

remedy put forward in the NOPR to create a cost-of-service recovery mechanism for chosen resources. Consistent with the Commission's past approach, NEPGA and IPPNY believe that market-based solutions specific to the regional characteristic of each market can and should be developed to address any gaps that may exist in the design and structure of the competitive wholesale electricity markets.

I. Motion to Intervene and Communications

NEPGA is the trade association representing competitive power generators in New England. NEPGA's member companies represent approximately 26,000 megawatts, or roughly 80% of the installed capacity in New England. NEPGA's mission is to support competitive wholesale electricity markets in New England through the ISO New England, Inc. ("ISO-NE"). IPPNY is the trade association representing competitive power generators in New York. IPPNY's members generate over 75 percent of New York State's electricity using a wide variety of generating fuels and technologies. IPPNY's mission is to advocate for the continued development and enhancement of reliable and efficient competitive electricity markets through the New York Independent System Operator, Inc. ("NYISO"). The ISO-NE and NYISO markets contain energy and capacity components that have been designed, *inter alia*, to accommodate the regional distinctions and differences present in these two markets. Both NEPGA and IPPNY believe that open markets are the best means to provide reliable and competitively-priced electricity for consumers.

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II. Initial Comments

a. Northeast Market-Based Investments

NEPGA and IPPNY strongly support open, competitive wholesale electricity markets. The competitive markets underpin the more than \$25 billion in power generation investments over the last 20 years in New England and New York. Market-based mechanisms in New England and New York provide reliability for consumers, while maintaining historically competitive pricing. The wholesale markets in the Northeast have evolved and been refined and enhanced to account for deficiencies in the market design revealed over time, address changing needs and provide for increased performance obligations to continue reliably serving consumers in the region. These markets are in the midst of extensive stakeholder processes to integrate and/or accommodate state public policy objectives, with a particular focus on reducing economy-wide carbon emissions.

The New England wholesale electricity markets have incented and are supporting nearly \$10 billion in new investments in needed power generation capacity in the form of 4,120 MW that are expected to come online by mid-2020, representing roughly 15% of New England's peak

electricity demand.³ These resources are replacing 4,200 MW of announced power plant retirements. All of these new facilities are predicated on market-based mechanisms and therefore would be undermined by other, likely uneconomic, resources in the market that are supported through cost-of-service arrangements, as contemplated in the NOPR. An additional roughly 13,000 MW of new facilities are currently in the ISO-NE generation interconnection queue primed to step in should additional retirements be announced and market signals support their entry and ability to recover their investments over the long term. In New York, competitive markets have spurred the addition of more than 11,000 MW of generation capacity in areas of the state where that power is needed most, and signaled the retirement of 7,000 MW of older or less efficient generation capacity.

NEPGA and IPPNY each submitted comments following FERC's Technical Conference on May 1 and 2, 2017, on State Policies and Wholesale Markets (Docket No. AD17-11).⁴ NEPGA and IPPNY would like to incorporate the important information in those comments in the Commission's consideration of this NOPR. In particular, NEPGA and IPPNY underscored the numerous benefits that have accrued in response to the market signals provided by the competitive markets which have included lower emissions, highly competitive pricing and increased investments in the region to support reliability. NEPGA's and IPPNY's comments also serve as an important caution against pursuing out-of-market mechanisms which will put all of these successes and investments at risk.

As NEPGA's comments note, the collective actions by a number of New England states "have the very real potential of carving out the majority of the annual electricity consumed in

³ New England's all-time peak electricity demand of 28,130 MW was reached in August 2006.

⁴ *State Policies and Wholesale Markets Operated by ISO New England Inc., New York Independent System Operator, Inc., and PJM Interconnection, L.L.C.*, Notice of Technical Conference, Docket No. AD17-11-000, (Mar. 3, 2017).

New England for a small subset of resources and technologies and insulating them from the competition and economics of the energy, ancillary services and capacity markets.”⁵ The comments further established that “the Commission should provide guidelines that enable stakeholders to reach solutions that work for individual regions and that also are consistent with the Federal Power Act. Further, the Commission should respect solutions that regions, states and stakeholders are able to reach in the future to address these challenges, provided they fall within the guidelines the Commission has established as well as the framework of the Federal Power Act and general competitive market principles.”⁶

Commission leadership is critical to charting the path forward, but such direction should also be mindful of the regional differences between the wholesale electricity markets and should seek to hold true to, and remain consistent with, the market-based policies that have long served as FERC’s guidepost in the New England and New York markets, and which are the basis for the investments made by NEPGA and IPPNY members.

The NOPR, as proposed, fails this test.

b. Markets Can Meet Reliability and Resilience

The NOPR highlights the potential economic retirement of certain facilities that historically have operated as baseload resources and expresses concern that the loss of these facilities threatens “grid reliability and resilience.” NEPGA and IPPNY appreciate DOE’s urgent focus on ensuring that critical services provided by power plants in the FERC-jurisdictional wholesale electricity markets are adequately compensated. Indeed, the concern underlying the NOPR reflects a core tenet of competitive market design and is the fundamental motivation of

⁵ *Post-Technical Conference Comments of The New England Power Generators Association, Inc.*, Docket No. AD17-11-000, (June 22, 2017) at pp. 8.

⁶ *Id.* at pp. 11.

NEPGA's and IPPNY's support for the price formation initiatives that the Commission has prioritized in recent years.

As has occurred over the nearly two decades of wholesale competitive market operations, NEPGA and IPPNY are confident that any reliability or resilience gaps that may currently exist in the design of the wholesale markets can be remedied by developing additional enhancements in the market rules that are focused on clearly identified reliability needs and that adequately compensate any resources that help meet those needs. New England and New York have long histories of developing market mechanisms to meet reliability. It is worth highlighting just some of these recent examples of major changes to the market designs that are responsive to reliability concerns identified by ISO-NE, NYISO, FERC or stakeholders. It is also noteworthy that the Commission has not directed "one size fits all" solutions but rather has permitted ISO-NE, NYISO and the other competitive markets to develop market design enhancements with their stakeholders that best aligned with the respective needs of their systems.⁷

In New England, the single largest change in the last several years was the implementation of "Pay for Performance" in the Forward Capacity Market. ISO-NE adopted this two-settlement capacity market design due to its concern that the ISO-NE markets were not providing sufficient revenues or incentives for capacity resources to make the necessary investments to guarantee system resource availability and system reliability.⁸ The two-settlement design, which takes effect on June 1, 2018, is intended to provide the "economic

⁷ See, e.g., Wholesale Competition in Regions with Organized Electric Markets, Order No. 719, 125 FERC ¶ 61,071 at P 234 (2008) ("Although we require RTOs and ISOs to modify, where necessary, their market rules governing price formation during periods of operating reserve shortage, we will not mandate any specific approach to this reform. Rather, because each market design is different, the changes to market rules should reflect each region's market design."); see also *New York Independent System Operator, Inc.*, 150 FERC ¶ 61,139 (2015) at P 47 (citations omitted) (emphasizing determination to accept exemption was based "solely on the merits of the Complainant's proposal and not based on the Commission's previous action in PJM" and reaffirming the Commission "allow[s] for each region to develop rules to address the differing concerns of the regions.").

⁸ ISO-NE Filing, Transmittal Letter at p. 1, Docket No. ER14-1050-000 (filed January 17, 2014).

motivation, and the financial capability, for operational related-investments that ensure resources are available when needed to maintain reliability” in the most cost-effective and efficient way possible.⁹

Other recent changes to the ISO-NE markets are likewise intended to economically and efficiently improve upon ISO-NE system reliability. For example, beginning in December 2014, energy market participants were permitted greater offer flexibility in the Day-Ahead and Real-Time Energy Markets, which in turn both allowed resources to more accurately price their offers on an hourly basis to account for intra-day changes in the fuel costs and “provide ISO-NE with the tools to better manage the electric system and thereby help ensure reliability.”¹⁰ Earlier this year, ISO-NE put into practice new pricing rules in the Real-Time Energy Market that more accurately price the reliability value provided by so-called fast-start resources (generally those that can start within thirty minutes or less and have a minimum run time of one hour or less) when they are committed and dispatched.¹¹ The economic incentives created by properly pricing the value of these resources are important to “operating the system efficiently and reliably.”¹² Together, these and other recently adopted market designs demonstrate that proper price-formation and market outcomes can economically and efficiently ensure resilience and maintain system reliability, resource adequacy and resource availability.

New York has similarly adopted changes to its market design to economically and efficiently maintain system reliability. In the wake of the 2013-2014 Polar Vortex, the NYISO adopted performance-related energy market designs and gas-electric coordination reform to

⁹ *Id.* at pp. 6-7.

¹⁰ *ISO New England Inc. and New England Power Pool*, 145 FERC ¶ 61,014, at P 33 (2013).

¹¹ *Letter Order Accepting Tariff Revisions, ISO New England Inc. and New England Power Pool Participants Committee*, Docket No. ER15-2716-000 (October 19, 2015).

¹² ISO-NE Filing, Transmittal Letter at p. 4, Docket No. ER15-2716-000 (filed Sept. 24, 2015).

further augment its system design in light of the experiences in neighboring regions despite the fact that its existing system design and generation composition prevented major supply shortages from extended periods of severe cold weather or a NYISO all-time winter peak load of 25,738 MW.¹³ In November 2015, the NYISO implemented comprehensive shortage pricing rules to provide long term economically efficient price signals to promote fuel assurance and incent resources to provide flexibility and perform reliably during stressed system conditions such as cold and hot weather events.¹⁴

The NYISO was the first ISO to establish a shortage pricing protocol that places a clear value on reserve capacity. Thereafter, in June 2016, the NYISO followed its shortage pricing initiative with a companion proposal to implement comprehensive scarcity pricing rules to allow demand response resources to set price whenever a reserve shortage would have occurred if the demand response had not been deployed.¹⁵ Most recently, the NYISO implemented hybrid pricing criteria for gas turbines to set prices in the Real-Time Market by allowing Fixed Block Units to be eligible to set price in all intervals in which they are dispatched.¹⁶ Other relevant projects currently underway to improve price formation include work to develop Constraint-Specific Graduated Transmission Demand Curves that more accurately reflect the severity of

¹³ See “Winter 2015 Cold Weather Operations” (presented at March 31, 2015 Management Committee meeting) at 4, available at http://www.nyiso.com/public/webdocs/markets_operations/committees/mc/meeting_materials/2015-03-31/Agenda%205_Winter%202014-15%20Cold%20Weather%20Operations_1.pdf.

¹⁴ *New York Independent System Operator, Inc.*, 151 FERC ¶ 61,057 (2015)

¹⁵ *New York Independent System Operator, Inc.*, 154 FERC ¶ 61,152 (2016)

¹⁶ *New York Independent System Operator, Inc.*, Docket No. ER17-549-000, letter from Kurt M. Longo to NYISO accepting submittal for filing (Feb. 28, 2017).

transmission shortages when there are insufficient resources to resolve a constraint¹⁷ and work to secure certain 100+kilovolt transmission facilities in the NYISO's market model.¹⁸

NEPGA and IPPNY therefore ask that, if FERC identifies a reliability or resilience service that is not currently provided for under existing ISO/RTO market structures, FERC clearly define the need and then direct the ISOs/RTOs, working with their respective stakeholder groups, to rectify the situation by promptly developing market-based rule revisions that continue to be specific to the characteristics of each market. FERC should explain how the service benefits reliability in the markets and the degree to which such benefits are locational in nature. The specific reliability service that is sought must also be clearly defined in a resource and vintage-neutral manner.¹⁹

As noted above, while the competitive wholesale markets in the Northeast have generally demonstrated their ability to respond to market design concerns, NEPGA and IPPNY take this opportunity to point out that further improvements in the market, particularly market pricing, remain outstanding and should be pursued promptly. For example, numerous market improvements were identified as part of the Commission's price formation investigation in Docket No. AD14-14 and progress has been made towards ensuring that prices ideally "reflect

¹⁷ See NYISO presentation on *Constraint Specific Demand Curves*, NYISO MIWG (October 3, 2017). http://www.nyiso.com/public/webdocs/markets_operations/committees/bic_miwg/meeting_materials/2017-10-03/Constraint%20Specific%20Demand%20Curves.pdf.

¹⁸ See NYISO presentation on *Securing 100+kV Transmission Facilities in the Market Model*, NYISO MIWG (September 25, 2017) http://www.nyiso.com/public/webdocs/markets_operations/committees/bic_miwg/meeting_materials/2017-09-25/100+kV%20-%20Sept%20MIWG%20FINAL.pdf.

¹⁹ Resources and vintage-neutral rule revisions address Staff's fourth inquiry under Eligibility. In any event, in response to Staff's second inquiry under Implementation, NEPGA and IPPNY submit that any rules adopted in this NOPR must not adversely skew capacity market results.

the true marginal cost of production.”²⁰ However, more needs to be done to ensure accurate price formation and the Commission should work promptly to complete that important work.

c. Cost-of-Service Mechanisms Are the Wrong Path Forward

The NOPR identifies recent storms and other weather events affecting the performance of certain resources as indicative that “[i]mmediate action is necessary to ensure fair compensation in order to stop the imminent loss of generators with on-site fuel supplies, and thereby preserve the benefits of generation diversity and avoid the severe consequences that additional shut-downs would have on the electric grid.” As a solution, DOE proposes that resources with 90-days of fuel onsite receive recovery of “fully allocated costs and a fair return on equity.”²¹

By providing for the recovery of all costs and a guaranteed return, the NOPR moves those chosen resources from being fully engaged in the competitive wholesale markets to being indifferent to their outcomes. While today those resources are dependent on recovering any costs and potential returns based on being the most efficient choice in the market, the NOPR would ensure that their “fully allocated costs” would be recovered directly from consumers in addition to a guaranteed “return on equity.” In the simplest terms, these resources would go from being at-risk, merchant investments to being fully supported by a cost-of-service, rate-base regime.

While there will be many consequences to this type of a drastic change to the market treatment of certain resources, the most immediate will be the impact felt by other resources that will continue to solely rely on market opportunities. The vast majority of the remaining market-based resources will still be relied on to play a critical role in supporting reliability as well as

²⁰ *Price Formation in Energy and Ancillary Services Markets Operated by Transmission Organizations and Independent System Operators*, Notice, Docket No. AD14-14-000, at 2 (June 19, 2014).

²¹ NEPGA and IPPNY’s silence on the proposed 90-day onsite fuel requirement is not indicative of tacit support. Studies conducted by ISO-NE and NYISO in the aftermath of the 2013-2014 Polar Vortex and 2012 Superstorm Sandy provide no evidence to suggest a 90-day fuel supply requirement would have provided reliability benefits in New York or New England.

ensuring competitive electricity prices for consumers. But the wholesale markets will likely be unable to provide the market-based resources with a reasonable opportunity to recover the revenues necessary to continue providing energy and reliability services if a subset of resources in the market no longer is exposed to market-based rates due to their cost-of-service rate recovery.

Resources that have no exposure to the markets have no incentive to make economic-priced offers into the markets – they are made whole through their cost-of-service rates. These out-of-market resources will therefore cause the markets to clear at uneconomic, below-market levels, which will deprive market-based resources the opportunity to recover the costs of their continued operation. As the market based resources are deprived of appropriate revenues, it will in all likelihood force units that would otherwise be economic to either retire or require some out of market treatment themselves; perhaps even cost-of-service rates. A snowballing effect would occur – out-of-market payments compelling the need for additional out-of-market payments. Though the New England and New York markets allow for another form of cost-of-service rate treatment, the Reliability Must Run (“RMR”) agreement, these are intended to be “of a limited duration so as to not perpetuate out-of-market solutions that have the potential ... to undermine price formation.”²² Indeed, given the grave consequences of cost-of-service resources interfering with price-formation in the wholesale markets, “[t]he Commission views RMR agreements as tools of last resort.”²³

The view that the treatment proposed in the NOPR will lead to the unwinding of the wholesale markets may sound hyperbolic to some, but it is also a function of other market

²² *New York Independent System Operator, Inc.*, 150 FERC ¶ 61,116, at P 2 (2015).

²³ *ISO New England Inc.*, 125 FERC 61,102, at P (2008), quoting *Norwalk Power, LLC*, 120 FERC ¶ 61,048, at P 42 (2007).

factors. Both New England and New York’s wholesale electricity markets are today seeing some of the lowest prices in their market histories.²⁴ In the midst of this situation, cost-of-service arrangements for a selected few resources would undermine an already challenging revenue picture for all the other resources that are also necessary for reliability.

Capacity resources receiving cost-of-service rates are immune to market clearing prices because they are made whole by virtue of their guaranteed rates. Whether they are removed from the market or offered in as price-takers, market clearing prices will fall below economic and competitive levels. This action to move some resources to cost-of-service ratemaking could then drive the premature retirement of other resources important for reliability. In a death-spiral for the competitive marketplace, a sufficient amount of these additional premature retirements could force the Commission to contemplate expanding cost-of-service treatment to all resources that support reliability. At such a point, there would effectively be no more competitive wholesale electricity market. Indeed, New England’s existing capacity market design was largely a response to a wave of requests for cost-of-service ratemaking in the form of RMR agreements in 2002 and 2003, and the Commission’s concerns about their impact on the competitive wholesale markets. The Commission denied full cost-of-service rate recovery, explaining:

“[E]xpensive generators under RMR contracts receive greater revenues than new entrants, who would receive lower revenues from the suppressed spot market price. In short, extensive use of RMR contracts undermines effective market performance. In addition, suppressed market clearing prices further erode the ability of other generators to earn competitive revenues in the market and increase the likelihood that additional units will also require RMR agreements to remain profitable.”²⁵

²⁴ “New England’s Wholesale Electricity Prices in 2016 Were the Lowest Since 2003,” ISO-NE Press Release, February 27, 2017. https://www.iso-ne.com/static-assets/documents/2017/02/20170227_pr_2016_price_release.pdf Power Trends 2017, New York’s Evolving Electric Grid, May, 2017. http://www.nyiso.com/public/webdocs/media_room/publications_presentations/Power_Trends/Power_Trends/2017_Power_Trends.pdf

²⁵ *Devon Power LLC, et al*, 103 FERC ¶ 61,092, at P 29 (2003) (denying full cost-of-service RMR agreements).

Likewise, in its order requiring the NYISO to adopt tariff provisions governing the rates, terms and conditions for RMR service, the Commission stated its belief that:

“RMR filings should be made only to temporarily address the need to retain certain generation until more permanent solutions are in place and that all alternatives should be considered to ensure that designating a generator for RMR service is a last resort option for meeting immediate reliability needs.”²⁶

It is for that reason that NEPGA and IPPNY oppose cost-of-service support for individual resources or technologies. Instead, as noted above, if the Commission identifies additional critical resiliency services, such services must be clearly defined. Once defined and consistent with the Commission’s practice of recognizing and accommodating regional differences, each ISO should be directed to develop revisions to their respective market design that provide adequate value for these services while continuing to meet the needs of their individual systems.

III. Conclusion

NEPGA and IPPNY respectfully request intervention in this important rulemaking docket and offer these Initial Comments for Commission consideration. NEPGA and IPPNY oppose the cost-of-service aspects of the proposal in the NOPR. NEPGA and IPPNY, however, greatly appreciate the focus brought by DOE to the continued efforts by FERC and stakeholders to timely ensure that resources are adequately compensated for the reliability services they provide. If FERC identifies a reliability or resilience service that must be provided in ISO/RTO markets, the Commission’s priority should remain to rely on market-based mechanisms that take into account regional market designs to meet these objectives. NEPGA and IPPNY look forward to continuing to work with FERC, the ISOs/RTOs and other stakeholders to implement any such revisions deemed warranted to address identified market issues as quickly as possible.

²⁶ *New York Independent System Operator, Inc.*, 150 FERC ¶ 61,116, at P 16 (2015).