained.

22. Although ISO-NE provided the Mystic Retirement Studies, which were limited to the periods of 2022-2023 and 2023-2024 in its waiver request filing, the Commission found in the July 2 Order that the Tariff may not be just and reasonable without provisions that address regional fuel security concerns beyond that particular time period. Furthermore, in its proposed Fuel Security Reliability Retention Mechanism, ISO-NE provided, and the Commission accepted, Tariff language sunsetting the mechanism after FCA 15.[38] Accordingly, we do not find ISO-NE's initial analysis in the Mystic Retirement Studies dispositive here. Moreover, as noted above, the OFSA demonstrated that there would be load shedding and depletion of operating reserves in winter 2024-2025 if Mystic 8 and 9 and Everett retired.

23. We disagree with ISO-NE's argument that the precedent established in the creation of the Forward Capacity Market supports sunsetting the Fuel Security Reliability Retention Mechanism prior to the Commission's acceptance of the Permanent Market Solution. While ISO-NE is correct that it did not file the tariff provisions for the Forward Capacity Market design with the Commission until eight months after the Commission issued the FCM Order accepting the settlement phasing out RMR agreements in ISO-NE,[39] ISO-NE fails to acknowledge that the settlement agreement specified the Forward Capacity Market design, its implementation date, and the transition period preceding its implementation in great detail.[40] No such detail regarding the Permanent Market Solution has been provided here. Furthermore, in the FCM Order, the Commission accepted the termination of the RMR agreements coincident with the specified

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[37] Petition for Waiver, Testimony of Peter T. Brandien, Exhibit ISO-1, at 26.

[38] December 3 Order, 165 FERC ¶ 61,202 at P 96.

[39] *See* ISO New England Inc., Revisions to Market Rules Implementing the Forward Capacity Market Settlement Agreement, Docket Nos. ER07-546-000 and ER07-547-000 (filed Feb. 15, 2007).

[40] *See* FCM Order, 115 FERC ¶ 61,340 at PP 15-37.

implementation date of the Forward Capacity Market (i.e., June 1, 2010). In doing so, the Commission chose not to require the termination of existing RMR agreements prior to the full implementation of the Forward Capacity Market.[41] ISO-NE's proposal here would do the opposite: sunsetting the Fuel Security Reliability Retention Mechanism on a fixed date not explicitly tied to the implementation of the Permanent Market Solution.

<u>The Commission orders</u>:

Filing Parties' proposed Tariff revisions are hereby rejected, without prejudice, as discussed in the body of this order.

By the Commission. Commissioner Glick is dissenting with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[41] *Id.* at P 166 ("The Commission will not require the termination of existing RMR agreements prior to the full implementation of the FCM and will not require RMR holders to reapply for new RMR agreements. The Commission has consistently accepted RMR agreements for a term that expires upon implementation of a locational capacity mechanism" (footnote omitted)).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England Inc.
New England Power Pool Participants Committee

Docket No. ER20-645-000

(Issued February 14, 2020)

GLICK, Commissioner, *dissenting*:

1. I dissent from today's order because ISO New England Inc. has met its burden to show that removing the Fuel Security Reliability Retention Mechanism (Fuel Security RMR) from its Tariff for FCA 15 is just and reasonable. Frankly, this should be an easy case. Consistent with the Commission's well-established preference for market-based approaches,[1] ISO New England seeks to remove the Fuel Security RMR to pave the way for its transition to a market-based approach to ensuring fuel security. The ISO explains that retaining the Fuel Security RMR for the fifteenth Forward Capacity Auction (FCA 15) could hinder its efforts to make that transition without doing anything to enhance reliability. That ought to be more-than-sufficient to find the filing just and reasonable.

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2. This proceeding has its roots in ISO New England's 2018 filing to waive certain portions of its Tariff so that it could retain Units 8 and 9 at Exelon Corporation's Mystic Generating Station (Mystic) to address a potential reliability issue identified in a series of fuel security studies conducted by the ISO.[2] Those studies, which were and remain highly contested, concluded that the retirement of Mystic Units 8 and 9 and—critically—the Everett LNG import facility which supplies gas to those units, could, under conservative assumptions, cause a reliability problem in the delivery years associated with the thirteenth and fourteenth Forward Capacity Auctions (FCA 13 and FCA 14, respectively).[3] The Commission rejected the waiver request and instituted a proceeding under section 206 of the Federal Power Act (FPA),[4] requiring ISO New England to

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[1] *ISO New England Inc.*, 164 FERC ¶ 61,003, at P 53 (2018) (July 2 Order) ("We reaffirm our support for market solutions as the most efficient means to provide reliable electric service to New England consumers at just and reasonable rates.").

[2] *Id.* PP 4-5.

[3] *Id.* The delivery years for FCA 13 and FCA 14 are 2022-2023 and 2023-2024.

[4] 16 U.S.C. § 824e (2018).

propose a short-term approach to addressing fuel security or explain why such an approach is unnecessary. In response, ISO New England proposed the Fuel Security RMR, which permits it to retain a resource needed for fuel security through a cost-of-service contract.[5] The ISO proposed that the Fuel Security RMR would apply to FCA 13, FCA 14, and FCA 15, sunsetting automatically thereafter. The Commission accepted the proposal, although it underscored the importance of moving to a market-based approach as rapidly as possible.[6]

3. I dissented from the Commission's decision to initiate the section 206 proceeding. ISO New England's fuel security studies did not show that, under any plausible set of assumptions, the retirement of Mystic Units 8 and 9 could lead to a reliability violation.[7] Instead, the most they suggested was that the Everett LNG import facility may be necessary to ensure reliability under certain scenarios.[8] I concluded, however, that the FPA does not give the Commission the authority to bail out a non-jurisdictional LNG import facility and that the Commission could not use its jurisdiction over Mystic to achieve that result.[9] Nevertheless, I voted to approve the Fuel Security RMR, reasoning that it was *a* just and reasonable proposal, even if it was not necessary for the ISO's Tariff to be just and reasonable in the first place.[10]

4. That brings us to today's order. Pursuant to section 205 of the FPA,[11] ISO New England has—with the unanimous support of its stakeholders[12]—proposed to remove the

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[5] *ISO New England Inc.*, 165 FERC ¶ 61,202, at P 5 (2018) (December 3 Order).

[6] *Id.* P 96.

[7] *See* July 2 Order, 164 FERC ¶ 61,003 (Glick, Comm'r, dissenting in part at 1-2); *Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267 (2018) (December 19 Order) (Glick, Comm'r, dissenting at 5-6 & n.23) (discussing evidence regarding the relative reliability contribution of Mystic versus the Everett facility).

[8] *See, e.g.*, December 19 Order, 165 FERC ¶ 61,267 (Glick, Comm'r, dissenting at 5-6 & n.23) (discussing evidence regarding the relative reliability contribution of Mystic versus the Everett facility).

[9] *Id.* (Glick, Comm'r, dissenting at 3-6).

[10] December 3 Order, 165 FERC ¶ 61,202 (Glick, Comm'r, concurring at 1-3).

[11] 16 U.S.C. § 824d.

[12] NEPOOL Answer at 4. All voting stakeholders supported to the proposal. Only Exelon abstained. *Id.*

Fuel Security RMR prior to FCA 15. ISO New England explains that it will shortly be filing with the Commission a market-based approach to addressing fuel security that it will have four years to implement before the FCA 15 delivery year (*i.e.*, 2024-2025), which would seem to provide plenty of time to tweak or revise the proposal in the event the Commission does not approve it outright.[13] The ISO also contends that retaining the Fuel Security RMR for FCA 15 could hinder its ability to successfully transition to a market-based approach to fuel security.[14]

5. In addition, ISO New England explains that the Fuel Security RMR is not needed to maintain fuel security in the FCA 15 delivery year. The studies regarding Mystic on which both ISO New England and the Commission relied to justify the Fuel Security RMR did not show any fuel security need in 2024-2025.[15] Furthermore, to the extent such a need should arise, the ISO explains that it has a variety of different options for addressing such a need over the course of the next four years.[16] Those options include, but are not limited to, the ISO's various operational procedures and programs for procuring resources on a short-term basis.[17] In addition, the ISO has the Inventoried Energy program, which was approved by operation of law last year and addresses the same underlying concerns that ISO New England and the Commission relied on to justify the Fuel Security RMR in the first place.[18] That is sufficient to satisfy ISO New England's section 205 burden.

6. As noted, I did not believe that the Fuel Security RMR was necessary in the first place. And, for all the reasons identified by ISO New England, I certainly do not believe it is needed now. Moreover, as I have observed in an analogous context, over-reliance on programs like the Fuel Security RMR, can be more than "a pair of training wheels" to use while developing new market mechanisms; they can be an excuse "to stay off the bike entirely."[19] Instead of searching for reasons to retain out-of-market mechanisms, the

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[13] ISO New England Transmittal at 2, 6; ISO-NE Answer at 8.

[14] ISO New England Transmittal at 8; ISO-NE Answer at 6-8.

[15] NEPOOL Answer at 3-4.

[16] ISO New England Transmittal at 7-8; ISO New England Answer at 3.

[17] ISO New England Transmittal at 7-8.

[18] *Id.* at 7.

[19] *Cal. Indep. Sys. Operator Corp.*, 168 FERC ¶ 61,199 (2019) (Glick, Comm'r, dissenting in part at P 10).

Commission should be encouraging ISO New England to move with all deliberate haste towards a market-based approach to fuel security.

7. Nevertheless, the Commission rejects ISO New England's proposal on the erroneous bases that the proposal is premature and that the Fuel Security RMR is still needed to address fuel security. Let's begin with the purported need for the Fuel Security RMR.[20] The only evidence on which the Commission relied in commencing the FPA section 206 investigation was ISO New England's fuel security studies.[21] In commencing that investigation and in subsequently accepting the Fuel Security RMR, the Commission expressly deferred to the ISO's assessment of the potential risk to reliability.[22] Now, when ISO New England tells us that that reliability risk has subsided for the FCA 15 delivery year, the Commission refuses to extend the same deference. Accordingly, the Commission lacks a reasoned basis for rejecting ISO New England's filing, especially in light of the bevy of different options that ISO New England has identified to address any unanticipated fuel security concern that may arise between now and the FCA 15 delivery year.

8. In addition, the Commission never actually made a finding that ISO New England's pre-existing Tariff was unjust and unreasonable. The most the Commission has ever held was that the Tariff *may* be unjust and unreasonable, as today's order appears to recognize.[23] But that preliminary finding in the July 2 Order, which took place before the hearing required by FPA section 206(a), does not support the conclusion that removing the Fuel Security RMR is unjust and unreasonable.[24] Indeed, suggesting that the Commission's preliminary determination in the July 2 Order requires the outcome in

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[20] As noted, *see supra* P 3, I do not believe that the Fuel Security RMR was needed in the first place, meaning that I see no barrier to removing it here. Nevertheless, as explained below, even assuming that the Commission was correct that these tariff provisions were needed to address the potential reliability violations identified in ISO New England's fuel security studies, the record does not indicate that they are still needed today.

[21] *E.g.*, July 2 Order, 164 FERC ¶ 61,003 at PP 49-52; *see also* NEPOOL Answer at 3-4.

[22] July 2 Order, 164 FERC ¶ 61,003 at PP 49-52.

[23] *ISO New England Inc.*, 170 FERC ¶ 61,099, at P 18 (2020) (Order) (noting "the Commission's previous finding that the Tariff *may* be unjust and unreasonable . . . ." (emphasis added)).

[24] *See* 16 U.S.C. § 824e(a) (requiring that the Commission hold a hearing prior to finding any rate unjust and unreasonable or unduly discriminatory or preferential).

today's order is the same as saying that because you were once charged with a crime, we can assume you were guilty. But the FPA does not work that way anymore than does the criminal justice system. That means, however, that the Commission cannot rely conclusively on its prior orders to reject this filing without violating the FPA and basic principles of reasoned decisionmaking.

9. Finally, the Commission also claims that the fact that ISO New England originally proposed a three-year period for the Fuel Security RMR supports its finding today.[25] Not so. ISO New England filed the proposal before us pursuant to FPA section 205, which envisions a range of just and reasonable rates.[26] Section 205 allows a public utility to revise its filed rate—even a filed rate accepted in a compliance filing in a section 206 proceeding—just by showing that its proposal is just and reasonable.[27] Accordingly, the fact that ISO New England originally proposed—and the Commission accepted—a longer term for the Fuel Security RMR is beside the point.

10. The Commission's determination that ISO New England's filing is premature is misguided for largely the same reasons. The Commission is saying essentially that the ISO cannot withdraw the Fuel Security RMR without filing its long-term market based solution. But, as noted, the Commission has no basis to support that conclusion. It has not made an actual section 206 finding—as opposed to a preliminary one—that the Tariff is unjust and unreasonable without something akin to the Fuel Security RMR. And ISO New England has explained that there is no fuel security concern for the FCA 15 delivery year and that, in the event one arises, it has ample tools to address that concern without the Fuel Security RMR. As a result, the Commission has no reasoned basis to find that ISO New England's filing is not just and reasonable.

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[25] Order, 170 FERC ¶ 61,099 at P 21.

[26] *Emera Maine v. FERC*, 854 F.3d 9, 23 (D.C. Cir. 2017).

[27] *See PJM Interconnection, L.L.C.*, 117 FERC ¶ 61331, at P 85 n.73 (2006) (noting that the Commission will accept a rate proposed by a public utility in a compliance filing if it is just and reasonable because the utility can always file to change its proposal under section 205); *ANR Pipeline Co.*, 110 FERC ¶ 61,069 at P 49 (2005) (similar); *see also Emera Maine*, 854 F.3d at 24 ("In contrast to section 206, section 205 'is intended for the benefit of the utility.'" (quoting intended *City of Winnfield, La. v. FERC*, 744 F.2d 871, 875 (D.C. Cir. 1984))).

For these reasons, I respectfully dissent.

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Richard Glick
Commissioner